

*Translated from Spanish*

**Criminal accountability of United Nations officials and experts on mission  
Republic of El Salvador  
Report pursuant to General Assembly resolution 75/132**

The Republic of El Salvador is submitting the present report pursuant to resolution 75/132, adopted by the General Assembly on 15 December 2020, in which the Assembly urged States to take all measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators are brought to justice, in accordance with international law and international human rights standards, including due process.

In accordance with its national commitment to the purposes and principles of the Charter of the United Nations, El Salvador has appointed national officials and experts to various peacekeeping operations. In order to comply with the above-mentioned resolution, the information below is provided in relation to the specific matters that States have been asked to address.

**I. Paragraphs 10 and 12 (a) of General Assembly resolution 75/132, concerning the establishment of jurisdiction over crimes, particularly those of a serious nature, as known in States' existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, and mutual assistance in connection with criminal investigations or criminal or extradition proceedings in respect of such crimes**

El Salvador has taken the necessary legislative measures to ensure the investigation and prosecution of crimes that may have been committed by its nationals while serving as United Nations officials or experts on mission. In particular, the national legal framework covers, inter alia, the investigation stage, the applicable principles of jurisdiction, and cooperation in international investigations.

In accordance with article 193, paragraphs 3 and 4, of the Constitution, the Office of the Attorney General of the Republic is responsible for leading investigations, with the cooperation of the National Civil Police, and for initiating legal proceedings, either of its own motion or at the request of a party. The Office of the Attorney-General is part of the Public Prosecution Service and exercises its competence independently from the other organs of the State. The Office is guided by the principle of legality, among others. According to articles 9 and 13 of its Organic Act, this means that the

Office's actions must be fully in accordance with the Constitution, international treaties and other norms that form part of the legal order of El Salvador.

At the administrative level, the Ministry of Defence of El Salvador has the power to conduct investigations and disciplinary proceedings in respect of personnel stationed at missions who may have engaged in conduct considered to be disciplinary misconduct regulated by military laws and regulations.

With regard to the exercise of the jurisdiction of El Salvador, article 9 of the Criminal Code refers to the active personality principle, on the basis of which Salvadoran criminal law applies in respect of: "(1) crimes committed abroad by an individual in the service of the State, when the individual has not been prosecuted in the place where the crime was committed, owing to the privileges attached to his or her position; (2) crimes committed by a Salvadoran national abroad or in a place not subject to the particular jurisdiction of a State; and (3) crimes committed abroad by Salvadoran nationals, when extradition is requested and denied on account of their nationality, or crimes committed by foreign nationals that infringe the legal rights of Salvadorans".

In addition, our laws establish the principle of universality, in accordance with which, under article 10 of the Criminal Code, Salvadoran criminal law applies to crimes committed by any person in a place not subject to Salvadoran jurisdiction. In that regard, there is no provision establishing an exhaustive list of crimes in respect of which the principle of universality applies; there is merely a requirement that the act in question has affected rights that are internationally protected by specific agreements or norms of international law or that it involves a serious violation of universally recognized human rights.

In that connection, under article 47, paragraph 2, of the Code of Criminal Procedure, the jurisdiction of Salvadoran courts and judges in respect of criminal matters extends to "trying crimes committed outside the territory of the Republic in accordance with the Criminal Code. The judge or court with jurisdiction to try a crime or misdemeanour may also rule on all incidental issues that arise during the proceedings, even if they are not criminal matters. The exception is issues relating to the determination of the family status of individuals and of property rights in cases of usurpation."

With regard to cooperation for the purpose of conducting international investigations, article 78 of the Code of Criminal Procedure provides that "if criminal conduct takes place wholly or in part outside national territory or is attributed to persons related to international organizations, the Office of the Attorney General of the Republic may set up joint investigation teams together with foreign or

international institutions. In any event, joint investigation agreements shall be authorized and overseen by the Attorney General of the Republic. Where crimes of an international nature are involved, the Office of the Attorney General of the Republic may be part of the international and inter-agency commission designated to cooperate in the investigation.”

With regard to extradition and jurisdiction over crimes committed abroad, article 28, second and third paragraphs, of the Constitution of the Republic provides that “extradition shall be governed by international treaties and, in the case of Salvadorans, shall be carried out only if the relevant treaty expressly provides for it and has been approved by the legislative branch of the signatory States. In any case, the principle of reciprocity must be upheld and Salvadorans must be granted all the procedural and criminal law safeguards set forth in the Constitution. Extradition shall be carried out if the offence has been committed within the territorial jurisdiction of the requesting State, except in the case of crimes of international significance, and may in no case be imposed for political crimes, even if ordinary crimes result therefrom.” In accordance with article 182, paragraph 3, of the Constitution, it is the responsibility of the Supreme Court of Justice to “[...] order the sending of letters or commissions rogatory issued for the conduct of proceedings outside the State and order compliance with those coming from other countries, without prejudice to the provisions of treaties; and to grant extradition”.

The above-mentioned provisions reflect the progress that El Salvador has made with regard to the adoption of measures to ensure that there is no impunity for serious crimes, in particular when they are committed by officials and experts on mission, or by any other person. They are also related to the implementation of its human rights obligations under the various international instruments that El Salvador has ratified, including the American Convention on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

These provisions do not prevent members of missions accused of committing a misdemeanour or crime in connection with the exercise of their duties in the territory of the country in which they are stationed from being prosecuted by the host State, once the necessary procedures have been carried out. In such cases, article 27, second paragraph, of the Constitution of the Republic of El Salvador, prohibiting life sentences, degrading punishment and all forms of torture, must be taken into consideration.

**II. Report on the implementation at the national level of paragraphs 12, 13, 18 and 20 of resolution 75/132, including periodic updates on the handling of credible allegations and**

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**practical problems in implementation**

El Salvador has made significant efforts to ensure the application of stringent criteria in the selection of the officials and experts it sends on mission. In particular, thorough criminal record checks are carried out and personnel are given predeployment training. The Peace Operations Training Centre of the Armed Forces of El Salvador is responsible for training on human rights, international humanitarian law and United Nations guidelines for conduct – including the Manual on Policies and Procedures concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions, the policy of zero tolerance towards crimes in peacekeeping missions and the provisions of the relevant memorandum of understanding for each mission – and on compliance with the General Assembly resolutions on the criminal accountability of United Nations officials and experts on mission.

As indicated above, El Salvador puts officials and experts selected to go on mission through a rigorous preparation and screening process. With regard to the request for information about investigations or prosecutions of crimes committed by United Nations officials or experts, according to the records of the General Directorate of the National Civilian Police, proceedings have been initiated in connection with a crime allegedly committed by a national of El Salvador serving as a United Nations official or expert on mission.

To date, there are no other records of serious crimes committed by personnel on mission. Nonetheless, if a criminal act occurs, the country has an obligation to cooperate with the host State in the investigation of the punishable act or to address it appropriately in accordance with national criminal laws.

If crimes are committed in the territory of El Salvador by personnel deployed in the country, there are legal tools for ensuring due process, and also for providing adequate protection and care for victims, including through appropriate treatment that takes the gender perspective into account, and for witnesses of serious crimes. In that regard, El Salvador has, inter alia, a special law for the protection of victims and witnesses and a comprehensive special law on a violence-free life for women.

### **III. Paragraph 15 of General Assembly resolution 75/132, concerning the legal aspects of the report of the Group of Legal Experts, in particular the question of future action**

The standardization of criminal proceedings is a very complicated undertaking, particularly given that each State is entitled to exercise its own sovereignty; therefore, the draft convention proposed by the Group of Legal Experts could be an option for establishing a standard for the determination of each State party's jurisdiction. It is important to emphasize reciprocity, in particular with regard to the cooperation that a convention of that nature should entail; however, the ratification of such a convention would make it necessary to adapt the national legal framework or to establish new laws elaborating on the content of the convention.

We consider that Salvadoran law already makes sufficient provision for the cases referred to in the present analysis, although the efforts to elaborate a convention on the requirement of criminal accountability for United Nations officials and experts on mission could be useful to fill gaps in the law, in particular for those States that do not have laws aimed at resolving such situations.

In sum, the Republic of El Salvador considers it vital for all States to take appropriate steps to ensure that crimes committed by United Nations officials and experts on mission do not go unpunished and that the perpetrators are brought to justice, while ensuring full respect for procedural guarantees, including due process, the right to a hearing and international human rights norms, without prejudice to the privileges and immunities of such individuals.

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