



Translated from French
 Unofficial translation by the Secretariat

Observations of the Ministry of Justice on the implementation of Resolution 76/106 on the criminal accountability of United Nations officials and experts on mission, of 9 December 2021

Resolution 76/106	Comments
<p>10. Urges States that have not yet done so to consider establishing jurisdiction over offences, in particular serious offences, under their domestic criminal law committed by their nationals serving as United Nations officials or experts on mission, and further urges States and relevant international organizations to assist States, upon request, with technical or other assistance in developing such a legal framework.</p>	<p>With regard to the prosecution and punishment of national officials and experts on mission for the United Nations, we comply with what is stated in the United Nations Convention on Privileges and Immunities. Indeed, there is no specific provision in Malagasy criminal law that penalizes offences committed by national officials or experts on mission for the United Nations when they are included in the list of officials and experts enjoying privileges and immunities communicated to the Government of Madagascar, except in the case of a waiver of immunity by the Secretary-General.</p> <p>We wish to prosecute and punish United Nations officials or experts on mission, whether nationals or foreigners, so that there is no room for impunity and so that no category of person escapes the jurisdiction of national courts when it is established that the offence was committed outside the exercise of their functions or was unrelated to those functions. We therefore request the technical assistance of the United Nations in drafting a legal text on this issue.</p> <p>Furthermore, we consider that there is no need to distinguish between serious and non-serious offences as long as the person concerned commits an offence, as stated above, outside the performance of his or her duties or in no way connected with them.</p>

12. Encourages all States :

(a) to assist each other in criminal investigations, prosecutions and extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, in particular for the purpose of gathering evidence at their disposal, in accordance with their national law and existing treaties or other arrangements on extradition and mutual legal assistance between them ;

(b) in accordance with their national law, to consider ways and means of facilitating the possible use of information and material obtained from the United Nations for the purpose of criminal proceedings in their territory against any United Nations official or expert on mission who has committed a serious crime, bearing in mind the rights of the defence;

(c) in accordance with their national law, to provide effective protection to victims and witnesses of any serious crime alleged to have been committed by a United Nations official or expert on mission, as well as to any person reporting such crimes, and to facilitate the access of victims to victim assistance programmes, without prejudice to the rights of the accused, including those relating to due process ;

(d) in accordance with their domestic law, to consider how to respond appropriately to host States that request support and assistance in improving their capacity to effectively investigate serious crimes alleged to have been committed by United Nations officials or experts on mission;

Madagascar is ready to assist Member States in criminal investigations against United Nations officials and experts on mission who have committed offences and is open to any collaboration and to the conclusion of bilateral agreements on mutual legal assistance and extradition in that regard, in strict compliance with our domestic law. We would also like to stress that Madagascar has a legal text governing international cooperation in criminal matters, namely Act No. 2017-027 of 29 January 2018.

The Malagasy State fully guarantees the exercise of the right of defence, which is a fundamental right recognized by the Constitution of the Republic of Madagascar:

"The State guarantees the fullness and inviolability of the rights of the defence before all courts and at all stages of the proceedings, including the preliminary investigation, at the level of the judicial police or the public prosecutor." (Article 13, paragraph 6 of the Constitution of the IV^{ème} Republic).

In addition, to supplement the provisions of the Constitution, Act No. 2017-013 amending and supplementing the provisions of the Malagasy Code of Criminal Procedure relating to the defence of parties, the preliminary investigation, preventive detention during the prosecution and investigation provides in its Article 53 paragraph 1^{er} that during the preliminary investigation, any person suspected of having committed a crime or an offence, Article 53 bis, paragraph 1^{er} of the same law also provides that *"during the first appearance of an accused person, the investigating judge or the magistrate of the Public Prosecutor's Office, after having proceeded as stated in article 273 of the present code, shall give notice to the accused person who has not constituted a defence counsel during the preliminary investigation of his or her right to choose from among the lawyers of the bar of Madagascar or any other person of his or her choice, subject to the legal provisions in force."*

	<p>On victim and witness protection :</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 on aid to testimony and anonymous testimony in its article 18, which provides for the insertion of new provisions, including article 385.1 and article 385. With regard to the protection of victims, article 13 of the same Act, amending and supplementing article 333 of the Code of Criminal Procedure, makes "<i>the exercise of pressure or reprisals on victims and their families</i>" an objective criterion for placing an accused person under a detention order; - With regard to trafficking in persons, Law No. 2014-040 of 20 January 2015 on the fight against human trafficking enacts measures for the protection of victims, witnesses, investigators and their family members in its articles 41, 42 and 43 ; -In terms of the fight against corruption, Law No. 2016-020 of 22 August 2016 also contains provisions relating to the protection of whistleblowers, witnesses and victims, as well as agents responsible for the suppression of corruption; - Law No. 2019-008 of January 16, 2020 on the fight against gender-based violence also offers protection to victims in its Article 17.
<p>13. Requests the Secretariat to continue to ensure that Member States requested to provide personnel to serve as experts on mission are made aware of the high standards of conduct and behaviour required of persons acting in this capacity and of the fact that certain conduct may constitute an offence for which they may be held accountable, and also requests the Secretariat to take all necessary steps to continue to</p>	<p>We agree with what is said in that paragraph. Furthermore, national and foreign officials and experts on mission for the United Nations should be reminded that privileges and immunities are granted not for their personal benefit but in order to ensure the independent performance of their functions in connection with the Organization to which they are attached. Immunities and privileges shall not impede</p>



<p>ensure that States providing such personnel and the Organization verify that no misconduct has occurred on the part of such personnel and United Nations officials while in the service of the United Nations;</p>	<p>the course of justice and shall not constitute a derogation from respect for individual rights and fundamental freedoms. It is also necessary for foreign officials and experts on United Nations missions to be aware of the local customs and laws of the host countries.</p>
<p>15. Reiterates its decision, in the light of its resolutions 62/63 and 63/119, to continue its consideration of the report of the Group of Legal Experts, in particular its legal aspects, at its seventy-fifth session in a working group of the Sixth Committee, taking into account the views of Member States and the information provided by the Secretariat, and to this end invites Member States to provide additional comments on the report, including on the follow-up to it;</p>	<p>No comments</p>

18. Requests the Secretary-General to bring credible allegations of misconduct by United Nations officials and experts on mission to the attention of the State of nationality of the individual concerned and to request that State to report to the General Assembly, as set out in paragraph 20 below, on the steps it has taken to investigate and, as appropriate, prosecute serious crimes and to inform the Assembly of the types of assistance it would like to receive from the Secretariat in connection with such investigations and prosecutions;

20. Urges the States referred to in paragraphs 18 and 19 above to report regularly to the Secretary-General on the follow-up to allegations, which will demonstrate that Member States are taking action to hold accountable United Nations officials and experts on mission who have committed crimes, and, in particular, to inform the Secretary-General of the outcome of any disciplinary or criminal proceedings or of the reasons for inaction, provided that such action does not result in a breach of national law or prejudice internal investigations or prosecutions, and requests the Secretary-General to continue to follow up with the States concerned through all appropriate forms of communication in order to encourage them to provide the requested information;

We request the Secretary-General not to hesitate to waive immunity when necessary. We wish to see the development of close cooperation with the United Nations with a view to the proper administration of justice, the observance of police regulations and the avoidance of any abuse to which privileges and immunities might give rise.