

REPORTS AND DOCUMENTS

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

Biannual update on national implementation of international humanitarian law* July–December 2016

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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 or similar bodies on IHL. It also provides information on some efforts by the ICRC

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. 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 IHL 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 Estefania Polit, Legal Attaché for the ICRC Advisory Service on International Humanitarian Law, with the collaboration of regional legal advisers.

Advisory Service during the 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, seven IHL and other related international conventions and protocols were ratified or acceded to by sixteen States.³ In particular, there has been notable adherence to the 1972 Convention on the Prohibition of Biological Weapons. Indeed, six States have ratified the said Convention in the second half of 2016, bringing the number of States Parties as of 31 December 2016 to 178. In addition, five States have acceded to the Arms Trade Treaty during the period in question.

Other international treaties ratified or acceded to during the period under review are also of relevance for the protection of persons during armed conflicts, such as the Optional Protocol to the Convention on the Rights of the Child and the International Convention for the Protection of All Persons from Enforced Disappearance.

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 December 2016.

Ratifications and accessions, July–December 2016

Convention	State	Ratification/ accession date	Number of parties
1972 Convention on the Prohibition of Biological Weapons	Angola	26 July 2016	178
	Dominica	1 August 2016	
	Guinea	9 November 2016	
	Liberia	4 November 2016	
	Nepal	4 November 2016	
	Vanuatu	6 September 2016	

- 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 at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in August 2018).
- 2 For information on national implementation measures and case law, please visit the ICRC National Implementation Database, available at: www.icrc.org/ihl-nat.
- 3 To view the full list of IHL-related treaties, please visit the ICRC Treaties, States Parties and Commentaries Database, available at: www.icrc.org/ihl.

Convention	State	Ratification/ accession date	Number of parties
1999 Second Hague Protocol for the Protection of Cultural Property	Norway	5 September 2016	69
2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Pakistan	17 November 2016	166
2003 Protocol V to the Convention on Certain Conventional Weapons on Explosive Remnants of War	Burkina Faso	10 October 2016	92
2005 Protocol Additional (III) to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem	Burkina Faso	7 October 2016	73
2006 International Convention for the Protection of All Persons from Enforced Disappearance	Central African Republic	11 October 2016	54
	Switzerland	2 December 2016	
2013 Arms Trade Treaty	Benin	7 November 2016	91
	Cabo Verde	23 September 2016	
	Guatemala	12 July 2016	
	Madagascar	22 September 2016	
	Republic of Korea	28 November 2016	

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 second half of 2016. They cover a variety of topics linked to IHL, such as weapons, protection of the red cross and red crescent emblems, missing persons, criminal repression, victims' rights, protection of cultural property, and the establishment of national committees or similar bodies on IHL.

This compilation is not meant to be exhaustive; it represents a selection of the most relevant developments relating to IHL implementation and related issues based on information 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, the domestic legislation adopted during the period under review (July–December 2016). Countries covered are Afghanistan, Australia, Colombia, France, Guatemala, Guinea, Mexico, Peru, South Sudan and Sri Lanka.

Afghanistan

*Law on Regulation Affairs of Red Crescent Society*⁵

On 8 October 2016, the Law on Regulation Affairs of the Red Crescent Society entered into force in Afghanistan. The law is composed of two parts: Part One regulates issues related to the Afghani Red Crescent Society (ARCS), and Part Two deals with the red cross and red crescent emblems. The law was published in *Official Gazette* No. 1228.

Articles 13, 14 and 15 cover the use of the red crescent emblem – protective, indicative and supportive, respectively – as well as its abuse. In particular, Article 13 establishes that the emblem can only be used by ARCS staff and transport, the ICRC and the International Federation of the Red Cross.

Article 14(6) establishes that, under the express authorization of the ARCS, civilian medical personnel, governmental and private-sector clinics assigned to the transport and treatment of the wounded and sick shall, in times of armed conflict, be entitled to wear the protective emblem.

Furthermore, Article 14(8) prescribes that health units of the Ministry of Defence, Ministry of Interior and National Directorate of Security are entitled to use the red crescent emblem, both during armed conflict and peacetime, to mark their medical transport, personnel and units.

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

5 Available at: <https://tinyurl.com/y9d39kot>.

Australia

*Criminal Code Amendment (War Crimes) Act, No. 97*⁶

On 7 December 2016, the Criminal Code Amendment (War Crimes) Act 2016 entered into force in Australia. The Act amends Division 268 of the Criminal Code Act 1995, establishing a distinction between civilians and members of an organized armed group and clarifying the principle of proportionality in non-international armed conflict.

Division 268 of the Criminal Code Act 1995 contains a number of war crimes offences that apply in a non-international armed conflict; in particular, sections 268.70, 268.71 and 268.72 apply where the perpetrator causes the death of, seriously endangers the health of, or inflicts severe pain or suffering upon one or more persons not taking an active part in hostilities.

Part I of the Criminal Code Amendment (War Crimes) Act 2016 clarifies that these offences will not be engaged where the person or persons affected are members of an organized armed group. The Act also establishes that the perpetrator will commit an offence under section 268.70 where his or her conduct results in the death of one or more persons who are neither taking an active part in hostilities nor are members of an organized armed group. Furthermore, a new subsection is included through this amendment whereby it is an offence to cause the death of a member of an organized armed group who is *hors de combat*.

Part II of the Act refers to the requirements of the IHL principle of proportionality and clarifies that sections 268.70, 268.71 and 268.72 will not apply to attacks on military objectives which are not reasonably expected to cause civilian death or injury that would be excessive in relation to the concrete and direct military advantage anticipated. Finally, Part III amends section 268.65 and excludes military personnel from the scope of paragraph 268.65(1)(a), which makes it an offence to use protected persons as shields.

Colombia

*Law No. 1820 providing for Amnesty, Pardon and Special Criminal Treatment Provisions and Other Provisions*⁷

On 30 December 2016, the Congress of Colombia issued Law No. 1820, which regulates amnesty, pardon and special criminal treatment provisions and other provisions. This law was adopted within the peace agreement process between the government and the Revolutionary Armed Forces of Colombia – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC–EP).

6 Available at: <https://tinyurl.com/ycpy56qw>.

7 Available at: <https://tinyurl.com/ybe72ayu>.

Article 3 prescribes the scope of application of this law and establishes that it will cover all of those who participated in the armed conflict and that have signed the peace agreement with the government.

Article 8 recognizes political crimes and further prescribes that in conformity with IHL, the Colombian State will grant the broadest amnesty possible at the end of the hostilities, while recalling the Article 10 obligation to investigate and repress violations of IHL and human rights.

In addition, Article 9 establishes that State agents having participated in the armed conflict will not receive amnesty or pardon, and provides for a special, symmetric, simultaneous and equitable criminal treatment which is further detailed in Title IV of this law.

Article 15 refers to amnesties *de jure*, which apply to convicted and not convicted members of the FARC–EP for political crimes and politically motivated crimes, clearly excluding crimes against humanity, genocide, “grave war crimes” and other human rights violations.

According to Article 21, in all cases that are not subject to *de jure* amnesty, the decision to grant amnesties or pardons will be taken within the Special Jurisdiction for Peace, on a case-by-case basis. *De facto* amnesties apply to convicted and not convicted members of the FARC–EP for the same type of crime, also excluding amnesty or pardon for crimes against humanity and gross human rights violations.

Finally, Article 41 provides for the legal effects of such amnesties and prescribes the extinction of the criminal action and sanction against FARC–EP members.

France

*Law No. 2016-925 on Freedom of Creation, Architecture and Heritage*⁸

On 8 July 2016, Law No. 2016-92 on Freedom of Creation, Architecture and Heritage was enacted in France. Chapter I, Title II of this law provides for the enhancement of the protection of cultural heritage and the improvement of its promotion.

Article 56 establishes that in cases where cultural property is at risk due to an armed conflict or disaster occurring in the territory of the State which has it under its possession, France, upon request of such a State or when a United Nations Security Council resolution has been adopted, may provisionally offer secured premises to shelter cultural property while informing UNESCO in this regard.

The Act further prescribes that while in deposit in French territory, and with the assent of the State which entrusted the said cultural property, an agreement can be reached to circulate cultural property outside the territory within the framework of the organization of national or international exhibitions intended to make this endangered heritage known.

⁸ Available at: <https://tinyurl.com/y9hedrtu>.

Guatemala

*Migration Code, Decree No. 44-2016*⁹

On 16 October 2016, the Guatemalan Congress adopted the Migration Code, which restructures the institutions in the migratory system. Besides setting out the rights of migrants, the Code addresses the issue of migrants who have gone missing.

First, Article 166 prescribes for migratory officials and national police to receive training and education regarding the rights of migrants as well as on international human rights law and IHL.

Chapter V of the Code, in Article 198, regulates the procedure for providing care to the families of persons reported as missing due to migration. It establishes that relatives of persons whose whereabouts and fate remain unknown and who have migrated to another country – on a regular or irregular basis – have the right to report this person as missing.

Article 200 further prescribes for the Council for the Protection of Migrants to put in place a system to search for missing migrants, with a view to facilitating the exchange of information with the authorities of the State on whose territory the missing person is presumed to be present. This procedure shall be established in order to obtain information about identified and unidentified deceased persons, persons deprived of liberty, and persons who may find themselves in health or forensic facilities or in places that the host or transit State has set up for the care and shelter of migrants.

Guinea

*Law 2016-059/AN on the Criminal Code*¹⁰

On 26 October 2016, the National Assembly of Guinea adopted Law No. 2016/059/AN on the Criminal Code. The Code defines and establishes the set of rules regulating crimes against persons, including genocide, crimes against humanity, war crimes and crimes of aggression. The Code also regulates the use of weapons.

Book V of Title I of the Code deals with war crimes, crimes of aggression and mercenarism. Article 787 defines war crimes as serious violations of the Geneva Conventions and their Additional Protocols, serious violations of the laws and customs of war applicable in international armed conflicts, violations of common Article 3 to the Geneva Conventions in non-international armed conflicts, and other violations of the laws and customs of war applicable in non-international armed conflict. Articles 788 to 793 further determine the conducts constituting war crimes and transpose provisions of the Rome Statute and the

⁹ Available at: <https://tinyurl.com/yavpzckn>.

¹⁰ Available at: <https://tinyurl.com/y7edhj23>.

Geneva Conventions into their text. Furthermore, Article 795 establishes a punishment of life imprisonment for those who commit these acts.

Title II of the Code provides for violations against laws regulating weapons in accordance with the international treaties that prohibit their use in armed conflict: Chapter I prohibits the development, manufacturing, stockpiling and use of chemical weapons; Chapter II deals with small arms and light weapons; Chapter III criminalizes the use, stockpiling, manufacturing and transfer of anti-personnel mines; and Chapter IV provides for the prohibition of cluster munitions. Cyber-criminality is also regulated under this title.

Finally, and simultaneously to the adoption of this Criminal Code, the National Assembly enacted a new Criminal Procedure Code which contains a specific section on procedural aspects with respect to war crimes, crimes against humanity, genocide and crimes of aggression, as well as a section dealing with cooperation procedures with the International Criminal Court. The Criminal Procedure Code further establishes the jurisdiction of national courts over international crimes.

Mexico

*Law on Forensic Processes for the Localization, Recovery and Identification of Persons*¹¹

On 20 December 2016, the Mexican State of Coahuila promulgated the Law on Forensic Processes for the Localization, Recovery and Identification of Persons. The law was published in the *Official Journal of the State of Coahuila*.

Article 7 of this law provides for the right of missing persons to be searched for. These persons and their families have the right for the authorities to undertake all necessary measures to ensure their protection.

Article 8 further prescribes the right of the deceased person for his or her identity to be established and recognized, through any scientifically approved methods, while ensuring respect of their dignity and securing the return of their human remains to their family. The General Attorney's office, as well as other authorities in the State of Coahuila de Zaragoza, will coordinate and cooperate to achieve this objective.

Articles 10 and 11 establish that information regarding the search process for missing persons and the process for location and identification of human remains should be public and accessible. These provisions also prescribe for the right of the families to be informed about ongoing procedures to find their family member as well as criminal investigations related to the disappearance.

In addition, Article 12 recognizes the right of families of missing persons to know the fate and whereabouts of their missing relatives. Article 23 provides for the protection of data collected within the identification process, information which can

¹¹ Available at: <https://tinyurl.com/y9qnzavm>.

exclusively be used for the purpose of searching for and identifying missing persons or investigating the circumstances around their disappearance. Article 24 establishes that human remains must be treated in a respectful and decent manner, from the time they are located and in every subsequent procedure, in accordance with the applicable law and local customs.

Finally, Article 29 provides for the establishment of an Information Management System (IMS) on Unidentified Missing and Deceased Persons which, by compiling and processing information, seeks to contribute to the search for missing persons and, in the case of deceased persons, to the full identification and respectful return of the remains to the family. This law regulates the components of the IMS, which include a registry of missing persons, a registry for identified and unidentified deceased persons, a genetic databank, a registry of persons detained in the State of Coahuila, and any other registry that can facilitate the search for missing persons.

Peru

*Supreme Decree No. 010-2016-MIMP approving the Protocol for the Care of Persons and Families Abducted by Terrorist Groups*¹²

On 28 July 2016, Supreme Decree No. 010-2016-MIMP was issued, approving the Protocol for the Care of Persons and Families Abducted by Terrorist Groups and creating the permanent multi-sectoral commission in charge of following compliance with the Protocol.

Point 3 of the Protocol describes its main objective, which consists of promoting the restitution of the rights and autonomy of the people (including children, adolescents and families) rescued from the control of remnants of the armed group involved in the non-international armed conflict between 1980 and 2000. These vulnerable groups have been subjected to labour exploitation and sexual exploitation at the hands of terrorist groups, as explained under point 7 of the said Protocol.

In addition, point 4 provides for the Prosecutor's Office, specialized in terrorism crimes, to determine whether a person is a beneficiary of the programme or not. Furthermore, point 8 lays out the different stages of the process provided for in the Protocol: emergency response, accessibility to public services as well as programmes, and reintegration of the rescued person into his or her family and community.

Finally, the Protocol defines a terrorist group as a criminal organization made up of two or more persons that perpetrates terrorist acts as specified in Decree No. 25475. According to Article 2 of that decree, this crime consists of acts against life, body, health, freedom and personal safety, or against property or any other goods or services, causing, creating or maintaining a state of anxiety,

¹² Available at: <https://tinyurl.com/ycr29fes>.

alarm or fear in the population (or in a part of it) by using weapons or other means capable of causing serious disturbance of public tranquillity.

*Ministerial Resolution No. 0363-2016-JUS approving the National Plan on the Search for Missing Persons (1980–2000)*¹³

As required by Law No. 30470 on the Search for Persons Disappeared during the 1980–2000 Period of Violence (22 June 2016), on 23 December 2016 the Ministry of Justice issued Ministerial Resolution No. 0363-2016-JUS approving the National Plan on the Search for Missing Persons. The National Plan was prepared by the Working Group in charge of contributing to the implementation process of Law No. 30470.

The Ministerial Resolution acknowledges the suffering of the relatives of persons who went missing during the 1980–2000 period of violence and affirms their right to know the truth regarding the fate and whereabouts of their missing family members. The National Plan annexed to and approved by the Ministerial Resolution seeks to answer and address, in a comprehensive manner, the needs of the families of missing persons, according to Section II.

Section VIII establishes that the National Plan is guided by a humanitarian approach and that it applies in three determined situations: persons whose location is unknown and where there is no information about their whereabouts; missing persons presumed to be buried; and human remains of missing persons that have not been identified or that have not been returned to their communities/families.

Section IV sets out the three strategic objectives of the National Plan, which are to find out what happened to the missing person by exhausting all search efforts, and, if the person is found to be deceased, to recover, identify and return the human remains to the family; to address the psychosocial impact suffered by the relatives as a consequence of the disappearance and due to the search process; and to promote the participation of the families in the search process, which is dependent on their consent and should be based on clear, sufficient and timely information.

Finally, the specific goals, strategies and activities to be reached and performed are set out for each objective.

The Ministry of Justice is in charge of coordinating the implementation of the National Plan as well as other measures¹⁴ provided for by Law No. 30470, such as the creation of a database of genetic profiles of missing persons and their families.¹⁵

13 Available at: <https://tinyurl.com/y924udqn>.

14 See Ministerial Resolution No. 0363-2016-JUS, Section X, “Implementation”.

15 See Law No. 30470 on the Search for Missing Persons, Second and Third Supplementary Provisions, 22 June 2016, available at: <https://tinyurl.com/ybexc67p>.

South Sudan

*Regulations for Restricted Use of the Emblem of Red Cross, Red Crescent and Red Crystal, 2016*¹⁶

On 15 November 2016, South Sudan's minister of justice signed the Regulations for Restricted Use of the Emblem of Red Cross, Red Crescent and Red Crystal. This regulation contains implementing provisions with regards to the protection of the emblem, already embodied in South Sudan Geneva Conventions Act, which was adopted on 5 June 2012.

Chapter II provides for the use of the emblems as indicative and protective devices, and specifies which entities are entitled to wear the emblems both in time of peace and time of war. In particular, Regulations 4, 6 and 7 provide for the use of the emblems as a protective sign in time of armed conflict by authorized persons, namely medical personnel, medical units and transports of the armed forces. Hospitals and other civilian medical units may use the protective emblems upon authorization from the minister of justice.

Finally, Regulation 10 prohibits the registration of any sign or signal of the red cross, red crescent or red crystal as a trademark or industrial model, and Regulation 11 emphasizes the role of the South Sudan Red Cross and relevant authorities in cooperating to prevent and repress misuse of the emblem.

Sri Lanka

*Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14*¹⁷

On 23 August 2016, the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act was issued. The Act is divided into sections, including Part I, on the establishment of the Office on Missing Persons (OMP); Part II, relating to the powers and mandate of the OMP; and Part III, which provides for the creation of a Secretariat, Tracing Unit, and Victim and Witness Protection Division.

Article 1 establishes as the objective of the OMP the search for and tracing of persons who have gone missing as well as the implementation of other mechanisms to protect the rights and interests of missing persons and their relatives.

Article 4 provides for the members of the OMP to be appointed by the Constitutional Council and further establishes that eligible candidates must have experience in fact-finding missions or investigation, human rights law, IHL and/or humanitarian response.

Article 10 lays out the functions of the OMP, which include searching for missing persons, coordinating with other organizations, formulating

¹⁶ Available at: <https://tinyurl.com/yd4joj2q>.

¹⁷ Available at: <https://tinyurl.com/y96hf4z6>.

recommendations and collecting data from various sources. In addition, Article 12 prescribes for the investigative powers of the OMP and its authority to receive complaints, statements and inquiries. Article 13 further establishes that, pending an ongoing investigation and where the OMP has sufficient material to conclude that the person to whom a complaint relates is a missing person, the OMP shall issue an interim report to the relative of the missing person which will later enable the registrar-general to issue a Certificate of Absence.

Finally, Article 27 of the Act defines “missing person” as a person whose fate or whereabouts are reasonably believed to be unknown, and who is reasonably believed to be unaccounted for and missing, when they fall into one of the following categories: those who went missing in the course of, consequent to, or in connection with the conflict which took place in the Northern and Eastern Provinces, or its aftermath, or members of the armed forces or police who are identified as “missing in action”; those who went missing in connection with political unrest or civil disturbances; or those who went missing as part of an enforced disappearance as defined in the International Convention on the Protection of All Persons from Enforced Disappearance.

*Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016*¹⁸

On 9 September 2016, the Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016, was issued, amending Act No. 19 of 2010 (hereinafter referred to as the principal enactment).

Article 1 amends the principle enactment to provide for the registration of persons reported missing as a result of the conflict which took place in the Northern and Eastern Provinces or its aftermath; political unrest or civil disturbances; enforced disappearances; or when dealing with members of the armed forces or police identified as missing in action.

Part IA is inserted into the principal enactment, and Article 8(A–G) therein establishes the process to be followed by a relative of the missing person in order to obtain a Certificate of Absence from the district registrar/registrar-general.

In particular, Article 8(J) provides a list of rights and benefits that relatives of the missing persons are entitled to, once they have obtained a Certificate of Absence, including benefits under social welfare schemes, management of the property and assets of the missing person, and provisional guardianship for dependent children of the missing person.

B. National committees or similar bodies on IHL

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

¹⁸ Available at: <https://tinyurl.com/y9zr9ub3>.

similar body – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. Among other activities, such committees 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 December 2016, the National Humanitarian Law Committee was established in Papua New Guinea, bringing the total number of national IHL committees across the world to 110 as of December 2016.¹⁹

Papua New Guinea

On 28 September 2016, the National Humanitarian Law Committee was established by a decision of the National Executive Committee of Papua New Guinea.

The main function of the National Humanitarian Law Committee is to promote Papua New Guinea's ratification of and adherence to humanitarian treaties, and their national implementation. One of its mandates is to advise the National Executive Council on issues relating to the ratification and implementation of IHL instruments, including by formulating recommendations and proposals in this regard. It also provides support to individuals or agencies involved in IHL matters, including by drafting legislation and developing national positions. In addition, the Committee is in charge of spreading knowledge of IHL and humanitarian principles as well as forging and maintaining relationships with other national IHL committees in the Pacific region, and with the ICRC, on humanitarian issues.

The National Humanitarian Law Committee is chaired by the Department of Justice and the attorney-general and is composed of representatives of the Departments of Justice, Community Development, Defence, Education, Finance, Foreign Affairs, National Planning and Monitoring, and Provincial and Local-Level Government Affairs, and the PNG Defence Force, Royal Papua New Guinea Constabulary, Papua New Guinea National Disaster Centre, National Coordination Office for Bougainville Affairs, University of Papua New Guinea School of Law, ICRC, and Papua New Guinea Red Cross Society, as well as the attorney-general, prime minister and National Executive Council.

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 (July–December 2016). Countries covered are El Salvador and Sweden.

¹⁹ To view the full list of national committees and other national bodies on IHL, please visit the ICRC's related webpage, available at: <https://tinyurl.com/y8wbgwx8>.

El Salvador

*Decision on Amnesties, Supreme Court, 13 July 2016*²⁰

Keywords: amnesties, war crimes, human rights.

On 13 July 2016, the Supreme Court of El Salvador found the 1993 Amnesty Law to be contrary to El Salvador's Constitution, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and Additional Protocol II to the 1949 Geneva Conventions (AP II).

The Court referred to Article 6(5) of AP II, which provides that at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict and persons deprived of their liberty for reasons related to the armed conflict. The Court established that this provision is not of an absolute character, as it must be interpreted in light of other international instruments. The granting of amnesties is confined to warlike acts carried out by the parties to the conflict, thus excluding serious and systematic violations of the constitutional order and international law, such as crimes against humanity and war crimes constituting serious violations of IHL.

Taking into consideration the obligations deriving from international human rights law and the Constitution, the Court concluded that the Amnesty Law violated the right to access to justice; that it was contrary to the protection provided by fundamental human rights; and that it was a violation of the right to reparation for victims of crimes against humanity and war crimes. The Court explained that the effective protection of fundamental rights recognized by the Salvadoran legal system is an unavoidable responsibility of the State, even in the context of a non-international armed conflict.

Concretely, the Supreme Court found Articles 1 and 4 of the Amnesty Law – relating to the scope of application and effects of amnesties – to be contrary to the obligation of the State to protect the fundamental rights of persons, as these articles exempt the State from preventing, investigating, trying, punishing and repairing grave violations of fundamental rights. Having declared Articles 1 and 4 unconstitutional, the Court considered all the other provisions contained in the Amnesty Law to be void and consequently declared them unconstitutional “by connection”.

²⁰ Available at: <https://tinyurl.com/y7doauov>.

Sweden

*Case No. B 4770-16, Svea Court of Appeal, 5 August 2016*²¹

Keywords: war crime, torture, non-international armed conflict, nexus with the armed conflict, Syria.

On 5 August 2016, the Appeal Court of Stockholm convicted Mouhannad Droubi for war crimes committed in Syria and sentenced him to eight years in prison.

During the Syrian civil war, Droubi fought for the Free Syrian Army (FSA) against the government forces loyal to Syrian president Bashar al-Assad. In the summer of 2012, Droubi and other FSA militants assaulted an unidentified man allegedly affiliated with the Syrian army. According to a video uploaded to Facebook, Droubi violently assaulted the victim, who was already injured, and whose hands and feet were tied up. Soon afterwards, Droubi uploaded a video of the incident to his Facebook page.

On 26 February 2015, Droubi was convicted for war crimes and gross assault based on the said Facebook video, as the acts amounted to torture and were inflicted upon a person *hors de combat*. Nonetheless, the case was later reopened after the victim was identified and new evidence surfaced, including the fact that the victim was also an FSA member and was tortured for several days for planning to create a new opposition group.

On the basis of these new facts, the District Court in Huddinge, in a second judgment, considered that although there has been an ongoing non-international armed conflict in Syria, there was no nexus between the act and the armed conflict, as it appeared that the victim was not a pro-regime soldier but a member of the FSA like Droubi himself. The District Court dismissed the war crime conviction and sentenced him for aggravated assault under Swedish law.

On 5 August 2016, the Appeal Court overturned this decision and qualified Droubi's conduct as a war crime. The Appeal Court considered that the first-instance tribunal did not correctly apply the criteria advanced by the International Criminal Tribunal for the former Yugoslavia on the notion of nexus. It held that the torture and ill-treatment to which the victim was subjected was linked to the armed conflict. Droubi was sentenced to eight years in prison, and the Court ordered his deportation following completion of his sentence.

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, regional or sub-regional organizations, a number of national workshops and several regional conferences directed at engaging national authorities in the period under review.

21 Available at: <https://tinyurl.com/y7xhe32x>.

On 3 September 2016, the ICRC and the National Judicial Academy of Nepal co-hosted the first ever South Asian Expert Consultation for the Judicial Sector in South Asia, which brought together high-level representatives from the National Judicial Academies of Afghanistan, Bangladesh, Bhutan, India, Iran, the Maldives, Nepal and Pakistan. The event generated useful discussion on potential approaches towards greater integration of IHL into the training of the judiciary and concluded with the adoption, by consensus, of the Kathmandu Declaration, which outlines the commitment of participants to promote IHL dissemination with the judiciary and to pursue further opportunities for peer exchange between National Judicial Academies of the South Asia region.

A similar event was the Expert Consultation on “Respect for International Humanitarian Law – the Role of Magistrates in French-Speaking African Countries”, held in Abidjan, Côte d’Ivoire, from 5 to 8 September 2016. The ICRC and the Organisation Internationale de la Francophonie, in collaboration with the Ministry of Justice and the Ministry of Foreign Affairs of Côte d’Ivoire, hosted this event, which gathered judges, magistrates and other leading legal experts from Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Congo, Côte d’Ivoire, the Democratic Republic of the Congo (DRC), Equatorial Guinea, Gabon, Mali, Mauritius, Niger, Senegal and Togo. The Expert Consultation dealt mainly with the role of the judiciary in ensuring respect for and application of IHL.

On 4–5 October 2016, the Kenyan capital of Nairobi played host to an event on the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention), jointly organized by the ICRC and member States of the Intergovernmental Authority on Development (IGAD). The seminar gathered civil servants from various government ministries and departments working on internally displaced persons (IDP) issues from Ethiopia, Djibouti, Kenya, Somalia, South Sudan and Uganda. The main topic on the agenda was the importance of ratifying and implementing the Kampala Convention for IDPs in Africa, and the seminar provided a platform for discussing tools and support systems available to help IGAD member States implement the Convention, including the ICRC stocktaking exercise.²²

Another event of interest was the 16th Regional Seminar (Central and South Africa) on IHL, co-organized by the ICRC and the South African Department of International Relations and Cooperation, which took place on 23 to 26 August 2016 in Pretoria, South Africa. The event brought together government representatives from Angola, Botswana, Comoros, the DRC, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland,²³ Zambia and Zimbabwe. The main topics on the agenda were the protection of persons and property in times of armed conflict;

22 The ICRC stocktaking exercise on the Kampala Convention was designed to support the efforts of the African Union and States Parties to the Kampala Convention to fulfil their responsibilities with regard to the monitoring and effective implementation of the Convention. For more information, see ICRC, *Translating the Kampala Convention into Practice: A Stocktaking Exercise*, Geneva, October 2016, available at: www.icrc.org/en/publication/4287-translating-kampala-convention-practice.

23 The official name of Swaziland was changed to the Kingdom of Eswatini on 19 April 2018.

IHL and emerging challenges to armed conflict; IHL-related resolutions of the 32nd International Red Cross/Red Crescent Conference; and country reports on national IHL implementation.

Similar regional conferences on various topics were conducted in Cairo, Egypt;²⁴ Colombo, Sri Lanka;²⁵ Hiroshima, Japan;²⁶ Saint Petersburg, Russia;²⁷ Sarajevo, Bosnia and Herzegovina;²⁸ and Seoul, South Korea.²⁹

Finally, of particular interest was the Fourth Universal Meeting of National Committees and Similar Bodies on IHL, which took place from 30 November to 2 December 2016 in Geneva, Switzerland. It was convened by the ICRC, through its Advisory Service on IHL, and organized with the support of the Swiss Federal Department of Foreign Affairs and the involvement of the Swiss Interdepartmental Committee for IHL and the Swiss Red Cross. The active participation of all attendees, 281 people in total, contributed greatly to the success of the meeting. The event continued the constructive discussions that took place during the previous events, held in March 2002, March 2007 and October 2010.

24 Regional Seminar on Strengthening Legal Protection of Victims of Sexual Violence in Armed Conflicts, Cairo, 21–22 December 2016.

25 Second Regional Drafting Workshop on IHL, Colombo, 4–5 October 2016.

26 11th Southeast and Northeast Asia Session on IHL, Hiroshima, 11–15 July 2016.

27 Conference on “Use of Weapons in Modern Conflicts: Humanitarian Aspects”, Saint Petersburg, 20–21 October 2016.

28 Regional Workshop on the Use and Protection of the Red Cross Emblem, Sarajevo, 6–7 October 2016.

29 Fifth IHL Regional Conference on New Technologies and Weapons, Means and Methods of Warfare and IHL (Asia & Pacific), Seoul, 22–23 September 2016.

