

2022 REPORT

IMPLEMENTATION OF IHL IN WEST AFRICA

PARTICIPATION OF WEST AFRICAN COUNTRIES
IN INTERNATIONAL HUMANITARIAN LAW (IHL)
TREATIES AND THEIR IMPLEMENTATION AT THE
NATIONAL LEVEL



ICRC

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ENHANCING RESPECT FOR IHL AND ITS INTEGRITY

REPORT OF THE 18TH ECOWAS-ICRC ANNUAL REVIEW MEETING ON THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN WEST AFRICA

MARCH 30TH – 31ST, 2022 – VIRTUAL MEETING

I. CONTEXT AND OBJECTIVES OF THE MEETING

Since 2001, the Economic Community of West African States (ECOWAS) Commission and the International Committee of the Red Cross (ICRC) have been working together to promote the implementation of and respect for the rules of international humanitarian law (IHL), mainly codified in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. These rules aim to limit the consequences of armed conflict by ensuring that people who are not or are no longer taking part in hostilities are protected and treated humanely, and by restricting the means and methods of warfare.

Ensuring greater respect for IHL during armed conflict, however, requires that certain measures be adopted in peacetime. These include criminal sanctions, which remain one of the most effective means of deterring future violations. Suppressing all violations and punishing the most serious ones, qualified as war crimes, is an obligation of all States parties to the Geneva Conventions. But effective repression of such grave breaches and violations of IHL presupposes the prior incorporation of appropriate definitions and penalties into national criminal law. Although several ECOWAS Member States have already provided for the repression of war crimes in their domestic legal framework, this integration is not effective or incomplete in some other Member States.

In parallel, other criminal provisions may be relevant in times of armed conflict. This is the case with the provisions on the repression of acts of terrorism, which may be applied including when the acts of terrorism take place in the context of an armed conflict. In these circumstances, IHL and the provisions on the repression of war crimes apply in parallel to the provisions on the repression of terrorism. The co-application of these two legal regimes raises a number of theoretical and practical questions. In addition, certain provisions criminalizing material support for terrorism may result in the criminalization of impartial humanitarian aid, and thus have a negative impact on access by impartial humanitarian agencies to vulnerable populations in areas under the control or influence of armed groups designated as “terrorists”. ECOWAS Member States have committed, in the framework of the ECOWAS Action Plan on IHL (2019–2023), to take the necessary measures to mitigate this risk.¹

¹ Member States have committed to ‘ensure humanitarian actors are able to conduct their non-discriminatory protection and assistance activities without the risk of prosecution or harassment by the government, security forces or general population’, see “ECOWAS Plan of Action on IHL (2019–2023)”, *Implementing IHL in West Africa: 2018 Report*, Annex I, p. 63, available at <https://www.icrc.org/en/document/implementing-ihl-west-africa-redux>.

These topical legal issues were the subject of the 18th annual ICRC–ECOWAS meeting on the implementation of IHL, which had as its theme **“Enhancing respect for IHL and its Integrity”**, with a specific focus on **the criminal repression of violations of the law in armed conflict**.

The objectives of this annual meeting, which took place online on 30 and 31 March 2022, were therefore to:

- Take stock of progress towards the implementation of ECOWAS IHL POA and the related ECOWAS Pledge to the 33rd International Conference by Member States;
- Present Member States’ priorities for 2022;
- Build Member States technical capacities and facilitate and support peer-to-peer exchanges between MS;
- Facilitate peer-to-peer exchanges between MS on their efforts towards respect for IHL and preservation of its integrity, notably through the criminal repression of violations of the law in armed conflicts.
- Strengthen the collaboration between ECOWAS and ICRC in the implementation of IHL in MS and serve as an opportunity for ICRC to continue to support ECOWAS missions in MS on IHL implementation.

The meeting was attended by experts from Member States – either as members of their State’s national IHL commission or as representatives of the Ministry of Justice or Ministry of Foreign Affairs – as well as thematic experts from ECOWAS, the ICRC, and observer States. Indeed, for the first time, two representatives from Chad and South Africa took part in the meeting as expert observers, in order to broaden the sharing of good practice and to allow for exchanges between regions on a continental scale (see list of participants, Annex III).

II. OPENING CEREMONY

The 18th annual ICRC–ECOWAS meeting was opened with speeches by the ECOWAS and ICRC authorities, followed by an inaugural address by the Head of the ICRC’s Legal Division in Geneva.

A. Speeches

In her address, Ms. Hajiya Raheemat Momodu, Head of the Human Security and Civil Society Division at the ECOWAS Commission, on behalf of the Director of the Directorate of Humanitarian and Social Affairs, thanked the ICRC for its continued collaboration with ECOWAS, as well as the participants for their presence. Sharing an update on the activities of the Human Security and Civil Society Division, she noted with satisfaction the ECOWAS Commission’s “integrated missions” on human security to The Gambia, Burkina Faso, Sierra Leone and Togo since the last meeting, and announced further missions in 2022 to Niger, Liberia, Ghana and Senegal.

Mr. Leonard Blazeby, deputy head of the ICRC delegation in Nigeria, on behalf of Mr. Yann Bonzon, Head of delegation, noted the importance of such a meeting in view of the persistence of conflicts in the region, the humanitarian consequences of which are exacerbated by the COVID-19 pandemic. M. Blazeby returned to the relevance of the theme chosen, in the light of the growing threat posed by acts of terrorism, particularly in the Sahel and coastal countries. Recalling the representation of West Africa, through Nigeria, at the recent ICRC seminars on IHL in Southern and Eastern Africa, Mr. Blazeby welcomed this sharing of experiences between regions, which continued with the presence of Chad and South Africa at this 18th annual meeting.

The Master of Ceremonies, M. Olatunde Olayemi, Program Officer of the ECOWAS Commission, stressed the importance not only of this annual meeting in terms of sharing experiences and tools, but also of the adoption of regional action plans for the implementation of IHL, such as the one adopted in 2009 and then in 2019. M. Olayemi recalled the legitimacy of this action plan, which was first validated by experts from ECOWAS Member States, then endorsed at a meeting of ECOWAS Ministries of Justice, before being adopted by ECOWAS as a humanitarian policy. This plan is therefore a roadmap for assessing the progress made by Member States in implementing and respecting IHL and for identifying the way forward.

B. Keynote speech: Strengthening respect for IHL and its integrity

In her opening address, Dr Cordula Droege, the Head of the ICRC's Legal Division in Geneva, said that "the implementation of IHL is a matter of urgency" as millions of people in the region suffer the humanitarian consequences of armed conflict and other situations of violence, particularly in the Sahel and Lake Chad Basin regions. IHL contains rules that can protect these populations and minimize the effects of violence," said Dr Droege. While ECOWAS Member States have ratified many IHL treaties, their implementation is imperative to ensure that these commitments do not remain a dead letter. The lives and dignity of these populations depend in part on taking concrete steps to implement IHL, such as adopting legislative, administrative, or practical measures. "The necessary legal and institutional reforms may be long and technical processes, but they are nonetheless urgent and vital," said Dr. Droege. She also praised the commitment of ECOWAS and its member states to the implementation of IHL, which is reflected in the holding of these annual meetings and the adoption of the ECOWAS plan of action on IHL (2019–2023), a commitment that was renewed and taken to the international level at the 33th International Conference of the Red Cross and Red Crescent.

On the theme of the annual meeting – "Strengthening respect for IHL and its integrity" – Cordula Droege considered that it invited an exchange on two distinct but related issues: first, the repression of serious violations of IHL (war crimes), and second, the relationship between the repression of terrorism in times of armed conflict and IHL. With regard to the repression of war crimes, Dr. Droege recalled that it is first and foremost an obligation of States parties to the Geneva Conventions. They must therefore ensure that all conditions are met to guarantee adequate punishment of serious violations of IHL committed in international and non-international armed conflicts. One of the first steps to be taken is the adoption of adequate national legislation, defining war crimes, providing for sanctions that reflect the gravity of these crimes, or enshrining the principle of "universal jurisdiction" at least for serious offences, as well as judicial guarantees and the designation of bodies empowered to impose and implement sanctions. While welcoming the integration of war crimes into the legislation of several ECOWAS Member States (completed or underway), Dr Cordula regretted that this process remains incomplete. In some countries, the definition of war crimes omits certain conduct that constitutes a war crime under international law, while other laws only punish war crimes committed in international armed conflicts (IACs), leaving out those committed in non-international armed conflicts (NIACs) – even though these are the most common conflicts today.

Regarding the repression of acts of terrorism, Dr. Droege deplored the immeasurable suffering caused to individuals, communities, and States in West Africa by such acts. Acts of terrorism negate the principle of humanity and contradict the fundamental objectives of IHL. It is therefore legitimate for States to take measures to combat such acts. Thus, in recent years, all ECOWAS Member States have adopted (or revised) criminal laws against acts of terrorism. The Head of the Legal Department recalled that when acts of terrorism and counter-terrorism measures take place in the context of an armed conflict, IHL is applicable. IHL strictly prohibits acts of terrorism. It also constitutes a red line that States have committed themselves to respect, even in the most difficult situations. That said, in these situations of armed conflict, the concurrent application of IHL and anti-terrorism laws raises certain legal questions: does IHL contradict or complement these laws? Can conduct be both prohibited under anti-terrorism law and tolerated under IHL? If conduct constitutes both a crime of terrorism and a war crime, which judicial characterization should be preferred?

At the same time, these anti-terrorism laws are a source of concern for the ICRC as they can have a negative impact on the ability of impartial humanitarian agencies to aid the most vulnerable populations. Indeed, according to Dr Droege, some laws that criminalize direct and indirect support to individuals or organizations designated as "terrorists" amount to sanctioning or discouraging the provision of humanitarian assistance to populations living under the control of such individuals or organizations. Some states have adopted measures to mitigate this risk. For example, the inclusion of "humanitarian exemption clauses" in these anti-terrorism laws allows for the exclusion of humanitarian activities carried out by impartial humanitarian organizations from their scope of application. Dr. Droege welcomed Chad's initiative to become one of the first states in Africa and the world to include such a clause in its anti-terrorism law, thereby ensuring its compliance with IHL and humanitarian principles.

The exchange session between Dr. Droege and the participants provided concrete examples of how certain anti-terrorism laws can impede the provision of humanitarian assistance (such as providing medical care to wounded combatants), even when carried out in a manner consistent with IHL. Dr. Droege also clarified that humanitarian exemption clauses are not intended to prevent States from criminalizing acts of terrorism or support for terrorism, but only to ensure that such legitimate measures do not contradict States' commitment under IHL, and do not prevent the most vulnerable populations from receiving the humanitarian assistance and protection they need. The discussion also focused on the difference between "counter-insurgency" and "counter-terrorism" and the applicability of human rights and IHL to both. In particular, it was recalled that in all situations involving a State and an armed group, the conditions for the existence of a non-international armed conflict, and therefore for the applicability of IHL, are the same: the level of violence must have reached a certain threshold, and the armed group must be sufficiently organized.

III. STATE REPORTS ON THE IMPLEMENTATION OF IHL

The session on reporting on the implementation of IHL was moderated by the ECOWAS Commission. It provided an opportunity for each Member State to report **on developments in 2021** (or since 2020 for those States that did not report at the previous annual meeting) in the implementation of the ECOWAS Plan of Action on IHL (2019–2023), and to share their national priorities for 2022, in line with this Plan of Action.

Of the ten (10) Member States represented at this 18th meeting, eight (8), namely **Côte d'Ivoire, Gambia, Ghana, Mali, Niger, Nigeria, Senegal** and **Togo** reported on the implementation of the ECOWAS Plan of Action in 2021. Most reported that the 2021 priorities could not be implemented, or were only partially implemented, due to the COVID-19 pandemic, which prevented face-to-face meetings. Member States also reported other challenges, including the lack of sufficient IHL training for government experts on specific topics and of funding for actions to implement IHL. Table 1 below summarizes the implementation developments reported by Member States for the year 2021. Table 2 summarizes the priorities for 2022 (for several States – including those that did not report to the annual meeting – the priorities identified for 2021 or previous years have been automatically renewed for 2022).

TABLE 1: STATUS OF IMPLEMENTATION OF NATIONAL IHL PRIORITIES SET FOR 2021

IVORY COAST	GAMBIA	GHANA	MALI	NIGER	NIGERIA	SENEGAL	SIERRA LEONE	TOGO
1. Development by the National IHL Commission of a 12-point national action plan for the implementation of IHL.	1. Ratification of the Arms Trade Treaty: Commitment by the Ministry of Defence in August 2021 2. Establishment of a national commission on small arms and light weapons.	No development in 2021	1. Training in IHL, in particular within the framework of the Peacekeeping School, for elements of the armed and security forces, as well as civilian authorities (in particular magistrates) (three courses organized annually) 2. Establishment of a National IHL Commission under evaluation 3. Ratification of Article 1 of the Convention on Conventional Weapons under review 4. Ratification of the Treaty on the Prohibition of nuclear weapons under evaluation.	1. Ratification of the Treaty on the Prohibition of nuclear weapons and Protocol V on Explosive Remnants of War (Convention on Certain Conventional Weapons); under evaluation. 2. Kampala IDP Convention (following the adoption of the 2018 law): popularization of implementation measures and adoption of an order in 2020, establishing a national coordination committee for the protection and assistance of IDPs. 3. NIHL activities: 3 meetings in 2021; activities for the implementation of the national action plan (adopted in 2020), including advocacy for the ratification and implementation of IHL treaties	1. Convention on Cluster Munitions: ratification process initiated and ongoing 2. Training of members of the national IHL commission: did not take place 3. Strategic visit of the National IHL Commission to the National Assembly: did not take place as the NA was not in session for most of 2021 due to COVID 19 4. Adoption of the bill (2005) on the implementation of the Additional Protocols to the Geneva Conventions: not achieved	1. Draft Law 21-2021 on the status of refugees and stateless persons passed through the Technical Committee of the National Assembly (subsequently adopted by the National Assembly on 5 April 2022) 2. Preparation of a decree establishing the composition and organization of the IHL Technical Commission, within the National Advisory Council on Human Rights and IHL.	No intervention	1. Adoption of the Criminal Procedure Code in accordance with the new Criminal Code (Law No. 2015-10 of 24 November 2015) (postponed from 2018): process still ongoing 2. National IHL action plan not adopted, but the country is inspired by the regional action plan in order to make progress in certain areas, such as the fight against terrorism or the circulation of arms (a UNIDIR and ECOWAS mission made

IVORY COAST	GAMBIA	GHANA	MALI	NIGER	NIGERIA	SENEGAL	SIERRA LEONE	TOGO
			5. Penal Code and Code of Criminal Procedure under revision.	4. Sexual violence: creation of centers for the care of victims, and development of standard procedures. 5. Dissemination of IHL in police, gendarmerie and FDS schools, and for justice auditors, in collaboration with the ICRC				it possible to assess the circulation of arms and ammunition in Togo, with a view to putting in place a national framework governing the management of arms and ammunition in accordance with international commitments.

TABLE 2: NATIONAL IHL PRIORITIES SET FOR 2022

BENIN	BURKINA FASO	CABO VERDE	IVORY COAST	GAMBIA	GHANA	GUINEA	GUINEA-BISSAU
1. Reactivate the National IHL Commission and train its members 2. Establish a three-year national action plan for the implementation of IHL 3. Organize a workshop on the dissemination and implementation of IHL for government officials and academics. 4. Publish a compilation of all IHL treaties	1. Implementation of the ECOWAS Action Plan on IHL (2019-2023) 2. Capacity building in IHL for national security and defense forces, in particular on the protection of children in armed conflict and sexual violence 3. Dissemination of IHL to the civilian population 4. Implementation of the Plan of Action for the identification of cultural property	1. Advocating for effective implementation of IHL at the national level 2. Ratification of the Convention for the Protection of Cultural Property and its Protocols 3. Establishment of an IHL Committee as an advisory body on the national implementation of IHL 4. Training of IHL Committee members 5. Provide courses on IHL to the armed forces, as outlined in the Action Plan	1. Adoption of a law on the protection of the emblem 2. Adoption of a Decree reforming the National IHL Commission	1. Implementation of the Arms Trade Treaty (ATT)	1. Ratification of additional treaties 2. Domestication of the Kampala Convention	1. Establishment of a National IHL Commission 2. Awareness-raising sessions on IHL for the armed forces. 3. Strengthening health care in prisons. 4. Ratification of the Kampala Convention	1. Ratification of the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2. Adoption of a law implementing the Rome Statute, to be incorporated into the new Penal Code once it is adopted. 3. Conduct a study on the status of implementation of IHL in Guinea Bissau 4. Adoption of a law on the emblem by the National Assembly 5. Establishment of an internal coordination mechanism between actors working in the field of IHL

LIBERIA	MALI	NIGER	NIGERIA	SENEGAL	SIERRA LEONE	TOGO
<p>1. Amendment of the Penal Code to include the repression of violations of the Geneva Conventions</p> <p>2. Dissemination of IHL within the armed and security forces</p> <p>3. Implementation of the Kampala Convention.</p> <p>4. Implementation of the ATT</p>	<p>1. Continued and intensified training of armed and security forces, as well as judicial actors, to update them on IHL (carried over from 2018)</p> <p>2. Consideration of a proposal to establish an IHL Commission that would bring together the different ministries.</p> <p>3. Continuation of the work on the revision of the Codes (Criminal Code and Code of Criminal Procedure)</p> <p>4. Establishment of a national committee to combat statelessness, with a mandate to protect IDPs</p>	<p>1. Advocacy for the ratification of Protocol V on Explosive Remnants of War and the Palermo Protocol</p> <p>2. Adoption of a law on weapons.</p>	<p>1. Ratification of the Convention on Cluster Munitions</p> <p>2. Training of members of the national IHL commission</p> <p>3. Visit strategic plan of the National IHL Commission in the National Assembly</p> <p>4. Adoption of the Implementation of the Additional Protocols to the Geneva Conventions Bill (2005)</p>	<p>1. Initial and ongoing training in IHL for the police, the army and the judiciary.</p>	<p>1 Restructuring of the national IHL committee</p> <p>2. Development of a national action plan in line with the ECOWAS Action Plan</p> <p>3. Dissemination of IHL</p> <p>4. Implementation of already ratified IHL treaties.</p>	<p>1. Adoption of the code of criminal procedure in accordance with the new penal code (law N ° 2015-10 of 24 November 2015) (postponed from 2018)</p> <p>2. Further implementation of the ECOWAS Action Plan 2019-2023.</p>

IV. THEMATIC SESSIONS: STRENGTHENING RESPECT FOR IHL AND ITS INTEGRITY

The second day was devoted to the theme of this 18th meeting, namely “Enhancing Respect for IHL and its Integrity”, and more specifically to the need for clarification of the legal frameworks governing the repression of violations of the law in armed conflicts. Two issues were addressed: “State obligations in relation to the criminalization of IHL violations” (thematic session 1) and “Preserving the integrity of IHL in the context of the repression of terrorism” (thematic session 2). This thematic segment of the meeting also provided an opportunity to present the ICRC’s *Guidelines on Investigating Violations of IHL*.

A. State obligations to criminalize violations of IHL

The first thematic session provided an opportunity to recall that criminal repression is the main mechanism through which States can ensure compliance with IHL. The experts highlighted the deterrent, and therefore preventive, value of criminal repression. According to Kirsty Welch, Legal Adviser to the ICRC’s Advisory Services in Geneva, criminal repression is the most appropriate and effective means of responding to serious violations of IHL (war crimes) committed in both international and non-international conflicts.

It is also a legal obligation that derives from Article 1 common to the Geneva Conventions (the obligation to “respect and ensure respect” for IHL) as well as from other specific provisions, including those relating to the obligation to investigate, search for and prosecute (or extradite) perpetrators of grave breaches, and to bring to an end all other violations of IHL². States have also provided for the criminal repression of violations of IHL through treaties other than the Geneva Conventions – notably those relating to the regulation of certain weapons or the protection of cultural property.

In order for national courts to be able to punish serious violations of IHL, it is essential that they be penalized under domestic law. The repression of these crimes must have a legal basis. In this regard, the moderator, Pélagie Manzan Dékou, Legal Adviser at the ICRC regional delegation in Abidjan, welcomed the fact that at least 80% of ECOWAS member states (12 out of 15) have incorporated grave breaches into their criminal legislation. However, it is concerning that only half of ECOWAS member states have criminalized serious violations of IHL committed in non-international armed conflicts – which represent the majority of armed conflicts today. This important aspect of the implementation of IHL – which is also included in the ECOWAS Plan of Action on IHL for 2019–2023 – therefore remains relevant in the region.

In this regard, Togo’s experience was highlighted as the country revised its Penal Code in 2015 in order to, among other things, bring it in line with IHL. According to Mr. Komlan Midotepe, Chargé de Mission and IHL Focal Point at the Ministry of Justice and Legislation of Togo, the integration of war crimes into the Togolese Penal Code was motivated not only by Togo’s legal obligations as a party to the Geneva Conventions, but also by Togo’s willingness, as a member State of international and regional organizations, not to be on the sidelines of the process of domesticating the Geneva Conventions. According to Mr. Midotepe, failure to do so would be tantamount to condoning war crimes.

The revision of the Togolese Penal Code is the culmination of a process initiated as part of a justice and human rights support project, aimed at taking into account various developments since the previous Code of 1980.³ During the discussion, Mrs. Welch of the ICRC emphasized the usefulness of a preliminary analysis to assess the need for legislative reform. The ICRC thus advocates for the drafting of “compatibility studies” that make it possible to measure the compatibility of domestic law with IHL and to formulate precise and appropriate recommendations to the legislative authorities.

On the definition of war crimes, Mr. Midotepe stressed that the new Togolese Penal Code criminalizes grave breaches and other serious violations of the Geneva Conventions, whether committed during international or non-international armed conflicts. Regarding serious violations of IHL other than grave breaches (a particularly serious type of violation committed during international armed conflict), the obligation of States

² See Articles 49, 50, 129 and 146 of the First, Second, Third and Fourth Geneva Conventions of 12 August 1949 respectively.

³ A preliminary draft text was produced by a committee composed of technicians from the Ministry of Justice and magistrates, then enriched by consultations with practitioners and experts (magistrates, university professors, etc.), before being adopted.

is to “suppress” them, which leaves a margin of appreciation to States as to how to fulfil this obligation, Kirsty Welch clarified.

In the ICRC’s view, it is preferable to criminalize serious violations of IHL committed during international and non-international armed conflicts *as such* (i.e. as war crimes) in the State’s criminal law, taking into account the specificities of these offences. Different methods of criminalization are possible: either through the incorporation of a referral clause,⁴ or through the specific criminalization of types of conducts as war crimes.⁵ If a State decides to refer to existing offences (ordinary crimes) without creating specific war crimes offences, it is incumbent on it to ensure that all grave breaches and other serious violations of IHL are covered in full and with sufficient clarity. Furthermore, in establishing culpability and penalties, the law should take into account conduct lawful under IHL (e.g. attacking lawful targets under IHL). In addition, the law will also need to reflect certain general principles such as command responsibility, the non-applicability of the statute of limitations to war crimes, and universal jurisdiction. The State will also need to ensure that penalties are appropriate to the context of armed conflict and the gravity of the crimes in question, and that domestic law meets the requirements of predictability and clarity. Kirsty Welch recalled that the ICRC’s legal advisers remain available to guide and support States in the process of incorporating war crimes into domestic law.

During the session, Senegal also shared its experience, not only in bringing criminal legislation into line with IHL, but also in applying the provisions relating to war crimes. Mr. Youssoupha Diallo, senior magistrate, and Deputy Attorney General of the Dakar Court of Appeal, stressed that the Extraordinary African Chambers established within the Senegalese courts have had to deal with international crimes, including war crimes, committed in Chad between 1982 and 1990. The Extraordinary African Chambers are the result of a 2012 agreement between the government of the Republic of Senegal and the African Union and have made Senegal a forerunner in the region in the criminal prosecution of serious violations of IHL. Mr. Diallo, who was Deputy Prosecutor General at the Extraordinary African Chambers in the case of Hisssein Habré, also drew the attention of participants to the importance of compensating victims once the sanction has been pronounced. In this regard, he regretted that the victims of Hisssein Habré have not yet received individual or collective compensation. In this respect, he welcomed the experience of the ICC which has set up a compensation fund for victims.

During the exchange session, South Africa, which participated for the first time in this regional meeting as an observer State, also shared its experience in implementing IHL, including in the criminal law field. Ambassador Francis Moloi, Director for Human Rights and Humanitarian Affairs at the Department of International Relations and Cooperation, stressed that the integration of IHL in South Africa is the result of a long process stemming from its history of more than 250 years of colonialism and apartheid: at the end of the apartheid period, it was a matter of rebuilding a new country, and reshaping its image in the eyes of the international community, as a State that respects international law, including IHL. To this end, the drafters of the Constitution took care to incorporate several provisions relating to IHL.⁶ Various pieces of legislation have also allowed to domesticate IHL. For instance, South Africa, has domesticated the four Geneva Conventions and their additional protocols, as well as the Rome Statute. Specific laws to combat torture and mercenary activities have also been adopted. The ambassador also gave examples of the country’s commitment to respecting IHL in practice (e.g. the training of South African military contingents in IHL prior to their deployment on peacekeeping missions; and South Africa’s work with partners to ensure compliance with IHL and IHRL by private military and security companies).

4 The clause may refer to the relevant provisions of IHL, to international law in general, or to the laws and customs of war (customary law).

5 Either by transcribing the whole list of offences into national law with the identical wording of the treaties and laying down the penalties applying to them, individually or by category; or by separately redefining or rewriting in national law the description of the types of conduct constituting the offences. See ICRC, *Methods of Incorporating Punishment into Criminal Law – Factsheet*, <https://www.icrc.org/en/document/methods-incorporating-punishment-criminal-law-factsheet>.

6 For example, Section 198 of the Constitution states that national security must be provided in accordance with international law (including IHL). The Constitution also provides that the armed forces must respect international law on the use of force. The Constitution, as the supreme law, is binding on all branches of the State.

B. Preserving the integrity of IHL in the context of the repression of terrorism

The second thematic session was devoted to the repression of acts of terrorism. Its objectives were to clarify the relationship between laws relating to the repression of terrorism and IHL, and to discuss ways of ensuring that the former conforms with IHL rules and do not impede the access of impartial humanitarian organisations to the most vulnerable populations. The moderator, Dr. Elvina Pothelet, Regional Legal Adviser for West Africa at the ICRC, recalled that these objectives are an integral part of the ECOWAS Plan of Action on IHL (2019–2023).⁷

By way of introduction, the invited experts shared an overview of the impact of acts of terrorism on populations and communities, as well as the measures taken by States to deal with them – with particular emphasis on the Liptako-Gourma and Lake Chad Basin sub-regions. Dr. Maman Aminou Amadou Koundy, President of the Court of First Instance Hors Classe of Niamey and of the Specialized Judiciary Pool for the repression of terrorism in Niger, recalled that the judicial aspect is an important aspect of the fight against terrorism. For example, the State of Niger has set up central bodies, including a specialized judiciary unit and a specialized police force, to combat acts of terrorism. The investigation, prosecution and trial bodies must ensure that human rights and IHL are respected.

The experts then discussed the applicability of IHL to acts of terrorism and its relevance to the fight against terrorism. Dr. Paola Forgione, Legal Adviser at the ICRC’s Advisory Service in Geneva, made a distinction between acts of terrorism committed in peacetime and those committed in the context of an armed conflict. IHL applies in the latter case. But what does IHL say about acts of terrorism? The ICRC expert indicated that although IHL does not define terrorist acts, it unambiguously prohibits them, either by virtue of specific rules or by virtue of general principles or rules such as the principles of humanity and distinction (distinction between combatants and civilians and between military and civilian targets). By way of illustration, attacks against civilians and hostage-taking are strictly prohibited by IHL.

Thus, certain acts qualified as “terrorist” in national law also constitute violations of IHL, and sometimes war crimes, as summarized by the moderator. A point shared by Dr. Koundy: judicial bodies are responsible for combating acts of terrorism, including those that constitute violations of IHL. An act of violence linked to an armed conflict can sometimes be qualified as an act of terrorism or a war crime. In practice, he noted that when judicial actors are confronted with such acts, they favour the qualification of terrorist acts rather than war crimes. According to the expert on counter-terrorism and IHL, this practice can be explained by the reluctance of States to classify certain situations as armed conflicts and thus to recognize the applicability of IHL. However, the qualification of these acts as war crimes has several advantages, according to him. First, it is a more appropriate judicial classification (IHL applies specifically to acts committed in connection with an armed conflict). Secondly, the collection of evidence for war crimes would be easier from a technical point of view than the collection of evidence for crimes of terrorism (for which, *inter alia*, a specific intentional element must be established). Thirdly, the qualification of war crimes could be associated with more severe sanctions than those related to crimes of terrorism. Finally, such a qualification would allow States to respect their international commitments in the field of IHL. In conclusion, Dr. Koundy recalled that the provisions relating to crimes of terrorism and those relating to war crimes do not contradict but complement each other.

The second part of the discussion focused on the impact of anti-terrorism laws on humanitarian access. In this regard, IHL expert Dr. Forgione clarified that the adoption of measures to address the threat of terrorism is a right and even a duty of States. That said, the ICRC and other humanitarian organizations have found that some of these measures are so restrictive and severe that they prevent or discourage them from engaging in any type of interaction with groups designated as “terrorist”, or from travelling to territories controlled by such groups. However, establishing contact with these groups or gaining access to areas controlled by them is a prerequisite for providing humanitarian assistance to civilian populations in need, for visiting persons

⁷ The ECOWAS Plan of Action on IHL (2019–2023) indeed calls on States to “Ensure domestic legal frameworks related to counter-terrorism do not overlap with or contradict IHL by prohibiting conduct which is lawful under IHL, creating legal confusion and adversely affecting the underlying principles of IHL”, but also to “ensure humanitarian actors are able to conduct their non-discriminatory protection and assistance activities without the threat of prosecution or harassment by the government, security forces or general population”. See “ECOWAS Plan of Action on IHL (2019–2023)”, *Implementing IHL in West Africa: 2018 Report*, Annex I, p. 63, available at <https://www.icrc.org/en/document/implementing-ihl-west-africa-redux>.

detained by these groups, or for convincing these groups to respect IHL, for example. According to Paola Forgione, it is essential to find solutions to combat acts of terrorism, while allowing impartial humanitarian organizations, such as the ICRC, to protect and assist victims of armed conflict or other situations of violence.

Chad is a forerunner in this regard: in 2020, the country revised its anti-terrorism law to include, among other things, a “humanitarian exemption clause”. According to Chadian magistrate Carlos Rotta Dingamadji, Director of Legislation and International Cooperation in the Ministry of Justice and Human Rights of Chad, who was invited as an expert from an observer state, this reform appeared necessary in view of the reality on the ground, namely the need for assistance and basic services for populations living in areas controlled by terrorist groups. It was therefore important to ensure that access by humanitarian organizations capable of providing such services was preserved and therefore to tolerate the fact that they could contact terrorist groups for this purpose. It is in this context that the legislator advocated that impartial humanitarian activities be excluded from the scope of the anti-terrorism law.⁸ According to Director Rotta, “this inclusion has been salutary and allows Chad to respect its IHL commitments”. He also pointed out that the clause does not protect all humanitarian organizations, but only those that work in complete impartiality and neutrality, such as the ICRC. Dr. Forgione noted that such clauses have been adopted by other States such as Ethiopia, and that they correspond to the recommendations of the African Union’s Model Law against Terrorism.

Dr. Koundy congratulated Chad on the inclusion of a humanitarian exemption clause in its anti-terrorism law, saying that Niger could be inspired by it. He also stressed the importance of raising awareness among the armed forces (which may have a role to play in the judicial process) about respect for IHL, IHRL and humanitarian actors (Dr Koundy was himself on a mission to take part in such an awareness-raising activity at the time of the online meeting).

Finally, Dr. Isaac Armstrong, Regional Security Program Officer at the ECOWAS Commission, presented the ECOWAS counter-terrorism strategy, which is based on three pillars – prevention, prosecution and reconstruction. Prevention involves a range of measures such as information sharing on border control and governance structures. Prosecution is about encouraging Member States to adopt adequate and effective laws, but also about ensuring a degree of harmony to ensure effective judicial treatment in the event that terrorist suspects travel from one State to another. Reconstruction concerns measures to be taken following the commission of terrorist attacks, in particular to restore confidence and to respect and protect the rights of victims. In the view of the ECOWAS Commission, it is essential that States respect international law in the fight against terrorism. In this regard, Dr. Armstrong welcomed the importance of cooperation with the ICRC to ensure that counter-terrorism laws and measures comply with IHL.

The moderator closed the session by encouraging all member states to include a humanitarian exemption clause in their counter-terrorism legislation, as foreseen in the ECOWAS Action Plan on IHL (2019–2023).

C. ICRC Guidelines on Investigating Violations of IHL

The thematic part of the annual meeting continued with a presentation of the [Guidelines on investigating Violations of IHL](#)⁹ produced by the ICRC and the Geneva Academy of International Humanitarian Law and Human Rights.

In his introduction, Ramin Mahnad, Senior Legal Adviser at the ICRC in Geneva, noted that the Guidelines deal with the investigation of possible violations of IHL. They are intended to assist States in investigating the conduct of their own armed forces, in order to encourage compliance with IHL. The publication also provides States with a general framework to which they can refer when reviewing their legislation, procedures, and mechanisms for investigating IHL violations. The ICRC expert clarified that the Guidelines are not related to international investigation, fact-finding mechanisms, or international tribunals.

⁸ See Chad, Loi n° 003/PR/2020 Suppressing Acts of Terrorism in the Republic of Chad, art. 1(4): “Activities of an exclusively humanitarian and impartial nature carried out by neutral and impartial humanitarian organizations are excluded from the scope of application of this law” (unofficial translation).

⁹ ICRC, Geneva Academy of International Humanitarian Law and Human Rights, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy and Good Practice*, 2019, available at: <https://www.icrc.org/en/document/guidelines-investigating-violations-ihl-law-policy-and-good-practice>

These Guidelines are the result of research work carried out by the ICRC and the Geneva Academy on State practice in investigations, enriched by five (5) expert meetings from 2014 to 2019, which brought together academics and government experts. This work led to sixteen (16) guidelines with commentaries, covering all aspects of the issue – from the preparatory elements of the investigation (triggering of the investigation, recording of military operations, etc.), to the criteria for an effective investigation. They are based on common elements found in international law, national legislation, and policies, and are also supported by State practice.

Some of the principles and good practices in the guidelines are equally valid for an investigation into any human rights obligation, although IHL takes into account the specific circumstances of armed conflict. According to Ramin Mahnad, what the Guidelines show is not so much that the standards are different for investigations during armed conflict or outside of it, but rather that specific preparation is needed for investigations related to armed conflict, and this before the conflict breaks out.

The presentation then highlighted some of the most important guidelines:

- **Military operations should be recorded as soon as possible:** it is essential to put recording mechanisms in place, as it is often impossible or difficult to return to the scene. This includes recording where and when the armed forces were deployed, the nature of the incident and the actors involved, the taking of prisoners, whether civilians were injured, etc.
- **Securing and preserving evidence:** A commander at the scene of an incident should, in the absence of more appropriate authorities, take all practicable steps to ensure that relevant information and evidence is protected and preserved. This is closely related to recording.
- **Reporting:** Any incident should be promptly reported by a commander to the competent authority for assessment. This includes having the necessary procedures in place, and ensuring that third parties can report the incident (e.g. reports from subordinates).
- **The principles of an effective investigation must be respected.** For criminal investigations, these include:
 - Independence and impartiality. Those conducting the investigation must have the necessary distance from the incident. In the context of armed conflict, this means that for each deployment, the State must identify in advance who might conduct such investigations.
 - Thoroughness requires that all feasible steps be taken to collect, analyse, preserve, and store evidence.
 - Promptness: Where an assessment establishes that there are reasonable grounds to believe that a war crime has been committed, a criminal investigation must be opened promptly. The investigative process must be carried out without unreasonable delay.
 - Transparency: This is essential in investigations of human rights violations. In armed conflicts, this requirement can be adapted to the reality of military operations, but certain elements of transparency must be ensured (e.g. informing families about the fate of their loved one who disappeared or died as a result of armed conflict).
- **Fair trial guarantees** must be respected even in contexts of armed conflict, and for persons suspected of having committed war crimes.

Following this presentation, the expert from Ghana emphasized the need for specialized expertise, for example in relation to the use of chemical weapons. This remark illustrates, according to the ICRC expert, the need for preparation and training even before a conflict breaks out – although it is sometimes necessary to call on external expertise.

In conclusion, this session addressed the specific challenges of investigating violations of IHL in armed conflict. The discussions clarified that such investigations are subject to the same standards as peacetime investigations but require specific preparation – even before the conflict occurs. The Guidelines provide guidance to States to ensure that such investigations are conducted effectively and fairly, taking into account the realities of the conflict.

V. FOLLOW-UP TO THE 33RD INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT

The final part of the annual meeting was devoted to the follow-up to the 33rd International Conference of the Red Cross and Red Crescent (IC) in December 2019. The session was moderated by Dr. Anne Quintin, Head of ICRC Advisory Services in Geneva and M. Olatunde Olayemi, Program Officer of the ECOWAS Commission. The objectives of this session were to take stock at mid-term of the implementation of the commitment made by ECOWAS Member States at the 33rd IC, and to clarify the reporting expectations related to this commitment. It was also an opportunity to share a brief report on the 5th Universal Meeting of National Commissions on IHL and the contribution of ECOWAS Member States to this meeting.

The ICRC's Head of Advisory Services recalled that the [commitment](#) made by ECOWAS member States at the 33rd IC on the *"Implementation, domestication and dissemination of international humanitarian law in West Africa"* was historic in that it was the very first joint commitment submitted to the IC by member States of a single Regional Economic Community in Africa.¹⁰ This commitment was also fully in line with [Resolution 1](#) – Bringing IHL Home : A Road Map for Better National Implementation of International Humanitarian Law, adopted at the 33rd IC.¹¹

Member States are expected to report on the implementation of this commitment at the 34th IC, which should be held in 2024. A short and simple report on the progress made could be presented at that time. Such a report by ECOWAS Member States would show the collective impact of the Conference on the implementation of IHL at the national and regional level in West Africa, highlight the experience of ECOWAS States and encourage other States to take similar steps; and finally, if some States have encountered difficulties in implementing this commitment, the report could be used to garner support from other members. To facilitate this process, a form is available on the Red Cross Red Crescent Statutory Meetings website.¹² Dr Quintin therefore encouraged the ECOWAS Commission and member states to coordinate – with the support of ICRC legal advisers when necessary – to prepare and submit such a report before the next IC.

A (non-exhaustive) mid-term review of the implementation of the ECOWAS commitment to 33rd IC highlighted some notable progress made since the 33rd IC (2019), and identified areas where efforts remain to be made. In **terms of ratification** of IHL treaties, The **Gambia** has ratified Protocols I, IV and V of the Convention on Certain Conventional Weapons, as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Four Member States have become parties to the Treaty on the Prohibition of Nuclear Weapons: **Benin, Nigeria, Guinea Bissau and Côte d'Ivoire**. In terms of implementing **IHL treaties**, and more specifically in the area of **arms regulation**, **Mali** adopted a law governing arms and ammunition in March 2021, supplemented by a decree establishing a National Commission to combat the proliferation of small arms and light weapons and setting out its powers, composition and organization. In May 2021, **Burkina Faso** adopted a law on the general regime for arms, their parts, components, ammunition and other related materials. Similar legislative processes are underway in **Côte d'Ivoire, Niger and Senegal** to implement the Arms Trade Treaty and the ECOWAS Convention on Small Arms and Light Weapons. In the area of **criminal law enforcement of IHL violations**, **Côte d'Ivoire** revised its Penal Code in 2019, in particular to bring it in line with IHL. In **Mali**, the Penal Code, the Code of Criminal Procedure and the Code of Military Justice are being revised. Several states have also taken, or are in the process of taking, measures to implement the Kampala Convention on **IDPs**. For example, after adopting an implementing law in 2018, **Niger** adopted a series of three relevant decrees in 2020, including a decree establishing a National Coordination Committee for the Protection and Assistance of IDPs. Encouragingly, laws implementing the Kampala Convention are also being drafted, including in **Burkina Faso, Nigeria, Liberia and Mali**. Finally, in the area of **health care protection**, **Côte d'Ivoire** has prepared a draft law on the protection of the Red Cross emblem.

10 Available at: <https://rcrcconference.org/pledge/mise-en-oeuvre-transposition-dans-les-lois-nationales-et-diffusion-du-droit-international-humanitaire-dih-en-afrique-de-louest/>

11 Available at: <https://rcrcconference.org/about/reporting/33ic-resolution-1-bringing-ihl-home/>

12 Website of the statutory meetings of the Red Cross Red Crescent Movement, Reporting on the outcomes of the XXXIIIrd International Conference, available at Reporting on the outcomes of the 33rd International Conference – Statutory Meetings (rcrcconference.org).

The mid-term review also highlighted developments in the five (5) specific areas mentioned in the pledge made at the 33rd IC:

1. “To establish National Committees and similar entities on IHL where they do not yet exist and to reinforce existing National Committees and similar entities on IHL”.

The Head of Advisory Services praised the dynamism of the NIHLC of **Burkina Faso** and **Niger**, which have distinguished themselves in particular by holding regular meetings, adopting action plans, and sharing experience at regional and international meetings. The revitalization, since 2019, of the NIHLC in **Côte d’Ivoire** and its adoption of an action plan for 2022–2023 was also welcomed, as was **Mali**’s interest in creating such a commission. However, Dr. Quintin also regretted the absence of active NIHLC in several other ECOWAS Member States, stressing that these entities provide leadership, guidance, coordination and support for the implementation of IHL at the national level.¹³ It is significant that 118 States in the world already have an NIHLC.

2. “To carry out an analysis of the areas requiring further domestic implementation in particular through comparing the compatibility between our international and regional obligations and the state of domestic legislation and policies”

Several States have fulfilled this second specific commitment to analyze the compatibility of national law with their international commitments. For example, the study on the national legal framework for the protection of cultural property carried out by **Burkina Faso** led to the drafting of a bill on the protection of cultural property in times of armed conflict, which is currently in the process of being adopted. The Inter-ministerial Committee on Human Rights and International Humanitarian Law of Burkina Faso is also planning a study on the protection of health care. In **Niger**, a compatibility study on the legal framework for missing persons and their families was initiated by the ICRC and carried out by a national expert who made a number of concrete recommendations.

3. “Continue the implementation of the ECOWAS IHL Plan of Action and ensure National IHL Plans of Action are operational or enacted”

In this regard, it is regrettable that most ECOWAS member countries have not adopted national action plans, contrary to their commitment to the 33rd IC. Such action plans are essential to guide the adoption of all necessary legislative, administrative and practical measures at national level. A model action plan developed by the ICRC can be used as a guide by Member States’ NIHLC.¹⁴

4. “Continue to consult the ECOWAS Commission and ICRC delegations in West Africa”

With regard to this specific commitment, the ICRC’s Head of Advisory Services reiterated the availability of the ICRC’s legal advisers to accompany States in order to enable them to fulfil the remaining commitments before the 34th IC.

¹³ Dr. Quintin recalled the reasons for the establishment of NIHLC: they assist the State in fulfilling its obligation to respect and ensure respect for IHL; provide a platform for collaboration between ministries and other relevant parties, and facilitate the coordination of strategies and initiatives; contribute to the development of the capacity of those working in this field; provide expert advice; and facilitate exchanges and cooperation with other States by being part of a global network of similar entities.

¹⁴ ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success*, 2019, Annex 4, available at <https://www.icrc.org/en/document/national-committees-and-similar-entities-international-humanitarian-law-guidelines-success>

5. “To ensure regular reporting of achievements and challenges in implementing the ECOWAS IHL Plan of Action to the ECOWAS Commission, for effective monitoring and evaluation”.

The final specific commitment concerns the preparation of “voluntary reports” on the implementation of IHL, which can be submitted to different authorities and take different forms. According to the ICRC’s Head of Advisory Services, these reports have several advantages: they identify areas where implementation efforts are still needed, provide benchmarks for monitoring the evolution of priorities, stimulate cooperation between the different actors responsible for implementing IHL, and allow for the exchange of good practices between States. In **Niger**, the National IHL Implementation Committee has produced two voluntary reports, in 2019 and 2020. **Burkina Faso** has also produced annual reports since 2018. These reports analyze the progress made in the past year, highlight the difficulties encountered and identify prospects. Both Burkina Faso and **Mali** have also produced reports that specifically address the implementation of the 1977 Additional Protocols under UN General Assembly Resolution 75/138.

Other member states were therefore encouraged to draw on these reports and do the same to fulfil this aspect of the ECOWAS commitment. As Niger and Burkina Faso have testified in several forums, the drafting of such reports requires few resources. The meetings of the NIHLs are also excellent opportunities to gather the information that needs to be included in the report from the various ministries and other bodies involved in the implementation of IHL. Anne Quintin was keen to invite States that have drafted voluntary reports to share them, for example on *the online community of National IHL Commissions*¹⁵ – as is the case with the reports from Niger.

Finally, the ICRC’s head of advisory services shared a brief report on the 5th Universal Meeting of National IHL Commissions, which was held online from 29 November to 2 December 2021. She recalled that these Universal Meetings, organized by the ICRC since 1995, bring together Commissions and other national IHL bodies, and are unique opportunities to share, at the global level, good practices and exchange views on the national implementation of IHL. Four (4) Member States attended the meeting: **Burkina Faso**, **Gambia**, **Niger** and **Mali** (Mali as an observer considering the creation of a NIHL). On this occasion, these States were able to share their experiences on certain themes, namely voluntary reports (Burkina Faso), the protection of missing persons (Niger) and the relationship between IHL and counter-terrorism (Chad).

Olatunde Olayemi concluded the session by reminding Member States to fill in the questionnaires distributed in advance of the annual meeting as this information will contribute to the ECOWAS Member States’ report to the 34th IC.

VI. FINAL RECOMMENDATIONS

The 18th annual ECOWAS-ICRC meeting on the implementation of IHL in West Africa resulted in the adoption of the following recommendations by member states:

1. Appreciate Member States who presented their progress on the 2021 International Humanitarian law (IHL) priorities and their 2022 national priorities and recommend that Member States (MS) complete and share questionnaires with ECOWAS and ICRC in order to fully capture the position of IHL in the region.
2. Identify and recognise the need to develop a link in IHL, International Human Rights Law (IHRL) and Peace, Security & Development initiatives in the region.
3. Considering that ECOWAS and Member States are encouraged to report on the implementation of their pledge through the submission of a report by 30 September 2023, more efforts should be deployed to implement the ECOWAS pledge at the 33rd IC before the 34th IC in December 2023. ICRC and ECOWAS commission can coordinate on the preparation of this report.

15 See <https://www.icrc.org/en/document/online-community-national-committees-and-similar-bodies-ihl>

4. Urge Member States with National International Humanitarian Law Committees (NIHLC) to meet regularly, identify priorities and adopt plans of action, reach out to ICRC for capacity building or technical support when needed. While MS who do not yet have a NIHLC are encouraged to take steps to create one they are key to guiding, supporting and coordinating IHL implementation.
5. Continue and strengthen efforts to implement the ECOWAS Plan of Action including the adoption of National IHL Plans of Action as they are essential to guide ratification, domestication and implementation efforts.
6. Work towards the integration of IHL in security sector reform and governance in MS.
7. Recognises that for effective enforcement of IHL efforts should be put towards whistleblowing protections, witness protection and reparation for victims.
8. Encourage MS to assess whether domestic criminal law appropriately reflects IHL and in particular that IHL violations are properly criminalised and punished, in compliance with judicial guarantees.
9. Acknowledge the importance of humanitarian exemptions in counter-terrorism laws and consider integrating humanitarian exemption clauses in CT laws to ensure they are compatible with States' IHL commitments. MS can continue these discussions with ICRC and ECOWAS bilaterally.
10. Encourage MS to utilise the ICRC guidelines on Investigating Violations of IHL.

VII. CLOSING CEREMONY

The 18th annual ICRC-ECOWAS meeting on the implementation of IHL ended with speeches by ECOWAS and ICRC representatives.

Mrs Raheemat, welcoming the holding of this interactive and enriching meeting, hoped that the commitments made and the recommendations adopted would translate into positive results for the benefit of the citizens of ECOWAS Member States by the time of the next meeting.

Leonard Blazeby expressed his satisfaction with the good representation of Member States at the meeting and with the fact that the discussion focused on important issues such as the criminalization of IHL violations and the relationship between IHL and the legal frameworks developed for the repression of terrorist acts. He noted the progress made since the commitment made by Member States at the 33rd international conference, although improvements are still needed in some areas, such as arms treaties. He concluded by warmly thanking ICRC colleagues and ECOWAS partners for their collaboration.

ANNEX I – CONCEPT NOTE

ECOWAS-ICRC ANNUAL REVIEW MEETING ON THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW TREATIES IN WEST AFRICA VIRTUAL CONFERENCE, 30-31 MARCH 2022

A. BACKGROUND

Many Member States (MS) of the Economic Community of West Africa (ECOWAS) region (including Mali, Niger, Burkina Faso or Nigeria) are experiencing the dire humanitarian consequences resulting from armed conflicts and other situations of violence. These include internal displacement, increased instances of sexual violence, lack of access to healthcare and other essential services, and a fragile food situation.

In situations of armed conflict, International Humanitarian Law (IHL) imposes obligations on parties to the conflict (both States and non-State armed groups) with a view to protect those who are not, or no longer, participating in hostilities, and to restrict the means and method of warfare. ECOWAS member states (MS) have been increasingly active in ratifying or acceding to IHL-related treaties, but ratification is only the first step of the process to make treaty rules fully effective. Treaty ratification must be followed by additional measures to implement those treaties, including domestication of the treaties into the national legal frameworks, procedures, practices and trainings.

B. ECOWAS-ICRC COLLABORATION ON IHL IMPLEMENTATION

Since 2001, the ECOWAS Commission and the International Committee of the Red Cross (ICRC) have been collaborating to promote respect for IHL, including through domestication of IHL treaties into national legal frameworks.¹⁶

This fruitful collaborative relationship has established an impactful on-going cooperation with the Directorate of Humanitarian and Social Affairs (DHSA) in the promotion of IHL domestication in MS, policy discussions and interactions, and the Directorate of Political Affairs, Peace and Security (PAPS), by conducting IHL training for the ECOWAS Standby Force.

A key activity implemented within this collaboration is the Annual Review Meeting on the Implementation of IHL in West Africa. The Annual Review Meetings doubling as Training Seminars have been central to capacity building, determination of gaps, challenges and good practices and identifying follow up actions for support by ECOWAS and the ICRC at the national level in the MS. This combination of technical assistance and peer review contributes to ensuring respect for, and integration of IHL into the legislation and practical measures adopted by MS. The cooperation between ECOWAS and the ICRC led to the adoption of the first ECOWAS Plan of Action on Implementation of International Humanitarian Law (IHL, 2009 – 2014, extended to 2018). Its successor, the ECOWAS IHL Plan of Action (2019–2023) was committed to in the ECOWAS pledge submitted to the 33rd International Conference of Red Cross and Red Crescent.

¹⁶ The MOU between the ECOWAS Commission and ICRC was signed in February 2001 which defined operational axes including: convening conferences and other meetings; undertaking joint activities to achieve common goals; and providing technical cooperation on topics of mutual concern. Another MOU was signed between the ECOWAS Parliament and the ICRC in 2010 which invites the ICRC to attend the Parliamentary sessions as an observer. The ICRC has been present in the plenary since 2011. This relationship has grown since then as the ICRC gave an IHL presentation to the plenary in 2018 and is also conducting a joint study on Access to Healthcare for Internally Displaced Persons (IDPs) in the ECOWAS Region which would be presented to the Plenary in 2021.

C. OBJECTIVES

The objectives of this meeting are to:

- Take stock of progress towards the implementation of ECOWAS IHL POA and the related ECOWAS Pledge to the 33rd International Conference by Member States;
- Build Member States technical capacities and facilitate and support peer-to-peer exchanges between MS on IHL implementation in general, and on a select theme relevant to the ECOWAS region;
- Facilitate peer-to-peer exchanges between MS on their efforts towards respect for IHL and preservation of its integrity, notably through the criminal repression of violations;
- Strengthen the collaboration between ECOWAS and ICRC in the implementation of IHL in MS and serve as an opportunity for ICRC to continue to support ECOWAS missions in MS on IHL implementation; and
- Provide feedback from the 5th Universal Meeting of National IHL Committees.

D. 18TH ANNUAL IHL REVIEW MEETING

The Annual Review Meeting will be held virtually through teleconferencing tools due to the restrictions occasioned by the COVID-19 pandemic. The Meeting will be spread over two days (4–5 hours each day), and will involve participation by MS experts, ECOWAS and ICRC thematic experts, and other partners. MS participants will include Government Officials and Parliamentarians who are involved in the technical implementation of IHL treaties in their countries, as well as members of National IHL Committees.

The IHL Annual Review Meeting will first feature reports by MS on the progress and challenges associated with the implementation of their 2021 IHL Priorities, measures taken to implement the ECOWAS IHL POA, and stating of their 2022 national IHL Priorities. These MS reports on key IHL developments since the last ECOWAS-ICRC Annual IHL Review Meeting will be collated via an IHL questionnaire. The collated reports of the MS will serve as an avenue for the update of the relevant section of the 2021 Report on *“Implementing IHL in West Africa”*.

The second part of the meeting will be dedicated to thematic discussions centred on efforts to enhance respect for IHL and preserve its integrity, with a special focus on the repression of violations of the law in armed conflict. All States parties to the Geneva Conventions have committed to “respect and ensure respect for” IHL. This obligation includes the taking of measures necessary for the suppression of IHL violations, even before an armed conflict starts. Amongst those measures, penal repression is particularly important to deter future violations. This requires the adoption of adequate criminal legislation against IHL violations committed in international and non-international armed conflicts, as well as adequate and properly trained judicial institutions with clear jurisdiction. ECOWAS MS will have the opportunity to exchange good practices in this regard. The meeting will also be the occasion to address the criminal repression of terrorism by ECOWAS MS and ways to preserve the integrity of IHL as well as humanitarian access in this context.

The final part of the meeting will be dedicated to follow-up on the ECOWAS pledge¹⁷ and pledges made by MS¹⁸ at the 33rd International Conference of Red Cross and Red Crescent.

The 2021 Annual Review Meeting will be an opportunity for the MS to review their efforts towards enhanced respect for IHL and its integrity. By the end of the meeting, participants will be well prepared to work with the delegates of their countries to improve on their legislation, regulations, policies and practices to offer responses to curbing violations of the law in armed conflicts while preserving the integrity of IHL. This will also set an example for other regional organisations to emulate the efforts of the ECOWAS MS in their determination to uphold the provisions of IHL.

17 ECOWAS Specific Pledge to the 33rd International Conference of the Red Cross and Red Crescent, Implementation, domestication, dissemination of international humanitarian law (IHL) in West Africa: <https://rcrcconference.org/pledge/mise-en-oeuvre-transposition-dans-les-lois-nationales-et-diffusion-du-droit-international-humanitaire-dih-en-afrique-de-louest/>.

18 All 33rd International Conference of the Red Cross and Red Crescent Pledges are available online: <https://rcrcconference.org/about/pledges/search/>.

E. 18TH ANNUAL IHL REVIEW MEETING - AGENDA ITEMS

The meeting will address the following issues:

- Opening session and keynote on respect for IHL and preserving its integrity
- Reporting on the implementation of the ECOWAS IHL POA and 2021 IHL Priorities and setting out 2022 IHL Priorities;
- Thematic sessions on States' efforts to enhance respect for IHL through the adoption of adequate legal frameworks for the repression of IHL violations. Topics to be discussed could include: State obligations in relation to the repression of IHL violations; the domestic criminalisation of IHL violations committed in IAC and in NIAC; the interaction between IHL and the judicial treatment of terrorism.
- Session on follow-up of the 33rd International Conference of Red Cross and Red Crescent;
- Closing session

F. MEETING DETAILS

Dates: 30 – 31 March 2022

Location: Abuja, Virtual

Participants: Thirty (30) Government Experts from the 15 ECOWAS Member States, ECOWAS Staff, ICRC, and other Partners;

Modalities of meeting: The meeting will be held virtually for approx. 4–5 hours each day for 2 days. There will be an opening session and keynote speaker, participants from MS will make presentations on the progress and challenges related to implementing the ECOWAS IHL POA, their 2021 IHL Priorities, as well as set out their 2022 IHL Priorities. Each session will comprise presentations as well as Question and Answer sessions. Different MS representatives will moderate the sessions. ECOWAS, the ICRC or other invited partners will serve as Technical Experts for each session, providing additional tools and information to augment the presentations.

Budget: The meeting will be held virtually. Therefore, the budget costs are minimal. However, responsibilities will be shared between the partners. The organisation of the meeting using Zoom (ECOWAS), Interpretation (ICRC) and Photo Session (ICRC).

ANNEX II – AGENDA OF THE MEETING

ECOWAS-ICRC ANNUAL REVIEW MEETING ON THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN WEST AFRICA ENHANCING RESPECT FOR IHL AND ITS INTEGRITY

30-31 MARCH 2022 (VIRTUAL CONFERENCE)

30 MARCH, 2022	
9:30 – 10:00	Digital arrival and housekeeping
OPENING SESSION Chair of Meeting: Hajiya Raheemat Momodu, Head of the Human Security and Civil Society Division, ECOWAS Commission Moderator: Olatunde Olayemi, Programme Officer, Human Security and Civil Society Division, ECOWAS Commission	
10:00 – 10:05	Welcome Address by Commissioner, Social Affairs and Gender Dr. Siga Fatima Jagne
10:05 – 10:15	Remarks by ICRC Accredited Representative to ECOWAS Leonard Blazeby, Deputy Head of Delegation, ICRC Abuja (representing the Head of Delegation)
10:15 – 10:20	Opening Statement by Ambassador of Ghana to Nigeria and Permanent Representative to ECOWAS, Chairman of ECOWAS Authority
10:20 – 10:30	Presentation of the agenda and objectives of the meeting
10:30 – 11:00	KEYNOTE – Introduction to the Annual Meeting’s Main Thematic: Enhancing respect for IHL and its Integrity Dr. Cordula Droege, Head of the Legal Division, ICRC Discussion
REPORTING SESSION: Implementation of ECOWAS IHL Plan of Action (2019-2023): 2021 priorities, outlook on 2022 priorities Moderator: ECOWAS	
11:00 – 11:50	Reporting by Representatives of Member States: Benin, Burkina Faso, Côte d'Ivoire, Cape Verde, The Gambia
11:50 – 12:00	Question and Answers
12:00 – 12:45	Break

30 MARCH, 2022	
12:45 – 13:35	Reporting by Representatives of Member States: Ghana, Guinea, Guinea Bissau, Liberia, Mali
13:35 – 13:45	Questions and answers
13:45 – 14:35	Reporting by Representatives of Member States Niger, Nigeria, Senegal, Sierra Leone, Togo
14:35 – 14:45	Question and Answers
14:45 – 15:00	Wrap up and Concluding Remarks ECOWAS Commission and ICRC

31 MARCH, 2022	
09:30 – 10:00	Digital arrival and housekeeping
THEMATIC SESSIONS: Enhancing respect for IHL and its integrity: Clarification of the legal frameworks governing the repression of violations of the law in armed conflict	
10:00 – 10:45	Thematic Session 1: States' obligations in relation to the criminalisation of IHL Violations Moderator: Pélagie Manzan Dekou, Legal Adviser Supra, ICRC Abidjan Member State Lead Presenters: Senegal, Togo Technical Expert: Kirsty Welch, Legal Adviser, Advisory Services, ICRC Geneva
10:45 – 11:15	Plenary Discussion
11:15 – 11:30	Coffee break
11:30 – 12:15	Thematic Session 2: Preserving the integrity of IHL in the context of the repression of terrorism Moderator: Dr. Elvina Pothelet, Regional Legal Adviser, ICRC Dakar Member State Lead Presenters: Niger; Chad (non-Member State) Technical Experts: Dr. Paola Forgione, Legal Adviser, Advisory Services, ICRC Geneva Dr. Issac Armstrong, Programme Officer, Regional Security Division, ECOWAS Commission
12:15 – 12:45	Plenary Discussion
12:45 – 13:30	Break
13:30 – 14:00	Thematic Session 3: Presentation of the ICRC Guidelines on Investigating Violations of IHL Ramin Mahnad, Thematic Legal Adviser, ICRC Geneva
REVIEW SESSION	
Mid-term review of the ECOWAS Pledge on IHL at the 33 rd International Conference of the Red Cross and Red Crescent	

31 MARCH, 2022	
14:00 – 14:45	<p>Experts:</p> <p>Dr. Anne Quintin, Head of Advisory Services, Legal Division, ICRC Geneva</p> <p>Olatunde Olayemi, Programme Officer, Human Security and Civil Society Division, ECOWAS Commission</p>
14:45 – 15:00	Adoption of the Recommendations and Resolutions in the Meeting
CLOSING SESSION	
15:00 – 15:30	<p>Moderator: ECOWAS</p> <p>Remarks by Hajiya Raheemat Momodu, Head of the Human Security and Civil Society Division, ECOWAS Commission</p> <p>Remarks by Leonard Blazeby, Deputy Head of Delegation, ICRC Abuja</p> <p>Closing Statement by the representative of Ghana, Chairman of ECOWAS Authority</p>

ANNEX III - LIST OF PARTICIPANTS




COUNTRY	NAMES	FUNCTIONS
PARTICIPANTS FROM ECOWAS MEMBER STATES		
CABO VERT	Sra. Zaida Freitas	President, National Commission for Human Rights and Citizenship
CÔTE D'IVOIRE	Major Colonel Jean-Hubert Ouassenan	Member of the NIHLC
	Gaston Richard Angbonon	Deputy Public Prosecutor at the Court of First Instance of Abidjan
	Makaya Dagnogo	Director of the Petitions and Investigations Department, National Human Rights Council
THE GAMBIA	Kumba Jow	Head of the Interministerial Committee on International Humanitarian Law, Ministry of Justice
GHANA	Cecil Adadevoh	Principal State Attorney, Office of the Attorney-General and Ministry of Justice
MALI	Diambéré Sylla	Ministry of Foreign Affairs and International Cooperation
	Dramane Diara	Ministry of Justice and Human Rights
NIGER	Maman Moutari Na Ayo.	Director of Human Rights and Social Action, Ministry of Justice, President of the NIHLC
	Oumarou Abdul Aziz	Representative of the Director, Legal Affairs Department, Ministry of Foreign Affairs
	Ibrahim Moussa Maziri	Director of Judicial Affairs, Ministry of Justice
	Maman Aminou Amadou Koundy	President of the High Court of Niamey / President of the specialized judiciary pool for the repression of terrorism
NIGERIA	Mrs. Janet Awanen	Head of Secretariat, NIHLC / Deputy-Director, International and Comparative Law Department, Ministry of Justice
SENEGAL	Mr. Ndiaye	Deputy Director, Directorate for Human Rights, Ministry of Justice
	Youssoupha Diallo	Senior Magistrate, Deputy Prosecutor General, Dakar Court of Appeal (former Deputy Prosecutor General for the Extraordinary African Chambers)
SIERRA LEONE	Allieu Vandi Koroma	State Counsel, Office of the Attorney-General and Minister of Justice
TOGO	Komlan Midotepe	Project officer, IHL Focal Point, Ministry of Justice and Legislation
PARTICIPANTS FROM OBSERVER STATES		
SOUTH AFRICA	Ambassador Francis Moloi	Chief Director, DIRCO, Ministry of International Relations
	Kasturie Maharaj	IHL Focal Point, DIRCO, Ministry of International Relations
TCHAD	Carlos Rotta Dingamadji	Director of Legislation and International Cooperation, Ministry of Justice and Human Rights
PARTICIPANTS FROM ECOWAS AND ICRC		
ECOWAS	Hajiya Raheemat Momodu	Head of the Human Security and Civil Society Division, ECOWAS Commission

COUNTRY	NAMES	FUNCTIONS
ECOWAS	Olatunde Olaye	Program Officer, Human Security and Civil Society Division
ECOWAS	Issac Armstrong	Programme Officer, Regional Security Division
ECOWAS	Essossinam Ali Tiloh	Program Officer, Human Security and Civil Society Division
ECOWAS	Osondu Ekeh	Program Officer, Human Security and Civil Society Division
ICRC	Cordula Droege	Chief Legal Officer and Head of the ICRC's Legal Division, ICRC headquarters, Geneva
ICRC	Leonard Blazeby	Deputy Head of Delegation, ICRC delegation in Nigeria
ICRC	Chinelo Nnenna AGOM EZE	Multilateral Liaison Officer, ICRC delegation in Nigeria
ICRC	Elvina Pothelet	Regional Legal Adviser, ICRC regional delegation in Dakar
ICRC	Pélagie Manzan Dekou	Legal adviser supra, ICRC regional delegation in Abidjan
ICRC	Kany Sogoba	Legal adviser, ICRC delegation in Mali
ICRC	Koue Stephane Ourigbale	Legal adviser, ICRC regional delegation in Abidjan
ICRC	Lawal Abdoulaye	Legal adviser, ICRC delegation in Niger
ICRC	Paola Forgione	Legal adviser, ICRC headquarters, Geneva
ICRC	Ramin Mahnad	Legal adviser, ICRC headquarters, Geneva
ICRC	Kirsty Welch	Legal adviser, ICRC headquarters, Geneva

The ICRC helps people around the world affected by armed conflict and other violence, doing everything it can to protect their dignity and relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles. People know they can count on the ICRC to carry out a range of life-saving activities in conflict zones and to work closely with the communities there to understand and meet their needs. The organization's experience and expertise enables it to respond quickly, effectively and without taking sides.



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