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DOI:10.1017/ilm.2018.26

BRIEFLY NOTED

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Judicial and Similar Proceedings

1. Prosecutor v. Bemba et al. (International Criminal Court – March 8, 2018)

<https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/05-01/13-1989-Red>

On March 8, 2018, the Appeals Chamber of the International Criminal Court (ICC) issued its judgments on the verdict and sentence in the case *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido.* The five accused were found guilty of offenses against the administration of justice by Trial Chamber VII in October 2016 for corruptly influencing witnesses and soliciting false testimonies in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* before the ICC. The Appeals Chamber mostly confirmed the appeals against the five accused, though it acquitted Bemba, Kilolo, and Mangenda "of the charge of presenting evidence that a party knows is false or forged (Article 70(1)(b) of the Rome Statute), finding that this provision only applies to the presentation of documentary evidence, not to the calling of witnesses, as in the case at hand." All five convictions are now final. The Appeals Chamber also rejected the appeals of Bemba, Babala, and Arido regarding their sentences, which are now final.

2. Bar Council of India v. A.K. Balaji And Ors. (Supreme Court of India – March 13, 2018)

<http://www.supremecourtofindia.nic.in/supremecourt/2012/13890/13890_2012_Judgement_13-Mar-2018.pdf>

On March 13, 2018, the Supreme Court of India ruled in *Bar Council of India v. A.K. Balaji And Ors.* that foreign attorneys may not practice law within the state on a permanent basis. The Court held that foreign attorneys and firms may only advise clients in India on matters pertaining to foreign laws on a temporary "fly in, fly out basis." The Court defined this expression as covering only "a casual visit not amounting to 'practice.'" Determining whether a foreign attorney was conforming to this standard "for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues or whether in substance he was doing practice which is prohibited can be determined by the Bar Council of India."

3. Naït-Liman v. Switzerland (European Court of Human Rights – March 15, 2018)

<http://hudoc.echr.coe.int/eng?i=001-181789>

On March 15, 2018, the European Court of Human Rights (ECtHR) ruled in *Naït-Liman v. Switzerland* that Swiss courts were not obligated to take up a case involving a Tunisian man who alleged that he was tortured in Tunisia in 1992, and that there was no violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights**.**The case concerns a Tunisian national, Abdennacer Naït-Liman, who alleges that he was detained and tortured in Tunis on the orders the then Minister of the Interior, A.K., and was later granted political asylum in Switzerland in 1995. In 2004, Naït-Liman lodged a claim in a Swiss court for damages against Tunisia and A.K., which was declared inadmissible, and he later appealed to the ECtHR. The ECtHR reviewed state practice concerning universal jurisdiction for acts of torture and found "that the prevalence of universal civil jurisdiction was not yet sufficient to indicate the emergence, far less the consolidation, of an international custom which would have obliged the Swiss courts to find that they had jurisdiction to examine Mr Naït-Liman's action." The Court also found that international law did not imposed an obligation on Swiss authorities to make a forum of necessity—exceptional jurisdiction that a state's civil courts assume where proceedings abroad prove impossible—available to Naït-Liman as there was no international custom rule on the matter, nor was there an international treaty obligation for states to provide a forum of necessity. The Court also emphasized that this ruling "did not call into question the broad consensus within the international community on the existence of a right for victims of acts of torture to obtain appropriate and effective redress, nor the fact that the States were encouraged to give effect to this right."

https://doi.org/10.1017/ilm.2018.26 Published online by Cambridge University Press

4. Commission v. Poland (Court of Justice for the European Union – April 17, 2018)

<http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30dd6effe8d5e77a456b868-c92e8f55e9158.e34KaxiLc3qMb40Rch0SaxyNbxz0?text=&docid=201150&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=638809>

On April 17, 2018, the Grand Chamber of the Court of Justice for the European Union ruled in *Commission v. Poland* that Poland's logging of the Puszcza Białowieska Natura 2000 site violated the Habitats Directive and the Birds Directive under European Union law. The European Commission calls the site "one of the best preserved natural forests in Europe, characterised by large quantities of old trees, in particular trees a century old or more, and dead wood," and in 2007 the Commission designated it as a "site of Community importance" due to the habitats of certain species of animals and birds on the land. The Court held that Poland had not fulfilled its obligations arising from the Habitats and Birds Directives when it "failed to ascertain that [] forest management measures would not adversely affect the integrity of the Puszcza Białowieska" before it greatly increased timber harvesting in the forest areas and conducted active forest management operations where such actions were previously precluded. The Court upheld the Commission's action against Poland in its entirety.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Revised Deliberation No. 5 on Deprivation of Liberty of Migrants (UN Working Group on Arbitrary Detention – February 26, 2018)

<http://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf>

On February 26, 2018, the UN Working Group on Arbitrary Detention released its Revised Deliberation No. 5 on Deprivation of Liberty of Migrants, in which the Group discusses its "criteria for determining whether the deprivation of liberty of asylum seekers and immigrants might be arbitrary." It provides a series of explanations regarding the various rights of migrants under international law as they concern the deprivation of liberty on matters such as the length of detention, the right to asylum, challenging detention, rights during detention, and the prohibition of non-refoulement. The Deliberation states that "[p]lacing migrants and asylum seekers in detention should be seen as a last resort to be used only in strictly limited circumstances," while also reaffirming generally "the absolute prohibition of arbitrary detention and the universal human right to seek asylum." This Deliberation updates a previous one on the subject from 1999 in order to reflect changes in international law and the Working Group's jurisprudence since then.

2. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (March 8, 2018)

<https://www.mfat.govt.nz/assets/CPTPP/Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP-English.pdf>

On March 8, 2018, eleven Asia-Pacific states (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) signed a trade agreement titled the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a multilateral free trade agreement that updates its previous iteration as the Trans-Pacific Partnership (TPP). Much of the original TPP has been kept in the CPTPP, though twenty-two provisions from the TPP were suspended or otherwise changed. The Agreement will allow for freer trade and investment access among its members and is one of the largest free trade agreements in the world, representing nearly 13.5 percent of global gross domestic product.

3. African Continental Free Trade Area (Assembly of the African Union – March 21, 2018)

<https://au.int/sites/default/files/decisions/34055-ext_assembly_dec_1x_e26_march.pdf>

On March 21, 2018, the Assembly of the African Union passed a decision at its Tenth Extraordinary Session, held from March 17–21, 2018 in Kigali, Rwanda, to create the African Continental Free Trade Area (AfCFTA). Leaders from forty-four African states signed the agreement, although fifty-five African states had been

https://doi.org/10.1017/ilm.2018.26 Published online by Cambridge University Press

involved in negotiations on the AfCFTA since 2015. The agreement's aim is to "[c]reate a single continental market for goods and services, with free movement of business persons and investments, and thus pave the way for accelerating the establishment of the Continental Customs Union and the African customs union." A "Questions and Answers" sheet notes that under the agreement, "African businesses, traders and consumers will no longer pay tariffs on a large variety of goods that they trade between African countries" and "[t]raders constrained by non-tariff barriers, including overly burdensome customs procedures or excessive paperwork, will have a mechanism through which to seek the removal of such burdens," among other commitments. In terms of size, the AfCFTA "will cover a market of 1.2 billion people and a gross domestic product (GDP) of $2.5 trillion, across all 55 member States of the African Union," forming the largest free trade area since the creation of the World Trade Organization. The AfCFTA will come into force when it has been ratified by twenty-two signatories.

4. Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communications No. 2270/2013 and No. 2851/2016 (UN Human Rights Committee – April 4, 2018)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f122%2fD%2f2270%2f2013&Lang=en>

On April 4, 2018, the UN Human Rights Committee, the body that monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), released a report finding that Maldives violated ex-President Mohamed Nasheed's right to a fair trial and concluding that the state must let stand for office. The UN noted that "UN human rights experts found that the judicial proceedings in which Mr. Nasheed was convicted were based on vague legislation, contained serious flaws and violated his right to a fair trial under the [ICCPR]" and that the restrictions placed on his right to stand for office violated Article 25 of the ICCPR (right to political participation). The Committee directed Maldives to quash the conviction, reconsider the charges against him in light of this report, and conduct a new trial if that review deems it fit. The Committee Vice-Chair also noted, "As a party to the ICCPR, Maldives is obliged to make full reparation to individuals whose rights have been violated. We have asked Maldives to inform us within 180 days about the measures they have taken to implement our decision."

5. Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya (Office of the High Commissioner for Human Rights and the UN Support Mission in Libya – April 10, 2018)

<http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf>

On April 10, 2018, the Office of the High Commissioner for Human Rights and the UN Support Mission in Libya (UNSMIL) published a report titled, "Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya," detailing the extent of arbitrary and unlawful detention taking place in Libya. The report states that "[a]rmed groups across Libya, including those affiliated with the State, hold thousands of men, women and children in prolonged arbitrary and unlawful detention, and subject them to torture and other human rights violations and abuses." Since hostilities broke out again in Libya in 2014, armed groups have detained suspected opponents, critics, activists, medical professionals, journalists, and politicians, while others are held due to tribal or family links, as well as political affiliations. As of "October 2017, some 6,500 people were estimated to be held in official prisons overseen by the Judicial Police of the Ministry of Justice, while thousands more are held in a multitude of other facilities nominally under the Ministries of Interior or Defence or run directly by armed groups." The report "summarizes the main human rights concerns regarding detention in Libya since the signing of the Libyan Political Agreement (LPA) on 17 December 2015 until 1 January 2018."

https://doi.org/10.1017/ilm.2018.26 Published online by Cambridge University Press