

## REPORTS AND DOCUMENTS

# What's new in law and case law across the world

Biannual update on national legislation and case law  
July–December 2011

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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). The ICRC was entrusted with this task in a resolution adopted by the 26th International Conference of the Red Cross and Red Crescent in 1996.

The laws presented below were either adopted by states in the second half of 2011 (July–December) or collected during that period. They cover a variety of topics linked to IHL, including protection of the emblems, reparations for conflict victims, and prohibitions or restrictions on the use of certain weapons. The full texts of these laws can be found in the ICRC's database on national implementation at: <http://www.icrc.org/ihl-nat>.

### 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 international humanitarian law (IHL). Working worldwide, through a network of legal advisers, its three priorities are: to encourage and support adherence to IHL-related treaties; to assist states by providing them with the technical expertise required to incorporate international humanitarian law into their domestic legal frameworks; and to collect and facilitate the exchange of information on national implementation measures.

The inclusion of selected case law illustrates, among other things, the growing number of domestic prosecutions for violations of IHL and other international crimes, and shows the practical application of domestic implementing measures to punish these crimes. National IHL committees and other similar bodies are also increasing in number. More and more states find them an important tool in facilitating national implementation measures. The recent creation of an IHL committee in Turkmenistan has brought their total number worldwide to 101 at the end of 2011.

To further its implementation work, the ICRC organized a number of workshops and national and regional events during the period under review. Of particular note was the 31st International Conference of the Red Cross and Red Crescent.<sup>1</sup> This conference, which takes place every four years, brought together the States Parties to the Geneva Conventions, the world's National Red Cross and Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies, and the International Committee of the Red Cross in order to discuss the strengthening of IHL and humanitarian action. More than 2,000 delegates debated and adopted a series of resolutions on action to boost legal protection for victims of armed conflict, strengthen disaster law, enhance local humanitarian work, and address barriers to health care.

Universal participation in international treaties is a vital first step toward respect for life and human dignity in armed conflict, and is therefore a priority for the ICRC. In the period under review, seven of the twenty-eight IHL conventions and protocols were ratified or acceded to, showing a steady growth in the number of States Parties to the Protocols Additional to the 1949 Geneva Conventions and the Convention on Cluster Munitions. By the end of 2011 a total of sixty-seven states had become party to the latter treaty, which was adopted at the end of 2008 and came into force on 1 August 2010 (the complete list can be found at: <http://www.icrc.org/ihl>).

1 See: <http://www.rcrcconference.org/en/introduction.html> (last visited March 2012).

<b>Conventions</b>	<b>States</b>	<b>Ratification date</b>	<b>Total number of ratifications (as of 31 December 2011)</b>
2005 Protocol III additional to the 1949 Geneva Conventions	Armenia	12.08.2011	<b>59</b>
	Cook Islands	07.09.2011	
	Timor-Leste	29.07.2011	
2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	San Marino	26.09.2011	<b>144</b>
1998 Rome Statute of the International Criminal Court	Cape Verde	10.10.2011	<b>120</b>
	Maldives	21.09.2011	
	Philippines	30.08.2011	
	Vanuatu	02.12.2011	
1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction	Burundi	18.10.2011	<b>165</b>
2003 Protocol V of 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 as amended on 21 December 2001	Argentina	07.10.2011	<b>76</b>
	Poland	26.09.2011	

(Cont.)

<b>Conventions</b>	<b>States</b>	<b>Ratification date</b>	<b>Total number of ratifications (as of 31 December 2011)</b>
1997 Anti-Personnel Mine Ban Convention	South Sudan	11.11.2011	<b>159</b>
	Tuvalu	13.09.2011	
2008 Convention on Cluster Munitions	Afghanistan	08.09.2011	<b>67</b>
	Cook Islands	23.08.2011	
	Czech Republic	22.09.2011	
	Dominican Republic	20.12.2011	
	Italy	21.09.2011	
	Senegal	03.08.2011	
	Swaziland	13.09.2011	
	Trinidad and Tobago	21.09.2011	

## Ratifications July–December 2011

### National implementation of international humanitarian law

#### A. Legislation

##### Belarus

###### *Law of the Republic of Belarus No. 282-3 of 3 July 2011 on issues pertaining to fulfilment by the Republic of Belarus of its obligation under international humanitarian law to protect the emblems*

On 3 July 2011, the Republic of Belarus adopted Law No. 282-3 on protection of the emblems under the Geneva Conventions and their Protocols, amending the Belarus Criminal Code and the Law of the Republic of Belarus on the Use and Protection of the Red Cross and Red Crescent Emblems of 12 May 2000.

Law No. 282-3 extends the scope of the regulations on the use of the protected emblems by adding the term ‘red crystal’ in various provisions of the Criminal Code and articles of the Law of 12 May 2000. Article 1 of the Law of 12 May 2000 now reads: ‘International Obligations of the Republic of Belarus in the Field of Use and Protection of the Emblems of the Red Cross, Red Crescent, and Red Crystal’. The Law also amends the Code of the Republic of Belarus on Administrative Violations of 21 April 2003. The term ‘red crystal’ is inserted into the name and the first paragraph of Article 23.40.

Article 4 of Law No. 282-3 grants the Council of Ministers of Belarus a period of two months in which to execute its provisions, and Article 5 states that the Law will come into force retroactively as from the date on which Protocol III additional to the 1949 Geneva Conventions came into force in Belarus, namely September 2011.

##### Colombia

###### *Decree No. 3750 of 10 October 2011 on humanitarian demining activities by civil-society organizations<sup>2</sup>*

On 10 October 2011, the Colombian government adopted Decree No. 3750 on humanitarian demining that regulates Article 9 of Law 1421 of 2010 on humanitarian demining activities by civil-society organizations, thus giving effect to the Mine Ban Treaty.<sup>3</sup>

2 Decreto Número 3750 de (octubre 10) 2011 por medio del cual se reglamenta el artículo 9 de la Ley 1421 de 2010, ‘por la cual se prorrogada la Ley de 1997, prorrogada y modificada por las Leyes 548 de 1999, 782 de 2002 y 1106 de 2006’.

3 The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction is available at: <http://www.apminebanconvention.org/> (last visited March 2012).

Under Article 9 of Law 1421 of 2010, humanitarian demining is a priority for the Colombian government in so far as it guarantees effective respect for the fundamental rights and liberties of the communities affected by violence in the country. The recent Decree provides guidance on carrying out humanitarian demining.

More specifically, its various articles establish that the process of demining is to be conducted by the government zone by zone and in conformity with international standards and humanitarian principles (Article 2). Civil-society organizations may, however, carry out certain predefined demining tasks (Article 1) as long as they have received preliminary authorization from the government to do so (Article 4). In order to co-ordinate action by the government and civil-society organizations, the Decree states that the National Commission on Anti-Personal Mines will provide support for civil-society organizations and that an agency for humanitarian demining will be set up within the Ministry of Defence (Article 6). This agency will determine/identify the areas that need to be demined (Article 12) and the civil-society organization that 'can partake in the demining activities' (Article 6).

*Decree No. 4100 of 2 November 2011 on the establishment and organization of a national system of human rights law and international humanitarian law<sup>4</sup>*

On 2 November 2011, the Republic of Colombia adopted Decree No. 4100 on the establishment and organization of a national system of human rights law and international humanitarian law, modifying at the same time the mandate of the existing Committee on Human Rights and International Humanitarian Law and abolishing Law 321 of 2000, which established the Permanent Inter-Sectorial Committee for Human Rights Law and International Humanitarian Law (Article 20).

The first part of the Decree deals with the national system of human rights law and international humanitarian law (IHL), defining it as encompassing principles, norms, policies, programmes, courts, and public institutions relating to the promotion, implementation, and evaluation of policies on human rights law and IHL and follow-up given to them (Article 2). Article 4 states that this system shall operate in conformity with the principles and criteria enshrined in the constitution and in international treaties on human rights law and IHL, such as the principles of equality, complementarity, and subsidiarity. The objective of the system is to strengthen the country's capacity to monitor, evaluate, and guarantee respect for those principles and criteria (Article 6).

The second part of the Decree discusses the role of the Committee on Human Rights and International Humanitarian Law, taking into account the recent

4 Decreto Número 4100 de (Noviembre 2) 2011 por el cual se crea y organiza el Sistema Nacional de Derechos Humanitaria, se modifica la Comisión Intersectorial de Derechos Humanos y derecho Internacional Humanitario y se dictan otras disposiciones.

modifications, which is to plan, harmonize, co-ordinate, and define the actions that are needed under the national system to promote, implement, and evaluate the objectives of human rights law and IHL (Article 9). The Committee will in turn receive logistical support from the Technical Secretariat (Article 12) – which works under the authority of the Presidential Programme on Human Rights and International Humanitarian Law – and from technical groups (Article 14).

## France

### *Law No. 2011-1862 of 13 December 2011 on the distribution of litigation and on relief from certain court proceedings*<sup>5</sup>

On 13 December 2011, the President of France promulgated Law No. 2011-1862 on the distribution of litigation and on relief from certain court proceedings. The Law was published on 14 December in the *Official Gazette* and entered into force on 1 January 2012.<sup>6</sup>

Law No. 2011-1862 removes jurisdiction from the military courts for crimes against humanity, war crimes, and acts of torture, transferring such jurisdiction to the Tribunal de Grande Instance, a lower court in Paris. In its Chapter VIII on the ‘regrouping of certain criminal litigation in specialized courts’, Articles 22 and 23 set up a special unit to deal with crimes against humanity, war crimes, and acts of torture within the Tribunal de Grande Instance. ‘The special investigating unit, composed of dedicated lawyers and investigators, will . . . deal with all cases opened in France related to crimes against humanity, including genocide, crimes of war and acts of torture’.<sup>7</sup> Article 22 also specifies that the investigators may conduct hearings on foreign territory, with the prior consent of the relevant authorities. To that effect, the authorities will issue them with an international rogatory letter.

## Guatemala

### *Decree No. 27-2011 of 8 December 2011 amending the Law on the Protection and Use of the Emblem of the Red Cross*

On 8 December 2011, the Congress of Guatemala passed Decree No. 27-2011 amending the Law on the Protection and Use of the Emblem of the Red Cross

5 Loi n° 2011-1862 du 13 décembre 2011 relative à la répartition des contentieux et à l’allègement de certaines procédures juridictionnelles.

6 Chapter VIII of the Law came into force on 1 January 2012 but the rest of the provisions (Chapter I–VII) will not come into force until 1 January 2013.

7 More information available at: <http://www.hirondellenews.org/other-courts/326-oc-other-courts/25306-en-en-050711-francejustice-new-law-creating-a-special-investigative-unit-adopted-by-french-deputies-1435714357> (last visited March 2012).

(Decree No. 102-97). The Decree modifies Article 1 of Decree No. 102-97, extending its scope to cover the use of the emblem by different units and medical transports (in conformity with Protocol I additional to the 1977 Geneva Conventions) and the use of the red crescent and the red crystal as substitutes for the red cross emblem.

Decree No. 27-2011 modifies Article 2 of Decree No. 102-97 by stating that the red cross emblem, also known as the ‘cross of Geneva’, must always be used in conformity with the Geneva Conventions and their Additional Protocols. It also states that the Guatemalan Red Cross is the only civil-society organization authorized to use the denomination ‘red cross’.

The new Decree furthermore modifies Article 11 of the Law on Sanctions by stating that any person who uses the emblem of the red cross, the red crescent, or the red crystal or any imitations thereof, without prior authorization, for purposes other than those defined in the Law, could face four to six years’ imprisonment and a fine of 50,000 to 100,000 quetzals.

## Ireland

### *Biological Weapons Act No. 13 of 10 July 2011*

On 10 July 2011, the Irish Parliament adopted the Biological Weapons Act, which gives further effect, in Irish domestic law, to the country’s international obligations under the 1925 Geneva Protocol, the 1972 Biological and Toxin Weapons Convention, and UN Security Council Resolution 1540 of 2004.<sup>8</sup>

The Act defines a number of key terms in Section 1, then proceeds to set out offences in Section 2, the extra-territorial applicability of the law in Section 3, the penalties that a person guilty of an offence might face in Section 4, the evidence needed in proceedings for offences committed outside the state in Section 5, the principle of double jeopardy in Section 6, the presumption relating to conduct referred to in the Convention in Sections 7 and 8, liability for offences committed by corporate bodies in Section 9, forfeiture to the state of any material seized or retained after conviction in Section 10, forfeiture to the state of any biological agent or toxin on application to the District Court in Section 11, forfeiture of related fixtures used for the purpose of producing a biological weapon<sup>9</sup> in Section 12, amendments made to the Bail Act of 1997 in Section 13 so as to include ‘offences relating to biological weapons’, the expenses of the relevant minister in the administration of this Act in Section 14, and the short title of the Act in Section 15.

<sup>8</sup> See: <http://debates.oireachtas.ie/seanad/2011/06/08/00008.asp> (last visited March 2012).

<sup>9</sup> *Ibid.*



## Kosovo

### *Law No. 04/L–023 of 14 September 2011 on missing persons*

On 14 September 2011, the Assembly of the Republic of Kosovo, basing its action on Article 65(1) of the country's constitution, approved Law No. 04/L–023 on missing persons. The Law came into force fifteen days after its publication in the *Official Gazette* of the Republic of Kosovo. Its aim is to protect the rights and interests of missing persons and their family members, in particular the right of family members to know the fate of persons reported missing during the period 1 January 1998 to 31 December 2000 in connection with the 1998–1999 war in Kosovo (Article 1).<sup>10</sup>

Chapter II of the Law enumerates the rights of missing persons and their family members. Under Chapter III, all requests concerning missing persons must be submitted to the Government Commission on Missing Persons, a body created to lead, supervise, harmonize, and co-ordinate such activities, together with local and international institutions (Articles 7 and 8). Finally, under Chapter IV of the Law, the Commission is to establish and maintain a Central Register on Missing Persons (Article 13), in which it will place all data collected in order to facilitate access to it by relevant state organizations, in particular for the purpose of research.

## Sultanate of Oman

### *Royal Decree No. 110/2011 on the Military Judiciary Law*

On 21 October 2011, his Majesty Sultan Qaboos bin Said issued Royal Decree No. 110/2011 promulgating the country's Military Judiciary Law. Under Chapter 3, the Law defines crimes of genocide, crimes against humanity, war crimes, crimes of captivity, ill-treatment of the wounded, spoliation, squander and pillage, and other crimes as punishable offences. The provisions of this Chapter came into force immediately.

Article 2 of the Decree states that a 'Founding Committee shall be constituted to prepare for the enforcement of the attached law', which will come into force in its entirety two years from its date of publication.

## United Kingdom

### *Police Reform and Social Responsibility Act 2011*

On 15 September 2011, the Parliament of the United Kingdom approved the Police Reform and Social Responsibility Act, which deals, in part, with restrictions on the issue of arrest warrants for certain extra-territorial offences, limiting such arrests under universal jurisdiction. The Act, which had been proposed as a bill in

<sup>10</sup> See <http://www.ic-mp.org/wp-content/uploads/2007/11/law-on-missing-persons-republic-of-kosovo.pdf> (last visited March 2012).

December 2010, ‘removes the exclusive power of granting arrest warrants from local magistrates, requiring that all such warrants receive approval from the Director of Public Prosecutions’ (Article 153, Subsection 4(A)).<sup>11</sup> Article 153, Subsection 4(C), states that

Subsection 4(A) applies to (a) a qualifying offence which is alleged to have been committed outside the United Kingdom, or (b) an ancillary offence relating to a qualifying offence where it is alleged that the qualifying offence was, or would have been, committed outside the United Kingdom.

The Act entered into force on 25 April 2012.

## United States

### *Presidential Study Directive on Mass Atrocities of 4 August 2011*

On 4 August 2011, the White House released the Presidential Study Directive on Mass Atrocities, with the aim of creating an Interagency Atrocities Prevention Board within 120 days from the date of the Directive. According to the Directive, which took effect immediately, ‘the Secretary of State will determine which criminals or violators will be allowed into the US’.<sup>12</sup>

The purpose of the Interagency Board is to coordinate the government’s approach to mass atrocities by ensuring that United States authorities recognize early indicators, implement prevention and response strategies, and develop doctrine for their foreign and armed services with a view to engaging as many actors as possible in the process and working with ‘allies’ to share the burden of prevention and response.

## B. National Committees for the Implementation of International Humanitarian Law

### The Czech Republic

#### *Law of 10 October 2011 on the setting up of a National Committee for the Implementation of International Humanitarian Law*<sup>13</sup>

On 10 October 2011, the Czech Republic passed a law on the setting up of a National Committee for the Implementation of International Humanitarian Law.

11 A. Malatesta, ‘UK passes law limiting arrests under universal jurisdiction’, in *Jurist*, 16 September 2011, available at: <http://jurist.org/paperchase/2011/09/uk-passes-law-limiting-arrests-under-universal-jurisdiction.php> (last visited March 2012).

12 C. Morris, ‘Obama bars war criminals, rights violators from entering US’, in *Jurist*, 4 August 2011, available at: <http://jurist.org/paperchase/2011/08/obama-bars-war-criminals-rights-violators-from-entering-us.php> (last visited March 2012).

13 Ujednání o ustavení Národní skupiny pro implementaci mezinárodního humanitárního práva.

The founding bodies of the Committee are the Ministry of Foreign Affairs, the Ministry of Defence, and the Czech Red Cross. The laws and principles governing it will be decided by the Committee itself, which is composed of a chairman, a national secretary, and other representatives of the founding bodies. The chairman, who is from the Ministry of Foreign Affairs, will select a representative of the Ministry of Defence or of the Czech Red Cross to assist him or her. They must have expertise in the field of international humanitarian law (IHL). The national secretary, also from the Ministry of Foreign Affairs, takes part in all the negotiations and meetings of the Committee.

The aim of this inter-ministerial Committee is to serve as a permanent co-ordinating and advisory body on issues relating to IHL. The Committee will promote and disseminate IHL within the government, the armed forces, the police, schools, and universities. It will also monitor and evaluate current IHL developments and implementation of the law by judicial and administrative bodies and by the armed forces. The Committee is empowered to adopt resolutions containing recommendations for stakeholders, such as the adoption of legislative measures to comply with state obligations under IHL or to push for ratification of and accession to IHL treaties.

## **Turkmenistan**

### *Resolution 117886 setting up a Committee for the Implementation of International Humanitarian Law*

On 12 August 2011, the government of Turkmenistan approved Resolution 117886 setting up a Committee for the Implementation of International Humanitarian Law. The Committee's main objectives will be to co-ordinate the efforts of various ministries to implement Turkmenistan's commitments in the field of international human rights law and international humanitarian law (IHL), to draft national implementation reports for submission to the relevant international bodies, to monitor the harmonization of national legislation with international standards in the area of human rights law and IHL, and to make recommendations on aligning national legislation with the provisions of international human rights law and IHL.

The Committee is made up of the Head of the Human Rights Committee attached to the Mejlis (parliament), the Director of the Institute of State and Law under the authority of the President of Turkmenistan, the Deputy Minister of Foreign Affairs, the Deputy Minister of Defence, the Deputy Minister of Justice (Adalat), the Deputy Minister of the Interior, the Deputy Head of the Supreme Court, the Deputy General Prosecutor, the Deputy Minister of TV and Radio Broadcasting, the Deputy Minister of Education, the Deputy Minister of Health and Medical Industries, the Deputy Minister of Labour and Social Welfare, the Deputy Minister of Economy and Development, the Deputy Chairman of the State Statistics Committee, the Deputy Chairman of the Gengeshi (Council) on Religious Affairs, the Chairman of the Trade Union, the Chairwoman of the Women's Union, the

Chairman of the Youth Union, and the Chairwoman of the National Red Crescent Society of Turkmenistan.

The Committee is chaired by the Deputy Prime Minister and the Minister of Foreign Affairs, and the seat of vice-chairman is held by the Director of the Turkmen Institute for Democracy and Human Rights.

## C. Case law

### Bosnia

*Prosecutor v. Radoje Lalović and Soniboj Škiljević*, Case No. S1 1 K 005589 11 Kžk, Appellate Division of the War Crimes Chamber of the Court of Bosnia and Herzegovina, 11 July 2011

On 16 June 2010, under Article 172(1)(h) of the country's Criminal Code, the Court of Bosnia and Herzegovina found Mr Radoje Lalović, in his capacity as warden of the Butmir Correctional Institution (KPD) in Kula, and Soniboj Škiljević, in his capacity as deputy warden, guilty of crimes against humanity and sentenced them respectively to five and eight years' imprisonment.

On 11 July 2011, the Appellate Chamber of the Court of Bosnia and Herzegovina acquitted Radoje Lalović and Soniboj Škiljević of all charges, pursuant to Article 284(c) of the country's Code of Criminal Procedure. The Appellate Chamber found that the prosecutor had not determined, beyond a reasonable doubt, that the accused had committed the crimes with which they had been charged and therefore agreed that they should be acquitted of

having participated, in collaboration with members of military, police and political structures of the then Serbian Republic of Bosnia and Herzegovina, in a systematic joint criminal enterprise from May to December 1992 with the aim of persecuting, detaining civilians, intentionally depriving people of [their] lives, torturing and forcing people to commit hard labour.<sup>14</sup>

Moreover, the Appellate Chamber found that the prosecutor had not proved that the accused had effective control over the functioning of the Correctional Institution or that they could have prevented forced labour but failed to do so (para. 255). Finally, the state prosecutor had not proved, beyond a reasonable doubt, that the accused had discriminatory intentions towards the non-Serb detainees or had 'approved, consented or contributed to ill-treatment of the non-Serb detainees' (para. 262).

The Appellate Chamber concluded by stating that Lalović and Škiljević were exempted from paying the costs of the criminal proceedings (para. 264) and

<sup>14</sup> See Balkan Investigative Reporting Network, Justice Report, 12 July 2011, available at: <http://www.bim.ba/en/278/10/32957/> (last visited on March 2012).

advised the injured parties to file civil suits in order to settle their property and legal claims (para. 265).

*Prosecutor v. Slavko Lalović*, Case No. S 1 1 K 002590 10 Kri,  
Trial Chamber of the Court of Bosnia and Herzegovina, 29 August 2011

On 29 August 2011, the Trial Chamber of the Court of Bosnia and Herzegovina found Slavko Lalović, a former member of the reserve police force at the Kalinovik Public Security Station, guilty of war crimes against civilians, pursuant to Articles 173(1)(c)(e), 31, and 180(1) of the Criminal Code of Bosnia and Herzegovina. He was sentenced to five years' imprisonment.<sup>15</sup>

The Trial Chamber stated that Lalović '[had] assisted in the commission of rape and [had] applied terror and intimidation measures' against civilians<sup>16</sup> when, in late August 1992, he allowed two soldiers of the army of the Serbian Republic of Bosnia and Herzegovina to enter and commit violence against civilians detained in the Miladin Radojević elementary school building.

The accused was further charged with intimidating and terrorizing civilians detained in the same facility in August 1992: 'He did this by depriving them of water and not letting them use the toilet on one occasion. Lalović intimidated the civilians by telling them that he would kill them unless they gave him their money and other valuables'.<sup>17</sup>

However, the Trial Chamber acquitted Lalović of any criminal responsibility for the injury of one female detainee, under Article 173(1)(c), pursuant to Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

Lalović was to remain in custody until the end of his trial in May 2012.

*Prosecutor v. Velibor Bogdanović*, Case No. S1 1 K 003336 10 Krl,  
Trial Chamber of the Court of Bosnia and Herzegovina, 29 August 2011

On 29 August 2011, the Trial Chamber of the Court of Bosnia and Herzegovina found Velibor Bogdanović, a former member of the HVO Croatian Defence Council, guilty of war crimes against civilians, pursuant to Articles 173(1)(e) and 180(1) of the Criminal Code of Bosnia and Herzegovina. He was sentenced to six years' imprisonment.<sup>18</sup>

The Trial Chamber stated that Bogdanović, 'acted in contravention of the rules of international humanitarian law and in violation of Articles 3(1)(a) and (c), 27(2) and 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949' (p. 2) when, in May 1993, he unlawfully

15 See case information of the Court of Bosnia and Herzegovina, available at: <http://www.sudbih.gov.ba/index.php?opcija=predmeti&id=339&jezik=e> (last visited March 2012).

16 See Balkan Investigative Reporting Network, 'Slavko Lalovic sentenced to five years', 29 August 2011, available at: <http://www.bim.ba/en/285/10/33214/> (last visited March 2012).

17 *Ibid.*

18 See case information of the Court of Bosnia and Herzegovina, available at: <http://www.sudbih.gov.ba/index.php?opcija=predmeti&id=343&jezik=e> (last visited March 2012).

entered the apartment of a Bosnian couple in Mostar, subjected them to humiliating and degrading treatment, raped the woman, unlawfully detained her husband in the prison of Heliodrom (and other detention facilities) for more than thirty days, and looted their property.<sup>19</sup>

The Trial Chamber concluded its decision by stating that the injured parties were advised to file civil suits in order to settle their property claims, pursuant to Article 198(2) of the Code of Criminal Procedure of Bosnia and Herzegovina.

## Colombia

*Fredy Rendón Herrera Case*, No. 2007 82701, Supreme Tribunal of Bogotá, 16 December 2011

On 16 December 2011, the Supreme Tribunal of Bogotá handed down the world's first decision ordering reparations to be paid for the 'illegal conscription of child soldiers'. Fredy Rendón Herrera, also known as 'El Alemán', former leader of the armed Élder Cárdenas paramilitary group (AUC), active in Colombia from 1995 to 2006, was sentenced, pursuant to Article 24 of Law 975 of 2005, to pay reparations in the form of monetary compensation and medical and psychological care for more than 300 minors illegally recruited by his group.<sup>20</sup>

In its ruling, the Tribunal classified the type of conflict being waged between armed groups such as the AUC and the Colombian government as an 'armed conflict', and concluded that the illegal conscription of minors as child soldiers was a violation of international humanitarian law (para. 507). The Tribunal then proceeded to look at the international and national law applicable to the case. It stated that Article 24 of the Fourth Geneva Convention of 1949 and the obligations under Article 77(2) of Protocol I of 1977 additional to the Geneva Conventions (providing that 'the parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces' (para. 524)), and Article 4(3) of Additional Protocol II were applicable. The Tribunal also mentioned that States Parties to the Convention on the Rights of the Child were obliged to take 'all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of... armed conflicts' under Article 39 (para. 525).

The Tribunal then determined the material and psychological damages to which the conscripted children were entitled. With regard to material damages, the Tribunal's main concern was to establish whether there was a presumption that the minors should have received a salary for the number of months they were part of the AUC (para. 762). Given that the vast majority of minors were known to have

<sup>19</sup> *Ibid.*

<sup>20</sup> 'Colombia ruling on reparations for child soldiers', in *Politics of International Justice*, 8 February 2012, available at: <http://politicsofjustice.wordpress.com/2012/02/08/colombia-ruling-on-reparations-for-child-soldiers/> (last visited March 2012).

joined the AUC for financial reasons, it was decided that they should have received at least the minimum wage, which could vary from 250,000 to 400,000 Colombian pesos (para. 766). With regard to psychological damages, defined as ‘pain, moral anguish and emotional distress that affect the individual’, the Tribunal stated that, pursuant to Article 97 of the country’s Criminal Code, moral damages could total up to 1,000 statutory monthly wages (para. 797).

After having taken these elements into account, the Tribunal sentenced Fredy Rendón Herrera to pay reparations to more than 300 minors ‘for approximately 15 months of work at minimum wage, with higher payments to those who were recruited at an earlier age’.<sup>21</sup>

As mentioned above, this ruling is ground-breaking in that it is the first to order reparations for the illegal conscription of child soldiers. The Tribunal acknowledged this fact in paragraph 522, which states that national and international jurisprudence contain no examples of reparations having been ordered for the crime of conscripting minors.

## Guatemala

*The Dos Erres Trial (Manuel Pop Sun, Reyes Collin Gualip, Daniel Martinez and Carlos Antonio Carias)*, Criminal Tribunal of First Instance of Guatemala City, Decision C-01076-2010-00003, 2 August 2011

On 2 August 2011, the Criminal Tribunal of First Instance of Guatemala City sentenced four former military officers, Manuel Pop Sun, Reyes Collin Gualip, Daniel Martinez, and Carlos Antonio Carias, to more than 6,000 years’ imprisonment each for the ‘Dos Erres’ massacre of 201 villagers in 1982, during the Guatemalan civil war (1960–1996).<sup>22</sup>

The Court sentenced Manuel Pop Sun, Reyes Collin Gualip, and Daniel Martinez, three former members of the Kaibiles unit, to ‘30 years for each death, plus 30 years for crimes against humanity’. Carlos Antonio Carias, who was a second lieutenant, received an extra six years for stealing the victims’ belongings and providing information to the army that led to the massacre.<sup>23</sup>

This landmark case is an important step in the struggle ‘for the recognition of heinous atrocities sanctioned and carried out by the state during Guatemala’s 36-year long civil war’ and in the fight against military impunity in Guatemala.<sup>24</sup>

21 *Ibid.* (view link at bottom of text).

22 William Moore, ‘The Dos Erres Trial: justice and politics in Guatemala’, in *Council on Hemispheric Affairs*, 9 August 2011, available at: <http://www.coha.org/the-dos-erres-trial-justice-and-politics-in-guatemala/> (last visited March 2012).

23 ‘Guatemalan soldiers jailed for more than 6,000 years over massacre’, in *The Guardian*, 3 August 2011, available at: <http://www.guardian.co.uk/world/2011/aug/03/guatemala-soldiers-jailed-massacre> (last visited March 2012).

24 W. Moore, above note 22.

## India

### *Nandini Sundar and Ors. v. State of Chhattisgarh*, Supreme Court of India, 5 July 2011<sup>25</sup>

On 5 July 2011, the Supreme Court of India gave a ground-breaking judgment on the use of special police officers (SPOs) in the armed insurgency in Chhattisgarh in India. The Court ‘delivered a striking defense of peoples’ rights and condemnation of state-sponsored aggression’.<sup>26</sup>

The petitioners in the case, Ms Sundar and others, alleged that there were ‘widespread violations of the human rights of people in Dantewada District and its neighbouring areas in the State of Chhattisgarh, on account of the ongoing armed Maoist/Naxalite insurgency, and the counter-insurgency offensives launched by government authorities in Chhattisgarh’. The petitioners referred specifically to the state practice of hiring local tribal youth as SPOs and arming them to fight the Maoists, claiming this practice to be illegal and unconstitutional.

One of the arguments used by the respondent, the State of Chhattisgarh, was that it had the right, under the constitution, to arm local tribal youth with guns to fight the battle against ‘extremist Maoists’.

The Court’s rulings specifically addressed the ill-treatment, torture, murder, and forced displacement suffered by local people, reducing them to a ‘sub-human existence’ resulting from disproportionate action on the part of the State of Chhattisgarh. It reaffirmed the unconstitutionality of such action and specified that the state had to adhere to the rule of law. In order to do so, the Court ordered the State of Chhattisgarh to stop using SPOs immediately; to desist from funding the recruitment of other vigilante groups; to recall all firearms issued to SPOs; to make arrangements to provide protection for previously appointed SPOs; to commit to filing ‘First Information Reports’; and to ensure diligent prosecution for the crimes of SPOs.

## Mexico

### Decision 912/2010 of the Supreme Court of Mexico on jurisdiction over cases of human rights violations committed against civilians by military personnel, 14 July 2011<sup>27</sup>

On 14 July 2011, the Supreme Court of Mexico, following instructions given by the Court in a previous case (Case No. 912/2010 of 7 September 2010),

25 The case is available at: <http://www.scribd.com/doc/59445570/Salwa-Judum-Order-July-2011> (last visited March 2012).

26 Javed Iqbal, ‘India’s highest court lays bare assaults on the country’s poorest peoples’, in *MAC: Mines and Communities*, 18 July 2011, available at: <http://www.minesandcommunities.org/article.php?a=11049> (last visited March 2012).

27 Resolución para resolver el expediente ‘varios’ 912/2010, relativo a la instrucción ordenada por el Tribunal Pleno de la Suprema Corte de Justicia de la Nación, en la resolución de fecha siete de septiembre de dos mil diez, dictada dentro del expediente ‘varios’ 489/2010.



made a ground-breaking decision whereby military personnel accused of having committed human rights violations against civilians would no longer be judged by military tribunals but would fall under the jurisdiction of civil tribunals. This decision, which led to a major change in Mexico's judiciary order, could have a bearing on military legislation and procedure in the future. For the time being, no military tribunal has yet had to take up the issue.

## Philippines

*Bayan Muna v. Alberto Romulo (in his capacity as executive secretary)*,  
Supreme Court of the Philippines, 1 February 2011

On 1 February 2011, the Supreme Court of the Philippines dismissed a claim by Bayan Muna ('the petitioner'), a 'duly registered party-list group set up to represent the marginalized sectors of society', which sought to nullify the Non-Surrender Agreement ('the Agreement') concluded between the Republic of the Philippines and the United States of America.

According to the petitioner, the Agreement contravened the obligations of the Philippines under the Rome Statute of the International Criminal Court (ICC), which had been signed (but not ratified) by the Philippines. The petitioner also argued that the Agreement was void *ab initio* because it created obligations that were immoral or that were contrary to universally recognized principals of international law.

Regarding the petitioner's first argument, the Supreme Court concluded that the Agreement did not undermine or contravene the Rome Statute. On the contrary, the Court held that the Agreement and the Rome Statute complemented each other and thus conformed to the ICC's 'principle of complementarity'. The Court added that:

it is abundantly clear to us that the Rome Statute expressly recognizes the primary jurisdiction of states, like the RP [Republic of the Philippines], over serious crimes committed within their respective borders, the complementary jurisdiction of the ICC coming into play only when the signatory states are unwilling or unable to prosecute. (p. 27)

Regarding the petitioner's second argument, namely that the Agreement was immoral because 'it leaves criminals immune from responsibility for unimaginable atrocities that deeply shock the conscience of humanity' (p. 32), the Court also disagreed. It stated that the Agreement 'is an assertion by the Philippines of its desire to try and punish crimes under its national law' and that it 'is a recognition of the primacy and competence of the country's judiciary to try offenses under its national criminal laws and dispense justice fairly and judiciously' (p. 33). The Court did not concur with the petitioner's opinion that the Agreement would allow

Americans and Filipinos to commit grave international crimes with impunity. The Court explained that people who

may have committed acts penalized under the Rome Statute can be prosecuted and punished in the Philippines or in the US; or with the consent of the RP [Republic of the Philippines] or the US, before the ICC, assuming . . . that all the formalities necessary to bind both countries to the Rome Statute have been met.

It also stated:

With the view we take of things, there is nothing immoral or violative of international law concepts in the act of the Philippines of assuming criminal jurisdiction pursuant to the Non-Surrender Agreement over an offense considered criminal by both Philippine laws and the Rome Statute. (p. 34)

## United Kingdom

*Regina v. Mohammed Gul [2012]*, Court of Appeal of England and Wales, Criminal Chamber 280

The appellant, Mohammed Gul, was convicted, among other charges, of terrorism in early 2011 for uploading videos on the Internet inciting people to fight against coalition forces in Afghanistan. In his appeal, the applicant's counsel used both criminal law and international humanitarian law (Geneva Conventions and customary law) to uphold the contention that combatants from non-governmental armed factions who attacked military forces were immune from prosecution under domestic criminal law, even in non-international armed conflicts, owing to the fact that they were engaged in a struggle against the government.

The argumentation was twofold: the counsel first stated that the notion of terrorism in international law excluded those 'engaged in an armed struggle against a government who attacked the armed forces of that government' and, second, highlighted the need to make a clear distinction in international humanitarian law (IHL) between attacks on the military and attacks on civilians. The Court noted the government's argument whereby IHL provided no status or protection for armed groups against criminal prosecution but underlined that the criminal liability of 'insurgents' was at the discretion of national law.

The Court then considered the notion of terrorism, stating that there was no internationally accepted definition of that crime. It questioned whether, under customary international law, an attack conducted by an armed fighter in a non-international armed conflict could be considered as a terrorist act under international law. To do so, it referred to various conventions and domestic laws that excluded from the notion of terrorism armed struggles waged by national liberation movements and other movements made up of 'freedom fighters'. It concluded that the question had no clear answers as there was no *opinio iuris* or

state practice that prohibited treating individuals who attacked combatants as terrorists. This reasoning allowed the Court to affirm that no norms of international law could compel it to interpret British law as authorizing the use of force by civilians against the military.

The Court therefore concluded that British law relative to terrorism prohibited attacks on military forces by civilians:

The definition in s.1 is clear. Those who attacked the military forces of a government or the Coalition forces in Afghanistan or Iraq with the requisite intention set out in the Act are terrorists. There is nothing in international law which either compels or persuades us to read down the clear terms of the 2000 Act to exempt such persons from the definition in the Act.

## Uganda

### *Thomas Kwoyelo v. Attorney General*, High Court Miscellaneous Application No. 162 of 22 September 2011

On 6 September 2010, the Director of Public Prosecutions (DPP) indicted Thomas Kwoyelo for grave breaches of the Geneva Conventions, namely: '53 counts of willful killing, hostage taking, destruction of property and causing injury' during the Ugandan civil war from 1992 to 2005.<sup>28</sup> Kwoyelo petitioned the High 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.<sup>29</sup> The Constitutional Court, in its ruling No. 36 of 2011, concluded that Kwoyelo was entitled to amnesty as he had renounced his rebel activities.

In the present case (High Court Miscellaneous Application No. 162 of 22 September 2011), Kwoyelo petitioned the High Court for an order of *mandamus* (judicial remedy) against the Amnesty Commission and the DPP as they had failed to provide him with the certificate of amnesty granted by the Constitutional Court's ruling No. 36 of 2011. The prosecution's argumentation was twofold: first, it stated that the Constitutional Court's ruling did not order the DPP or the Amnesty Commission to grant the accused amnesty but solely to cease their action against him; second, the DPP had instructed the Amnesty Commission not to deliver the amnesty writ as the appellant had been charged with grave breaches of the Geneva Conventions, for which amnesty could not be granted.

28 Hillary Stemple, 'Uganda appeals court grants ex-LRA rebel amnesty', in *Jurist*, 23 September 2011, available at: <http://jurist.org/paperchase/2011/09/uganda-court-grants-ex-lra-rebel-amnesty.php> (last visited March 2012).

29 Judgment available at: [http://www.kituoachakatiba.org/index2.php?option=com\\_docman&task=doc\\_view&gid=1451&Itemid=27](http://www.kituoachakatiba.org/index2.php?option=com_docman&task=doc_view&gid=1451&Itemid=27) (last visited March 2012).

The High Court ruled in favour of Kwoyelo, granting him the *mandamus*, in order to compel the DPP and the Amnesty Commission to deliver a certificate of amnesty to the applicant, as the grave breaches had been committed in the exercise of the rebellious activities for which he was granted amnesty under Uganda's Amnesty Act.