
Republic of Senegal

One people – one goal – one faith

Ministry of Justice

Directorate for Human Rights

Information and observations on the scope and application of universal jurisdiction

By General Assembly resolution 71/149 of 13 December 2016, Member States were invited to submit, before 28 April 2017, information and opinions on the scope and application of universal jurisdiction, including information on the relevant applicable international treaties and their national legal rules and judicial practice.

Beginning with the establishment of the International Military Tribunal at Nuremberg in the aftermath of the Second World War, the international community has made it very clear that never again will an international crime go unpunished. The international criminal tribunals for Rwanda and the former Yugoslavia, the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and also the International Criminal Court, were founded in that spirit. While the establishment of the International Criminal Court represented the emergence of a permanent international justice system, its scope remains limited, since the Court tries only a fraction of international crimes. The international community therefore decided that national justice systems should play a role, and legal means were found to enable them to try exceptionally grave international crimes, even if they are committed in another country. Thus, the universal jurisdiction of national courts could help break down the wall that executioners were hiding behind in order to get away with their crimes.¹

During the Eichmann Trial in 1961, the Supreme Court of Israel stated, in support of universal jurisdiction, that “the State of Israel’s right to punish the Accused derives ... from ... a universal source (pertaining to the whole of mankind) which vests the right to prosecute and punish crimes of this order” because they affect the international community. The State that acts does so, juridically speaking, in the name of the international community.

Universal jurisdiction is an essential element of efforts to combat impunity. Senegal, in keeping with its continued commitment to ensuring respect for human rights around the world, fully

¹ “La compétence universelle, une arme contre l’impunité” (Universal jurisdiction, a weapon against impunity), Christine Laroque, Head of International Justice, Action by Christians for the Abolition of Torture.

supports any initiative that enables Member States to come to a better understanding of the concept, which has not yet been defined at the treaty level in international law.

Universal jurisdiction is understood to be the power of a national court to prosecute and try certain crimes committed on foreign soil, by foreign nationals and against foreign nationals. Given the important role of universal jurisdiction in combating serious violations of international law, Senegal has incorporated universal jurisdiction into its domestic legislation (see section 1), on the basis of international instruments (see section 2), and has subsequently implemented its rules (see section 3).

1. Universal jurisdiction in Senegalese domestic law

The principle of universal jurisdiction was introduced into Senegalese law by Act No. 2007-05 of 12 February 2007 amending the Code of Criminal Procedure, concerning the implementation of the Rome Statute establishing the International Criminal Court.

Pursuant to article 669 of the amended Code of Criminal Procedure, “any foreign national who, outside Senegalese territory, has been accused of committing or aiding in the commission of any of the crimes mentioned in articles 431-1 to 431-5 of the Criminal Code, an offence against the security of the State or forgery of the State seal or national currency, or of the acts referred to in articles 279-1 to 279-3 and 295-1 of the Criminal Code, may be prosecuted and tried under Senegalese law or laws applicable in Senegal if he or she is arrested in Senegal, if a victim resides in Senegalese territory or if the Government secures the alleged offender’s extradition.”

Senegalese lawmakers have thus not limited the exercise of universal jurisdiction to genocide, crimes against humanity and war crimes. Other crimes and offences, including offences against the security of the State, forgery of the State seal or national currency, acts of terrorism, attacks, plots and other crimes against the authority of the State or the integrity of the national territory, crimes likely to disrupt public order and acts of torture, may also give rise to the exercise of universal jurisdiction by the Senegalese courts.

It should be noted that Senegalese law stipulates that universal jurisdiction may be exercised only if the alleged offender is present in Senegalese territory having been arrested in or extradited to Senegal, or if one of his or her victims resides in Senegal.

Thus, the law clearly states that the exercise of universal jurisdiction is limited to situations where the alleged perpetrator is present in Senegalese territory or a victim resides in Senegalese territory.

While the new text of article 669 of the Code of Criminal Procedure was adopted to implement the Rome Statute establishing the International Criminal Court, it has been strengthened by the accession of Senegal to a number of other international instruments concerning matters liable to warrant the application of universal jurisdiction.

2. International instruments applicable under Senegalese law

Pursuant to article 98 of the Senegalese Constitution, any international treaty ratified by Senegal constitutes an integral part of its domestic law and, consequently, is binding on the Senegalese authorities. There are therefore many instruments that could give rise to prosecutions under universal jurisdiction by the Senegalese courts. They are:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984 and ratified by Senegal on 21 August 1986;
- The four Geneva Conventions of 1949;
- The International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Senegal on 24 September 2008;
- The Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948 and ratified by Senegal on 4 August 1983;
- The Rome Statute of the International Criminal Court, adopted in 1998.

Senegal has been able to exercise universal jurisdiction on the basis of that domestic and international framework.

3. Practice of Senegalese courts with regard to universal jurisdiction

Senegal prosecuted, convicted and sentenced the former dictator of Chad, Hissène Habré, on the basis of universal jurisdiction. On 30 May 2016 he was found guilty of crimes against humanity, war crimes and crimes of torture, including rape, and was sentenced to life imprisonment by the Extraordinary African Chambers.

The Hissène Habré case was the first universal jurisdiction trial in Africa. It was also the first time, not only in Africa but anywhere in the world, that a former leader of a country was convicted of human rights violations by the courts of another country.

On 29 July 2016, the judges of the Extraordinary African Assize Chamber in Senegal ruled on the civil claims in the proceedings brought against Hissène Habré.

The judges awarded compensation to victims of rape and arbitrary detention, persons who had survived imprisonment, and indirect victims.

They sentenced Hissène Habré to pay each victim a sum of between 15,000 and 30,000 euros, as follows:

- 20 million CFA francs to each victim of rape and sexual slavery;
- 15 million CFA francs to each prisoner of war and victim of torture or arbitrary detention;
- 10 million CFA francs to each indirect victim.

However, the judges rejected the claim for collective reparations.

The application for the Chadian Government to be held liable was found admissible.

Sources of funding for the victim compensation fund include one of Hissène Habré's residences, located in Dakar. Voluntary contributions to the fund should also be provided by States, international organizations and other donors wishing to contribute to the payment of compensation to the victims.

The judges also ordered the provision of 10 per cent of the total amount and reaffirmed the validity of the pre-judgment attachment of Hissène Habré's assets.

The exercise of universal jurisdiction has allowed Senegal to demonstrate once again its commitment to combating impunity. One of the main lessons to be learned from this experience is that good cooperation between countries and the provision of assistance to countries exercising universal jurisdiction are required in order for this unprecedented instrument for combating crime to be effective.