



PERMANENT MISSION OF THE REPUBLIC OF BOTSWANA TO THE UNITED NATIONS

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The Permanent Mission of the Republic of Botswana to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to draw attention to Secretary-General communication LA/COD/59/1 with respect to the submission of information and observations on the scope and application of Universal Jurisdiction pursuant to General Assembly resolution 65/33 of 6 December 2010.

Botswana is pleased to submit herewith the information of the domestic legal framework and judicial practice as well as relevant applicable international instruments.

The Permanent Mission of the Republic of Botswana to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

31 May 2011

**Secretary-General
of the United Nations
New York**



SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION - INFORMATION AND OBSERVATIONS OF THE REPUBLIC OF BOTSWANA

1. INTRODUCTION

- 1.1 The principle of universal jurisdiction is a widely accepted principle of international law which has crystallised into customary law. Botswana is among those states that recognise that certain crimes pose a serious threat to the international community and that states have a logical and moral duty to prosecute them, even if there is no criminal connection with the prosecuting state.
- 1.2 The principle aims to bring those responsible for crimes such as war crimes genocide, torture, extra judicial executions, crimes against humanity to justice. Botswana acknowledges that these are crimes that cannot go unpunished, especially if perpetrated by those in a position of power. Hence Botswana has signed several international treaties that provide for the principle of universal jurisdiction and has to a limited extent enacted national legislation giving effect to the principle of universal jurisdiction for certain crimes.

2. APPLICABLE INTERNATIONAL TREATIES

- 2.1 Internationally, Botswana has ratified several treaties containing the principle of universal jurisdiction. However, few of these have been domesticated to give them effect in Botswana's national legislation. Botswana has a dual legal system that requires that all Treaties that have been ratified by the country be domesticated first and incorporated into national legislation. Therefore, any international Treaty that Botswana is party to and provides for universal jurisdiction will not be

recognised by the courts of Botswana nor have legal effect within Botswana if it has not been made into law by an Act of Parliament.

2.2 There are several circumstances that make the domestication of Treaties a slow process. Botswana is aware of the principle of international law that a country cannot use on lack of domestic legislation as an excuse for non compliance with her treaty obligations. A number of issues such as lack of capacity in implementing the obligations of treaties so signed and inadequate resources are some of the obstacles in domesticating a majority of treaties.

2.3 That notwithstanding, Botswana is a party to the following international treaties which extend universal jurisdiction to those countries that have also signed these conventions:

- The Geneva Convention of 12 August 1949 on International Humanitarian Law;
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Adopted by the General Assembly of the United Nations on 10 December 1984;
- Rome Statute of the International Criminal Court; Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998;
- OAU Convention on the Prevention and Combating of Terrorism; Adopted at Algiers by the 35th Ordinary Session of the Assembly of Heads of State and Government in July 1999;

- International Convention for the Suppression of the Financing of Terrorism; Adopted by the General Assembly of the United Nations on 9 December 1999;
- International Convention for the Suppression of Terrorist Bombings; Adopted by the General Assembly of the United Nations on 15 December 1997; and
- United Nations Convention on the law of the Sea.

3. UNIVERSAL JURISDICTION IN BOTSWANA DOMESTIC - LEGAL RULES AND JUDICIAL PRACTICE

3.1 Domestically, Botswana has enacted the Geneva Conventions Act [Cap 39:03] to enable Botswana to give effect to certain international conventions made at Geneva defining the basic rights of those captured during military conflict, protection of those wounded during war, protection of the civilian population in and around the war zone. The Act provides at Section 3 that **“any person, whatever his nationality, who, whether in or outside Botswana, commits.....any such grave breach of any of the scheduled conventions...shall be guilty of an offence.”** It further states that where an offence under Section 3 is committed outside Botswana, the person may be proceeded against, indicted, tried and punished in any place in Botswana as if the offence so committed was committed within the jurisdiction of Botswana.

3.1 The crimes so scheduled as provided in Section 3 are diverse and include willful killing, torture or inhumane treatment, biological experiments, willfully causing great suffering or serious injury to body and health, compelling a prisoner of war to serve in the forces of the hostile power,

willfully depriving a prisoner of war of the rights of fair and regular trial, taking hostages and extensive destruction and appropriation of property.

- 3.2 Any Magistrate within Botswana will have jurisdiction to hear the cases invoking the Geneva Conventions Act only if the Director of Public Prosecutions has instituted the proceedings. Where there is doubt in relation to the circumstances in which the Act applies, evidence must be obtained from the President of the Republic in the form of a certificate setting out such requisite determination. Such certificate must be signed by or on behalf of the President and shall be accepted as evidence in proving the said circumstances.
- 3.3 Even though Botswana has domesticated the Geneva Conventions, their application has never been tested in the domestic courts of Botswana. Currently therefore, there is no judicial practice nor is there any judicial precedent on the application thereof which Botswana can report on to the Secretary General.
- 3.4 The obstacles to the implementation of the Geneva Conventions Act have been identified as the lack of expertise and manpower in Botswana to indict, try and prosecute the crimes under the Act and the expenses connected with the implementation of the Act in so far as prosecuting offenders not present within our borders. In addition, gathering evidence for the crimes so committed is a difficult and time consuming process which can put an enormous strain on the resources of a country.