

*Translated from Spanish*

## **The scope and application of the principle of universal jurisdiction**

### **Report of the Republic of El Salvador pursuant to General Assembly resolution 73/208**

The Republic of El Salvador is submitting the present report pursuant to General Assembly resolution 73/208, in which Member States are invited to submit, before 26 April 2019, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice.

With regard to this important topic, El Salvador reiterates that universal jurisdiction plays a significant role in combating impunity for the most serious crimes of concern to the international community, including torture, genocide and crimes against humanity, and for ensuring justice, truth and full reparation for victims.

In its previous reports, El Salvador had shown that it had a strong normative foundation for establishing the elements needed for the recognition and application of the principle of universal jurisdiction. It had also provided examples of cases from its constitutional jurisprudence and the Supreme Court of Justice that included major precedents for the effective application of the principle.

A case in point was judgment No. 44-2013/145-2013, of 13 July 2016, by which the Constitutional Chamber of the Supreme Court of Justice of El Salvador declared several articles of the General Amnesty (Peacebuilding) Act, applicable in El Salvador for crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. Another example was judgment No. 24-S-2016, of 24 August 2016, in which the Supreme Court referred to the definition set out in the Princeton Principles on Universal Jurisdiction of 4 December 2001. A final example was *amparo* judgment No. 558-2010, of 11 November 2016, in which the Constitutional Chamber recognized the importance of not granting amnesty for crimes that represent serious violations of international humanitarian law, stating that: “[...] to do otherwise, that is, to grant amnesty for acts provisionally characterized as crimes falling within the scope of the above-mentioned law, when it is probable that they are crimes against humanity or war crimes constituting serious violations of international humanitarian law, would hinder the investigation, prosecution, conviction and sentencing of those responsible for acts for which the granting of amnesty is prohibited under the Constitution and international law.”

The abovementioned legal precedents represent significant progress towards ensuring justice, truth and full reparation for victims. Other examples of progress achieved by El Salvador concern the practices adopted by the Office of the Attorney-General, which, in exercising its jurisdiction under article 193 of the Constitution, and in accordance with judgment No. 44-2013/145-2013 of the Constitutional Chamber of the Supreme Court, formulated the policy for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador, which was approved by the Attorney-General in December 2018.

The policy is primarily aimed at establishing criteria and guidelines for the criminal prosecution of war crimes and crimes against humanity committed during the armed conflict in El Salvador, to ensure effective and responsible investigations based on the principle of due diligence, which upholds the rights of victims to access to justice, to the truth about the acts that had occurred, and to reparation arising from criminal proceedings in the competent courts.

The policy is binding on all the staff of the Office of the Attorney-General and on the national civilian police and other entities that assist in the investigation of crimes, provided it is not at variance with the internal rules of those bodies. The policy therefore safeguards the duty to guarantee rights in respect of the responsibility of the State of El Salvador, namely the responsibility established in connection with the subjective element of criminal responsibility, and in respect of actions or omissions by any public authority in the exercise of its functions or actions or omissions by individuals acting with the consent of the State through its public servants.

This approach is in line with international legal instruments relating to the protection of human rights, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which build on the Universal Declaration of Human Rights, as well as the American Convention on Human Rights, in the regional context of the American continent. All of these instruments have been ratified by El Salvador and are a part of its law, in line with article 144 of the Constitution.

In sum, it is evident that the judicial practice developed in El Salvador has produced major precedents for the recognition and application of the principle of universal jurisdiction. It has had an impact in particular on the development of public policies that promote coordinated action by State entities involved in the investigation of crimes, to ensure that there are fewer instances of impunity for the most serious crimes of concern to the international community. The Republic of El Salvador therefore reiterates its commitment to the continued consideration of this important topic in the Sixth Committee of the General Assembly.

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