

Translated from Arabic

Note concerning the scope and application of the principle of universal jurisdiction

The principle of universal jurisdiction is intended to establish effective mechanisms to ensure accountability and prevent impunity for crimes against humanity at times when the State is slow to administer justice.

Like other international principles and rules, however, it can be subject to political considerations and can be steered away from its original aim for political purposes. In order to avoid that outcome, action should be taken in the competent international forums to:

- Emphasize as a matter of principle, in all relevant provisions and decisions, respect for the judicial sovereignty of the State;
- Give the national judiciary an opportunity to investigate offences at every stage, so long as it has the capacity to do so;
- Put in place a mechanism obligating the authorities of the State in question to communicate with the national authorities in the State where the crimes were committed, and to give them the scope to investigate and prosecute, when any suspect is detained on the territory of a State that recognizes the principle of universal jurisdiction;
- Stipulate that the principle of universal jurisdiction may be invoked only when the national authorities competent to investigate the offences expressly refuse to do so.

As regards the scope and application of the principle of universal jurisdiction under Moroccan law, the following points should be noted:

The Moroccan judiciary is the entity competent for prosecuting any individual of any nationality who has committed an offence on Moroccan soil. That is because criminal law continues to be an aspect of State sovereignty: chapter 10 of the Criminal Code provides that national Moroccan law applies to anyone on Moroccan territory, including nationals, foreigners and stateless persons, barring the exceptions set forth in domestic and international public law.

Accordingly, Moroccan law takes a particular approach to the jurisdiction of Moroccan courts over offences committed abroad and relations with foreign judicial authorities. The relevant provisions are set out in book 7 of the Code of Criminal Procedure.

Paragraph 1 of article 704 provides that Moroccan criminal law governs offences committed on Moroccan territory. Paragraph 2, however, enables the Moroccan judiciary to exercise competence in respect of any offence if one component thereof was committed in Morocco. In such instances, the offence as a whole is treated as though it had occurred on Moroccan territory. In paragraph 3, the jurisdiction of Moroccan courts to consider the principal act is extended to all associated acts of complicity or concealment, even if they were committed outside the country and by foreigners.

Similarly, in accordance with the territorial principle in criminal law, Moroccan criminal law applies to Moroccan ships and aircraft wherever they are located, except for cases that are subject to foreign law by virtue of international law. That provision is enshrined in article 705 of the Code of Criminal Procedure, which provides that Moroccan courts are competent to consider offences committed on Moroccan-flagged ships on the high seas. The same approach is taken in paragraph 1 of article 706 of the Code of Criminal Procedure, which recognizes a jurisdictional link in order for the Moroccan judiciary to consider offences committed on Moroccan aircraft, regardless of the perpetrator's nationality.

With a view to strengthening jurisdiction over Moroccan citizens wherever they may be, Moroccan law gives Moroccan courts the option of prosecuting any Moroccan who has committed, outside Morocco, a major or minor offence under Moroccan law (articles 707 and 708 of the Code of Criminal Procedure).

Similarly, Moroccan courts have been given competence when a major offence is committed against a Moroccan citizen outside the territory of Morocco (article 710 of the Code of Criminal Procedure). For the purposes of the competence of Moroccan courts, such acts are downgraded to a minor offence in the case of an act against State security, the counterfeiting of a State seal, the counterfeiting or forging of national cash or banknotes circulating legally in Morocco, or a major offence against staff or diplomatic or consular missions or public offices of Morocco.

As regards efforts to combat terrorism and prevent impunity, Moroccan law adopted the principle of comprehensive universal jurisdiction in respect of terrorism in 2015. Competent Moroccan courts were thus given the power to prosecute and put on trial any Moroccan or foreign national who has committed a terrorist offence outside Morocco, whether as main perpetrator, accomplice or accessory, and whether or not that offence was

intended to harm Morocco or its interests (article 711(1) of the Code of Criminal Procedure; chapter 218(1)(1) of the Criminal Code).

In view of the country's international obligation to protect human rights and ensure compliance on the part of the Moroccan judiciary, a legislative policy has been adopted to update domestic law and harmonize it with human rights and international humanitarian law standards. The offences of genocide, crimes against humanity and war crimes are transposed into domestic law by virtue of draft law 10.16 amending and completing the Criminal Code. The draft law includes provisions criminalizing those offences and specifying penalties. The offences are defined in accordance with the Rome Statute. The draft code of criminal procedure grants the Moroccan judiciary comprehensive competence in respect of those offences.

With regard to paragraph 4 of General Assembly resolution 76/118, our country has ratified several treaties on combating crime, including, in particular, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, which contain provisions on universal jurisdiction – in articles 15 and 42 respectively – that are consistent with Moroccan domestic law.