

**THE CAIRO - ARUSHA PRINCIPLES ON UNIVERSAL
JURISDICTION IN RESPECT OF GROSS HUMAN RIGHTS**

OFFENCES: AN AFRICAN PERSPECTIVE

PREAMBLE

The African tradition has always been to abhor gross human rights offences.

The principle of universal jurisdiction concerns the international community as a whole; it should therefore have a truly universal scope in its content, implementation and effects.

While it is generally preferable to try gross human rights offences in the State where they occurred, it is sometimes necessary, in order to avoid impunity, to make use of international tribunals or other national jurisdictions.

Most African States have accepted the principle of universal jurisdiction by becoming parties to instruments which provide for universal jurisdiction over certain crimes under international law, including under the 1949 Geneva Conventions, the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid and the 1984 Convention against Torture. Many of those States, however, have not ensured that their courts can exercise jurisdiction in respect of gross human rights offences on the basis of universal jurisdiction.

In recognition of this, AFRICA LEGAL AID (AFLA) convened a meeting in Cairo from 30 to 31 July 2001 and in Arusha from 18 to 21 October 2002. The meetings brought together a number of leading experts from all across Africa and elsewhere to discuss and devise principles on universal jurisdiction from an African perspective.

The Principles are prompted, among other things, by a concern that certain offences which have particular resonance in Africa, such as the crime of apartheid, have so far not attracted prosecution under the principle of universal jurisdiction.

The Principles are aimed at assisting governments, in Africa and around the world, in exercising their powers and obligations, human rights organisations and legal practitioners in their attempts to pursue international justice, and advocacy and lobbying initiatives. They are also aimed at contributing to the progressive development of international law.

The starting point for these Principles is an awareness of existing law, as enshrined, for example, in the Rome Statute of the International Criminal Court.

In the particular context of the African Continent, however, there are additional considerations, including economic, social and cultural, that should be taken into account in trying to ensure the effective exercise of universal jurisdiction.

PRINCIPLES

1. Universal jurisdiction applies to gross human rights offences committed even in peacetime.
2. The principle of universal jurisdiction should apply not only to natural persons, but also to other legal entities.
3. States shall adopt measures, including legislative and administrative, that will ensure that their national courts can exercise universal jurisdiction over gross human rights offences, including, but not limited to, those contained in the Rome Statute of the International Criminal Court.

4. In addition to the crimes that are currently recognised under international law as being subject to universal jurisdiction, certain other crimes that have major adverse economic, social or cultural consequences -- such as acts of plunder and gross misappropriation of public resources, trafficking in human beings and serious environmental crimes -- should also be granted this status.

5. The absence of specific enabling domestic legislation does not relieve any State of its international legal obligation to prosecute, extradite, surrender or transfer suspects to any State or international tribunal willing and able to prosecute such suspects.

6. The principle of non-interference in the internal affairs of States, as enshrined in Article 4(g) but qualified by Article 4(h) of the Constitutive Act of the African Union, shall be interpreted in light of the well established and generally accepted principle that gross human rights offences are of legitimate concern to the international community, and give rise to prosecution under the principle of universal jurisdiction.

7. In dealing with gender crimes, such as rape and other forms of sexual violence that are recognised as crimes subject to universal jurisdiction, States shall make every effort to create conditions favourable to reporting such crimes, investigate them, bring the perpetrators to justice and provide support to the victims.

8. In applying universal jurisdiction, prosecuting authorities shall avoid bias and selectivity based on race, gender, sexual orientation, ethnicity, colour, language, age, religion, political or other opinion, national or social origin, birth or other status of the suspect. In particular, the application of the principle of universal jurisdiction shall not be used as a pretext to pursue politically motivated prosecutions.

9. Financial and other constraints do not relieve States of their duty to carry out investigations or to prosecute, extradite or transfer for trial persons suspected or accused of gross human rights offences under international law. However, the international community should assist developing countries in the latter efforts in prosecuting such offences.

10. States shall provide mutual legal assistance in order to facilitate the effective exercise of universal jurisdiction.

11. Proceedings, including but not limited to, the investigation, prosecution, incarceration and/or sentencing of gross human rights offenders, shall be undertaken in conformity with internationally recognized human rights standards. These rights include the right to consular assistance under the Vienna Convention on Consular Relations, and the right to counsel, which shall include, in the case of self-funding defendants, the right to choose counsel from outside the legal profession of the prosecuting jurisdiction.

12. In proceedings based on universal jurisdiction, States shall ensure that victims and witnesses receive adequate protection.

13. A person who has been tried and convicted or acquitted of a gross human rights offence under international law before a national court may not be tried again, except where the prior proceedings shielded the person from justice.

14. The use of alternative forms of justice, including truth and reconciliation commissions, does not relieve States of their responsibility and their duty to prosecute individuals or to extradite or transfer for trial individuals suspected or accused of gross human rights offences under international law.

15. While amnesties for gross human rights offences granted to individuals may, in certain cases, be politically expedient, such amnesties are generally incompatible with international law and do not have any effect outside the borders of the country in which they are granted; nor do they absolve other States of their responsibility and their duty to prosecute or to transfer for trial such individuals.

16. Prosecution and sentencing of gross human rights offenders shall be guided not only by the need for deterrence, but also by the need to reconcile, rehabilitate and reconstruct the society where the offence was committed.

17. Responses to gross human rights offences shall include a requirement for the offender or other available mechanism to make appropriate reparation to the victims of the offences, to the extent possible.

18. Refugee status or applications for refugee status shall not relieve States of their obligation to prosecute or to extradite or transfer for trial to any other State or international tribunal willing and able to prosecute persons accused or suspected of gross human rights offences. This is without prejudice to the prohibition of non-refoulement.

19. A State in whose territory a gross human rights offence suspect is found shall prosecute him or her in good faith or extradite or surrender him or her to any other State or international tribunal willing and able to prosecute such suspect. The absence of an extradition treaty or other enabling legislation shall not bar the extradition, surrender or transfer of such a suspect to any State or international tribunal willing and able to prosecute the suspect.