

Translated from Spanish

Permanent Mission of Panama to the United Nations

MPP-NY-130/F/12

The Permanent Mission of the Republic of Panama to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to the request contained in his note LA/COD/50 concerning General Assembly resolution 66/93 entitled “Criminal accountability of United Nations officials and experts on mission”, has the honour to transmit herewith the reply of the Government of Panama.

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

New York, 12 July 2012

With respect to paragraph 3 of General Assembly resolution 66/93, article 18 of the new Criminal Code establishes that Panamanian law is applicable to crimes, even if committed abroad, against humanity, against the legal personality of the State, against public health and against the economy or public administration of the nation, as well as to the crimes of enforced disappearance, trafficking in persons, falsification of Panamanian public credit documents or official documents, stamps and seals and counterfeiting of Panamanian currency or other currencies that are legal tender in the country if, in this last case, they were brought into, or were intended to be brought into, the territory of Panama.

This indicates the physical reach of criminal law and its application to crimes of a serious nature. Persons must answer for crimes such as those listed above, even when they have not committed them in Panama and whether or not they are acting in their capacity as United Nations officials or experts.

Pursuant to article 20 of the new Criminal Code, Panamanian law is applicable to crimes committed abroad, when:

1. They produce or are intended to produce results in the territory of Panama;
2. They are prejudicial to a Panamanian or his rights;
3. They are committed by Panamanian diplomatic agents, officials or employees who have not been prosecuted in the place where the crime was committed by reason of diplomatic immunity;
4. A national authority has denied the extradition of a Panamanian or a foreigner.

Article 21 of the Criminal Code goes on to specify that, notwithstanding the legislation in force in the place where the crime was committed and the nationality of the person accused of the crime, Panamanian criminal law shall apply to those who commit punishable acts covered by the international treaties in force in Panama, provided that the treaties give it territorial jurisdiction.

With respect to paragraph 4 of resolution 66/93, Panama, by resolution No. 13 of 18 December 2000, officially established the International Affairs Secretariat within the Attorney General's Office, putting it charge of international legal assistance and collaboration within the framework of international cooperation, in strict observance of international and domestic norms. The Secretariat generally works in coordination with the Ministry of Foreign Affairs.

It should be noted that the work being done in Panama in these areas by the Attorney General's Office has led to the conclusion of international agreements with the agencies responsible for prosecuting crimes in other countries and the development of best practices in dealing with their requests.

Attention might here be drawn to the following domestic legislation governing the response to requests from the authorities of other States for the purposes of investigation of prosecution, evidence gathering or any other action needed to facilitate criminal proceedings, in keeping with some of the international regulations regarding mutual assistance which have been incorporated into Panama's legal system:

- Act No. 39 of 9 July 2001 establishes in article 30 that, for the purposes of international assistance and cooperation under the Inter-American Convention against Corruption, Supreme Court General Transactions Division Four shall be designated as the main authority responsible for formulating, receiving, processing and dispatching requests for international assistance and cooperation.

Panama, seeking to establish ties of cooperation in combating crime, has concluded mutual legal assistance treaties with various countries and ratified other legal instruments, namely:

- Mutual legal assistance treaty with the United States of America (Act No. 20 of 22 July 1991);
- Multilateral Central American mutual legal assistance treaty (“Mutual Legal Assistance Treaty on Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama”) (Act No. 30 of 13 July 1995);
- Mutual legal assistance treaty with Colombia (“Agreement on Mutual Judicial Assistance and Cooperation”) (Act No. 42 of 14 July 1995, Supplementary Protocol to the Agreement of 1994);
- Mutual legal assistance treaty with the United Kingdom of Great Britain and Northern Ireland (Act No. 11 of 7 July 1994);
- Mutual legal assistance treaty with Spain (Act No. 7 of 3 May 1999);
- Mutual legal assistance treaty with Mexico (“Treaty on Mutual Legal Assistance in Criminal Matters”) (Act No. 40 of 30 June 1998); and
- Inter-American Convention on Mutual Assistance in Criminal Matters (Act No. 52 of 17 October 2001), signed at Nassau, the Bahamas, on 23 May 1992 by Canada, Grenada, Panama, Peru, the United States of America and Venezuela, to which Panama entered the following reservation:

“With respect to article 5, paragraph 1, the Republic of Panama declares that it is under no obligation to offer assistance in cases where the acts in question are not crimes in the Republic of Panama and the offering of such assistance would violate legal provisions in force in the Republic of Panama.”

To satisfy the above commitments, the Department for the Implementation of Mutual Legal Assistance Treaties was established by Decision No. 1446 of 13 September 1991, later amended by Decision No. 94 of 12 April 1995.

Money-laundering, including the laundering of funds derived from acts of corruption, was criminalized with the adoption of Acts Nos. 41 and 42 of 2002. Such crimes are assessed and investigated by the Financial Analysis Unit in the Office of the President, which forwards cases to the Public Prosecutor’s Office, to which the States parties [to the relevant treaties] apply for mutual assistance and cooperation.

The provisions governing both money-laundering and cooperation are, moreover, conceived in general terms and thus are applicable to all persons involved in illicit activities, whether or not they are United Nations officials or experts on mission.

With respect to paragraph 5 (a) of resolution 66/93, the Rome Statute of the International Criminal Court and the Convention on Transnational Organized Crime are the relevant international instruments, governing extradition and legal assistance specifically.

In addition, the Bustamante Code, adopted by Act No. 15 of 26 September 1928, sets out, *inter alia*, the General Rules of Criminal Jurisdiction, establishing which authorities have jurisdiction over specific crimes [of a serious nature] and also specifying that their jurisdiction extends to all other crimes and offences to which Panama's criminal law applies, in accordance with the provisions of the Code. The General Rules also cover crimes and offences committed abroad by national officials who enjoy immunity, and govern extraditions.

With respect to paragraph 5 (b) [of resolution 66/93] and the facilitation of the use of information and material obtained from the United Nations for purposes of criminal proceedings, Panama's Judicial Code has standard norms on matters such as documents originating abroad, specifically article 877, which indicates that such documents can be used as evidence in criminal proceedings if, except as otherwise established in international instruments, they meet the following criteria:

- They have been authenticated by a diplomatic or consular official of Panama on duty in the place where the document originated;
- They have, in the absence of a diplomatic or consular official, been authenticated by the diplomatic or consular representative of a friendly nation, in which case a certification shall be attached by the Ministry of Foreign Affairs attesting that no Panamanian consular or diplomatic official is serving in the place where the document originated.

It shall be assumed that documents thus authenticated have been issued in conformity with the local law of their place of origin, unless the interested party proves the contrary.

With respect to paragraph 5 (c) [of resolution 66/93], it must be said that there is no specific provision guaranteeing protection for victims of crimes committed by United Nations officials and experts [on mission], because Panamanian law does not normally make explicit provision for all kinds of possible occurrences. However, there are principles whose application in conjunction with other provisions does offer effective protection.

For example, article 17, paragraph 2, of the Constitution states specifically: "the rights and guarantees set out in this Constitution shall be taken as minimal and shall not exclude others which have a bearing on the fundamental rights and dignity of the individual".

In addition, our Code of Criminal Procedure now establishes precautionary measures that may be imposed on those convicted of a crime, and they too constitute a means of indirect protection for victims. A judge or the Public Prosecutor's Office is authorized to impose precautionary measures in exceptional circumstances in which the accused is liable to make an attempt on the well-being or the life of the victim, of witnesses or of others involved. Although the aim of the precautionary measures is to guarantee the effectiveness of the sentence or of the outcome of a trial, they are closely related to measures of protection because there is always the possibility that an accused criminal can harm the victim or witnesses.

By Act No. 3 of 23 January 1991, Panama adopted the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and accordingly, article 2127 of the Judicial Code allows a judge or a public prosecutor, in addition to ordering pretrial detention, to take the following steps:

- Prohibit the accused from leaving Panamanian territory without authorization of the court;
- Order him to appear periodically before a public official;
- Order him to reside in a specified location within jurisdiction of court;
- Order him to observe house arrest, residence arrest or hospital arrest, as appropriate.

The new Code of Criminal Procedure provides that precautionary measures must be applied only exceptionally, and in fact they can be imposed only by the magistrate who sets bail. The new Code is scheduled to enter into force in several stages; it is currently in effect in the Second Judicial District, will later be extended to the Fourth District, and by 2014 will have national application, at which point it will be possible to order the following measures in addition to pretrial detention and other coercive procedural measures:

- Immediate departure from the domicile, if an act of aggression has been committed and the victim lives with the person accused of it;
- Payment of a monetary security;
- Suspension from the exercise of public or private duties by a person accused of committing a crime while performing those duties (articles 280 and 2153 of the Judicial Code).

The Code of Criminal Procedure broke new ground by extending the suspension measure to cover employees of private enterprises or persons on private contracts. The Code prohibits a person under threat of suspension from performing any duties, although the person may be able to keep the licence or contract authorizing him to perform such activities.

Although, as indicated earlier, it is not the norm to spell out the regulation of the protection of victims and witnesses, Panama does have some special laws governing protection, such as the Special Criminal Regime for Adolescents, Domestic Violence and the Abuse of Children and Adolescents, the legislation governing offences against sexual integrity and freedom, the special provisions on drug-related offences and the Act for the Protection of Crime Victims.

Similarly, Act No. 79 on Trafficking in Persons and Related Activities of 9 November 2011 also contains measures to prevent women, either Panamanian or foreign, living in Panama or brought into its territory, or Panamanian women abroad, from falling victim once or repeatedly to trafficking; to protect and assist them; and to guarantee that their human rights will be respected. The Act also provides penalties for trafficking in persons and related activities, and strengthens the State's policies and security actions with respect to such punishable acts.

With respect to paragraph 5 (d) of resolution 66/93, there is now close collaboration in Panama between the Ministry of Foreign Affairs and the Public Prosecutor's Office, through the International Affairs Secretariat, all of which hold

periodic meetings to assess the effectiveness of the response to requests made by the various host States. The Public Prosecutor's Office, through the Office of the Attorney-General assisted by its International Affairs Secretariat, has concluded agreements with a number of States which expressed interest in a better response system to the requests they submitted. This has allowed Panama to improve the lines of communication that are so necessary between States in the investigation of crimes.

With respect to paragraph 9 of resolution 66/93, Panama is not expecting any pending information from other States having to do with allegations, investigations or prosecutions involving United Nations officials or experts.

With respect to paragraph 15 of the resolution, Panama considers it useful to study the matters dealt with in resolutions 62/63, 63/119, 64/110 and 65/20 and has made it a priority to continue participating in discussions on issues such as jurisdiction over serious crimes committed by Panamanian nationals serving as United Nations officials or experts on mission, or issues of cooperation among States, in order to ensure that information requested will be readily obtained.
