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**TOGOLESE REPUBLIC**

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## **COMMENTS 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 cannot go unpunished and that their effective prosecution must be ensured by measures taken under both domestic and international law. One such measure is the application of the principle of universal jurisdiction.

As a general rule, the courts with jurisdiction over a crime are those of the place where the crime was committed (territorial jurisdiction) or those of the country of which the perpetrator or the victim of the crime are nationals (active or passive personal jurisdiction). On the other hand, universal jurisdiction authorizes the courts of any country, anywhere in the world, to prosecute and judge the perpetrators of the most serious international crimes, regardless of the place where the crimes were committed and regardless of the nationality of the perpetrator or the victim of these crimes. This is the case for genocide, war crimes, crimes against humanity, and torture. This jurisdiction is based on the principle that these appalling crimes affect the international community as a whole. Therefore, every state has a duty and in some cases an obligation to prosecute the perpetrators of these crimes, just as their victims have a right to justice throughout the world.

This principle is indeed very useful and even necessary to prevent impunity for serious crimes after the suspected person has fled from the justice of his or her country to hide in another State, or when these crimes are perpetrated in particularly unstable regions where the inhabitants would not benefit from adequate legal protection. Because it considers these inhabitants as citizens of the world, this principle attributes to any State that declares itself competent the ability to judge international crimes.

Thus, first recognized by the Geneva Conventions of 1949, the principle of universal jurisdiction will be taken up in various other conventions by the international community and States are invited to incorporate it into their domestic laws.

However, in order to minimise the risks of interference in the internal affairs of a state, the conditions for the exercise of this competence need to be rigorously specified in order to preserve the sovereignty, integrity and political independence of each state.

### **I- International conventions ratified by Togo**

Togo has demonstrated its commitment to the principle of universal jurisdiction by ratifying the international conventions that have enshrined it. These include

#### **➤ The Geneva Conventions of 1949**

Ratified by Togo on 6 January 1962, the four Geneva Conventions and their Additional Protocols provide for the universal jurisdiction of national courts over serious violations of international humanitarian law. Any State party to these Conventions has jurisdiction to try any person allegedly guilty of grave breaches in its territory, irrespective of his or her nationality or the place where the breach was committed.

#### **➤ The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Adopted in New York on 10 December 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 26 June 1987. Togo signed it on 25 March 1987 and ratified it on 18 November of the same year. This text establishes the prohibition of torture as a peremptory norm of international law. It affirms that crimes of torture and other inhuman and degrading treatment fall under universal jurisdiction (articles 5.2, 6, 7.1).

#### **➤ The 2006 International Convention for the Protection of All Persons from Enforced Disappearance**

Adopted on 20 December 2006 during the sixty-first (61<sup>ème</sup>) session of the United Nations General Assembly, the International Convention for the Protection of All Persons from Enforced Disappearance was ratified by Togo on 21 July 2014. It enshrines the universal jurisdiction of national courts over the crimes of enforced disappearance and requires Member States to take "the necessary measures to

establish their jurisdiction over a crime of enforced disappearance when the alleged offender is present in any territory under its jurisdiction" (Article 9.2).

## **II- The rules of Togolese domestic law**

In the domestic legal order, the new Togolese criminal code of November 2015 provides for provisions that allow Togolese courts to hear certain serious crimes even committed outside the country's borders.

The provisions of article 155 state: "The provisions of this chapter shall apply to crimes committed within or outside the national territory, regardless of the nationality of the perpetrator or accomplice and the place where the offence was committed. The crimes covered are genocide, war crimes, crimes against humanity and the crime of apartheid.

Furthermore, the new Togolese Criminal Code criminalizes torture and other cruel, inhuman or degrading treatment or punishment and gives Togolese courts jurisdiction over these offences "regardless of the nationality of the alleged perpetrator, that of the victim, the place where the offences were committed, or when the alleged perpetrator is extradited from one State to another State or to an international criminal court" (article 207.3)

With regard to maritime piracy, the same code recognizes the jurisdiction of Togolese courts to hear and punish acts of piracy committed beyond the limits of the territorial sea, regardless of the nationality of the perpetrators and regardless of the flag of the ships or platforms involved (article 1068, paragraph 4).

This consecration of universal jurisdiction allows Togo to conform to the values defended by the international community. A reform of the code of criminal procedure will allow, at best, to take into account this aspect in a consistent manner.

## **III- The practice of Togolese courts**

As noted above, under the new Penal Code, Togolese courts have jurisdiction over the crime of genocide, war crimes, crimes against humanity and the crime of apartheid, regardless of where the crimes were committed and regardless of the nationality of the perpetrator, accomplice or victim of these crimes.

However, despite Togo's recognition of the principle of universal jurisdiction, no Togolese court has yet been seized of a case on the basis of this fundamental principle. However, the capacities of criminal justice actors still need to be strengthened to enable them to play their proper role. Lastly, the implementation

of the principle of universal jurisdiction should be organized and framed by the reform of the code of criminal procedure currently under way.

**Done at Lomé, 10 March 2022**  
**The Director of Criminal Affairs and Pardons**

**Amouzou Tossa AKOHOUÉGNON**