

REPORTS AND DOCUMENTS

What's new in law and case law around the world?

Biannual update on national implementation of international humanitarian law* January-June 2015

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The biannual update on national legislation and case law is an important tool in promoting the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to accession and ratification of IHL and other related instruments, and to developments regarding national committees for the IHL or similar bodies. It also provides information on some efforts by the ICRC Advisory Service during the

ICRC Advisory Service

The ICRC's Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of IHL. Working worldwide, through a network of legal advisers, to supplement and support governments' own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with specialized legal advice and the technical expertise required to incorporate international humanitarian law into their domestic legal frameworks;¹ (iii) to collect and facilitate the exchange of information on national implementation measures and case law;² and (iv) to support the work of committees on IHL and other bodies established to facilitate the IHL implementation process.

* This selection of national legislation and case law has been prepared by Cédric Apercé, legal attaché in the ICRC Advisory Service on International Humanitarian Law, with the collaboration of regional legal advisers.

period covered to promote universalization of IHL and other related instruments and their national implementation.

Update on the accession and ratification of IHL and other related international instruments

Universal participation in IHL and other related treaties is a first vital step toward the respect of life and human dignity in situations of armed conflict. In the period under review, eighteen IHL and other related international conventions and protocols were ratified or acceded to by twenty-five States.³ In particular, there has been notable adherence to the Arms Trade Treaty (ATT). Indeed, eight States have ratified the ATT in the first half of 2015, bringing the number of States Parties as of 30 June 2015 to sixty-nine.

Other international treaties are also of relevance for the protection of persons during armed conflicts, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its Optional Protocol, and the International Convention for the Protection of all Persons from Enforced Disappearance (CPPED).

The following table outlines the total number of ratifications of and accessions to IHL treaties and other relevant related international instruments, as of the end of June 2015.

Ratifications and accessions, January–June 2015

| Conventions | States | Ratification/ accession date | Number of parties |
|--|------------|---------------------------------|----------------------|
| 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction | Mauritania | 28 January 2015 | 173 |
| | Andorra | 2 March 2015 | |

1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits, model laws and checklists, as well as reports from expert meetings, all available on the unit's web page at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in December 2015).

2 For information on national implementation measures and case law, please visit the ICRC Database on National Implementation of IHL, available at: www.icrc.org/ihl-nat.

3 To view the full list of IHL-related treaties, please visit the ICRC Treaty Database, available at: www.icrc.org/ihl.

(Cont.)

| Conventions | States | Ratification/ accession date | Number of parties |
|--|----------------------|---|------------------------------|
| 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques | Kyrgyzstan | 15 June 2015 | 77 |
| 1977 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts | Palestine | 4 January 2015 | 168 |
| 1980 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 | Palestine Algeria | 5 January 2015 6 May 2015 | 121 |
| 1980 Protocol I to the Convention on Conventional Weapons on Non-Detectable Fragments | Palestine Algeria | 5 January 2015 6 May 2015 | 115 |
| 1980 Protocol III to the Convention on Conventional Weapons on Prohibitions or Restrictions on the Use of Incendiary Weapons | Palestine Algeria | 5 January 2015 6 May 2015 | 112 |

Continued

(Cont.)

| Conventions | States | Ratification/ accession date | Number of parties |
|---|---------------|---|------------------------------|
| 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | Vietnam | 5 February 2015 | 158 |
| | South Sudan | 3 April 2015 | |
| 1989 Convention on the Rights of the Child | South Sudan | 23 January 2015 | 195 |
| 1995 Protocol IV to the Convention on Conventional Weapons on Blinding Laser Weapons | Algeria | 6 May 2015 | 105 |
| 1998 International Criminal Court Statute | Palestine | 2 January 2015 | 123 |
| 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict | South Africa | 11 February 2015 | 68 |
| 2001 Amendment 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 | Algeria | 6 May 2015 | 82 |
| 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | Mongolia | 12 February 2015 | 79 |
| | South Sudan | 30 April 2015 | |
| | Rwanda | 30 June 2015 | |

(Cont.)

| Conventions | States | Ratification/ accession date | Number of parties |
|--|----------------|---|------------------------------|
| 2005 Protocol Additional (III) to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem | Palestine | 4 January 2015 | 72 |
| | Luxembourg | 27 January 2015 | |
| | Belgium | 12 May 2015 | |
| | Romania | 15 May 2015 | |
| 2006 International Convention for the Protection of All Persons from Enforced Disappearance | Mongolia | 12 February 2015 | 46 |
| | Malta | 27 March 2015 | |
| 2008 Convention on Cluster Munitions | Palestine | 2 January 2015 | 92 |
| | Paraguay | 12 March 2015 | |
| | Canada | 16 March 2015 | |
| | South Africa | 28 May 2015 | |
| 2010 Amendment to Article 8 of the Rome Statute of the International Criminal Court | Malta | 30 January 2015 | 24 |
| | Costa Rica | 5 February 2015 | |
| | Czech Republic | 12 March 2015 | |
| 2013 Arms Trade Treaty | Switzerland | 30 January 2015 | 69 |
| | Côte d'Ivoire | 26 February 2015 | |
| | Belize | 19 March 2015 | |
| | Chad | 25 March 2015 | |
| | Paraguay | 9 April 2015 | |
| | Liberia | 21 April 2015 | |
| | Barbados | 20 May 2015 | |
| | Dominica | 21 May 2015 | |

National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the first half of 2015. They cover a variety of topics linked to IHL, such as detention, criminal procedures, international criminal justice, sexual violence, victims and witnesses' rights, enforced disappearances, protected persons and regulation of private security services.

This compilation is not meant to be exhaustive; it represents a selection of the most relevant developments relating to IHL implementation and related issues collected by the ICRC. The full texts of these laws and case law can be found in the ICRC's Database on National Implementation of IHL.⁴

A. Legislation

The following section presents, in alphabetical order by country, domestic legislation adopted during the period under review (January–June 2015). Countries covered are Belarus, Bosnia and Herzegovina, the Central African Republic, Côte d'Ivoire, Croatia, Malta, Spain, Sri Lanka, Switzerland and Ukraine.

Belarus

*Law No. 244-Z on Martial Law*⁵

On 22 January 2015, the president of Belarus promulgated Law No. 244-Z introducing amendments and additions to certain laws of the Republic of Belarus on martial law as a new edition of Law No. 185-Z of 13 January 2003 on martial law.

The law defines the purpose of martial law as to create the necessary conditions to eliminate a threat of war or repel an attack, outlining its relevance for situations of armed conflict and ongoing violence.

Moreover, the law introduces definitions of internment, military censorship and martial law. Some provisions allow the mandatory involvement of persons aged 16 in work of a defensive nature.

Finally, the procedure for imposing martial law as well as for temporary limitation of the rights and freedoms of citizens is established by the law. Communication of those limitations of rights to other States party to the International Covenant on Civil and Political Rights is also considered.

⁴ See the ICRC Database on National Implementation of IHL, available at: www.icrc.org/ihl-nat.

⁵ Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FBA49A6EA941EC18C1257F3B0051359F&action=openDocument&xp_countrySelected=BY&xp_topicSelected=GVAL-992BU6&from=state.

Bosnia and Herzegovina

*Law No. 40/15 on Amendments to the Criminal Code*⁶

On 18 May 2015, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Amendments to the Criminal Code. The law harmonizes the domestic legislation with international standards of criminal justice.

It modifies the definition of rape in the context of Articles 172 (crimes against humanity) and 173 (war crimes against civilians) by eliminating the use of coercive force or threat of force on the victim or a person close to the victim as elements of the crimes.

Article 190 as modified by the law also provides a more extensive definition of torture, encompassing superior and subordinate criminal responsibilities. This crime carries a penalty of a minimum six years' imprisonment.

In addition, the law further introduces an article criminalizing enforced disappearance. According to the newly established article, a public official or any other person acting in such capacity, or anyone acting with the consent of a public official, who deprives another person of his/her liberty and withholds information on his/her whereabouts, thereby putting him/her outside the protection of the law, shall be punished by a prison sentence of a minimum eight years. This provision addresses both superior and subordinate criminal responsibilities. Likewise, a superior order does not relieve the person of his or her criminal responsibility, but might serve to reduce the punishment if a court considers it in the interest of justice.

Central African Republic

*Organic Law No. 15-003 on the Creation, Organization and Functioning of the Special Criminal Court*⁷

On 3 June 2015, the president of the Central African Republic promulgated Organic Law No. 15-003 on the Creation, Organization and Functioning of the Special Criminal Court.

Article 3 of the law provides that the Court is competent for serious violations of human rights and IHL committed on the territory of the Central African Republic since 1 January 2003, notably crimes of genocide, crimes against humanity and war crimes.

6 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=2EF4A23EC264EC96C1257F7F00548906&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state.

7 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=92C4EC76991F04C4C1257ECB004E25D5&action=openDocument&xp_countrySelected=CF&xp_topicSelected=GVAL-992BU6&from=state&SessionID=DLUWOZRFVN.

Furthermore, crimes under the jurisdiction of the Court have no statute of limitations, and the Court enjoys primacy over national jurisdictions. Articles 56 and 57 affirm the principle of individual criminal responsibility and the irrelevance of official capacity, while Articles 57 and 58 provide for criminal responsibility of commanders and other superiors. The Court may impose penalties referred to in the Penal Code of the Central African Republic on a person convicted of a crime under its jurisdiction within the limit of life imprisonment as provided by Article 59.

The Special Criminal Court is created in Bangui for a renewable period of five years and is composed of national and international judges divided in four chambers. Article 24 reads that international judges will be nominated upon proposition of the Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). In line with Article 53, the budget of the Court is supported by the international community in consultation with the government of the Central African Republic.

Côte d'Ivoire

*Law No. 2015-133 modifying and completing Bill No. 60-366 of 14 November 1960 instituting the Penal Procedure Code*⁸

On 9 March 2015, the president of Côte d'Ivoire promulgated the law modifying and completing the Penal Procedure Code. The law aims at ensuring domestication of the Statute of the International Criminal Court (ICC) and complementarity with the ICC.

In particular, it abolishes the ten-year statute of limitations for prosecuting war crimes, crimes against humanity and genocide, and establishes that these crimes are not subject to any statute of limitations.

*Law No. 2015-134 modifying and completing Law No. 81-640 of 31 July 1981 instituting the Penal Code*⁹

On 9 March 2015, the president of Côte d'Ivoire promulgated the law modifying and completing the Penal Code. The law aims at ensuring domestication of the ICC Statute and complementarity with the ICC.

Articles 16, 18 and 21 of the law respectively integrate the disposition relative to the crimes of genocide, crimes against humanity and war crimes, whereas Article 23 introduces within Côte d'Ivoire domestic legislation the disposition on responsibility of commanders and other superiors provided by the

8 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7F92464A77B81CFAC1257ECB00486AB3&action=openDocument&xp_countrySelected=CI&xp_topicSelected=GVAL-992BU6&from=state&SessionID=DLUWOZRFVN.

9 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=EDA0E02729E84FA8C1257EBB0049F134&action=openDocument&xp_countrySelected=CI&xp_topicSelected=GVAL-992BU6&from=state&SessionID=DLUWOZRFVN.

ICC Statute. The law also states that amnesty, mitigating circumstances, suspended offences and statutes of limitations are not applicable to those crimes.

Finally, Article 31 of the law also provides for the abolition of the death penalty in relation to international crimes.

Croatia

*Law on the Rights of Victims of Sexual Violence in the Homeland War*¹⁰

On 2 June 2015, the president of Croatia promulgated the Law on the Rights of Victims of Sexual Violence in the Homeland War. This legislation defines sexual violence in the context of the Croatian Homeland War from 5 August 1990 to 30 June 1996, and states the status and rights of victims of such violence. It refers to acts committed on the territory of the Republic of Croatia or during captivity in an enemy camp or prison outside Croatian territory.

Article 2 reads: “[S]exual violence in the Homeland War is sexual violence that has been committed contrary to criminal laws or international humanitarian law and the Geneva Conventions, as a war crime or crime against humanity, as well as an offense against sexual freedom that is not qualified as a war crime but was committed in circumstances directly related to the Homeland War, in connection with military and police operations as follows ...”

According to Article 3, a victim of sexual violence is a person against whom was committed or who was, in conditions of confinement, induced to commit against her/himself or against some third person, one or more forms of sexual violence by a military or police person, a member of a paramilitary forces or a civilian.

In its Articles 14 to 27, the law sets out the status and rights of victims of sexual violence, including psycho-social support, legal assistance, medical care, medical rehabilitation, medical physical examination, compulsory and supplementary health insurance, and pecuniary compensation. These rights are personal and cannot be transferred to another person or be inherited, except due and unpaid pecuniary compensation.

The law also specifies the procedure for obtaining the status and exercise of the rights for victims in its Articles 28 to 36. Furthermore, it provides details of the establishment of a Commission for Victims of Sexual Violence as an independent, mixed expert body which provides opinion on whether a person is a victim of sexual violence, as well as on the form or the consequences of sexual violence (Article 10). The Commission gathers judges, attorneys, lawyers, medical experts and other professionals with experience in the protection of human rights (Article 12) and should give its opinion within thirty days based on facts and evidence set out in the criminal proceedings (Article 13).

10 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E7CFB467BEAE9444C1257F18004AA23F&action=openDocument&xp_countrySelected=HR&xp_topicSelected=GVAL-992BUG&from=state&SessionID=DLUWOZRFVN.

Malta

*Act No. VIII amending the Criminal Code of 1854*¹¹

On 17 March 2015, the president of Malta approved Act No. VIII amending the Criminal Code of 30 January 1854.

Pursuant to Article 54G, as amended by the Act, a criminal action for genocide, crimes against humanity, war crimes and crimes of aggression may be initiated by the national courts, even if it has been committed outside the territory of Malta, or against any citizen or permanent resident of Malta who outside Malta conspires to commit any of these crimes, or a person subject to military law.

Spain

*Organic Law 1/2015 modifying Organic Law 10/1995 of the Penal Code*¹²

On 30 March 2015, Organic Law 1/2015 modifying the Penal Code was promulgated. This law prohibits the act of publicly negating or minimizing crimes of genocide, crimes against humanity and crimes against protected persons and property in times of armed conflict. In addition, it criminalizes nuclear and radiological weapons possession and storage.

Article 510 of the Penal Code, which criminalizes discriminatory speech, is thereby amended through the addition as a criminal offence of negating, minimizing or praising publicly the commission or perpetrators of the crimes of genocide, crimes against humanity and crimes against protected persons and property in times of armed conflict committed against a specific group or against members of such group.

Moreover, the law amends Articles 566 and 567, which prohibit the illegal production, trade and stockpiling of certain weapons, by adding nuclear and radiological weapons to a list that already included antipersonnel mines and cluster munitions as well as biological and chemical weapons. Through the modification of Article 347, the development, use and traffic of certain nuclear materials or other hazardous substances which cause or are likely to cause death or serious injury to persons or substantial damage to the environment shall also be punished.

This law has no retroactive effect.

11 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=F667132FF110CDD5C1257EF400623098&action=openDocument&xp_countrySelected=MT&xp_topicSelected=GVAL-992BU6&from=state.

12 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=95A4A12F347D96C3C1257EB900448826&action=openDocument&xp_countrySelected=ES&xp_topicSelected=GVAL-992BU6&from=topic&SessionID=DNMSXFGMJQ.

Sri Lanka

*Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015*¹³

On 7 March 2015, the Assistance to and Protection of Victims of Crime and Witnesses Act was promulgated.

The Act gives effect to appropriate international norms, standards and best practices relating to the protection of victims of crime and witnesses by setting out the rights and entitlements of those victims, as well as their protection and promotion. While of general scope, the Act can be specifically relevant for any transitional justice mechanism that may be established in Sri Lanka.

Part IV of the Act establishes the National Authority for the Protection of Victims of Crimes and Witnesses, managed by a board composed of the secretary of Ministries of Justice, Police, Women's Affairs and Children, a nominee of the attorney general and members of the Human Rights Commission as well as five appointed professionals in the areas of criminology, the criminal justice system, promotion of human rights or medicine. The National Authority is in charge, *inter alia*, of assistance to and protection of victims of crime and witnesses; payment of compensation to victims of crime; advice to the Sri Lanka Police Department; and reviewing existing policies and legislation adopted by various authorities.

*Gazette Extraordinary No. 1904/41 related to Property Rights of Displaced Persons*¹⁴

On 4 March 2015, the minister of justice and labour relations of Sri Lanka enacted Gazette Extraordinary No. 1904/41.

The order designates certain conflict affected areas as being within the scope of the settlement dispute mechanism established by the Mediation (Special Categories of Disputes) Act, No. 21 of 2003. This alternative means of dispute resolution addresses property concerns vis-à-vis displaced persons in relation to conflict in the north/northeast of the country.

Switzerland

*Ordinance on Private Security Services Abroad*¹⁵

On 24 June 2015, the Swiss Federal Council adopted the Ordinance on Private Security Services Abroad. The Ordinance contains implementing provisions for

13 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=CE8093495C102190C1257F7F00570D97&action=openDocument&xp_countrySelected=LK&xp_topicSelected=GVAL-992BUB&from=state.

14 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=43D8E97E74D1A6A6C1257F8E002EA9C4&action=openDocument&xp_countrySelected=LK&xp_topicSelected=GVAL-992BUE&from=state.

15 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=47F407214D5031EBC1257F7F005981A4&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUB&from=state.

the Federal Law on Private Security Services Provided Abroad adopted on 27 September 2013.¹⁶

Article 1 of the Ordinance defines the notion of complex environment – as referred to by Article 4 of the Federal Law – by three cumulative criteria. An area is considered as a complex environment when (i) the area is experiencing or recovering from unrest or instability due to natural disaster or armed conflict in terms of the Geneva Conventions and Additional Protocol I; (ii) the rule of law has been substantially undermined; and (iii) the capacity of the State authority to handle the situation is limited or non-existent. The definition adopted is close to the definition adopted by the International Code of Conduct for Private Security Providers.

Article 2 provides that companies are deemed to have acceded to the International Code of Conduct for Private Security Service Providers – as required by Article 7(1) of the Federal Law – if they are members of the International Code of Conduct for Private Security Providers Association.

Furthermore, the Ordinance designates the Directorate of Political Affairs of the Federal Department of Foreign Affairs as the competent authority for the implementation of the legislation, as well as for receiving declaration of activities from private security companies under Article 10 of the Federal Law. It also provides for simplifications of the declaration procedure for certain services and an accelerated procedure in case of emergency situations. Finally, Article 4 stipulates what information has to be declared to the above-mentioned authority and Article 5 details in which situation the identity of the principal or the recipient of a service must be disclosed.

*Ordinance on the Use of Private Security Companies Abroad by the Federal Government*¹⁷

On 24 June 2015, the Swiss Federal Council also adopted the Ordinance on the Use of Private Security Companies Abroad by the Federal Government, outlining the conditions under which a federal authority can employ a private security company in Switzerland or abroad. This ordinance implements and further develops the provisions contained in Section 7 of the Federal Law on Private Security Services Provided Aboard adopted on 27 September 2013.¹⁸

According to Article 1, the Ordinance applies to federal authorities that contract a private security company for the performance of protection tasks in Switzerland or abroad. Article 2 further specifies that such delegation of performance of protection is subject to statutory basis authorization.

16 “What’s New in Law and Case Law Around the World?”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014, or see: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=A593659189CD7578C1257D2D00547E77&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUB&from=state.

17 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=6C9257ECE3AB7126C1257F7F005D60F4&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUB&from=state.

18 See above note 16.

Prior to contracting a private security company, the authority shall consult the security officer of its department, or the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Defence, Civil Protection and Sport when the company is operating abroad (Article 3). Moreover, the company must meet the cumulative criteria set out by Article 4 encompassing good reputation, guarantees on recruitment and training of personnel, solvability, internal control system, authorization to carry out activities in the domain of private security, and liability insurance.

In addition, Article 5 underlines the importance of adequate training for personnel of private security companies. In particular, such training should include fundamental rights, use of force, first aid and anti-corruption components. Personnel of private security companies should be clearly identifiable (Article 6) and shall not carry weapons unless in Switzerland (Article 7) or when exceptional situations require it (Article 8). In any case, the recourse to force would be limited to legitimate defence and state-of-necessity situations. Articles 9 and 10 recognize the possibility that a private security company may undertake police measures if its personnel are adequately trained and authorized by the relevant law.

Finally, the Ordinance provides a list of clauses required for a contract with private security companies and refers to model contracts elaborated by the Federal Department of Justice and Police and the FDFA for this purpose.

Ukraine

*Law on Accession to the International Convention for the Protection of All Persons from Enforced Disappearance*¹⁹

On 17 June 2015, the president of Ukraine promulgated the Law on Accession to the International Convention for the Protection of All Persons from Enforced Disappearance. The law declares Ukraine's accession to the Convention, and contains specific reservations and declarations.

In relation to Article 13 and 14 of the Convention, Ukraine empowers the Prosecutor General's Office of Ukraine (concerning request during the pre-trial investigation) and Ministry of Justice of Ukraine (concerning request during the court proceedings or execution of judgments) to consider requests according to Articles 10 to 14 of the Convention.

Ukraine recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of violations of the Convention by Ukraine, as well as to receive and consider communications in

19 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=8D2D92A8DA58E2FBC1257F7F005F5258&action=openDocument&xp_countrySelected=UA&xp_topicSelected=GVAL-992BUA&from=state.

which a State Party claims that another State Party is not fulfilling its obligations under the Convention (Article 31 and 32).

Finally, Ukraine made a reservation considering itself not bound by paragraph 1 Article 42 of the Convention on additional dispute settlement procedures between State Parties by arbitration or the International Court of Justice with regard to the interpretation or application of the Convention.

B. National IHL committees and similar bodies

National authorities face a formidable task when it comes to implementing IHL within the domestic legal order. This situation has prompted an increasing number of States to recognize the usefulness of creating a group of experts or similar body – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. Such committees *inter alia* promote ratification of or accession to IHL treaties, make proposals for the harmonization of domestic legislation with the provisions of these treaties, promote dissemination of IHL knowledge and participate in the formulation of the State's position regarding matters related to IHL. In January 2015, Kuwait reactivated its committee, bringing the total number of national IHL committees across the world to 107 by June 2015.

Kuwait

In January 2015, the Kuwait IHL Committee was reactivated as a result of Ministerial Decision No. 18.

The main function of the national committee is to assist in bringing domestic legislation in line with obligations under the Geneva Conventions, their Additional Protocols and other IHL instruments. One of its mandates is to coordinate the activities of State bodies involved in the implementation of IHL. It provides recommendations, proposals and advice for implementing IHL at the national level, and is also responsible for the organization of training and dissemination programmes in IHL.

The Kuwait IHL Committee is composed of representatives of the Ministries of Foreign Affairs, Defence, Justice, the Interior and Communication as well as the Faculty of Law of Kuwait University and the Kuwait Red Crescent Society. It is chaired by the minister of justice, *awqaf* and Islamic affairs.

C. Case law

The following section lists, in alphabetical order by country, relevant domestic case law related to IHL and released during the period under review (January–June 2015). Countries covered are India, Nepal, South Africa and Uganda.

India

*WP(C).No. 24902 of 2014 (K): Shyam Balakrishnan v. State of Kerala, Kerala High Court*²⁰

Keywords: arbitrary arrest, law enforcement procedure, oversight mechanism.

On 22 May 2015, the High Court of Kerala delivered its judgement in the case of *Shyam Balakrishnan v. State of Kerala*.

Acting on a writ petition filed by Shyam Balakrishnan, who claimed he was illegally arrested by the Kerala police on suspicion of being a Maoist in the context of the current insurgency, the Court ruled that a person could be arrested only if he is involved in unlawful activities. Judge Muahmmmed Mustaque specified that being a Maoist is no crime; therefore, the police cannot detain a person merely because he is a Maoist.

Based on Articles 21 and 22 of the Constitution, the Court refers to directions to be followed in cases of arrest or detention set out in *D. K. Basu v. State of W. B.* [AIR 1997 SC 610]. According to this case, an arrest or detention must follow the following requirements: clear and visible identification of police personnel; preparation of a memo of arrest countersigned by the arrestee; information of a relative of the arrestee; communication of the place, time and venue of custody; notification of rights; inscription in the diary of the place of detention; medical inspection of the arrestee; legal representation; copies of all documents to be sent to the magistrate; and inscription of the arrest on a police board.

Additionally, the Court entitles the petitioner to compensation for unlawful acts committed against him by the State. However, it considers that the State machinery failed in the action and not the individual officers, who were acting without *male fide* intention. Furthermore, the Court deliberates that the State failed to create adequate a supervisory oversight mechanism to safeguard against deprivation of liberty of individuals.

Nepal

*070-WS-0050: Review of the Investigation of Disappeared Persons and Truth and Reconciliation Commission Act, 26 February 2015, Supreme Court*²¹

Keywords: Truth and Reconciliation Commission, amnesties, victims' rights, war crimes.

20 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=BD228D8B7DD4B956C1257F80002AAED2&action=openDocument&xp_countrySelected=IN&xp_topicSelected=GVAL-992BU6&from=state.

21 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=3EB2FC583759622EC1257F80005B7B99&action=openDocument&xp_countrySelected=NP&xp_topicSelected=GVAL-992BU6&from=state.

On 26 February 2015, the Supreme Court of Nepal delivered its review of the Investigation of Disappeared Persons and Truth and Reconciliation Commission Act.

Based on the writ petition presented by 234 victims of Nepal's armed conflict, the Court ordered that the concerned commissions and the government of Nepal act in accordance with previous decisions as well as the Nepali Constitution, international human rights law and IHL with regards to the provisions of the Act.

On the basis of Article 100(1) of the Interim Constitution of Nepal, the Court states that the Commission formed under the Act cannot displace a judicial authority, nor provide for alternatives to judicial functions. It further specifies the distinction between political acts and acts of a criminal nature committed in the context of an armed conflict. Such determination of the criminal character of an act belongs only to a judicial authority.

In addition, the Court reaffirms that reconciliation can never occur without the consent of the victim or as a vector for amnesty for the perpetrators of serious violations of human rights.

According to the judges, a transitional justice process cannot be successful if it allows perpetrators of serious offences to escape through the guise of reconciliation. Moreover, the case details that a transitional justice process is composed of (i) investigating and truth seeking, (ii) prosecution of the most serious crimes, (iii) reparation and (iv) guarantee of non-recurrence.

In 2014, the Supreme Court had already struck down as unconstitutional a 2013 ordinance that had established the Truth and Reconciliation Commission, as it provided the Commission with discretionary powers to grant amnesties.²²

South Africa

*Southern African Litigation Centre v. Minister of Justice and Constitutional Development and Others, Gauteng Division of the High Court of South Africa*²³

Keywords: arrest warrant, immunities, ICC, Al Bashir.

On 23 June 2015, the Gauteng Division of the High Court of South Africa issued its decision in the case of *Southern African Litigation Centre v. Minister of Justice and Constitutional Development and Others*. The case considers the Implementation of the Rome Statute of the International Criminal Court Act No. 27 of 2002 (Rome

22 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=78AA53666CB1B3B7C1257E96002CE9D5&action=openDocument&xp_countrySelected=NP&xp_topicSelected=GVAL-992BU6&from=state.

23 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=481F300878BA3075C1257F1E00386F19&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state.

Statute Act) with regard to the arrest of a head of State against whom a warrant of arrest has been issued by the ICC.

In June 2015, Omar Hassan Ahmad Al Bashir, president of Sudan, arrived in South Africa to attend the African Union (AU) Summit of Heads of State. Following his arrival, the Southern African Litigation Center sought an application before the Court seeking an order compelling South African officials to arrest President Al Bashir, on the basis of South Africa's obligation under the Rome Statute Act. The respondent opposed the application, noting that all participants attending the AU Summit enjoy full immunity from arrest.

According to the respondent, the General Convention on the Privileges and Immunities of the Organization of African Unity (OAU Immunities Convention) affords immunity to "members of the Commission, staff members and other representatives of intergovernmental organizations" attending AU meetings. Pursuant to this, the South African minister of international relations and cooperation entered into a host agreement with the AU and, exercising her discretion in terms of the South African Diplomatic Immunities and Privileges Act 37 of 2001 (DIPA), published a notice in the *Government Gazette* on 5 June 2015 according immunities to parties attending the AU Summit as per the OAU Immunities Convention. The respondent argued that this notice is the basis of the immunity being given to President Al Bashir.

The Court considered the immunities regime in South Africa, noting that in the terms of Article 4 of the DIPA, heads of State are immune from prosecution only to the extent afforded by customary international law. Moreover, the DIPA does not domesticate the OAU Immunities Convention that South Africa has not ratified. Thus, AU staff do not automatically have immunity and the OAU Immunities Convention is not automatically applicable. In addition, the notice published by the minister in the *Gazette* affords immunity insofar as the OAU immunities Convention does – that is, to "members of the Commission, staff members and other representatives of intergovernmental organizations". It does not afford immunity to member States or their delegates. As such, the notice does not grant immunity to heads of State. Therefore, the only basis on which President Al Bashir could claim immunity is customary international law, which is excluded given that the Rome Statute Act excludes immunity for heads of State. Consequently, the Court held that President Bashir did not enjoy immunity on any of the grounds listed by the respondent. In any event, the minister may not exercise his or her discretion in a manner that would be unlawful and contrary to South Africa's domestic and international obligations. The Rome Statute Act enables the prosecution of customary international law crimes and its provisions enjoy pre-eminence in South Africa's constitutional regime. The minister's notice and the agreement entered into with the AU could not possibly trump these obligations. Therefore, the Court ordered that South African officials are obliged to arrest President Al Bashir.

The South African government has applied for leave to appeal the decision.

Uganda

*Constitutional Appeal No. 01 of 2012: Thomas Kwoyelo alias Latoni v. Uganda, Supreme Court*²⁴

Keywords: Uganda, amnesty, grave breaches of the Geneva Conventions.

On 8 April 2015, the Supreme Court of Uganda ordered the retrial of Thomas Kwoyelo (a former Lord's Resistance Army commander) by the International Crime Division of the High Court of Uganda. In doing so, the Supreme Court reverses the 2011 Constitutional Court judgment granting him full amnesty.

On 6 September 2010, the director of public prosecutions (DPP) indicted Thomas Kwoyelo for grave breaches of the Geneva Conventions committed during the Ugandan Civil War from 1992 to 2005. Kwoyelo lodged an application to the Constitutional Court of Uganda in 2011, stating that the refusal of the DPP and the Amnesty Commission to grant him a certificate of amnesty while the same had been granted to other applicants in circumstances similar to his was discriminatory and unconstitutional under the 1995 Constitution of Uganda. The Constitutional Court, in its ruling No. 36 of 2011, concluded that the respondent was entitled to amnesty as he had renounced his rebel activities.

On 11 April 2015, the DPP, represented by the attorney general, brought the present appeal. In responding to this appeal, the Supreme Court considered that the Amnesty Act does not provide for blanket amnesties, but is limited to participation in the rebellion and does not extend to war crimes. In the opinion of the Court, the Geneva Conventions Act still applies, and the indictment of Thomas Kwoyelo under Article 147 (i.e., grave breaches) thereof does not violate the Constitution of Uganda. It further specifies that the respondent has not suffered discrimination or unequal treatment under the law as certain individuals remain ineligible for the amnesty, and that the DPP is acting within his powers not to certify the respondent for granting the amnesty.

Other efforts to strengthen national implementation of IHL

To further its work on implementation of IHL, the ICRC Advisory Service organized, in cooperation with respective host States, or regional or subregional organizations, a number of national workshops and several regional conferences directed at engaging national authorities in the period under review.

Of particular interest was the Sixth South Asia Regional Conference on IHL, entitled "IHL: Yesterday, Today and Tomorrow", which was co-organized by the Sri Lankan Ministry of Foreign Affairs and the ICRC and took place on

24 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=20E1082342C75A5AC1257ED60046A45B&action=openDocument&xp_countrySelected=UG&xp_topicSelected=GVAL-992 BU6&from=state.

19–21 May 2015 in Colombo, Sri Lanka. It gathered senior government officials, members of parliament, members of the armed forces and police, academics and ICRC experts from Afghanistan, Bangladesh, Bhutan, Iran, Maldives, Pakistan and Sri Lanka. The conference dealt with topics such as IHL and peace operations, armed conflict and terrorism, IHL and means and methods of warfare.

Another event of interest was the Fifth Regional Seminar on Implementation of IHL, co-organized with the Ministry of Justice of Belarus, from 17 to 21 March 2015 in Minsk, Belarus. The seminar brought together governmental officials and members of national IHL committees from Azerbaijan, Armenia, Belarus, Germany, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Poland, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The event was also attended by representatives and experts of the ICRC, the Belarus Red Cross Society, the Organization for Security and Cooperation in Europe, the Collective Security Treaty Organization, the Commonwealth of Independent States and academia. The main topic on the agenda was related to the subjects covered during the upcoming 32nd International Conference of the Red Cross and Red Crescent Movement. Among other topics reviewed during the seminar, particular attention was given to the issues developing in and of interest to the region, such as the legal framework on the protection of missing persons and their families, weapons and IHL, and the new tools and mechanisms of implementation. Representatives from authorities of the respective countries were also asked to prepare reports on the level of implementation of IHL.

Similar regional conferences were also conducted in Naivasha, Kenya,²⁵ and Abuja, Nigeria,²⁶ respectively organized in cooperation with the Office of the Attorney General and Department of Justice of Kenya and the Economic Community of West African States (ECOWAS).

25 Third Regional Seminar on National Implementation of International Humanitarian Law, Naivasha, Kenya, 19–21 May 2015.

26 ECOWAS–ICRC IHL Review Seminar on International Humanitarian Law Treaties in West Africa, “Review Meeting of the Plan of Action on Implementation of International Humanitarian Law in West Africa” Abuja, Nigeria, 9–11 June 2015.

