

*Translated from French*

## **Permanent Mission of Togo to the United Nations**

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The Permanent Mission of Togo to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to his note verbale LA/COD/59/1 of 23 January 2014, has the honour to transmit hereunder the position of the Togolese Government on the implementation of United Nations General Assembly resolution 68/117, entitled "The scope and application of the principle of universal jurisdiction".

### **1. National legal rules**

At the national level, the concept of universal jurisdiction is defined by the Togolese Penal Code, in the context of the jurisdiction of courts (articles 5, 6 and 7) and, subsidiarily, by the Code of Penal Procedure, in the context of depositions by members of the Government and representatives of foreign Powers.

Article 5: criminal penalties may be handed down only by judges competent under the law to try the cases in question in accordance with their powers and geographical jurisdiction.

Article 6: the Togolese courts are competent to try any offence committed on Togolese territory, including maritime and air space and ships or aircraft recognized by law, treaties or international custom as having national sovereignty.

They are not, however, competent to try offences committed on board foreign military vessels sailing or berthing in Togolese territorial waters.

An offence is deemed to have been committed in Togo if at least part of the *actus reus* or acts of complicity in the principal action took place in Togo.

Article 7: the Togolese courts are competent to try any act classified as a crime under Togolese law that is committed by a Togolese national abroad.

They are also competent to judge any offence committed abroad by a Togolese national if the act is also punishable by the law of the country where it was committed. The same shall apply if the accused has acquired Togolese nationality only after the act for which he or she is being prosecuted was committed.

Proceedings may only be brought in the event of a complaint filed by the victim or notification of the acts by the authorities of the country where they were committed.

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The Togolese courts are also competent to try foreign nationals who, outside the national territory, have perpetrated, or been complicit in, offences against the security of the State, forgery of the State seal, or currency counterfeiting, in the event that they have been arrested in Togo or duly extradited.

Article 422: the President of the Republic may, in criminal proceedings, when called as a witness, and if he deems it useful, provide a written statement following transmission of the case documents by the Minister of Justice.

Members of the Government may serve as witnesses only upon written authorization by the President of the Republic. Such requests shall be transmitted, with the case documents, by the Minister of Justice.

In such cases, the deposition is taken in writing at the witness's residence or office by the President of the Appeal Court.

By virtue of the articles cited above, the universal jurisdiction of the Togolese courts requires the offence, or at least part of the *actus reus*, to have been committed on Togolese territory, or else for the offence to have been committed by a Togolese national abroad and for the offence to be punishable under the law of the country where it was committed.

This jurisdiction is limited by international conventions and in particular by the principle of reciprocity.

Based on the provisions of the Penal Code currently applicable, the draft Penal Code extends the jurisdiction of the Togolese courts to offences committed abroad by any person provided that the victim is of Togolese nationality at the time the offence was committed (article 10). Furthermore, territorial jurisdiction is affirmed with regard to offences relating to the security of the State (article 11), in cases where the presumed perpetrators have been arrested in Togo or duly extradited.

## **2- International treaties applicable in Togolese domestic law**

Under the terms of article 6, paragraph 1, of the Penal Code: "Togolese courts shall be competent to try any offence committed on Togolese territory, including maritime and air space and ships or aircraft recognized by law, treaties or international custom as having national sovereignty."

The said article does not specify the treaties on which the jurisdiction of Togolese courts is based. That gap is filled by the draft Penal Code in the process of being adopted, which gives jurisdiction to Togolese judges by reference to certain international conventions.

With regard to the crime of genocide, article 143 refers to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

In respect of war crimes, article 145 refers to the Geneva Conventions of 12 August 1949, Additional Protocol I of 8 June 1977, the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Statute of the International Criminal Court adopted on 17 July 1998.

With regard to bacteriological weapons, article 525 refers to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972.

Concerning chemical weapons, article 528 gives jurisdiction to the Togolese national courts by reference to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993.

Regarding conventional weapons, article 531 refers to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, concluded at Geneva on 10 October 1980.

Concerning cluster munitions, article 541 refers to the Convention on Cluster Munitions of 30 May 2008 to give jurisdiction to Togolese judges for related offences.

The Permanent Mission of Togo to the United Nations takes this opportunity to convey to the Secretary-General of the United Nations the renewed assurances of its highest consideration<sup>1</sup>.

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<sup>1</sup> Translator's note: The Secretary-General's note verbale LA/COD/59/1 is included as the final page of the original communication in French.