

Translated from French

Observations on the scope and application of the principle of universal jurisdiction

The international community has recognized that the most serious crimes that threaten the peace, security and well-being of the world must not go unpunished and that their effective prosecution must be ensured by taking measures under national and international law. One such measure is the application of the principle of universal jurisdiction.

In general, courts that are competent to hear criminal cases are those of the place where the crime was committed (territorial jurisdiction) or of the country of which the perpetrator or victim is a national (active or passive personality jurisdiction). By contrast, universal jurisdiction allows the courts of any country in the world to prosecute and try the perpetrators of the most serious international crimes, regardless of where the crimes were committed and of the nationality of the perpetrator or victim. This applies to genocide, war crimes, crimes against humanity and torture. This jurisdiction is based on the principle that these horrific crimes affect the international community as a whole. Consequently, each State has a duty and, in some cases, an obligation to prosecute the perpetrators of such crimes, just as victims have the right to obtain justice anywhere in the world.

This principle is useful, and indeed necessary, for preventing impunity for serious crimes when the suspect has fled to hide in another State in order to escape justice in his or her own country, or when the crimes in question were perpetrated in particularly unstable regions where people do not enjoy adequate legal protection. Because it considers such people citizens of the world, this principle grants any State claiming jurisdiction the power to adjudicate international crimes.

However, in order to minimize the risk of interference in the internal affairs of a State, the conditions for the exercise of such jurisdiction must be strictly specified in order to preserve the sovereignty, integrity and political independence of each State.

1- International conventions ratified by Togo

As a testament to its willingness to work effectively to prosecute serious offences, Togo has ratified a number of international conventions that recognize universal jurisdiction, namely:

a- The Geneva Conventions of 1949

These international instruments and the Protocols additional thereto provide for the universal jurisdiction of national courts with regard to serious violations of international humanitarian law. Any State party to these conventions has jurisdiction to try any person accused of serious offences who is present in its territory, regardless of the person's nationality or the place where he or she committed the offences. The adherence of Togo to this compulsory principle was demonstrated by its ratification of the conventions on 6 January 1962.

b- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984

Signed at New York in 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 26 June 1987. Togo signed the Convention on 25 March 1987 and ratified it on 18 November 1987. This instrument establishes the prohibition of torture as a peremptory norm of international law. It affirms that the offences of torture and other inhuman and degrading treatment are within the scope of universal jurisdiction (article 5, paragraph 2, article 6 and article 7, paragraph 1). The new Criminal Code of Togo criminalizes torture in accordance with the Convention as a reflection of the country's full commitment to the spirit of this critical instrument for the protection of human rights.

c- International Convention for the Protection of All Persons from Enforced Disappearance of 2006

Adopted on 20 December 2006 during the sixty-first session of the General Assembly, the International Convention for the Protection of All Persons from Enforced Disappearance was ratified by Togo on 21 July 2014. This instrument recognizes the universal jurisdiction of national courts with regard to crime of enforced disappearance. It requires each Member State to take "such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction" (article 9, paragraph 2).

2- Relevant provisions of Togolese law

In the domestic legal order, the new Criminal Code of November 2015 contains provisions that allow Togolese courts to exercise jurisdiction over certain serious crimes committed outside the country. In particular, article 155 states: “The provisions of this chapter shall apply to crimes committed within or outside the country, regardless of the nationality of the perpetrator or accomplice and of the place where the offence was committed.” The crimes concerned are genocide, war crimes, crimes against humanity and apartheid. This recognition of universal jurisdiction allows Togo to comply with the values upheld by the international community. An effective reform of the Code of Criminal Procedure will ensure that this issue is taken into account in a comprehensive manner.

3- The practice of Togolese courts

Under the new Criminal Code, Togolese courts have jurisdiction over genocide, war crimes, crimes against humanity and apartheid, regardless of the place where the crimes were committed and of the nationality of the perpetrator, accomplice or victim. However, although Togo recognizes the principle of universal jurisdiction, no cases have yet been brought before a Togolese court on the basis of this fundamental principle. The capacities of these courts must nevertheless be strengthened to allow them to play their appropriate roles. The principle should be expanded to cover torture, in order to be consistent with the rest of our laws. Lastly, the application of the principle of universal jurisdiction should be organized and circumscribed through the ongoing reform of the Code of Criminal Procedure.

Done at Lomé, 25 April 2017

Director of Criminal Affairs and Pardons

Amouzou Tossa Akohouegnon
