

## REPORTS AND DOCUMENTS

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

## Biannual update on national legislation implementing international humanitarian law and relevant case law January–June 2012

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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 1995.

The laws presented below were either adopted by states in the first half of 2012 (January–June) or collected during that period. They cover a variety of topics linked to IHL such as the legitimacy of the use of force, reparation for conflict victims, the missing, and the prevention and care of internally displaced persons. The full texts of these laws can be

### 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: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with the technical expertise required to incorporate international humanitarian law into their domestic legal frameworks; and (iii) to collect and facilitate the exchange of information on national implementation measures.

\* This selection of national legislation and case law has been prepared by Audrey Purcell-O'Dwyer, Legal Attaché of the ICRC Advisory Service on International Humanitarian Law.

found in the ICRC's database on national implementation at: <http://www.icrc.org/ihl-nat>.

The included 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 Committees on IHL and other similar bodies are also increasing in number. More and more states consider them an important tool in facilitating national measures of implementation. The recent creation of committees in Sierra Leone and Qatar has brought the global total to 101 in June 2012.

To further its work on implementation of IHL, the ICRC organized a number of workshops and national and regional events in the period under review. Of particular interest was the Fourth Regional Conference of South Asia on International Humanitarian Law held in Bhutan in February 2012, which was organized by the Royal Government of Bhutan and the ICRC. This conference, which takes place every four years, brought together senior officials, lawyers, judges and members of National Committees on IHL from ten countries in the region with the aim of sharing experiences on the regional development, implementation and enforcement of international humanitarian law. Topics discussed at the conference included: the follow-up on the monitoring program for the strengthening of legal protection for victims of armed conflict<sup>1</sup> and access to health;<sup>2</sup> the protection of the environment in times of armed conflict; and the adoption of new legislation to implement the international obligations of these states under IHL in various fields (i.e. The Arms Trade Treaty).

Universal participation in international treaties is a first vital step toward the respect of life and human dignity in situations of armed conflict, and is therefore a priority for the ICRC. In the period under review, fourteen of the twenty-eight IHL related international conventions and protocols<sup>3</sup> were ratified or acceded to by various States. In particular there has been notable accession to the Protocols Additional to the 1949 Geneva Conventions and to the Convention on Cluster Munitions (CCM). It is worth noting that the CCM, which was only adopted at the end of 2008 and came into force on 1 August 2010, had already seventy-three States Party by the end of June 2012<sup>4</sup> showing the true interest in regulating and prohibiting the use of such weapons in armed conflicts. There is still a long way before the CCM reaches universality, but the ICRC welcomes these ratifications.

1 For further information on this initiative, please see the ICRC Report on the strengthening of legal protection for victims of armed conflict (2011), available at: <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf> (last visited September 2012).

2 For further information on the Health Care in Danger (HCiD) initiative of the ICRC, please visit our website: <http://www.icrc.org/eng/what-we-do/safeguarding-health-care/about-health-care-danger-2012-02-06.htm> (last visited September 2012).

3 To view the full list of treaties the ICRC works on, please visit our website: [http://www.icrc.org/eng/resources/documents/misc/party\\_main\\_treaties.htm](http://www.icrc.org/eng/resources/documents/misc/party_main_treaties.htm) (last visited September 2012).

4 The complete list of States Party can be found at: <http://www.icrc.org/ihl> (last visited September 2012).

## Ratifications January–June 2012

Conventions	States	Ratification date	Total number of ratifications (as of 30 June 2012)
1954 Hague Convention on Cultural Property	Angola	07.02.12	126
	Benin	17.04.12	
	Palestine <sup>5</sup>	22.03.12	
1954 Additional Protocol to the Hague Convention on Cultural Property	Benin	17.04.12	102
1977 Additional Protocol I to the Geneva Conventions	Philippines	30.03.12	172
1997 Anti-Personnel Mine Ban Convention	Finland	09.01.12	160
	Somalia	16.04.12	
1998 Rome Statute of the International Criminal Court	Guatemala	02.04.12	121
1999 Hague Protocol to the Hague Convention on Cultural Property	Benin	17.04.12	63
	Poland	03.01.12	
2000 Optional Protocol to the Convention on the Rights of the Child	Côte d'Ivoire	12.03.12	147
	Malaysia	12.04.12	
	Grenada	06.02.12	
	Niger	13.03.12	
2001 Amendment to the Convention on Conventional Weapons	South Africa	24.01.12	75

(Cont.)

<b>2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b>	Hungary	12.01.12	<b>63</b>
	Philippines	17.04.12	
<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</b>	Lao (People's Democratic Republic of)	02.02.12	<b>79</b>
	South Africa	24.01.12	
<b>2005 Additional Protocol III to the Geneva Conventions</b>	Panama	30.04.12	<b>60</b>
<b>2006 Convention against Enforced Disappearances</b>	Costa Rica	16.02.12	<b>33</b>
	Austria	07.06.12	
	Bosnia and Herzegovina	30.03.12	
<b>2008 Convention on Cluster Munitions</b>	Honduras	21.03.12	<b>72</b>
	Côte d'Ivoire	12.03.12	
	Mauritania	01.02.12	
	Togo	22.06.12	
	Sweden	23.04.12	

- 5 **Palestine.** On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council 'that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto'. On 13 September 1989, the Swiss Federal Council informed the State that it was not in a position to decide whether the letter constituted an instrument of accession, 'due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine'. On 31 October 2011, Palestine became a full member of UNESCO. On 22 March 2012, Palestine deposited with the UNESCO Director-General its instrument of accession to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols.

## National implementation of international humanitarian law

### A. Legislation

#### Bolivia

##### *Law No. 251 of 20 June 2012 on the protection of refugees.*

On 20 June 2012, the Republic of Bolivia adopted a law on the protection of refugees, in accordance with their international obligations under the 1951 Convention relating to the Status of Refugees, its additional protocol of 1967 and other international human rights instruments ratified by the country (Article 1).

Law No. 251 provides jurisdictional protection to those people that have already entered the Bolivian territory and who either have obtained refugee status or who have applied for it (Article 2). The law gives an inclusive definition of 'refugee' in its Article 15 which states, in part, that 'any person persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion . . . or that have fled their country of nationality or, of habitual residence because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order' can apply for the status of refugee.

The rights and protections granted to people included in the reach of Article 2 can be found in Title II of Chapter I, for example the right to family reunification. Article 4 deals specifically with the fundamental pillar of the status of refugees: the principle of *non-refoulement*. It affirms that no person who has invoked the status of refugee in Bolivia shall be 'returned to their country of origin or to another country where their life, safety or freedom are at stake'. The status of refugee is however subject to certain conditions listed in Title III of Chapter I and Titles I and II of Chapter II, which, if not respected can lead to exclusion, termination, cancellation or revocation of the status and even possible expulsion from the Bolivian territory.

The National Committee for Refugees (or CONARE) is the organ in charge of refugee applications and of promoting the defence and protection of the rights of every refugee in Bolivia (Title I of Chapter III). It is composed of the Ministry of Foreign Affairs (acting as the chair of the CONARE), the Ministry of Government, the Ministry of Justice and a technical secretariat (Title II of Chapter III).

## Colombia

### *Regulatory Decrees No. 4800 and No. 4829 of 20 December 2011 on the regulation of Law No. 1448 of 10 June 2011 on the provision of assistance and integral reparation to the victims of the internal armed conflict and other provisions.*

On 20 December 2011, the President of the Republic of Colombia signed two decrees (No. 4800 and No. 4829 which came into force after publication in the official gazette) regulating Law No. 1448 which outlines several different mechanisms for the benefit of victims of internal armed conflict, so that they may fully enjoy their rights to truth, justice and reparation.

The two decrees include mechanisms for the implementation of Law No. 1448, as well as mechanisms that outline the amount of compensation receivable through the administrative track, the land restitution process and rehabilitation measures. The decrees also establish the *System of Registration of Victims*, an algorithm to record victims' information and claim to land.

Decree No. 4829 regulates Title IV of Chapter III of Law No. 1448, which deals specifically with land restitution and contains provisions on the functioning of the Registry of Stripped and Forcibly Abandoned Land, along with provisions relating to compensation and the relief of debts for victims of armed conflict.<sup>6</sup>

Decree No. 4800 regulates the sections of Law No. 1448 concerning the provision of assistance and reparation for the victims of armed conflict. The decree identifies the organ in charge of delivering humanitarian aid to victims of forced displacement and the conditions under which one can apply for such aid. The decree prohibits any grave violations of human rights and international humanitarian law, and sets out a number of guarantees in health care (physical and psychological), education, as well as reparation for victims of such violations. It also provides details on the procedure that has to be followed with respect to the program of collective reparation established by Law No. 1448. The regulation provides that individual victims, as well as any person who has suffered a systematic violation of his collective or individual rights as a member of the community, will be entitled to reparations.<sup>7</sup>

6 For the complete text of the Law No. 1448 and the Regulatory Decrees, please see: <http://www.leydevictimas.gov.co/documents/10179/19132/completo.pdf> (last visited September 2012).

7 *Ibid.*

### *Law No. 1531 of 23 May 2012 on the declaration of absence of missing persons.*

On 23 May 2012, the President of the Republic of Colombia signed Law No. 1531 on the declaration of absence of missing persons. The law was published the next day in the Official Gazette and entered into force immediately without need for further legislative action.

The purpose of Law No. 1531 is to create Declarations of Absence for victims of forced disappearances or other forms of involuntary disappearances and to take into account the civil implications these disappearances can have. The declaration is free and can be filled in by a spouse, a partner or same-sex partner, relatives within three degrees of consanguinity, or the Prosecutor. The declaration should be made to the civil court in the district of the last domicile of the victim, and contain information including marital status, age and work situation. The information will then be entered into the Information Network System on the Missing and Corpses (SIRDEC), in the civil registry, and finally will be published in a national newspaper.

This declaration aims at preserving the legal status of the disappeared person in regards to such things as their parental rights over minors and the protection of their estate. Finally, the law stresses that the declaration of absence should not in any way impede the search for the victim or to uncover the truth of what happened to them.

## **Haiti**

### *Organic Law of the 3 May 2012 on the Organisation and Functioning of the Office of the Ombudsman.*

On 3 May 2012, the Parliament of the Republic of Haiti adopted the Law on the Organisation and Functioning of the Office of the Ombudsman. The law was published in the Official Gazette (*Le Moniteur No. 119*) on 20 July 2012.

This law was adopted to consolidate the status of the Office of Ombudsman as an independent institution with the purpose of promoting, protecting and enforcing human rights, and with a view to ensuring that the Haitian government respects its national and international obligations in these matters. The law outlines the roles and responsibilities of the Ombudsman, the structure of the Office and its mode of functioning. Any individual or group of individuals may refer any violation or possible violation of their rights to this institution. On his/her own initiative, the Ombudsman may also intervene in or investigate any situation that it has reasonable grounds to believe is a violation or potential violation of an individual or group's rights pursuant to an act, omission or negligence on the part of the government. Further, the law empowers the Ombudsman to make recommendations for reform to the government and requires the government to consider and respond to any recommendations. The law also outlines sanctions for those who do not cooperate

with the Ombudsman and his/her Office. Finally, the Ombudsman is authorised by the law to report any violations of human rights to the judiciary.

## **Mexico**

### *Decree No. 158 of 22 February 2012 issuing the law on the Prevention and Care of Internally Displaced Persons from the State of Chiapas.*

On 22 February 2012, the Government of Mexico issued the Law on the Prevention and Care of Internally Displaced Persons (IDPs) from the State of Chiapas. This historical law recognizes for the first time the rights of IDPs established in the UN Guiding Principles on Internal Displacement but also integrates specific recommendations from various UN agencies, taking into consideration the specific conditions experienced by the State of Mexico.

This law establishes the basis for the prevention of internal displacement (Title IV), provides humanitarian assistance for the internally displaced (Title V), creates durable solutions for those affected (Title VI) and a framework that guarantees specific rights to IDPs (Title II).

The law provides measures for protection against the displacement of indigenous communities, farmers and other groups that have a special relationship with their land or territory. These measures are included in Title II of the law (Articles 4 to 17), which lists the specific rights recognized for internally displaced people (a right to a judicial status, a right to participate in any decision affecting their situation, a right to access justice, etc.) and instructs how such rights should be applied, i.e. in a non-discriminatory manner.

The Law is also very innovative in that it creates a registry of IDPs in order to track the phenomenon in the country and institutes a State Program for the Prevention of Internal Displacement. Its role is to implement the mechanisms necessary for the enforcement of the rights of displaced populations and allocate the resources necessary to achieve these objectives. The Law also creates the State Board of Comprehensive Care for Internal Displacement to act as the executing body of the said law.

### *Decree of 17 April 2012 issuing the law on the National Registry of Data on Lost or Missing Persons.*

On 17 April 2012 the Government of Mexico issued the Law on the National Registry of Data on Lost or Missing Persons. The objective of the law is to create an electronic database as part of the Public Security System, which can be consulted by all authorities and that will facilitate the search for missing persons as well as those that are in a care, shelter, detention or internment facility (Article 2). The Law is also considered to be an instrument that can be used for the protection of human rights

with regard to the fight against human trafficking, pornography, exploitation, child prostitution and forced labour.<sup>8</sup>

The database will contain information such as their sex; age; nationality; city, county or state where they disappeared; their ethnicity; their disabilities (if they have any); and any other relevant information which can be used to identify the person (Article 4).

The Law creates an obligation for any administrative or judicial authority that has knowledge of a missing person or that has received a complaint about a disappearance, to immediately notify the National Register (Article 6), and penalises any illegal use of the information contained in the database (Article 12).

*Directive of 23 April 2012, which governs the legitimate use of force by staff members of the Mexican Air Force, in the exercise of their functions in support of civil authorities and according to the Federal Firearms and Explosives law.*

On 23 April 2012, the Government of Mexico issued the Directive on the legitimate use of force by members of the Mexican Air Force in the performance of their duties in support of civil authorities and pursuant to the Act Federal Firearms and Explosives.

The Directive is part of the Mexican National Development Plan 2007–2012, the objective of which is to reinforce the strength and security of the state by combatting illegal activities such as: human, weapon and drug trafficking at the national and international levels.

The Directive establishes that in their fight against human, weapon and drug trafficking, the use of force by Air Force personnel will only be appropriate when strictly unavoidable or absolutely necessary and should be used only in full respect of human rights; i.e. based on the principles of opportunity, proportionality, rationality and legality (Article 6). The directive then proceeds to list the general rules for the use of force (Title III), stating that any personnel that has exercised undue force or fails to comply with the obligations under this Directive shall be subject to punishment under the established laws of the country (Article 17).

*Secretarial Agreement No. 27 of 23 April 2012 amending the Directive 003/09 of 30 September 2009 which regulates the legitimate use of force by naval personnel, in the performance of their duties and accordance with the rule of law.*

On 23 April 2012, the Government of Mexico issued the Secretarial Agreement amending the Directive 003/09 of 30 September 2009 which regulates the legitimate use of force by naval personnel.

8 For more information, please visit: <http://ww2.noticiasmvs.com/noticias/capital/aprueba-senado-ley-del-registro-nacional-de-datos-de-personas-extraviadas-340.html> (last visited September 2012).

The Agreement is part of the Mexican National Development Plan 2007–2012, which establishes a clear and viable strategy to regain strength and security of the state of Mexico and establish the country on solid, realistic and, above all, responsible foundations.

The Agreement amends some articles of the Directive of 2009 on the use of force by naval personnel such as Article 2 on Aggression and adds a certain number of provisions such as Article 2 (*bis*) on the objectives of the legitimate use of force or Article 19 on the unlawful use of force. As an example, Article 2 (*bis*) states that objectives of the legitimate use of force are law enforcement, the prevention of the violation of human rights, the safeguarding and the restoration of the peace and public order.

*Agreement of the Minister of Public Security No. 04/2012 of 23 April 2012, which issues general guidelines for regulating the use of public force by the police institutions of decentralized bodies in the Ministry of Public Security.*

On the 23 April 2012, the ministry of Public Security issued agreement No. 04/2012 thereby creating a general normative framework to regulate the use of force by police institutions in Mexico (Article 1).

The Agreement stipulates that the use of force by a member of the police force (in the performance of their duties) shall only be deemed permissible if done in respect of the principle of legality, proportionality, necessity and rationality, according to the Mexican Constitution and to Mexico's international obligations (Article 4, Articles 9-12).

Article 24 of the agreement emphasises the need to give ethics and human rights training to members of the police force throughout their careers as well as the means for peaceful conflict resolution methods such as negotiation and mediation.

Finally, the agreement also establishes the criminal responsibility that members of the police force could incur if they do not respect the principle of legality, proportionality, necessity and rationality in their use of force (Article 28).

## **Rwanda**

*Organic Law N° 01/2012/OL of 2 May 2012 giving effect to the new Penal Code of Rwanda.*

On the 2 May 2012, President Kagame assented to the new Penal Code of Rwanda, therefore replacing the old one of 1977 and, at the same time, repealing Law n° 33 bis/2003 of 6 September 2003 punishing the crime of genocide, crimes against humanity and war crimes (Article 654). The new Penal Code was published on the 14 June 2012 in the Official Gazette.

The main objective of this new Penal Code is to set out offences and provide for penalties applicable to offenders, co-offenders and accomplices.

Chapter 1 of Title 1 (Articles 114 to 134) on offences and their penalties is of particular interest as it deals with the crimes of genocide, crimes against humanity and war crimes. For example, according to Article 116, ‘any person who publicly shows, by their words, writings, images, or by any other means, that they negate genocide committed, rudely minimizes it or attempts to justify or approve its grounds, or any person who hides or destroys its evidence shall be liable to a term of imprisonment of 10 to 15 years’. The new code provides punishment for international and cross-border crimes, offences against children’s rights, offences related to information and communications technology (ICT), commercial and tax offences, human trafficking, illegal sale of body parts and misuse of public property.

## **South Sudan**

### *The South Sudan Red Cross Society Act, 2012.*

On 9 March 2012, the President of South Sudan, Salva Kiir, signed The South Sudan Red Cross Society Act setting up the autonomous and independent body of the South Sudan Red Cross Society (SSRC) (Article 7).

The SSRC will be recognisable through the use of the Red Cross Emblem on a white flag established by the Geneva Conventions and their additional protocols (Article 17). The SSRC is a component of the Movement and the Federation of the Red Cross and will act as an auxiliary to the government on humanitarian matters (Article 7).

The purpose of the SSRC is to ‘prevent and alleviate human suffering, provide humanitarian aid to civil and military victims in times of armed conflicts, violent and natural disasters, and in peace time, and to provide community services to the general population of South Sudan’ (Articles 3 and 6).

## **Uganda**

### *The Amnesty Act (Declaration of Lapse of the Operation of part II) Instrument 2012, Statutory Instrument No. 34 of 23 May 2012.*

On 23 May 2012, the Republic of Uganda published in its official gazette the Amnesty Act (Declaration of Lapse of the Operation of part II) Instrument 2012, Statutory Instrument No. 34 of 2012 which officially revokes amnesty for rebellion against the government and for all acts committed during the course of the rebellion including war crimes. The Statutory instrument does not, however, have retrospective application.

## Venezuela

*Joint Inter-ministerial decree of the Ministry of Foreign Affairs, of Justice and of Defense of 29 February 2012, which reinforces the registration of conventional weapons, including small arms, and regulates the disposal of these weapons in order to regularize the situation.*

On 29 February 2012, the Republic of Venezuela published in its Official Gazette, a Joint Inter-ministerial decree which reinforces the registration of conventional weapons, including small arms, and regulates the disposal of these weapons in order to regularize the situation.

The decree creates an operating record of weapons aimed at all those who possess a firearm in an irregular situation. The registration process began on 1 March 2012 for an initial period of 90 days which was to be extended if necessary in order to optimise the nationwide results (Article 1).<sup>9</sup> The objective of this exercise is to suspend the processing of applications for new permits to carry weapons, the marketing of firearms and ammunition, and suspend any donation of weapons throughout the territory for a period of one year (Articles 2 to 6). The decree then proceeds to list who is exempt from these modalities. Such persons include the state security forces and athletes who have to use weapons in the exercise of their functions (Articles 7 to 16).

## B. National Committees on International Humanitarian Law

### Sierra Leone

On 30 April 2012, Sierra Leone's National Committee for the Implementation of International Humanitarian Law was inaugurated. It was created through a joint action plan between the ICRC and ECOWAS. Its mandate includes the promotion, development and support of the dissemination of IHL in state institutions, (a function as advisory body to the Government), and to promote cooperation between the Government and international organisations in strengthening respect for IHL.

It will also promote the inclusion of further IHL instruments, such as the Rome Statute and the Ottawa Treaty, in national law and raise awareness of IHL among the authorities. The National Committee has already worked on two bills which will soon be presented to parliament: the Review Act of the Sierra Leone Red Cross Society and a draft legislation on the implementation of the Geneva Conventions and their Additional Protocols.

The National Committee is composed of 20 members, one member of the Ministry of Foreign Affairs and International Cooperation, one from the Ministry of Defence, one from the Ministry of Education, one from the Ministry

<sup>9</sup> At the time of writing no such extension had happened.

of Justice, one from the Ministry of Health and Sanitation, two representatives of the Civil Society Movement, two representatives from the International Organization for Migration, three from the Sierra Leone Red Cross, one from the Special Court for Sierra Leone, one from Women's Forum of Sierra Leone, two from the Sierra Leone Institute of International Law, two from prisons, one from the Human Right Commission and a member of the Sierra Leone National Commission on Small Arms. The Chairperson is the Solicitor-General, Mrs Martina Kroma.

## Qatar

On 8 May 2012, the Emir Sheikh Hamad bin Khalifa Al Thani endorsed the cabinet decision No. 27 of 2012 establishing a Qatari National Committee for International Humanitarian Law. The aim of this committee is to support principles of international humanitarian law, by ensuring that objectives set in international conventions and instruments are respected, by promoting international cooperation in this field and by raising awareness regarding IHL principles at the national level and ensuring their respect (Article 3).

The Committee, which will run for a renewable term of 3 years (Article 2), will be established within the Ministry of Justice, under the presidency of the Deputy Minister of Justice, and include a representative of the Ministry of Defence, the Ministry of Interior, Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Labour, the Higher Council for Education, the Higher Council for Health, a member from the Shura (Consultative) Council, the University of Qatar, the Qatari Institution for Combating Trafficking in Persons and a member of the Qatari Red Crescent Society. The National Commission shall select a Vice-President from among its members.

## C. Case law

### Bosnia and Herzegovina

*Case v. Šaban and Elvir Đelilbašić, before the Section I for War Crimes of the Court of Bosnia and Herzegovina of 22 June 2012.*

On 22 June 2012, the Trial Panel of the Criminal Division of Section I for War Crimes of the Court of Bosnia and Herzegovina charged the two Defendants in the *Šaban Đelilbašić et al.* case with the criminal offence of War Crimes against Civilians pursuant to Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) (individual criminal responsibility) of the same Code and sentenced them to six-year imprisonment each.<sup>10</sup>

<sup>10</sup> For a summary of the case in English, see the Court of Bosnia and Herzegovina's website: <http://www.sudbih.gov.ba/?id=2514&jezik=e> (last visited September 2012).

The two defendants, who were former members of the Army of Bosnia and Herzegovina during the armed conflict between 1992 and 1995 and of Muslim ethnicity, pleaded guilty of intentionally killing with an automatic rifle Nedeljko Kosca and Bozo Katana, of Serb ethnicity, in Turbe (Bosnia and Herzegovina), to avenge the death of their brother on 9 December 1992.<sup>11</sup>

*Case v. Franc Kos et al., before the Section I for War Crimes of the Court of Bosnia and Herzegovina of 18 June 2012.*

On 18 June 2012, the Trial Panel of the Section I for War Crimes of the Court of Bosnia and Herzegovina charged the defendants Franc Kos, Stanko Kojic, Vlastimir Golijan and Zoran Goronja with the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) (Persecution) read in conjunction with Paragraph 1 (a) and Article 29 (Accomplices) of the Criminal Code of Bosnia and Herzegovina. The accused were sentenced to 43 years imprisonment for Kojic, 40 years for Kos and Goronja and 19 years for Golijan.<sup>12</sup>

The defendants, who were former members of a unit (the 10th Sabotage Detachment) of the Army of Republika Srpska (VRS) created by Ratko Mladic, were found guilty of having participated in the 'widespread and systematic attack against the Bosniak civilian population of the UN Safe Area of Srebrenica' during the armed conflict in the Republic of Bosnia and Herzegovina in June and July 1995. These widespread and systematic attacks included forcible transfers and summary executions of more than eight hundred captured Bosnian men 'on national, ethnic and religious grounds'.

## **Denmark**

*Prosecution v. T, Case 2/2012, 26 April 2012 on the application of the Danish act on genocide.*

On 26 October 2011, the 6th Division of the Eastern High Court dismissed the primary charge of Genocide allegedly committed by the accused in Rwanda, thus upholding the first instance ruling of the Court of Roskilde. In the present case, the Prosecution requested that the Supreme Court of Denmark reverse the order of the Eastern High Court. The Prosecution used national and international humanitarian law, (namely the Genocide Convention), to argue that the Denmark's Genocide Act has extraterritorial effect and thus applies to acts of Genocide committed outside of Denmark. T. contested this argument, claiming that there was no authority under Danish law allowing for the prosecution of the crime of genocide perpetrated outside of Denmark in 1994.

The issue before the Supreme Court was therefore whether the scope of Denmark's Genocide Act is geographically limited to Denmark, or universal.

<sup>11</sup> For more information, please visit: <http://www.bim.ba/en/324/10/35241/> (last visited September 2012).

<sup>12</sup> Available at: <http://www.sudbih.gov.ba/index.php?id=2507&jezik=e> (last visited September 2012).

On 26 April 2012, the Court found that ‘the legislative history of the Genocide Act, including the comments on the obligation to prosecute genocide under Article VI of the Convention, does not provide any basis for finding that the intention of the Act was to limit the scope of the criminality of genocide to the territory of Denmark’. The Court therefore reversed the order of the Eastern High Court, having concluded that the Danish Genocide Act has universal scope.

## Spain

Case *Manos Limpias y Asociación Libertad e Identidad v. Baltasar Garzón*, *Supreme Court Decision n°101/2012, of 27 February 2012 on the breach of judicial duty of Justice Garzón*.

On 27 February 2012, by six votes against one, the collegial panel of judges of the Supreme Court ruled that Judge Garzón had not committed a breach of judicial duty in starting a criminal process in 2006 to investigate the fate of missing persons and crimes committed during the Spanish Civil War, which took place from 1936 to 1952.<sup>13</sup>

In 2009, *Manos Limpias & Co.* had intended a procedure against Judge Garzón for instructing crimes of the Franco dictatorship despite the existence of the Amnesty Law of 1977 and contrary to the statute of limitations set in the Spanish Constitution.

In this judgment, the Supreme Court found that even though the application and interpretation of legal norms by Judge Garzón were excessive and erroneous, they did not reach the threshold necessary to amount to a breach of judicial duty.

The court stated that the Amnesty Law of 1977 was indeed applicable in the circumstances and that the characterisation of the crimes under the Franco dictatorship as crimes against humanity was incorrect, as international criminal law was not applicable at the time.<sup>14</sup> Moreover, the court stated that a criminal process can only be initiated in order to investigate crimes committed by an accused who is still alive; as General Franco is dead, so is his criminal liability. Finally the court recalled that ‘the search for historical truth is neither the function of the criminal process nor of the Judge’.<sup>15</sup>

The Supreme Court, however, noted that similar procedures on similar legal bases and grounds as the one used by Garzón had already been brought before

13 For more information, please visit: [http://www.poderjudicial.es/cgpj/es/Poder\\_Judicial/Tribunal\\_Supremo/Sala\\_de\\_prensa/Documentos\\_de\\_Interes/Tribunal\\_Supremo\\_\\_Sentencia\\_del\\_caso\\_\\_Manos\\_Limpias\\_y\\_Asoociacion\\_Libertad\\_e\\_Identidad\\_vs\\_Baltasar\\_Garzon\\_\\_por\\_prevaricacion\\_judicial\\_\\_STS\\_101\\_2012](http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Tribunal_Supremo/Sala_de_prensa/Documentos_de_Interes/Tribunal_Supremo__Sentencia_del_caso__Manos_Limpias_y_Asoociacion_Libertad_e_Identidad_vs_Baltasar_Garzon__por_prevaricacion_judicial__STS_101_2012) (last visited September 2012).

14 For more information, please visit: <http://www.lefigaro.fr/international/2012/02/27/01003-20120227ARTFIG00506-espagne-le-juge-garzon-est-acquitte.php> (last visited September 2012).

15 See: [http://www.poderjudicial.es/cgpj/es/Poder\\_Judicial/Tribunal\\_Supremo/Sala\\_de\\_prensa/Documentos\\_de\\_Interes/Tribunal\\_Supremo\\_\\_Sentencia\\_del\\_caso\\_\\_Manos\\_Limpias\\_y\\_Asoociacion\\_Libertad\\_e\\_Identidad\\_vs\\_Baltasar\\_Garzon\\_\\_por\\_prevaricacion\\_judicial\\_\\_STS\\_101\\_2012](http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Tribunal_Supremo/Sala_de_prensa/Documentos_de_Interes/Tribunal_Supremo__Sentencia_del_caso__Manos_Limpias_y_Asoociacion_Libertad_e_Identidad_vs_Baltasar_Garzon__por_prevaricacion_judicial__STS_101_2012) (last visited September 2012).

Spanish national courts but also at an international level (citing a *European Court of Human Rights*' decision in the case of *Kolk and Kislyiy v. Estonia*, 17 January 2006, Dec., Nos. 23052/04 and 24018/04, ECHR 2006-I). The court finished its argumentation by stating that Garzón, even though wrong in their interpretation and application of the law, had aimed to improve the situation of victims whose right to know the facts and recover their dead to honour them is recognized by the Law of Recovery of Historical Memory of 2007.

## South Africa

South African Litigation Centre and Another v. The National Director of Public Prosecutions and Others (*Case No.77150/09*) [2012] ZAGPPHC 61; 2012 (10) BCLR 1089 (GNP); [2012] 3 All SA 198 (GNP) (8 May 2012).

On 8 May 2012, the North Gauteng High Court of South Africa issued its decision in the case of *South African Litigation Centre and Others v The National Director of Public Prosecutions and Others*. The case involved an application for judicial review of the decision of the South African National Prosecuting Authority and Police not to institute an investigation into alleged crimes against humanity of torture committed on 27 March 2007 in Zimbabwe, in accordance with South Africa's international obligations, including the Rome Statute and the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (ICC Act).

In the ruling, the Court addressed the issue of whether the Applicants had the requisite legal standing to bring the application. This was of particular note because the Court recognized that the ICC Act, read in the context of its purpose and in light of the Rome Statute, requires a broad approach to traditional principles of standing, particularly given the public interest in the proper administration and enforcement of justice and the rights of the victims to see justice done. The Court also dealt with the issue of jurisdiction over the alleged crimes. The Respondents had argued that South African Authorities did not have the requisite jurisdiction to investigate the crimes, asserting that the accused persons had to be present on South African territory. The Court rejected this argument, stating that according to the ICC Act, the South African authorities have a duty, irrespective of the location of the accused, to investigate international crimes.

The Court decided that the decision of the Respondents to refuse the Applicant's request that an investigation be initiated into acts of torture as crimes against humanity committed by certain named perpetrators in Zimbabwe under the (the ICC Act), was unlawful, inconsistent with the Constitution as well as South Africa's international obligations, and was therefore invalid. The Court ruled that the Respondents had a duty to investigate the allegations, to act independently, and not take into account irrelevant political and policy considerations at the investigation stage. Further, the Court found that the Respondents had relied on an incorrect evidential threshold in deciding not to initiate an investigation, stating the Rome Statute's thresholds should be applied *mutatis mutandis* to the domestic decision, thus requiring an examination of whether a *reasonable basis* existed for

carrying out an investigation. The Court stated that ‘the First, Second and Fourth Respondents, in failing to initiate an investigation, thereafter attempting to justify their decision on the basis of material errors of fact and law, and through taking into account irrelevant factors and failing to consider relevant ones, have flouted both their domestic and international obligations’. Thus the Court recognized that there was an obligation incumbent on the Respondents to investigate and prosecute international crimes under both international and domestic law, and that the ‘prosecution be enabled as far as possible’.

Consequently, the Court set aside the Respondent’s decision and ordered the Police’s Priority Crimes Investigation Unit (in cooperation with the National Prosecuting Authority) to carry out the investigation of the crimes allegedly committed. The Court further ordered that the Prosecuting Authority based on the results of the investigation, decide whether or not to then institute a prosecution.

## United States

Haditha Trial, case v. Staff Sgt. Frank G. Wuterich, 24 January 2012, on the massacre of 24 Iraqi civilians in Haditha.

On the 24 January 2012, after a six-year prosecution, a U.S. military judge sentenced Staff Sergeant Frank G. Wuterich, who was originally charged with alleged war crimes in Iraq for the 2005 attack on two dozen unarmed Iraqi civilians in Haditha, to 90 days imprisonment.<sup>16</sup> Sergeant Wuterich was however only subjected to a reduction in pay and rank (from Sergeant to Private), after having pleaded guilty to dereliction of duty when he admitted telling his subordinates to ‘shoot first and ask questions later.’<sup>17</sup> Eight Marines were initially charged with manslaughter in this case but one was acquitted, and six others had their cases dropped.<sup>18</sup>

16 For more information, please visit: <http://edition.cnn.com/2012/01/24/justice/california-iraq-trial/index.html> (last visited September 2012).

17 For more information, please visit: <http://www.reuters.com/article/2012/01/23/us-marine-haditha-idUSTRE80M1U620120123> (last visited September 2012).

18 For more information, please visit: [http://www.huffingtonpost.com/2012/01/25/haditha-killings-frank-wuterich-iraq\\_n\\_1230889.html](http://www.huffingtonpost.com/2012/01/25/haditha-killings-frank-wuterich-iraq_n_1230889.html) (last visited September 2012).