

Translated from French

Information on the jurisdiction of the Government over violations of domestic criminal law committed by nationals who are officials or experts on mission with the United Nations, with comments relating to paragraphs 10, 12, 13, 15, 18 and 20 of resolution 74/181, of 18 December 2019, on criminal accountability of United Nations officials

| Resolution 74/181 | Information and comments |
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| <p>10. Strongly urges all States to consider establishing, to the extent that they have not yet done so, jurisdiction over crimes, particularly those of a serious nature, as known in their existing national 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, and, further, urges States and appropriate international organizations to provide technical and other appropriate assistance in developing such legal measures to States requesting such support;</p> | <p>In connection with the prosecution and punishment of nationals who are officials or experts on mission with the United Nations, we comply with the provisions of the Convention on the Privileges and Immunities of the United Nations. There are no special provisions in Madagascar criminal law to punish offences committed by nationals who are officials or experts on mission with the United Nations if those individuals are included on the list of officials and experts enjoying privileges and immunities communicated to the Government of Madagascar, except in the event of waiver of immunity by the Secretary-General.</p> <p>We wish to see United Nations officials or experts on mission, whether nationals or foreigners, be subject to prosecution and punishment, in order to rule out any form of impunity and ensure that no category of person can escape the jurisdiction of national courts when it is established that a crime has been committed outside the exercise of their functions or is unrelated to those functions. We therefore seek the collaboration Secretary-General to expedite the process.</p> <p>We also see no need to distinguish between serious and non-serious offences if the person concerned has committed a crime that, as explained above, is outside the exercise of that person's functions or is unrelated to those functions.</p> |
| <p>12. Encourages all States:</p> <p>(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 and experts on mission, including assistance in obtaining evidence at their disposal, in accordance with their national law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;</p> <p>(b) In accordance with their national law, to explore ways and means of facilitating the</p> | <p>Madagascar stands ready to assist Member States in criminal investigations against United Nations officials and experts on mission who have committed crimes, particularly serious crimes, and is open to all cooperation and to the signing of bilateral agreements on mutual legal assistance and extradition to that end, in strict compliance with its domestic law. In addition, we would like to point out that Madagascar has legislation governing international cooperation in criminal matters, in the form of Act No. 2017-027 of 29 January 2018.</p> <p>Madagascar fully guarantees the exercise of the right to defence, a fundamental right recognized by the Constitution of the Republic of Madagascar: "The State guarantees the full and inviolable rights of defence before all courts and at all stages of the proceedings, including the preliminary investigation at the level of the judicial police or the prosecutor's office." (Article 13, paragraph 6 of the Constitution of the Fourth Republic).</p> |

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| <p>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;</p> <p>(c) In accordance with their national 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 of victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process;</p> <p>(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;</p> | <p>With regard to the protection of victims and witnesses:</p> <ul style="list-style-type: none"> - Act No. 2016-017 of 22 August 2016, amending and supplementing certain provisions of the Malagasy Code of Criminal Procedure, contains provisions regarding testimonial aids and anonymous testimony (article 18 of the Act, which provides for the insertion of new provisions, relating in particular to articles 385.1 and 385.6 of the Code); Article 13 of the same Act, amending and supplementing article 333 of the Code of Criminal Procedure, makes "the exercise of pressure on or reprisals against victims and their families" an objective criterion for placing the accused under a committal order; - With regard to trafficking in persons, articles 41, 42 and 43 of Act No. 2014-040 of 20 January 2015 on combating trafficking in persons set out measures for the protection of victims, witnesses, investigators and members of their families; - Act No. 2019-008 of 16 January 2020 also offers protection to victims of gender-based violence (in article 17). |
| <p>13. Requests the Secretariat to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and be aware that certain conduct may amount to a crime for which they may be held accountable, and also requests the Secretariat to take all appropriate measures to continue to ensure that all such personnel, as well as United Nations officials, are properly vetted by the States contributing personnel and by the Organization for any prior misconduct while serving with the United Nations;</p> | <p>We agree with the provisions of paragraph 13. Furthermore, national or foreign officials and experts on mission with the United Nations should be reminded that privileges and immunities are granted not for their personal benefit but in order to safeguard the independent exercise of their functions in connection with the Organization to which they are attached. The existence of privileges and immunities must not prevent justice from being done and must not constitute an exemption from respect for individual rights and fundamental freedoms.</p> |

15. Reiterates its decision that, bearing in mind its resolutions 62/63 and 63/119, the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and also noting the inputs by the Secretariat, shall be continued during its seventy-fifth session in the framework of a working group of the Sixth Committee, and, for that purpose, invites further comments from Member States on that report, including on the question of future action;

No comment to add.

18. Requests the Secretary-General to bring credible allegations that reveal that a crime may have been committed by a United Nations official or expert on mission to the attention of the States against whose nationals such allegations are made and to request from those States updates, as set out in paragraph 20 below, on the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions;

20. Urges the States referred to in paragraphs 18 and 19 above to provide to the Secretary-General periodic updates on their handling of the allegations, in order to demonstrate that Member States are taking steps to ensure accountability for crimes committed by United Nations officials and experts on mission, in particular by informing the Secretary-General of whether any disciplinary or criminal proceedings have been brought and of the outcome of any such proceedings or the reasons for not initiating them, provided that this would not be contrary to national laws or prejudice national investigations or national proceedings, and requests the Secretary-General to continue and undertake the necessary follow-up with the States concerned, by all appropriate forms of communication, with a view to encouraging those States to respond;

We request the Secretary-General not to hesitate to waive immunity when necessary. We would like to see the development of close cooperation with the United Nations in order to ensure the proper administration of justice and compliance with police regulations, and to avoid any abuse of privileges and immunities.