

## REPORTS AND DOCUMENTS

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

## Biannual update on national implementation of international humanitarian law\* January–June 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 and similar bodies on IHL. It also provides information on efforts by the ICRC Advisory Service during the period covered to promote universalization of IHL and other related instruments, and their national implementation.

### ICRC Advisory Service

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

## 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 respect for life and human dignity in situations of armed conflict. In the period under review, twelve IHL and other related international conventions and protocols were ratified or acceded to by fifteen States.<sup>3</sup> In particular, there has been notable ratification/accession to the Arms Trade Treaty (ATT). Indeed, seven States ratified the ATT in the first half of 2016, bringing the number of States Parties as of 30 June 2016 to eighty-six. In addition, four States have acceded to the Protocol on Explosive Remnants of War (Protocol V) to the Convention on Certain Conventional Weapons during the period in question.

Other international treaties 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 (CPPED).

The following table outlines the total number of ratifications of and accessions to IHL treaties and other relevant related international instruments, as of the end of June 2016.

### Ratifications and accessions, January–June 2016

Conventions	States	Ratification/ accession date	Number of parties
1971 Convention on the Prohibition of Biological Weapons	Côte d'Ivoire	23 March 2016	174
1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects	Bahrain	11 March 2016	123
	Côte d'Ivoire	25 May 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](http://www.icrc.org/en/war-and-law/ihl-domestic-law) (all internet references were accessed in December 2016).
- 2 For information on national implementation measures and case law, please visit the ICRC National Implementation of IHL Database, available at: [www.icrc.org/ihl-nat](http://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](http://www.icrc.org/ihl).

1980 Protocol II to the Convention on Certain Conventional Weapons on Prohibitions or Restrictions on Mines, Booby-Traps and Other Devices	Côte d'Ivoire	25 May 2016	95
1980 Protocol III to the Convention on Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Incendiary Weapons	Bahrain	11 March 2016	113
1995 Protocol IV to the Convention on Certain Conventional Weapons on Blinding Laser Weapons	Bahrain	11 March 2016	107
	Lesotho	25 April 2016	
1998 Rome Statute of the International Criminal Court	El Salvador	3 March 2016	124
2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Guinea	8 April 2016	165
	Brunei	17 May 2016	
	Samoa	17 May 2016	
2001 Amendment to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects	Lesotho	25 April 2016	83
2003 Protocol V to the Convention on Certain Conventional Weapons on Explosive Remnants of War	Bahrain	11 March 2016	91
	Lesotho	25 April 2016	
	Montenegro	20 May 2016	
	Côte d'Ivoire	25 May 2016	
2006 International Convention for the Protection of All Persons from Enforced Disappearance	Sri Lanka	25 May 2016	52

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Conventions	States	Ratification/ accession date	Number of parties
2008 Convention on Cluster Munitions	Cuba	6 April 2016	100
	Palau	19 April 2016	
2013 Arms Trade Treaty	Lesotho	25 January 2016	86
	Peru	16 February 2016	
	Greece	29 February 2016	
	Cyprus	10 May 2016	
	Zambia	20 May 2016	
	Georgia	23 May 2016	
	Monaco	30 June 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 first half of 2016. They cover a variety of topics linked to IHL, such as weapons, terrorism, missing persons, criminal repression, enforced disappearances, victims' rights and 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 National Implementation of IHL Database.<sup>4</sup>

### A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (January–June 2016). Countries covered are Liberia, Mauritius, Peru, Sri Lanka and Togo.

<sup>4</sup> See the ICRC National Implementation of IHL Database, available at: [www.icrc.org/ihl-nat](http://www.icrc.org/ihl-nat).

## Liberia

### *Firearms and Ammunition Control Act*<sup>5</sup>

On 12 May 2016, the House of Representatives of Liberia passed the Liberia Firearms and Ammunition Control Act of 2015, which regulates the possession and use of small arms and light weapons in the country.

The domestic gun control law was established with the purpose of preventing and reducing violence caused by small arms as well as their proliferation. Part II of the Act establishes a national small arms registry as well as the requirements to acquire licenses to possess, use, repair, manufacture, deal, broker, import, export, transit or transship small arms.

Part V of the Act provides for the conditions for brokering, export, import and transit of small arms, ammunition and other related materials. In every section, the law prohibits licensing for these activities when it is known, at the time of considering the application, that this material would be used in the commission of genocide, crimes against humanity or war crimes. The Act further prohibits the brokering, importation, exportation, transit or transshipment of small arms that could be used to commit or facilitate violations of IHL.

The Act prohibits the brokering, import, export, transit and transshipment of such material when it contravenes Liberia's international obligations, including the ECOWAS Small Arms and Light Weapons Convention, and includes an explicit ban on these activities where there is a risk of them resulting in "serious acts of gender-based violence or serious acts of violence against women and children under Liberian Laws".

Finally, the Act establishes the penalties for violations of its provisions, which can range from administrative sanctions to criminal penalties under the Penal Law of Liberia.

## Mauritius

### *Anti-Personnel Mines and Cluster Munitions (Prohibition) Act 2016*<sup>6</sup>

On 24 June 2016, the Parliament of Mauritius promulgated the Anti-Personnel Mines and Cluster Munitions (Prohibition) Act 2016, repealing the Anti-Personnel Mines (Prohibition) Act of 2015.

According to Section 2, the Act gives effect to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the Convention on Cluster Munitions, domesticating both international instruments through one piece of legislation.

5 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7268B7747562B4E8C12581BE004BECA8&action=openDocument&xp\\_countrySelected=LR&xp\\_topicSelected=GVAL-992BUP&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7268B7747562B4E8C12581BE004BECA8&action=openDocument&xp_countrySelected=LR&xp_topicSelected=GVAL-992BUP&from=state).

6 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=644E983208B74E93C1258099003A5B43&action=openDocument&xp\\_countrySelected=MU&xp\\_topicSelected=GVAL-992BUP&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=644E983208B74E93C1258099003A5B43&action=openDocument&xp_countrySelected=MU&xp_topicSelected=GVAL-992BUP&from=state).

Section 4 establishes a number of offences related to both anti-personnel mines and cluster munitions, and establishes the corresponding penalties. The offences include the development, production, acquisition, stockpiling, retention, use or transferring to anyone, directly or indirectly, of any anti-personnel mine, cluster munition or explosive bomblet specifically designed to be dispersed or released from a dispenser affixed to an aircraft. Any person who in any manner assists, encourages or induces any other person to engage in any of the prohibited acts mentioned above is also held criminally responsible. The Act establishes that if these and other activities are performed for the purpose of detection and destruction of anti-personnel mines and cluster munitions, they will not constitute an offence.

The Act gives jurisdiction to a court in Mauritius in respect of offences committed outside the territory with regards to citizens of or ordinary residents in Mauritius, as well as in cases in which the following conditions are fulfilled: if the act affects or is intended to affect a public institution, a business or any other person in Mauritius; if the person is found to be in Mauritius; and if the person is, for any reason, not extradited by Mauritius, or there is no request to extradite that person.

## Peru

*Legislative Resolution No. 30434 Recognizing the Competence of the Committee against Enforced Disappearances of the UN*<sup>7</sup>

On 14 May 2016, the Peruvian Congress passed a legislative resolution in which it approved the Declaration Recognizing the Competence of the United Nations Committee against Enforced Disappearances, after having ratified the CPPED on 26 September 2012.

The Declaration enables the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of the provisions of the CPPED by the Republic of Peru, in accordance with Article 31 of the said convention.

*Law No. 30470 on the Search for Missing Persons during the 1980–2000 Period of Violence*<sup>8</sup>

On 22 June 2016, the president of Peru promulgated Law No. 30470 on the search for those who went missing during the 1980–2000 period of violence.

Article 2 provides for a humanitarian approach in the search process in order to relieve the suffering of the families, without excluding the determination of individual criminal responsibility. It prescribes the search process as encompassing forensic investigation, psychosocial support, identification of dead

7 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=C132B826D364E912C12581800046C02D&action=openDocument&xp\\_countrySelected=PE&xp\\_topicSelected=GVAL-992BUF&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=C132B826D364E912C12581800046C02D&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BUF&from=state).

8 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=23C5E44C4007B58FC1258009002E5B08&action=openDocument&xp\\_countrySelected=PE&xp\\_topicSelected=GVAL-992BUF&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=23C5E44C4007B58FC1258009002E5B08&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BUF&from=state).

bodies or human remains, and material and logistic support to the families of missing persons.

Article 3 recognizes the right of families of missing persons to know the fate of their missing relatives, including their whereabouts, or, if deceased, the circumstances and cause of their death, as well as the place of burial.

Article 6 further creates the National Register for Missing Persons and Burial Sites, with a view to individualizing information on missing persons and the circumstances behind their disappearance, as well as to supporting the search process.

Finally, the Second and Third Supplementary Provisions require the Ministry of Justice to create the National Plan for the Search for Missing Persons and to draft a law on the establishment of a genetic data bank of the disappeared.

## Sri Lanka

*Prescription (Special Provisions) Act No. 5, regulating the right to pursue the recovery of immovable property due to the activities of any militant terrorist group*<sup>9</sup>

On 26 April 2016, the Parliament of the Democratic Socialist Republic of Sri Lanka passed this Act aimed at protecting the rights of rightful owners to reclaim their immovable property who were not able to do so as a consequence of the activities of militant terrorist groups between 1 May 1983 and 18 May 2009. It allows the said persons to institute such action before the courts within two years after the coming into operation of the Act.

Article 6 further interprets the notion of “activities of any militant terrorist group” as any act which is defined as a “terrorist act” in the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005, as amended by Act No. 3 of 2013.<sup>10</sup> It further regulates the right of the disadvantaged person, defined in Article 6 as a “person who was unable to pursue his rights in a court in which he was by law enabled to pursue such rights as a result of the circumstances during the period commencing on May 1st, 1983 and ending on May 18th, 2009”, to claim his/her property, and the running of the statute of prescription or limitations.

9 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=74E6A6C69664EBE0C12581800049D7CF&action=openDocument&xp\\_countrySelected=LK&xp\\_topicSelected=GVAL-992BUB&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=74E6A6C69664EBE0C12581800049D7CF&action=openDocument&xp_countrySelected=LK&xp_topicSelected=GVAL-992BUB&from=state).

10 Article 5(2) of the Convention on the Suppression of Terrorist Financing (Amendment) Act, No. 3 of 2013:

- (a) an act which constitutes an offence within the scope of or within the definition of any one of the Treaties specified in Schedule I to this Act;
- (b) any other act intended to cause death or serious bodily injury, to civilians or to any other person not taking an active part in the hostilities, in a situation of armed conflict or otherwise and the purpose of such act, by its nature or context is to intimidate a population or to compel a government or an international organization, to do or to abstain from doing any act.

## Togo

### *Law No. 2016-008 on the Code of Military Justice*<sup>11</sup>

On 21 April 2016, the president of Togo promulgated the Law on the Code of Military Justice, repealing Law No. 81-5 of 30 March 1981 on the same subject. The Code addresses various issues related to the organization and jurisdiction of courts, military criminal proceedings, military offences and corresponding penalties.

Article 2 establishes that the Code applies mainly to soldiers of the Togolese armed forces, members of military corps under the Ministry of Security, members of the operational reserve force, prisoners of war, civilians charged with military offences and civilians employed in military services and establishments.

Article 52 gives military jurisdiction the competence to prosecute violations of IHL committed by persons who are part of the military service/corps and also police and members of the military judicial police when they commit offences in their judicial police capacity. However, it subjects military justice to the control of the Supreme Court, in accordance with the provisions of the present Code, the Law on Judicial Organization, the Criminal Code and the Procedural Criminal Code.

The Code, in Title II, criminalizes a number of conducts by military members including insubordination, desertion, surrender, treason, pillaging, looting and destruction. Article 171 further punishes the misuse and abuse of distinctive emblems and signs in violation of the laws and customs of war, carried out by both civilians and members of armed forces.

Certain offences prescribed in the Code of Military Justice, such as the misuse of emblems and pillaging, are also criminalized by the Togolese Criminal Code, adopted on 24 November 2015, and could therefore be prosecuted as war crimes under the Criminal Code.

## 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 similar body – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. Such committees, *inter alia*, promote ratification of or accession to IHL treaties, make proposals for the harmonization of domestic legislation with the provisions of these treaties, promote dissemination of IHL knowledge, and participate in the formulation of the State's position regarding matters related to IHL. In January 2016, the Palestinian National Commission for the Implementation of IHL was established.

11 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=011C1CE311E3BE4CC1258180003FD4C5&action=openDocument&xp\\_countrySelected=TG&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=011C1CE311E3BE4CC1258180003FD4C5&action=openDocument&xp_countrySelected=TG&xp_topicSelected=GVAL-992BU6&from=state).



In addition, Kenya's National Committee was reconstituted on 10 June 2016, bringing the total number of national IHL committees across the world to 109 by June 2016.<sup>12</sup>

## Kenya

### *National Committee for the Implementation of IHL*<sup>13</sup>

On 10 June 2016, Kenya's National Committee for the Implementation of International Humanitarian Law, created in 2001, was reconstituted as prescribed in Gazette Notice No. 4135.

The main function of the National Committee is to coordinate and monitor the implementation of IHL in Kenya. One of its mandates is to advise the government on the ratification of IHL instruments and the corresponding reporting obligations. It also provides recommendations on existing and new legislation and is responsible for the coordination of IHL dissemination.

The National Committee is chaired by the solicitor-general from the State Law Office and Department of Justice, and is composed of representatives of the Ministries of Foreign Affairs, Defence, Home Affairs, and Sports, Culture and the Arts, the National Police Service, the commissioner-general of prisons, the Regional Delegation of the ICRC, and the Kenyan Red Cross Society.

## Palestine

### *Palestinian National Commission for the Implementation of IHL*<sup>14</sup>

On 13 January 2016, the Palestinian National Commission for the Implementation of IHL was established by Decree No. 2/2016.

The main function of the National Commission is to act as an advisory reference for the State of Palestine with regards to the implementation of IHL. Among its mandates are to coordinate the activities of the entities involved in the dissemination and implementation of IHL and to monitor and document violations of IHL provisions. It is responsible for reviewing laws and preparing draft laws to harmonize the State's actions with the principles and norms of IHL. The National Commission also contributes to improving the level of national expertise and capacity to apply IHL, and strengthening awareness of IHL

12 To view the full list of national committees and other national bodies on IHL, please visit the ICRC's related webpage, available at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>.

13 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7E3FDA204088F5B5C12581BE00500634&action=openDocument&xp\\_countrySelected=KE&xp\\_topicSelected=JPAA-9DWC8W&from=topic](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7E3FDA204088F5B5C12581BE00500634&action=openDocument&xp_countrySelected=KE&xp_topicSelected=JPAA-9DWC8W&from=topic).

14 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=BC98C369DF153E87C125817F005325EE&action=openDocument&xp\\_countrySelected=PS&xp\\_topicSelected=JPAA-9DWC8W&from=topic](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=BC98C369DF153E87C125817F005325EE&action=openDocument&xp_countrySelected=PS&xp_topicSelected=JPAA-9DWC8W&from=topic).

principles among different circles. To attain these objectives, the National Commission cooperates with the ICRC, as established in Article 4.

The National Commission is chaired by the Ministry of Foreign Affairs and includes representatives from the General Secretariat of the Palestinian Liberation Organization, the Palestinian Red Crescent, the Supreme Judicial Council, the Ministries of Justice, the Interior, Education and Higher Education, and Health, the Commission of Detainees and Ex-Detainees Affairs, the Political and National Guidance Organization, the Legal Commissions of the National Assembly and Legislative Assembly, the General Directorate for Civil Defence, the Military Judiciary Authority, the Independent Commission for Human Rights, and civil society organizations concerned with IHL.

## C. Case law

The following section lists, in alphabetical order by country, relevant domestic case law related to IHL and released during the period under review (January–June 2016). Countries covered are Colombia, Guatemala, Senegal and South Africa.

### Colombia

*Decision No. C-084/16 (2016) on IHL and IHRL application to military prosecutions, Constitutional Court*<sup>15</sup>

**Keywords:** IHL application, military prosecution, human rights.

On 24 February 2016, the Colombian Constitutional Court decided that Legislative Act No. 1 of 2015 was constitutional. The Act amends Article 221 of the Constitution by including two subparagraphs that prescribe the applicability of IHL to the investigation and prosecution of violations perpetrated by members of the armed forces in the context of armed conflict.

A claim of unconstitutionality against the Act was filed by a number of petitioners who argued that the exclusive application of IHL in the investigation and prosecution of violations committed by members of the armed forces in armed conflict violates a fundamental pillar of the Constitution: the obligation of the State to investigate and prosecute serious violations of human rights, as provided under international human rights law (IHRL), as well as serious violations of IHL.

The Court established that the amendment of the Constitution as envisaged in the Act does not exclude the applicability of IHRL in the prosecution of members of the armed forces for violations committed during armed conflict. The Court emphasized that the universal and permanent obligation of the State to respect,

15 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=46229086E0DAE44EC12580D50054C9C0&action=openDocument&xp\\_countrySelected=CO&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=46229086E0DAE44EC12580D50054C9C0&action=openDocument&xp_countrySelected=CO&xp_topicSelected=GVAL-992BU6&from=state).

protect and fulfil human rights under IHRL forms part of the body of constitutional rules applicable in armed conflict, and further asserted the complementary character of these two legal frameworks.

The Colombian Constitutional Court therefore dismissed the claim, as the Act does not exclude the applicability of human rights, and thus confirmed its enforceability.

## Guatemala

*Republic of Guatemala v. Esteelmer Francisco Reyes Girón and Heriberto Valdez Asig, High Risk “A” Tribunal, C-01076-2012-00021*<sup>16</sup>

**Keywords:** sexual violence, IHL application, war crimes.

On 26 February 2016, the Tribunal de Mayor Riesgo A. charged two former military officers with sexual violence and domestic and sexual slavery offences as well as several counts of homicide and enforced disappearances against indigenous women, when stationed at the Sepur Zarco military base in Alta Verapaz.

The Tribunal classified as a non-international armed conflict the situation at the time when the atrocities occurred and then analyzed the conducts of the military forces carried out against the Mayan population and in particular against Mayan Q'eqchi' women.

Article 378 of the Criminal Code punishes “Crimes against duties of humanity”, which includes both war crimes and crimes against humanity, as it refers to “acts against prisoners of war or wounded persons as a result of the hostilities [...]”, or “any other inhumane act against the civilian population”. The Tribunal held that the accused were responsible for crimes against the duties of humanity in the form of sexual violence, humiliating and degrading treatment and domestic slavery.

Further, the prohibition of “cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” of civilians and persons *hors de combat*, as established under common Article 3 of the Geneva Conventions of 1949, was invoked by the Tribunal.

Finally, the Tribunal ordered a combination of individual and collective redress measures on behalf of the victims, including the incorporation of women's rights and prevention of violence against women into military education and training curricula.

16 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp\\_countrySelected=GT&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp_countrySelected=GT&xp_topicSelected=GVAL-992BU6&from=state).

## Senegal

*Ministère Public c. Hisssein Habré, Judgment of 30 May 2016, Extraordinary African Chambers*<sup>17</sup>

**Keywords:** Extraordinary African Chambers, Hisssein Habré, universal jurisdiction.

On 30 May 2016, the Extraordinary African Chambers (EAC) of the Senegalese court system delivered the verdict in the case of *Ministère Public c. Hisssein Habré*, former head of State of Chad. The EAC sentenced Habré to life imprisonment for having perpetrated crimes against humanity, war crimes and torture against the Hadjerai and Zaghawa ethnic groups, the people of southern Chad and political opponents, in the period between 7 June 1982 and 1 December 1990.

On 4 July 2000, five months after the Senegalese Regional Tribunal of Dakar had indicted Habré on torture charges, the Court of Appeal of Dakar reverted the decision by declaring that tribunals were not competent to judge acts of torture committed by a foreigner outside Senegal. On 20 March 2001, a ruling from the Court of Cassation confirmed the judgment of the Court of Appeal.

As Senegalese courts had declared a lack of jurisdiction to prosecute the former head of State of Chad, the situation was referred to the African Union, which in 2006 mandated Senegal to try Habré in its territory “on behalf of Africa”.<sup>18</sup> To this end, Senegal underwent a revision of its Constitution and criminal laws to enable the prosecution of Habré.

On 18 November 2010, as a response to the petition filed by Habré claiming his right not to be prosecuted based on the principle of non-retroactivity of the law, the Court of Justice of the Economic Community of West African States (ECOWAS) ruled that Senegal must try Habré through a “special or ad hoc procedure of an international character”.

Following the ECOWAS Court’s judgment, Senegal and the African Union signed an agreement on 22 August 2012 establishing the EAC – embedded in the Senegalese justice system – to prosecute the “person or persons” most responsible for international crimes committed in Chad between 1982 and 1990.

The trial began on 20 July 2015, and approximately one year later the EAC found Habré guilty of torture, of the crimes against humanity of rape, forced slavery, murder, massive and systematic practice of summary executions, kidnapping of persons followed by their enforced disappearance, torture and inhumane treatment, and of the war crimes of murder, torture, inhumane treatment and unlawful confinement.

The conviction represents not only the first time a former head of State has been tried and convicted in another State, but also the first universal jurisdiction case in Africa, as the crimes prosecuted were committed abroad and by a

17 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=A59DAF636BE1C348C12581BE003F356A&action=openDocument&xp\\_countrySelected=SN&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=A59DAF636BE1C348C12581BE003F356A&action=openDocument&xp_countrySelected=SN&xp_topicSelected=GVAL-992BU6&from=state).

18 See Decision on the Hisssein Habré Case and African Union Doc. Assembly/Au/3 (Vii), available at: [www.hrw.org/news/2006/08/02/decision-hissene-habre-case-and-african-union-doc-assembly/au/3-vii](http://www.hrw.org/news/2006/08/02/decision-hissene-habre-case-and-african-union-doc-assembly/au/3-vii).

foreigner, regardless of the nationalities of the victims. An appeal was filed against this judgment on 10 June 2016.

## South Africa

*Decision No. 867/15, Minister of Justice and Constitutional Development v. Southern African Litigation Centre, Supreme Court of Appeal*<sup>19</sup>

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

On 15 March 2016, the Supreme Court of Appeal issued its decision in the case of *Minister of Justice and Constitutional Development v. Southern African Litigation Centre*. The decision follows the appeal filed by the minister against the order of arrest in the case of *Southern African Litigation Centre v. Minister of Justice and Constitutional Development and Others*.

On 23 June 2015, the Gauteng High Court declared unlawful the conduct of the South African government when it failed to take steps to arrest and detain the president of Sudan, Omar Al Bashir.<sup>20</sup> Although the government argued that the basis for the immunity given to President Al Bashir was found in the provisions of the host agreement with the African Union, in terms of the South African Diplomatic Immunities and Privileges Act, No. 37 of 2001 (DIPA), the Court ordered his arrest by virtue of South Africa's domestic and international obligations.

In order to successfully convince the Court to grant the leave to appeal, the government additionally contended that the general immunity which a head of State enjoys stems from the provisions of customary international law and the provisions of Article 4(1)(a) of DIPA, which reads: "A head of state is immune from the criminal and civil jurisdiction of the Courts of the Republic, and enjoys such privileges as ... heads of state enjoy in accordance with the rules of customary international law."

The Supreme Court of Appeal agreed that head of State immunity exists under both customary international law and domestic law, but noted that the Implementation Act, which domesticates the provisions of the Rome Statute, excluded this immunity in relation to international crimes and South Africa's obligations to the International Criminal Court. Therefore, the Supreme Court dismissed the appeal.

19 Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=06B21F9772B4B B00C1257FB1002E7060&action=openDocument&xp\\_countrySelected=ZA&xp\\_topicSelected=GVAL-992 BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=06B21F9772B4B B00C1257FB1002E7060&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992 BU6&from=state).

20 See Supreme Court of Appeal, *Southern African Litigation Centre v. Minister of Justice and Constitutional Development and Others*, 2015 (5) SA 1 (GP), 2015, available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=481F300878BA3075C1257F1E00386F19&action=openDocument &xp\\_countrySelected=ZA&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=481F300878BA3075C1257F1E00386F19&action=openDocument &xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state).

## **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.

Of particular interest was the Roundtable Meeting on the Progress towards Legally Binding Measures to Prohibit and Eliminate Nuclear Weapons, co-organized by the ICRC, the Institute for Security Studies and the International Law and Policy Institute, which took place on 17–18 February 2016 in Pretoria, South Africa. The event brought together government representatives from Austria, Botswana, Egypt, Ghana, Kenya, Malawi, Mauritius, Nigeria, Norway, South Africa, Switzerland and Zambia. The main topic on the agenda was nuclear non-proliferation and disarmament.

Another event of interest was the Fourth Regional Seminar on IHL National Implementation, jointly organized by the ICRC and the Office of the Attorney General and Department of Justice of the government of Kenya, from 7 to 9 June 2016 in Naivasha, Kenya. The seminar gathered civil servants from various ministries and departments of governments associated with the promotion and national implementation of IHL, including members of national IHL committees from Djibouti, Ethiopia, Kenya, Somalia and Tanzania. Among the topics reviewed during the seminar, particular attention was given to issues related to weapons treaty implementation, the obligation to respect and ensure respect for IHL, country reports, the ICRC 2015 Challenges Report, national IHL committees and the protection of cultural property.

A similar event was held in Abuja, Nigeria, from 28 June to 1 July 2016. The 13th ICRC-ECOWAS Annual Review Meeting on the implementation of IHL brought together governmental officials and national IHL committees from Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal and Togo. The conference dealt mainly with IHL and national implementation and other IHL-related issues, such as internally displaced persons, the protection of cultural property in armed conflict, and the ATT.