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Somalia: Using traditional law in dialogues with armed groups

[Source: Somalia: Using traditional law in dialogues with armed groups, ICRC, 10 November 2014, available at: <https://www.icrc.org/en/document/somalia-using-traditional-law-dialogue...>]

[1] The main sources of international humanitarian law (IHL) are international treaty and customary law. In addition, domestic traditional law can improve the protection of victims of armed conflict. The ICRC's online Customary IHL Database was recently updated with the practice of five additional countries: Denmark, Djibouti, Poland, Tajikistan and Somalia. Omar Odeh, deputy head of the ICRC's delegation in Somalia, explains the importance of such traditional law.

How useful is traditional law in Somalia?

[2] In Somalia, traditional behaviour in warfare is set in a collection of practices called 'biri-ma-geydo' that governs conflicts. It's a mix of traditional elements and Sharia law. It draws on elements of the two and in some way is a parallel of IHL. Basically, it sets rules and protection for those who are not fighting, in particular for the respect of children, women and elders. What is interesting is that it protects people not only based on vulnerability, but also – as in the case of elders – because of their role in Somali society. Elders are very often mediators in conflict resolution and can transmit messages from one clan to another.

How does the ICRC use that traditional law?

[3] We have been promoting traditional law through radio spots where fictional situations are portrayed, exploring principles of biri-ma-geydo, for instance traditional conduct of warfare, immune groups, prisoners of war and respect for private property. Local radio stations are a very important communication means in Somalia. Apart from that work, there's a lot of potential in exploring the commonalities between biri-ma-geydo and IHL. These systems are complementary and share the same basic impulse to maintain a certain humanity even at the height of conflict. This notion is one that is relevant across the full range of armed actors in Somalia.

[4] In the framework of promoting IHL and discussing the similarities with parts of Sharia law, we have just donated IHL libraries to the law faculties of two universities, Somaliland University in Burao and Puntland State University in Garowe. Typically, we take the books and organize sessions to take questions and open a dialogue.

More globally, what are the main protection activities of the ICRC in Somalia?

[5] Currently, detention visits and maintenance of family contact are our main protection activities. We have been visiting prisons in Somalia for the last two years and the programme continues to develop. To give you an idea, since the beginning of the year we have visited more than 4,500 detainees in 24 places of detention. Our visits aim to ensure humane treatment for detainees and we work with the Somali authorities to address any points of concern and improve conditions of detention. In some cases we provide direct assistance by distributing basic materials or undertaking light rehabilitation projects. Our delegates visit the premises, have private talks with detainees and make confidential recommendations to the authorities. Our ambition is to visit detainees under all parties to the conflict.

Despite these efforts, we hear almost every week of violations of IHL in media reports?

[6] Impact is indeed very hard to measure and it takes time. We are nevertheless convinced that it is important to create an environment conducive for the respect of civilians, for those who are not fighting or have stopped fighting. In that sense, traditional law alongside IHL is helpful in reaching our objective to protect those affected by the conflict in Somalia.

Discussion

1. (Para. [1])

- a. Considering its historical origins and the values it promotes, do you think IHL is universal? Should it be universal? Is there a place for cultural relativism within IHL? How do you square the notions of cultural relativism and universalism when it comes to IHL?
- b. Besides international treaty and customary laws, can we consider domestic traditional law as a source of law for the protection of victims of armed conflict? What would the merits of doing so be? What would the possible challenges be?
- c. Could domestic traditional laws serve as a material source for customary IHL?

2. (Para. [2])

- a. Do you think the values of 'biri-ma-geydo' in Somalia as described in para. [2] have the same personal scope of protection as IHL? A narrower scope? A broader scope? In what respects?
- b. Do such traditional laws contribute towards achieving the objectives of IHL? Does respect and implementation of IHL rules depend on clear correlation between the applicable rule and local customs?
- c. Should IHL, which is meant to embody common human values and which is known for its objective rules, accommodate such traditional laws?
- d. Do IHL rules protect persons solely on the basis of their vulnerability? Can you think of examples of IHL rules that protect persons because of their role in the society?
- e. Does IHL recognize the role of elders? In countries where the practice of mediation by elders is prevalent, should IHL consider recognizing such roles? Is this compatible with the principle of non-discrimination in IHL? In that regard, how could concomitant issues of gender equality be tackled? Must some serious violations of IHL see the light of formal justice systems rather than mediation by elders?

3. (Paras [3], [4] and [6])

- a. To what extent do you think that the obligation to disseminate IHL includes promoting respect for traditional laws? Do you agree that there is a role for the ICRC in this respect? (GC I-IV, Arts. 47/48/127/144; PI, Art.83; PII, Art.19)

b. Do you agree with the statement that: 'these systems are complementary and share the same basic impulse to maintain a certain humanity even at the height of conflict'? Do you think that traditional laws always necessarily complement IHL? How can cases of difference be resolved?

4. (Para. [5])

a. Does ICRC have a right to visit detention facilities and facilitate the maintenance of family contacts in non-international armed conflicts? (GC I-IV, common Art.3; CIHL, Rule 124)

b. Why is the aim of the visits restricted to ensuring the 'humane treatment for detainees'?

c. Why does the ICRC make its recommendations to the authorities in a confidential manner?

5. (Para. [6]) Does traditional law help in creating conducive environment for the respect of civilians, for those who are fighting or have stopped fighting? Had that been the case, why are repeated violations of IHL seen in Somalia? Do you believe IHL is most often violated in Somalia not only according to media reports but also in actual reality? Why does the media nearly exclusively report violations?

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