

Protecting Human Rights and Advancing the Rule of Law



International Commission of Jurists

Annual Report and Audited Financial Statement

2008



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

"dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"

The ICJ Vision and Mission

The ICJ has a vision of the world in which, through the rule of law, a just, democratic and peaceful society can be achieved. A vision based on the rule of law, not as a static set of rules, but as a dynamic concept that protects against arbitrary power, expands freedoms and embraces justice. A rule of law under which everyone is entitled to, without discrimination, their civil, cultural, economic, political and social rights.

Our vision is one in which everyone in society is equal before the law and protected from human rights violations by the law and in practice; in which those in power are held accountable and brought to justice if they violate human rights; where victims have access to remedies and justice and those who come before the courts receive a fair trial and never face the death penalty.

The ICJ's vision requires judges, lawyers and prosecutors to be truly independent, enlightened and courageous, and free to carry out their professional duties. It demands that international law, especially human rights and humanitarian law, should be a powerful tool for protection and advocacy and should be implemented through effective national and international procedures.

The ICJ Network of judges and lawyers is united by a belief that international law and the rule of law are powerful instruments to further the enjoyment of human rights by everyone. The "rule of law" broadly reflects the idea that law must be just (i.e. in accordance with human rights norms) and able to protect people from the arbitrary exercise of power. The "rule of law" also implies that the State must develop effective executive, judicial and legislative institutions as checks and balances, to respect, protect and fulfil the human rights of all people and to hold the State accountable when it violates rights.

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The ICJ would also like to thank the ICJ Commissioners, Honorary Members and individual supporters for the time they generously provided on a pro bono basis in 2008.

In particular, the ICJ thanks: ICJ President Mary Robinson and former President, Justice Arthur Chaskalson; ICJ Commissioners Ghanim Alnajjar, Justice Hisham El Bastawisi, Justice Solomy Balungi Bossa, Dr Rajeev Dhavan, Prof. Louise Doswald-Beck, Justice Unity Dow, Justice John Dowd, Roberto Garretón, Prof. Robert Goldman, Gladys Li, Kathurima M'Inoti, Justice Sanji Monageng, Prof. Vitit Muntarhorn, Dr Pedro Nikken, Prof U. Oji Umzurike, Justice José Antonio Martín Pallín, Duarte Lobo de Pina, Justice Michèle Rivet, Raji Sourani, Justice Raul Zaffaroni; ICJ Honorary Members Professor Georges Abi-Saab, Dato' Param Cumaraswamy, Justice Michael J. Kirby; as well as, Maggie Beirne, Marco Antonio Canteo, Richard Carver, Alfredo Chirino, Andrew Clapham, Carlos Ayala Corao, Claes Cronstedt, John Dugard, Alberto León Gómez-Zuluaga, Deena Hurtwitz, Hina Jilani, Hugo Lorenzo, Howard Mann, Florentín Meléndez, Errol Mendes, Prof. Errol Mendes, Eduardo Cifuentes Muñoz, Claudia Paz, Usha Ramanathan, Jaime Araújo Rentería, Thomas Roerdam, Andrés Sánchez, Alejandro Salinas, Ralph G. Steinhardt, Stefan Trechsel, Lucy Turner, Cees Van Dam.

The ICJ would also like to thank the following organisations, institutions, sections and affiliates:

Accountability Watch Committee, Advocacy Forum, Al Haq, Amnesty International, Andean Commission of Jurists, Arab Center for the Independence of the Judiciary and Legal Profession, Asian Institute for Human Rights, Association for Prevention of Torture, Blue Diamond Society, Business and Human Rights Resource Centre, Center for Victims of Conflict of Bardiya, Centre for Policy Alternatives, Coalition for an effective African Court on Human and Peoples' Rights, Colombian Commission of Jurists, Cross Cultural Foundation, Denmark Section of the ICJ, East African Law Society, Frontline, Human Rights and Democracy Forum, Human Rights Watch, Instituto de Estudios Legales y Sociales del Uruguay, Impunity Task Force, Informal Sector Service Center, International Center for Transitional Justice, International Federation of Human Rights, International Gay and Lesbian Human Rights Commission, JUSTICE, Kenya Section of ICJ, Moroccan Organisation for human rights, Muslim Attorney Centre, Nadesan Centre, National Human Right Commission, Nepal National Judicial Academy, Nepal Bar Association, NJCM, Office of the UN High Commissioner for Human Rights, International Protection Centre, Palestinian Centre for Human Rights, Poland Section of the ICJ, SADC Lawyers Association, SOAS International Human Rights Clinic, Social Justice Committee of Lamjung, South African Judges Forum, Working Group on Justice for Peace, Zimbabwe Lawyers for Human Rights.

The ICJ would like to thank the interns who contributed to the work of the ICJ in 2008: David Brown, Sopit Cheevapanich, Neeltje Eekhout, Anna Enkvist, Anthony Guerbidjian, Divina Naidu, Marlena Ong, Pariksha Rana, Ida Soeholm, Mathias Vermeulen, Kanyarat Wiphatawat, Belma Yasharova.

Introductory Note

In many ways 2008 was a challenging year for the ICJ. The economic climate has taken a toll on the financial standing of the ICJ. Yet a number of important initiatives have come to their fruitful conclusion and others were set in motion.

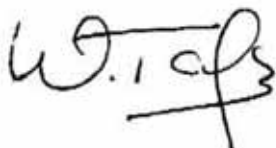
The Global Security and Rule of Law Programme completed a three-year long investigation by the Eminent Jurist Panel into the impact of terrorism and counter-terrorism on human rights and the rule of law. The resulting report, *Assessing Damage, Urging Action*, illustrates the consistent pattern of erosion of international legal principles of human rights that had, until recently, been taken for granted. Another initiative started in 2006, the Expert Panel on Corporate Complicity, concluded with the publication of the ICJ Report on *Corporate Complicity and Legal Accountability*. The report explores the legal responsibility of companies when complicit in gross human rights abuses and has been well received.

The ICJ concluded a publication on the justiciability of economic, social and cultural rights, which will help human rights defenders to use legal arguments for the enforcement of economic, social and cultural rights. This important report was followed up with the drafting of the Legal Commentary to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The ICJ made strides in further establishment of Regional Programmes and offices: the Africa Regional Programme, launched in Geneva at the beginning of 2008, set up offices in South Africa in September. The Asia-Pacific Regional Programme consolidated its work, particularly in Thailand and Nepal, while in Central America the Regional office deepened engagement in Guatemala and Honduras particularly. The Europe Regional Programme's work kept pressing issues related to renditions and secret detentions on national and international political agendas, and influenced national and international legal and policy debates on counter-terrorism and human rights issues, and the Middle East and North Africa Regional Programme followed on missions to the Occupied Palestinian Territory and Israel.

In December, the ICJ Congress came together, on the eve of the 60th anniversary of the Universal Declaration of Human Rights, to discuss the role of the judiciary in times of crises. The Congress brought together the Commissioners, the ICJ sections and affiliates. During the Congress, the Commission called for the re-establishment of the Centre for the Independence of Judges and Lawyers, increasing efforts to defend the independence of the judiciary. Without a truly independent and accountable judiciary, there cannot be sustainable growth; without rule of law that advances human rights, there cannot be long lasting justice and peace.

The values that inspire the work of the ICJ over the past 56 years have only become more relevant and remain worth defending. This report provides an overview of our activities in 2008, and a preview of activities underway in 2009.



Wilder Tayler
Acting Secretary-General

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INTERNATIONAL LAW AND PROTECTION PROGRAMME

The International Law and Protection Programme focuses on development and protection of international law, with emphasis on human rights law. The ICJ strategy in this area includes engaging in standard setting, strategic litigation, and advocacy through five thematic project areas: Global Security and Rule of Law; International Economic Relations; Economic, Social and Cultural Rights; Sexual Orientation and Gender Identity; and the UN Human Rights Council and Treaty Bodies.

GLOBAL SECURITY AND RULE OF LAW

The Project on Global Security and Rule of Law aims to ensure that the rule of law and international human rights standards are respected in the fight against terrorism. It addresses one of the most serious challenges to the human rights framework as a result of the security environment post 9/11. It seeks to prevent, or reverse through legal advocacy the negative impact on the rule of law and human rights of counter-terrorism laws, policies and practices proposed or adopted at national, regional and international levels and it seeks to provide guidance on international human rights law in counter-terrorism and to engage policy makers in a debate on the protection of human rights in countering terrorism.

In the course of 2008, the Project on Global Security completed the work on a three-year investigation into the global impact of terrorism and counter-terrorism on human rights and the rule of law. The final report of the Eminent Jurists Panel brings together the learning from sixteen public hearings covering more than thirty countries. Among the most comprehensive surveys undertaken on counter-terrorism and human rights, the report provides guidance on key legal and policy issues in relation to countering terrorism and will serve as the substantive basis for forthcoming work in this area.

ACHIEVEMENTS 2008

The Project on Global Security also made high-level strategic legal interventions in a number of international and national settings, often in cooperation with the ICJ's Regional Programmes, and stepped up the publication of its e-bulletin on terrorism and human rights. The publication of the *ICJ Legal Commentary to the Berlin Declaration on Upholding Human Rights and the Rule of Law while Countering Terrorism* will serve to provide clarity on the legal standards applicable in counter-terrorism. In 2008, the ICJ also made substantial contributions to the work of the UN Special Rapporteur on the Protection and Promotion of Human Rights While Countering Terrorism.

Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights

In the course of 2008, the ICJ completed the final report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights. The report *Assessing Damage, Urging Action* (the *EJP Report*) is based on sixteen public hearings that have involved the legal community, policy and lawmakers, human rights organisations and the ICJ network worldwide. It assesses the impact of counter-terrorism measures on human rights; draws extensively on lessons from the past from situations that have experienced cycles of terrorism and counterterrorism; examines the US 'war on terror' as a legal paradigm and the corrosive effects that have resulted from it; explores the increased role of the intelligence and intelligence cooperation and the resulting gap of accountability and the

challenge posed by preventive mechanisms based on secret intelligence; and provides guidance on a criminal justice response to terrorism. Summaries of the panel's hearings complement the final report. Thus the *EJP Report* was prepared for an auspicious release and launch in early 2009.

Monitoring and legal intervention

The Project on Global Security continued to provide information on developments on counterterrorism and human rights to the legal community, government officials, and its network through the publication of the ICJ "*E-Bulletin on Counter-Terrorism and Human Rights*" (*E-Bulletin*). In the course of 2008 the ICJ expanded the periodicity of this publication from bi-monthly to monthly. The *E-Bulletin* continues to be an important tool and is increasingly sought by public officials, international organizations, human rights NGOs, national human rights institutions, judiciaries and legal and academic communities. The ICJ now also provides a version of the *E-Bulletin* focusing on European developments, as a regular component of the *European Human Rights Law Review*.

Legal interventions

The Project on Global Security produced a number of high-level strategic interventions in 2008. In April the ICJ submitted an *amicus curiae* brief jointly with Human Rights Watch, Amnesty International, the International Federation of Human Rights Leagues-FIDH, and the Center for Constitutional Rights, before the US Court of Appeal for the third circuit in *Sameh Khouzam v. Michael Chertoff, Secretary, Department of Homeland Security*. The brief sets out the legal obligations surrounding the principle of *non-refoulement* and argues that diplomatic assurances from the Egyptian government do not mitigate against the risk of torture or ill treatment. In the case, the court followed the argument provided in the brief and suspended the deportation of the applicant. In July the ICJ's staff working on both Global Security and International Economic Relations filed a joint *amicus curiae* brief with REDRESS before United

States Court of Appeal for the Ninth Circuit in *Binyam Mohamed and others v. Jeppesen Dataplan, Inc.* The brief argues that the civil claims for compensation against the renditions of five individuals by the CIA with the support and assistance of private company Jeppesen Dataplan, Inc. should not be covered and effectively prevented by the invocation of the doctrine of state secrets, as originally held by the US District Court for the District of Northern California. The case addresses an issue of strategic importance as states increasingly rely on national doctrines, such as state secrecy, to prevent accountability for serious human rights violations. Additional legal interventions were submitted through regional programmes to the UN Human Rights Council Universal Periodic Review and to UN human rights treaty bodies, substantially based on an analysis of the information received during hearings of the Eminent Jurists Panel.

International standards and mechanisms

The ICJ provided significant input, both on legal issues and factual information, to the work of the UN Special Rapporteur on the protection and Promotion of Human Rights While Countering Terrorism. The ICJ also continued ongoing interventions on counterterrorism and human rights at the UN Human Rights Council through parallel events, statements and submissions calling on the Council to take a more active stand on the issue. In the course of 2008, the Project on Global Security also advocated for the protection of human rights in countering terrorism through presentations at the European Union, the Council of Europe, and the Inter-Parliamentary Union. The publication and dissemination of the *Legal Commentary on the ICJ Berlin Declaration on Upholding Human Rights while Countering Terrorism* provides lawyers, civil society activists, and governmental officials with clear and useful guidance and references on international human rights law and counter-terrorism.

PLANS FOR 2009

In 2009, the ICJ will build its advocacy on the report of the *EJP Report*. The Project on Global Security will seek to address challenges to accountability identified in the report, including the lack of intelligence accountability. Provided funding, the Project will broaden its scope beyond terrorism, counter-terrorism and human rights and address the emergence of *de jure* or *de facto* emergency situations and the militarization of justice. In 2009, the ICJ will also conduct an evaluation of the *E-Bulletin*, and will seek to employ it as a tool for advocating on behalf of the recommendations of the Eminent Jurists Panel Report.

ACKNOWLEDGMENTS

The ICJ Project on Global Security and Rule of Law recognizes the work of Commissioners, network members, affiliates, interns, and other partners in the field for support in activities undertaken as part of the Project during 2008. Without the partner organisations in the ICJ network, many of these activities would not have been possible. Equally, ICJ Sections and Affiliates, ICJ Commissioners and other members of the legal community have played a central role in the dissemination and promotion of the *EJP Report*, and will continue in advocacy initiatives in the coming year.

The Project on Global Security and Rule of Law recognizes in particular the contribution of those participating in the Eminent Jurists Panel. This includes the chair of the panel, Justice Arthur Chaskalson, and the new president of the ICJ, Mary Robinson. The other panel members were Justice Raul Zaffaroni, Professor Robert Goldman, Professor Vitit Muntarbhorn (all Commissioners) and Professor Georges Abi-Saab (Honorary Member), Professor Stefan Trechsel (member of the Swiss Section of the ICJ) and Ms Hina Jilani (Vice President of the Pakistan Human Rights Commission, an affiliate of the ICJ). In addition, many of the sections and affiliates that participated in

hearings of the ICJ have greatly contributed to the *EJP Report* and contributed to related work, such as by support on briefs and legal submissions or by providing input or information to the publication of the *E-Bulletin*. The ICJ wishes to thank Richard Carver and Maggie Beirne for coordinating and the latter for the editing of the report. Thanks also to our interns Mathias Vermeulen, Ida Soeholm, Anthony Guerbidjian and Anna Enkvist who provided research and support to the Project on Global Security in 2008.

INTERNATIONAL ECONOMIC RELATIONS

The International Commission of Jurists' work in the area of International Economic Relations (IER) began in 2006 with the aim of contributing to the enhancement of the rule of law and protection of human rights in the context of global economic integration and the emergence of global economic non-state actors. The main objectives of IER have been to engage in advocacy with governments to consolidate and develop legal principles on the human rights responsibilities of businesses and to support an inter-governmental process toward that end. The IER project has also undertaken activities to enhance the legal accountability of transnational corporations for human rights violations by supporting victims' access to justice and contributing legal expertise to judicial and quasi-judicial processes. The main achievements during 2008 have been the launch of the report of the ICJ Expert Legal Panel, *Corporate Complicity and Legal Accountability* (the *Complicity Report*), and the commencement of a follow up project that focuses on access to justice mechanisms. Key actors in the area of business and human rights, including many in the legal community, have welcomed the release of the *Complicity Report*.

ACHIEVEMENTS 2008

During 2008 the ICJ's objectives in IER included: a) achieving the widest possible acceptance of the need to pursue internationally agreed standards addressing business activities and their impact on human rights; b) enabling greater access to, and use of judicial and non-judicial bodies by victims of abuse as ways to secure changes in corporate behaviour and redress for victims; c) identifying and developing the scope of human rights responsibilities and accountability of businesses.

The main achievement during 2008 was the publication of the *Complicity Report (Corporate Complicity and Legal Accountability; Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes – Volumes 1-3)* in September, followed by a series of presentations, advocacy and dissemination activities among business people, the diplomatic community, civil society groups and lawyers/jurists. The report was welcomed by many working for enhanced accountability of businesses, and drew attention from leading international media.

The *Complicity Report* was presented and discussed in a series of events coordinated with Panel Members and supportive organisations including its formal launch at two public events: one in London co-organised by the ICJ, JUSTICE (the British section of the ICJ), Doughty Street Chambers and the Business and Human Rights Resource Centre; and a second in Geneva with the presence of ICJ Commissioners and ICJ Network members. As a follow up, a number of smaller meetings and events targeting business people, jurists and lawyers, and corporate social responsibility experts have been held.

A second main achievement was the targeted advocacy and provision of legal expertise to global and regional bodies on the issue of corporate complicity in human rights violations. This work was especially directed

toward the United Nations' Human Rights Council for the development of international standards applicable to the activities of business and transnational corporations that have an impact on the enjoyment of human rights. A parallel event, organized at the Human Rights Council's 8th session with the Friedrich Ebert Stiftung that included trade unions and human rights organisations, initiated a dialogue between the labour rights and human rights communities on the issue of corporate accountability. During the same HRC session, the ICJ and other NGOs organised a second side event, in which victims of human rights abuse – involving companies from various countries – discussed their cases and experiences.

The ICJ also undertook action in pursuit of enabling greater access to and use of judicial and non-judicial bodies by victims of abuse. These included a partnership with Redress International, to file an *amicus curiae* brief to an Appeals court in California in support of the plaintiffs in *Mohammed et al v. Jeppesen Dataplan, Inc.* case (mentioned earlier in this report). The brief was concerned with involvement of a company in secret renditions carried out by the CIA.

The ICJ worked with national affiliates and independent grass-roots organisations to advise on legal strategies in new and ongoing cases. The organization extended support to both the Palestinian Centre for Human Rights, and Al-Haq (an ICJ affiliate in Palestine), in preparation of a case against a corporation alleged to have aided and abetted in actions violating international humanitarian law in the Occupied Palestinian Territory. The ICJ also provided support to the plaintiffs in a case in Ecuador, where the members of indigenous communities have accused a company for alleged harm to the environment and the health of the local population.

Through attendance and participation in events related to corporate social responsibility and provision of legal expertise to international human rights bodies and mechanisms, the ICJ has

promoted further examination, policy formation, and elaboration of legal standards related to businesses. These activities included participation in a seminar organized by the International Francophone Organization and the Francophone Association of National Human Rights Commissions in Morocco, as well as submission of advice in respect of the draft *Guidelines for Pharmaceutical Companies on Access to Medicines* of the UN Special Rapporteur on the right to the highest attainable standard of health. The IER staff participated in discussions held by the UN Working Group on Mercenaries. The ICJ also helped partner organisations to include information about States' implementation of their duties to protect against activities of transnational corporations harmful to human rights into their submissions for the Universal Periodic Review of Nigeria.

“In 2008 after two years work the International Commission of Jurists produced a three volume report outlining how corporations could be held liable under both criminal and civil law, not only for human rights and environmental abuses that they commit directly but also for those in which they can be seen to be complicit. This is an important step forward in achieving redress for victims of corporate abuse and convincing companies that they need to seriously consider their impacts and ameliorate them where they are negative.”

European Coalition for Corporate Justice, ECCJ's contribution for the review meeting of the EU multistakeholder forum on CSR, Brussels, 10th February 2009

PLANS FOR 2009

During 2009 the ICJ will carry out the implementation of its new initiative to enhance access to justice for victims of corporate abuse. This comprises a series of country mappings/studies across regions and countries to be complemented by an overall report that will identify trends and obstacles

as well as provide suggestions for legal and justice reform in this area. As part of the project, and in combination with sustained effort to disseminate and advocate the contents of the *Complicity Report*, the ICJ will hold workshops in countries in each region of the world to discuss and gather country-specific information on access to justice challenges and opportunities. Another event to which the ICJ will devote special attention is the two-day consultation to be held in the framework of the Human Rights Council in October 2009. The ICJ will also continue its work and engagement within the UN Human Rights Council and its subsidiary bodies and mechanisms that focus on corporate human rights responsibilities in order to promote increased and broad participation by the victims and affected communities as well as other stakeholders in the process. The ICJ will also continue to address the lack of effective accountability and regulation in relation to private military and security companies.

ACKNOWLEDGMENTS

The Project on International Economic Relations is pleased to recognize support from Professor Deena Hurtwitz, coordinator of the Virginia Law School Legal Clinic, for the preparation of our *amicus curiae* briefs, and from the Business and Human Rights Resource Centre, for the organization of the London launch of the report on corporate complicity. Special recognition is due to the legal experts members of the ICJ Panel on Corporate Complicity: Andrew Clapham, Claes Cronstedt, Louise Doswald-Beck, John Dugard, Alberto León Gómez-Zuluaga, Howard Mann, Usha Ramanathan and Ralph G. Steinhardt. Professor Andrew Clapham and Mr Claes Cronstedt made themselves generously available to do presentations of the report in various settings, and Professors Errol Mendes and Cees Van Dam, Advisors to the Panel, now serve as advisors to IER. The ICJ also recognizes the assistance of Marlena Ong and Divina Naidu who during the year supported IER Project in their work as interns.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The ICJ has had as a long-standing and core objective to give effect to the now well-established principle that economic, social and cultural rights are an integral part of international human rights law, interdependent with and indivisible from civil and political rights. Through the work of the ICJ Project on Economic, Social and Cultural Rights (ESCR), the ICJ has focused on demonstrating the “justiciability” of these rights. The main aim of the ICJ in this area has been for victims whose economic, social and cultural rights have been violated to have access to justice, including through judicial and non-judicial mechanisms, in order to seek and to obtain remedies. An important milestone was achieved by the recent adoption by the UN General Assembly at the end of 2008 of the Optional Protocol to the ICESCR (the International Covenant on Economic, Social and Cultural rights). The ICJ has played an important role in this development by co-funding the coalition that worked for the elaboration of an Optional Protocol beginning in 2002 and by serving actively on its Steering Committee. Throughout the process thereafter, including throughout the five-year deliberations of the Intergovernmental Working Group mandated to elaborate the Optional Protocol, it provided legal advice and analysis; the ICJ contribution has been singled out by many of the relevant actors as being substantial and compelling. The ICJ project on ESCR will continue this work by translating and further disseminating a legal commentary to the text of the Optional Protocol.

ACHIEVEMENTS 2008

The objectives of the ICJ’s Project on ESCR have been to: increasingly enable victims to seek and achieve remedies at the international level for violations of economic, social and cultural rights; ensure the implementation of economic, social and cultural rights standards in domestic law;

expand, through test cases and impact litigation, the availability of remedies for violations of economic, social and cultural rights; and increase acceptance among judges, lawyers and governmental policy-makers of the justiciability of economic, social and cultural rights. During 2008 ESCR has worked in three primary areas: global advocacy for the Optional Protocol; research toward publication of the report on justiciability; and critical contributions to strategic litigation.

Global advocacy

The ICJ was a leading NGO in the Steering Committee of the NGO coalition for an OP-ICESCR, which will allow for individual complaints regarding the violation of the rights enshrined in the ICESCR. Among the achievements in this respect was success in ensuring that all of the substantive Covenant rights would be the subject of complaints, rather than allowing for the possibility of only a select number of rights. The ICJ was engaged in advocacy with select states, participated extensively in all the sessions of the Working Group, offered advice about the content of the drafts and the requirements for an effective instrument, and produced advocacy materials. After five years of deliberations by the intergovernmental, Working Group, the UN General Assembly adopted the Optional Protocol in its 2008 session.

The ICJ also completed a legal commentary to the Optional Protocol, which provides an important, and timely legal tool with an explanation of the justification and general characteristics of the OP-ICESCR, followed by the text of the instrument and an article-by-article comment. The commentary constitutes the first comprehensive legal analysis of this new instrument.

It clarifies the rationale of each article on the basis of the discussions that took place during the Working Group, and will assist in the advocacy campaign for ratification of the Protocol. It will also provide valuable assistance to governments, judges, lawyers,

civil society and victims on the implementation the Optional Protocol and its utilization to seek a remedy. The ICJ Commentary to the OP-ICESCR will officially be launched during the ceremony of opening the OP-ICESCR for signature and ratification to in late 2009.

Justiciability Report

In 2008 the ICJ published a global study on comparative experiences of justiciability of ESC rights, entitled *Courts and the Legal Enforcement of Economic, Social and Cultural Rights; Comparative Experiences of Justiciability* (the *Justiciability Report*). The *Justiciability Report* offers practitioners, NGOs, judges, governments and other audiences a panoramic overview and comprehensive examination documenting and evaluating the adjudication of ESC rights before domestic, regional and international courts. Presentations of the book took place in the Netherlands and Belgium. The ESCR Project staff has also published articles to clarify the content of ESC rights and highlight developments in their protection.

Strategic litigation

The ICJ also promoted and supported litigation in ESC rights before various domestic, regional and international fora, through submission of *amicus curiae* briefs and provision of legal support to groups and individuals taking cases to courts. An *amicus* brief was filed before the Mexican Supreme Court, jointly with the Center for Reproductive Rights, regarding the unconditional criminalization of abortion and its adverse impact on the rights to life and health and personal integrity. The Supreme Court endorsed most of the arguments on international human rights law put forward by the brief, and took a decision informed in part by suggestions of the ICJ and CRR.

The Project on ESCR has also intervened by providing legal input on conceptual analyses as well as standard-setting procedures before UN and regional committees, agencies and

organs, special rapporteurs, constitutional-making processes, and NGO and civil society initiatives. In 2008, it offered input to the Committee on Economic, Social and Cultural Rights on the draft General Comment on non-discrimination and ESC rights, and to the reports of the Special Rapporteurs on the Right to Housing and on the Right to Food.

Finally, actions undertaken by the Project on Economic, Social and Cultural Rights have included academic and training activities involving judges, public prosecutors, public servants, NGOs, lawyers and law students. In 2008, the Legal Officer on ESC rights participated in academic and training events on ESC rights in the Belgium, Brazil, Chile, Colombia, Costa Rica, India, Italy, Mexico, Nepal, the Netherlands, Portugal and Spain.

PLANS FOR 2009

At the beginning of 2009 the Project on ESCR is being restructured due to staff changes. Activities in 2009 include: coordinated actions with the NGO Coalition partners to step up advocacy work to ensure the ratification, and implementation of the Optional Protocol; publication of the ICJ *Commentary on the Optional Protocol for ESCR*; further dissemination of the ICJ Report *Courts and the Legal Enforcement of Economic, Social and Cultural Rights; Comparative Experiences in Justiciability*; and translation of the *Commentary* into French and English (to be released in 2009-2010). In addition, the ICJ will initiate and support strategic interventions and advocacy work at different levels with the aim of strengthening the content of economic, social and cultural rights, expanding access to remedies, and developing jurisprudence that makes effective the justiciability of economic, social and cultural rights.

SEXUAL ORIENTATION AND GENDER IDENTITY

The ICJ Project on Sexual Orientation and Gender Identity (SOGI) rights was established in 2006 based on the understanding that discriminatory legislation, policies, and practices continue to allow for and leave un-redressed human rights violations on the grounds of sexual orientation and gender identity. Steps to address such violations are hampered by a lack of clarity on the nature and the scope of States' obligations under international law regarding the prohibition against discrimination.

The objective of the ICJ's SOGI project has been to develop and consolidate rule of law and human rights protections against discrimination based on sexual orientation and gender identity rights, and to ensure that no person is denied enjoyment of internationally recognized human rights as a result of their sexual orientation. In 2008 several significant steps were achieved toward this objective. Specifically, the ICJ has aimed to provide new legal tools to develop this area of law, to increase legal protection for victims of crimes perpetrated on grounds of real or perceived sexual orientation or gender identity and to further development of standards providing better recognition of their human rights.

Among the most prominent achievements of the ICJ's SOGI project during 2008 was the completion of the *ICJ Legal Practitioners Guide N°4: Sexual Orientation and Gender Identity in International Human Rights Law a Practitioners' Guide* (the *Practitioners' Guide*). This Practitioners Guide, a product of two years of research informed by practitioners' consultations in Asia, Europe, North America and Latin America, explains how international law and standards can and should be used to provide victims of human rights violations on the grounds of sexual orientation or gender identity essential legal protection.

ACHIEVEMENTS 2008

The guide, currently available in English on the ICJ website (and soon available in French and Spanish), contains elements of important primary jurisprudence from regional courts and tribunals. The guide also examines the question of human rights in relation to sexual orientation and gender identity in the context of the UN and regional human rights systems, and contains an exposition of some comparative public law perspectives, particularly in the area of civil and political rights. The *Practitioners' Guide* has formed the core of the ICJ's work in this area, and will provide the basis for increased advocacy and important legal interventions in this area.

In 2008 the ICJ continued efforts promoting the Yogyakarta Principles, particularly by disseminating the Yogyakarta Principles, along with the ICJ compilations on jurisprudence, legislative and doctrinal references on sexual orientation and gender identity in human rights law in the UN human rights system, the Inter-American Court of Human Rights, and the Council of Europe / European Union, to the ICJ Network, national courts, bar associations, academies and various jurists. This work was welcomed by important stakeholders and leaders, including a former UN Secretary General, the Presidents of the International Criminal Tribunals for Former Yugoslavia (ICTY) and Rwanda (ICTR), numerous courts in Latin America, Bar Associations in Asia, the Caribbean Community (Caricom), and others throughout the ICJ network world-wide. The ICJ also pursued a focused programme of briefings on the Yogyakarta Principles to the UN human rights treaty bodies in Geneva, including the Committee on the Elimination of Discrimination against Women, the Committee on Migrant Workers, Committee Against Torture and the Committee on Economic, Social and Cultural Rights. Promotion of the Yogyakarta Principles also included presentations at academic and advocacy

forums, including a conference at the University of the West Indies (UWI), Barbados in February, and a joint ICJ–University of Hong Kong Faculty of Law legal forum in April.

In 2008 the ICJ continued work to assist other organisations in their applications for accreditation votes by the UN ECOSOC subsidiary NGO Committee, enabling greater level of contact at the UN level. This included provision of assistance to the Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit – COC Nederland, which subsequently received accreditation. In this project, the work of all organizations that lobbied missions was mutually reinforcing.

In May, the ICJ contribution to the case of *Major Margaret Witt v US Department of the Air Force* proved effective. The ICJ had submitted an *amicus curiae* brief before the US Court of Appeals for the Ninth Circuit in October 2006. Major Witt was suspended from duty as an Air Force reservist nurse on account of her sexual relationship with a civilian woman. She alleged that the “Don’t Ask, Don’t Tell” policy of the US military violated substantive due process, the Equal Protection Clause, and procedural due process. A district court had dismissed her suit. In this judgment, the US Court of Appeals for the 9th Circuit substantially reversed the District Court’s decision. The ICJ has remained seized of this matter and may continue further legal interventions as necessary.

The ICJ participation in the 43rd Ordinary Session of the African Commission on Human and Peoples’ Rights in May added value to efforts toward awareness and respect of SOGI rights. ICJ attendance has included lobbying through engagement in advocacy and distribution of ICJ SOGI material. Strategic alliances have been strengthened with African NGOs and ICJ Commissioners from Africa around this issue, as a result of working closely with International Gay and Lesbian Human Rights Commission (IGLHRC). Alliances are developing with women’s rights

organizations and the Rapporteurs on Women and Human Rights defenders in the African system. The ICJ and IGLHRC have also shepherded the commissioning of a paper on SOGI in the African human rights system, for the closed-door consideration of the Commissioners.

PLANS FOR 2009

In 2009 the ICJ’s project on Sexual Orientation and Gender Identity will build on its recent achievements, such as its contribution to the adoption of the Yogyakarta Principles, the updated compilations of related jurisprudence, and its successes in strategic litigations. It is important to note that new legal staff is currently being recruited for work in this area. Activities are generally expected to focus on promotion and dissemination of the *Practitioners’ Guide*; strategic litigation efforts directed against discriminatory laws and practices; activities to extend SOGI rights protection through the legislative processes and through inclusion of SOGI rights in the jurisprudence and general comments of UN treaty bodies; and capacity-building and monitoring efforts in the United Nations treaty bodies, special procedures, and OHCHR pursuant to developments in SOGI rights law. During 2009 the ICJ also intends to undertake a study of discrimination on grounds of sexual orientation and gender identity in relation to respect, protection and fulfilment of economic, social, and cultural rights.

ACKNOWLEDGMENTS

The ICJ SOGI project recognizes the work of Commissioners, network members, affiliates, interns, and other partners in the field for support in activities undertaken by the Project during 2008. This includes contributions by ICJ Commissioners Michael Kirby J, Professor Vitit Muntabhorn and Ms Gladys Li. The project has partnered with International Gay and Lesbian Human Rights Commission (IGLHRC). The ICJ is grateful for the contribution of David Brown, who during the year supported ICJ work as an intern.

THE UNITED NATIONS HUMAN RIGHTS SYSTEM

The ICJ has long played an important role within the non-governmental community and cooperated with Governments to enhance the work of the UN human rights system, including the Human Rights Council (HRC or ‘the Council’). A key objective, aimed at the new UN Human Rights Council, has been to safeguard the independence and improve the effectiveness of its procedures, and ensure timely responses to compelling human rights developments. The ICJ has advocated for the rule of law and administration of justice principles to be indispensable elements of the Council’s Universal Periodic Review, and has successfully worked with other civil society actors to preserve a critical space for NGOs to address urgent country situations, including when commenting on the outcomes of the UPR mechanism.

Another objective is to support and strengthen the expert bodies monitoring and supervising the implementation of human rights treaties – the UN treaty bodies. The ICJ has assessed the implementation of treaty obligations in individual State parties, commented on interpretation of relevant treaty obligations and advocated for the use of individual communications and follow-up to the views and recommendations of the treaty bodies. The ICJ also proposed measures to render the treaty body system more effective including, where appropriate, the adoption of more coherent and integrated methods of work by individual treaty bodies.

ACHIEVEMENTS 2008

I. United Nations Human Rights Council – Achievements and Activities

Thematic initiatives

ICJ activities relating to the Council in 2008 focused on general human rights advocacy, with a particular emphasis on accountability for human rights violations in both thematic

and country-specific contexts. Respect for international law, including states’ obligations to realize the full range of universal human rights, and reaffirmation of rule of law principles and administration of justice, have been the pillars of ICJ’s interactions with the Council. Prominent thematic initiatives included a reaffirmation of the absolute prohibition of torture and ill treatment in the fight against terrorism, opposition to the termination or weakening of mandates of independent experts on torture, extrajudicial, summary or arbitrary executions, and promotion of independence of judges and lawyers. In seeking a human rights response to the global food crisis, the ICJ urged States to fulfil a core obligation to take action to alleviate consequences of natural and other disasters that threaten the enjoyment of human rights, including by mitigating hunger.

The ICJ’s advocacy in the United Nations Human Rights Council is aimed at providing responses to acute human rights situations. The Council’s primary focus in 2008 involved operationalising procedures established in June 2007. The Council exhibited a growing reluctance to respond decisively to major human rights crises. As the 60th anniversary of the Universal Declaration of Human Rights passed, the capacity of the Council to address the implementation of the standards in that seminal instrument has been hampered by political obstacles. The advocacy role of the ICJ has been critical in minimizing moves to erode the effectiveness of international human rights standards and protective mechanisms.

Country initiatives

ICJ advocated for rapid responses by the Council to address a number of urgent country situations. Even where the initiatives did not result in action by the Council, the ICJ’s advocacy prompted state delegations to speak out in the debates, including for the Council’s Special Procedures to respond to these crises. Some initiatives included:

Kenya, where the ICJ pressed the Council to address the situation of ethnically-motivated post-election violence; China, where the ICJ urged the Council to call upon China to disclose information on the March crackdown on peaceful protests in Tibet; in Zimbabwe, where the ICJ urged the Council to push for acceptance of human rights monitors during elections and to mandate an inquiry mission; in Myanmar, where a denial of humanitarian assistance by the Government seriously threatened people affected by the Cyclone Nargis; in Georgia, where the ICJ supported the establishment of an international fact-finding mission to investigate alleged violations during the military conflict with Russia, and encouraged deployment of cease-fire monitors; in Pakistan, where the ICJ requested the repeal of emergency measures, and the reinstatement of judges and lawyers; and in Sri Lanka, where the ICJ asked the Council to urge the Government to strengthen the justice system to ensure adequate investigation, prosecution, trial and conviction for human rights violations and breaches of international humanitarian law committed by both sides in the conflict.

The ICJ also participated actively in special sessions of the Council. In a special session on the situation in the Occupied Palestinian Territory (OPT), the Council was informed about the ICJ's December 2007 mission to Israel and the OPT, drawing attention to the devastating human rights impact of Israel's siege on Gaza. The ICJ urged Israel to respect human rights and called on both parties to respect international humanitarian law. The ICJ urged the Council to push for Israel to lift restrictions and allow delivery of essential humanitarian supplies and transit in and out of Gaza. In a special session on the situation in the Democratic Republic of the Congo (DRC) convened to address the worsening situation, the ICJ urged respect of international humanitarian law and human rights law by all parties to the conflict. The ICJ urged the Council to reverse a decision to terminate the mandate of an expert on the DRC.

Participation in the Universal Periodic Review Mechanism

The ICJ contributed significantly to the Council's Universal Periodic Review (UPR) mechanism with a number of submissions, and advocated for rule of law principles to be inherent to this process. The ICJ made submissions in this regard on Tunisia, Morocco, Poland, Pakistan, Sri Lanka, Uzbekistan and Colombia. The ICJ also worked with other civil society actors to preserve a critical space for NGOs to address urgent country situations and comment on the outcomes of the UPR mechanism, and the ICJ advocated for greater interaction with civil society actors. The ICJ also urged clear pronouncements by states under review regarding their acceptance of, or reservations to, the recommendations.

II. The UN Human Rights Treaty Monitoring Bodies – Achievements and Activities

Reform of the treaty bodies system remains critical, as the current system does not provide for equal implementation of human rights. Efforts to arrive at more coherent monitoring functions or an enhanced follow-up and preventive role of the system have only met with partial success. The ICJ has therefore conducted an independent study concerned with reform of the treaty bodies system, making recommendations and encouraging deeper reform.

ICJ activities relating to the UN Human Rights Treaty Bodies in 2008 included increased interaction with treaty monitoring bodies as well as strategies to enhance the overall effectiveness of the treaty body system. The ICJ discussed policy questions with various Committee members, including how the Committees might interact with the Universal Periodic Review in a mutually complementary way, or ways that the NGOs may assist the follow-up to Committees' country recommendations. It has worked to increase awareness among human rights defenders on how to use the individual

complaint procedure with the UN Human Rights Committee. The ICJ provided briefings to the Committee members during periodic reports to draw attention to human rights violations in specific countries. The Committees have appreciated the role of the ICJ and other NGOs in providing such information, and have frequently reflected the content of ICJ submissions in the concluding recommendations.

Shadow Reports to Periodic Reports by States parties

In July the ICJ made a submission on the 6th Periodic Report of the United Kingdom on the implementation of the International Covenant on Civil and Political Rights, in which it expressed concerns at a number of the UK's counter-terrorism measures including attempts to persuade the European Court of Human Rights (ECtHR) to reverse jurisprudence and weaken protections against refoulement (transferring a person to a country where the person faces a real risk of serious human rights violations). In relation to the 5th Periodic Report of Spain, the ICJ expressed concern that the law and procedure regarding *garde à vue* and *incommunicado* detention, and the limited safeguards the law provides for detainees, fail to protect against torture or cruel, inhuman or degrading treatment. With respect to the consideration of the 5th Periodic Report of Denmark, the ICJ suggested that the Government reconsider how best to ensure protection against hate speech, in accordance with Article 20 of the Covenant, while ensuring the freedom of expression that is also vital for the enjoyment of other human rights and freedoms.

Draft general comments

The ICJ made submissions on the draft General Comments by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR). In a submission on the draft General Comment No. 33 by the Human Rights Committee, on States parties' obligations in respect of the Optional Protocol (containing the individual complaint procedure), the ICJ suggested that

States parties must faithfully observe the effects of their consent to be bound by the Optional Protocol. With regard to the International Covenant on Economic, Social and Cultural Rights, the ICJ commented on its draft General Comment No. 20 on the rights to equality and non-discrimination as contained in Article 2(2) of the Covenant, which has helped to clarify the interpretation of these rights and harmonize their interpretation with those of other relevant human rights bodies.

Jurisprudence

The ICJ worked to raise awareness on how to use the complaint procedure in the Optional Protocol, through which the Committee determines whether the rights of the International Covenant on Civil and Political Rights have been violated. Trainings of human rights defenders focused on meeting the conditions of admissibility of communications, on the legal implications of the Committee's views, and on the remedial measures in pursuit of their implementation.

ICJ Proposals for the Reform of Treaty Bodies

The UN treaty bodies system has developed without coherence, and as a result, individual treaty bodies do not operate through uniform working methods. As there has not yet been systematic reform to establish a holistic and integral treaty body system, the ICJ undertook a study in this area in an attempt to contribute to such reform with some analysis of experiences of the system thus far. Central to the study is the question of how to ensure equal implementation and standardized monitoring of all human rights obligations. It suggests some key ways for the future treaty body system to become more effective, visible and accessible. This study has been received with interest by various stakeholders, both working from within and outside of the treaty bodies.

PLANS FOR 2009

UN Human Rights Council: In 2009 the ICJ's work at the Human Rights Council will continue to defend the Council's procedures, in order to safeguard the UN mandate to

address human rights situations anywhere in the world. The ICJ will cooperate with its national sections and affiliates to prepare submissions for the Universal Periodic Review and follow-up on the implementation of its outcome recommendations. The ICJ will press for the UN Human Rights Council and the Security Council to interact in tandem rather than as alternates in addressing gross human rights violations, especially in countries where peacekeeping forces are deployed. Thematically, the ICJ will work towards narrowing the gap between human rights standards and their implementation, towards greater use of UN procedures in a complementary manner to address violations in real time, and to support collective action between UN organs, bodies and agencies to bolster human rights, under the auspices of the UN High Commissioner for Human Rights. The ICJ will also reach out directly to the UN Security Council to systematically address human rights violations.

UN Human Rights Treaty Bodies System:

In 2009 work focusing on the treaty bodies system, the ICJ will advocate for timely action in response to violations of human rights in individual countries. The engagement with the UN treaty bodies will be further reinforced through enhanced monitoring of the Committees' conclusions and observations, with contributions from the ICJ's widespread network of sections and affiliated organisations. The ICJ will also urge continued reform of the treaty bodies system, calling for the implementation of measures such as joint consideration of State reports, establishing joint communication procedures, and better coordinating the system of country visits and preventive measures.

FAIR TRIAL AND RIGHT TO REMEDY

In 2008, through its Project on Fair Trial and Right to Remedy, the ICJ began to develop and renew its focus on trial observation as an important tool in human rights protection work. Work to improve compliance with the right to fair trial, to combat impunity, and to ensure the right to remedy of those who suffer human rights violations necessarily involves many diverse and multifaceted strategies and approaches. Trial observation is one important part of these efforts and the ICJ believes that there is a need now to increase and improve the use of trial observation. In particular the ICJ considers that there is a need to develop the ability of human rights defenders to carry out trial observations. In 2008 the ICJ began work to develop and expand its Manual on Trial Observation, and collaborated with Front Line: The International Foundation for the Protection of Human Rights Defenders in the organisation of a training seminar for human rights defenders on trial observation.

ICJ Trial Observation Manual

In 2008 the ICJ updated and developed the ICJ publication *Criminal Trials and Human Rights: A Trial Observation Manual Trial Observation Manual*, which will be published in 2009. There are two components to the revised Manual. The first component provides trial observers with practical guidance on how to prepare for a trial observation mission, carry out the observation and write the follow-up report. The second component provides a synthesis of the basic legal standards applicable in relation to (i) the right to a fair trial, (ii) the right to remedy of victims of human rights violations, and (iii) combating impunity.

Training of Human Rights Defenders

In September, FRONTLINE (the International Foundation for the Protection of Human Rights Defenders), with ICJ collaboration, brought together a group of 15 human rights defenders in Geneva for a three-day training seminar on trial observation, conducted on the basis of the revised ICJ Manual. The group of participants included human rights defenders from each region of the world, and involved lawyers, journalists, legal clerks and human rights advocates. The training seminar covered both the practicalities of preparing for and carrying out a trial observation as well as the relevant international legal standards. It was interactive and participatory, with participants taking part in a mock trial.

JUDGES & LAWYERS PROGRAMME

Throughout its more than fifty-five-year history, the ICJ has worked to defend the independence and accountability of judges and lawyers. In 2008 the ICJ Judges and Lawyers Programme has embarked on the re-establishment of the Centre for the Independence of Judges and Lawyers, through which the ICJ will continue its work in defence of the independence and accountability of judges and lawyers throughout the world.

The Judges and Lawyers Programme has worked for justice systems to be independent in law and practice, impartial, and active in protecting human rights, and promoting the rule of law. The ICJ has conducted advocacy and strategic legal interventions to seek changes in regional institutions and domestic laws and policies that will guarantee the independence of judges and lawyers (see Regional Programmes section, p. 23-43), and promote international law principles for protection of human rights. This area of work includes intervention at country level to seek changes in domestic laws and policies that will guarantee and sustain the independence of judges and lawyers. The ICJ also works to combat corruption in the judiciary and the legal profession.

In recent years, the ICJ's has produced key publications targeting judges and lawyers, while initiatives in the field have primarily been implemented by the ICJ regional programmes, for example through capacity building and protection measures. During 2008 the ICJ has worked to expand this area of work, and this culminated in a call by the Commission for the re-establishment of the ICJ's Centre for the Independence of Judges and Lawyers (CIJL) at the ICJ Secretariat in Geneva in order to improve the impact of this work. This Centre will proactively help build the capacity of justice systems and strengthen the ICJ's role on issues related to the administration of justice.

ICJ Congress 2008

In December the ICJ Commissioners, Honorary Members, and representatives of ICJ National Sections and Affiliate Organisations, gathered together with ICJ

Secretariat Staff in Geneva for the ICJ Congress 2008. This was the first global gathering of the ICJ family since 2004. During this gathering Mrs Mary Robinson took up the position of President of the International Commission of Jurists.

The Congress 2008 was dedicated to the theme of "Judges and Lawyers in Times of Crisis," and concluded with the unanimous adoption of the *ICJ Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* (see Annex I for the full text of the *Declaration*). This important *Declaration* reaffirms the essential role of judges and lawyers in safeguarding the rule of law and human rights in times of crisis, and sets out 13 fundamental principles that must be upheld by governments and the legal community in such situations. The Plan of Action outlines a number of activities which the ICJ should undertake to support judges and lawyers in times of crisis. Notably it envisages and calls for the re-establishment of the ICJ's Centre for the Independence of Judges and Lawyers, and charges the Centre with the implementation of the Plan of Action.

The ICJ Congress also allowed the ICJ Secretariat the opportunity to provide participants with an overview of the work of the Secretariat, and of key institutional developments, in the period 2004–2008. Additionally, the Congress provided a forum for the initiation of a discussion on the ICJ Secretariat's Strategic Directions for the period 2010–2016, and allowed the ICJ

family to discuss future opportunities for collaboration and engagement. On the margins of the Congress, regional groupings of the ICJ met to discuss their work in each region, and to explore possibilities for increased collaboration.

In 2009 and beyond, follow up to the Congress will include: the use and dissemination of the *ICJ Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis*; the writing and publication by the Secretariat of a Commentary to the Declaration; the re-establishment of the Centre for the Independence of Judges and Lawyers and continuing efforts to increase engagement of members of the ICJ family in Secretariat work.

PLANS FOR 2009

In 2009 the ICJ will mainly be concerned with building capacity and financial support for the CIJL. Along with this and into 2010, as the CIJL is re-established, the ICJ will work toward: reinforcing standards on independence of judges and lawyers; building the capacity of judiciaries and prosecutorial authorities in a variety of countries to implement international law; and development of new relations with a wide range of judges and prosecutors in all regions to forge these contacts into an interconnected, international group; and intervening through appropriate means to protect judges and lawyers who are persecuted as a result of carrying out their professional duties.

ICJ REGIONAL PROGRAMMES

The ICJ Regional Programmes have focused primarily on promoting and supporting the independence and accountability of the judiciary, and on rule of law and human rights issues. As of 2008 the ICJ has established regional offices in Bangkok, Thailand; Johannesburg, South Africa; and Guatemala City, Guatemala. The Europe Regional Programme and the Middle East and North Africa Regional Programme are based in Geneva.

ASIA-PACIFIC REGIONAL PROGRAMME

The Asia-Pacific Programme of the International Commission of Jurists (ICJ) builds on a history of engagement with Asian legal systems dating back half a century, the adoption by 180 leading Asian jurists of the 1965 Declaration of Bangkok on rule of law and judicial independence. The Programme was re-established in 2004 and now has a regional office in Thailand, a field office in Nepal, and an ongoing country project in Sri Lanka. Being based in the region has strengthened the ICJ's capacity to help protect judges, lawyers and human rights defenders, to have greater impact on laws and policies that violate human rights, and to work closely with the ICJ's Asia-Pacific network of 15 Commissioners (active and honorary) and 19 national sections and affiliated organizations.

The ICJ's objective is to improve respect for the rule of law and human rights in the Asia-Pacific region by: safeguarding the independence of legal systems; building the capacity of judges, lawyers, and NGOs and government actors to uphold rule of law; improving the administration of justice; undertaking strategic legal interventions; preparing research reports on key rule of law and human rights challenges; and conducting targeted advocacy.

Achievements 2008

THAILAND

Political Context

2008 was a year of heightened political

instability. Supreme Court rulings brought down two Prime Ministers, and violence associated with mass protests led to the declaration of two states of emergencies in Bangkok. In December, amidst growing violence and civil disorder the elected government was forced to step down. Prolonged political instability in the capital undermined efforts to protect human rights and the rule of law in the troubled Deep South, where the death toll reached 3,500 as the conflict entered its fifth year, with serious allegations of torture and abuse by the security forces, and an increase in bombings and killings by insurgents. Impunity for serious human rights violations remains a serious problem throughout the country.

Supporting strategic legal interventions

The ICJ continued to strengthen the capacity of the Thai legal community to apply international human rights standards in combating impunity and reaffirming the rule of law, including in the Deep South.

Throughout 2008, the ICJ legal clinic provided lawyers, academics, and human rights defenders with materials and advice, in Thai and English, on fair trial standards, the use of *habeas corpus* to challenge unlawful or arbitrary detention, enforced disappearances, the prevention of torture, and claims for reparations. These actions contributed to a marked increase in the number of cases in the provincial courts challenging the legality of detention under emergency laws, and seeking accountability for alleged violations by state actors.

In October the ICJ prepared a legal memorandum critiquing an amendment to the criminal code allowing second-hand hearsay evidence and condemning its use to convict for terrorism-related offences in the southern conflict. The memo was translated and submitted by the Muslim Attorneys Center in support of a criminal appeal, and is being used in similar cases in preparation for challenging the legality of the amendment. The ICJ transmitted the memo to the Ministry of Justice, which welcomed it and sought dialogue with ICJ to consider the recommendations.

Human rights training and capacity building

In February the ICJ, the Canada Fund, and the Suk-Kaew Kaewdang Foundation conducted a seminar on international human rights law at Hat Yai University, attended by approximately 150 academics, students, lawyers, journalists and civil society members from the Deep South. This provided a rare occasion for a cross-section of Thai society to discuss human rights issues in the South at a high-level public event.

In April, the ICJ and the Asian Institute for Human Rights provided a one-week training to 30 young lawyers and human rights activists on international fair trial standards and how to conduct trial observations. As a follow up, the participants conducted trial observations around the country and their findings were evaluated at a workshop in November. The ICJ also held a two-day workshop at Chulalongkorn University with Thai lawyers on the use of forensic evidence in court proceedings.

Protection of human rights defenders

The ICJ continued to monitor and raise concerns about the safety of lawyers and human rights defenders in Thailand. In November, the ICJ and the Delegation of the European Commission launched the Thai and Yawi translation of the *European Union Guidelines on Human Rights Defenders*. The event brought together more than 130 human rights defenders from across the country,

representatives of the Royal Thai Government, and the diplomatic community.

Trial observations

In November, the ICJ observed the inquest into the death of 20-year-old Shan refugee, Saw U, shot dead by a defence volunteer at the Ban Mai Nai Say refugee camp in December 2007. The ICJ will report on the case once the judgment is made. From June to November, the ICJ observed the inquest into the death of Imam Yapha Kaseng, a local Malay-Muslim leader who died in military detention in March 2008. The Court held the cause of death to be physical abuse by military officers during custody – the first time Thai courts have found state agents responsible for human rights violations in the southern conflict.

Engagement with Thai government agencies and the judiciary

In May the ICJ, the Office of the UN High Commissioner for Human Rights (OHCHR), and the Association for the Prevention of Torture conducted a seminar with the Ministry of Foreign Affairs, the Ministry of Justice and other government agencies on the implementation of the UN Convention against Torture (CAT), ratified by Thailand in 2007. In June the ICJ, the Working Group on Justice for Peace, and the Ministry of Justice held a one-day seminar on torture to discuss the government's obligations after accession to the CAT. In December the ICJ advised the Ministry of Justice on the definition of torture for the preparation of legislation implementing the CAT, and provided training to the Ministry's Rights and Liberties Protection Department on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In June the ICJ and the Judge Advocate General's Department of the Ministry of Defence also held a three-day symposium on *the Rule of Law and the Military*. Leading Thai academics, representatives from the ICRC, and the British Army addressed over 200 members the Royal Thai Army, including high ranking officers with

operational commands, on the need to uphold human rights in military operations, provide human rights training prior to deployment, and avoid the use of coups to settle political disputes. The event was one of the few opportunities for an international NGO to engage directly with the military.

In August the ICJ and the Office of the President of the Supreme Court hosted an ASEAN regional colloquium and launched the Thai edition of the ICJ's *Practitioners Guide on the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*. A high level panel of twenty Supreme Court judges and lawyers from Malaysia, the Philippines, Laos PDR, and Thailand participated in a discussion about judicial independence at a time when the Thai judiciary was deciding a series of high profile political cases involving the disqualification of political leaders and parties.

Advocacy and briefings

Throughout the year the ICJ consistently brought human rights issues to the attention of national and international authorities. The ICJ held numerous briefings with high level government officials urging greater action to promote rule of law and human rights, and calling for accountability in high profile court cases that ICJ has observed and followed. The ICJ also called for ratification of human rights instruments, particularly the International Convention for the Protection of All Persons from Enforced Disappearance, to which the government publicly stated its intention to accede in 2009. The ICJ held regular bi-lateral briefings with diplomatic delegations in Bangkok, organized strategy sessions with delegations and NGOs, and requested interventions on key human rights cases.

In March the ICJ attended the 7th Session of the UN Human Rights Council and presented information on human rights and rule of law issues to various country delegations and special procedures. At the Working Group on Enforced or Involuntary Disappearances, the ICJ raised concerns

about impunity in Thailand, highlighting the failure to bring the perpetrators to justice for the enforced disappearance of human rights lawyer Somchai Neelapaichit.

NEPAL

Political Context

Nepal is undergoing an historic governance transition, from a monarchy to a democratic republic. One of the fundamental challenges facing the country is to strengthen rule of law and independent legal institutions to prevent a repeat of gross human rights and serious international humanitarian law violations that took place during the recent conflict. As part of the transition, the newly elected government is tasked with a number of critical responsibilities, including drafting a new constitution based on a federal system rather than a unitary state as in the past, addressing past violations through a truth and reconciliation process, and reforming the legal system to address weaknesses in the criminal justice system and combat a prevailing culture of impunity.

Training in rule of law and human rights

To create an environment in which lawyers can perform their duties independently, the ICJ organised five regional workshops on security and safety of lawyers with the National Bar Association, in which some 500 lawyers participated. Resulting from this, a Lawyers' Protection Network was established with focal points in each of the five regions, and is planned to expand to the district level in 2009.

In October and December the ICJ organized three-day workshops with families of victims, lawyers and human rights defenders on the proposed Disappearances Bill, which will address the crime of enforced disappearance. These workshops led to court cases filed and pressure applied to the Constituent Assembly to revise the Bill. In December the ICJ organised separate two-day workshops for judges and lawyers on

ensuring an independent and effective legal system in a federal constitutional system. Experts from India, Switzerland and Sri Lanka attended and offered comparative analysis.

Strategic human rights litigation

The ICJ continued to mentor human rights lawyers, providing legal and technical support to partner organizations and victim's groups to make written submissions to the courts, and to provide briefing papers on a variety of human rights issues, including discrimination based on sexual orientation, the writ of *habeas corpus* in cases of arbitrary arrest and detention, arbitrary killings, excessive use of force, torture, and the refusal of the police to file a First Information Report (i.e. police report) by the victim's next of kin in cases of enforced disappearance.

Support for human rights litigation contributed to important legal victories. The ICJ provided technical assistance to the Blue Diamond Society (BDS) to file two cases in the Supreme Court against arbitrary dismissal of two army cadets from the service of the Nepal Army on the ground of sexual orientation, leading to a landmark decision against the army for discrimination. The ICJ also assisted BDS to file a PIL (Public Interest Litigation request) challenging the provisions of Army Act relating to the military justice system. In May the ICJ assisted the Forum of Human Rights and Democracy to make written submissions before the Supreme Court in cases involving large numbers of indiscriminate killings of people suspected to be Maoists, leading to a positive judgment ordering the Government to enact comprehensive legislation on reparations and excessive use of force.

UN mechanisms

Throughout the year, the ICJ assisted the Conflict Victims Committee, to document and submit cases of enforced disappearances to the UN Working Group on Enforced or Involuntary Disappearance (WGEID) in the required UN format. In July, 135 cases were

submitted, and 65 more cases were submitted in October.

Research and advocacy reports

The ICJ carried out a mission to assess the administration of justice in Maoist-controlled areas during the conflict. In March the ICJ published the report *Justice in Transition* highlighting the shortcomings of the Maoist "People's Courts" in the light of international law and urging the Nepal authorities to address pressing public security concerns and rule of law issues that have arisen after the parallel system stopped functioning. The report, the first to assess the Maoist legal system, has become an essential reference in law reform initiatives.

The ICJ submitted recommendations to the Prime Minister and the Speaker of the Parliament and members in support of improvements to the Nepal Army Bill. In February, the ICJ published these recommendations, in a booklet that was widely circulated to government agencies. Nepal's security legislation, including criminal procedures, is outdated, and conflicts with international human rights standards. The ICJ has reviewed this legislation and the related provisions of criminal law and procedure in order to make recommendations to the Parliament to ensure the consistency of these laws with human rights law.

Transitional Justice and Enforced Disappearances

The ICJ continued its work with the legal community and government agencies on issues of enforced disappearance, impunity and transitional justice. The ICJ organised several round table meetings, national and regional level workshops in collaboration with Nepal Bar Association, OHCHR, ICTJ, Advocacy Forum, and other international and local NGOs, to discuss, raise awareness of, and advocate for the establishment of a Disappearances Commission and Truth and Reconciliation Commission to ensure investigation and prosecution of past violations. The participants included representatives from the Home Ministry, the

Law Ministry, the Law Commission, the Office of the Attorney General, Parliamentarians, NGOs, and lawyers. As a result, a strong lobby network of civil society actors and sympathetic members of government has emerged to lobby for human rights in transitional justice.

At the request of the Ministry of Peace and Reconstruction, the ICJ provided legal advice and recommendations towards the drafting of the Disappearances Bill, particularly in relation to the formation and mandate of the Disappearances Commission, as well as the appointments process of its members. In November the ICJ submitted a detailed letter to the Chairperson and members of the Nepalese Constituent Assembly (CA), and issued a Press Release critiquing the proposed Bill on Disappearances, and urging the CA and the Government to adopt a series of amendments to ensure compliance with the state's human rights obligations. These interventions have influenced the legislative process and brought successive drafts of the proposed bill closer to international standards.

SRI LANKA

Political context

In 2008 Sri Lanka experienced a crisis in rule of law and human rights as a result of intensified conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE). Attacks against human rights defenders, lawyers, and journalists escalated dramatically in the latter part of the year, with a number of high profile attacks and assassinations in Colombo. None of the perpetrators have been brought to justice, and some prominent critics of the Government have fled the country under pressure and intimidation. There has been a grave humanitarian crisis in the north, where thousands of civilians trapped in the shrinking conflict zone are reportedly being held hostage by the LTTE, and are subject to fierce bombardment from the Sri Lankan Army. Blanket restrictions on access to the North have prevented national and

international actors from reporting on these events.

Strategic support for human rights groups

In August, the ICJ visited Sri Lanka and met with leading civil society groups. The ICJ subsequently undertook a process of strategic collaboration with civil society organizations. In December the ICJ organized a half-day meeting of human rights groups in Colombo to plan a collective response to the increased government crackdown on peaceful dissent. The group decided to engage in advocacy work at the UN to raise the profile of the human rights and humanitarian crisis. The ICJ followed up by organizing a three-day strategy session in Bangkok. The ICJ also briefed delegations in Geneva and the office of the High Commissioner for Human Rights.

Research and advocacy reports

In December the ICJ finalised a briefing paper critiquing the Emergency Regulations, including recent amendments that allow for 18 months detention without judicial review. The paper is a comprehensive analysis of the security legislation vis-à-vis international standards. It was launched at the 10th session of the Human Rights Council in March 2009. In December the ICJ updated a report on witness protection and victims of crime.

PLANS FOR 2009

In 2009, the Asia-Pacific Regional Programme plans to expand its regional work in new countries around the themes of independence and accountability judges and lawyers, security sector compliance with human rights law, and justiciability of economic, social and cultural rights. Activities planned include: (a) international advocacy with an emphasis on participating in the sessions of the Human Rights Council and dealing with other UN human rights mechanisms; (b) working with judges, lawyers, and government actors to strengthen their capacity to promote access to justice and the rule of law; (c) strengthening the capacity of the legal community to participate in law reform to

ensure incorporation of human rights in relevant legislation, through practical trainings and translated materials; (d) providing technical assistance and training to support strategic litigation, trial observations, and other legal interventions to challenge impunity; and (e) undertaking missions and prepare research and advocacy reports in response to violations of rule of law and human rights.

ACKNOWLEDGMENTS

The ICJ's Asia-Pacific Regional Programme recognizes the support of many individuals and partner organizations, in particular Commissioners Prof. Vitit Muntarbhorn, the Hon. John Dowd and Honorary Member Dato' Param Cumaraswamy, who generously contributed their time and expertise. The Programme also acknowledges the critical contributions of partner organizations: in Nepal, Nepal Bar Association, the National Judicial Academy, the Accountability Watch Committee, Advocacy Forum, the Blue Diamond Society, the Center for Victims of Conflict of Bardiya, the Human Rights and Democracy Forum, the Impunity Task Force, Informal Sector Service Center, the International Center for Transitional Justice, the Social Justice Committee of Lamjung, and the office of the UN High Commissioner for Human Rights; in Thailand, the Asian Institute for Human Rights, the Association for Prevention of Torture, the Cross Cultural Foundation, the Muslim Attorney Centre, the National Human Right Commission, and the Working Group on Justice for Peace; and in Sri Lanka, the Nadesan Centre, and the Centre for Policy Alternatives. The ICJ also welcomes the cooperation of government agencies: in Nepal, the Ministry of Peace and Reconstruction and the secretariat of the Constituent Assembly, and in Thailand, the Ministry of Foreign Affairs, the Ministry of Justice Rights and Liberties Department, and the Ministry of Defence Judge Advocate Generals Department. Finally, the Programme recognizes the work and dedication of interns Sopot Cheevapanich

(Thailand), Pariksha Rana (Nepal), and Kanyarat Wiphatawat (Thailand).

AFRICA REGIONAL PROGRAMME

The Africa Regional Programme of the ICJ builds on the organisation's years of experience working with African judges, practicing lawyers, academics, civil society and government representatives and agencies, to improve rule of law and respect for human rights. As an important actor in standard setting, the contributed to the establishment of the African Human Rights System. The adoption of the African Charter on Human and Peoples' Rights (the Banjul Charter), and the establishment of the African Commission and the African Court also benefited from ICJ's engagement. In 2008, the ICJ set up a team to implement its Africa Regional Programme. After an initial period in Geneva, the team has now established an office in South Africa.

The general aim of the Africa Regional Programme is to enhance the realization of human rights on the African continent through adherence to the rule of law. The specific aim is to promote and strengthen the independence and accountability of judges and lawyers in Africa through improving safety for judges, lawyers and human rights defenders; improving administration of justice; improving the capability and capacity of human rights defenders; and strengthening the African human rights system.

Achievements in 2008

Political context

Programming has taken place in an environment that seems to be backsliding on modest democratic gains of the past. The failure to achieve separation of powers and strengthen rule of law institutions has been mirrored by the failure of key African countries to hold credible elections. Electoral processes in Nigeria, Kenya and Zimbabwe have considerably diminished faith in rule of

law institutions, which often seem weak and unable to defend fundamental human rights and democratic principles. There has also been an increased number of military coups (Mauritania: August 2008; Guinea (Conakry): December 2008) and an attempted coup in Guinea Bissau (August 2008). Impunity remains pervasive in Africa and a threat to the rule of law. The International Criminal Court and the principle of universal jurisdiction are under unfavourable scrutiny by the African Union, and African institutions. The sub-regional institutions remain weak, under-resourced, and unable to stand up against authoritarian executive regimes.

Improving security for judges, lawyers and human rights defenders

Events in Zimbabwe posed serious challenges in terms of harassment and persecution of human rights defenders during 2008. Following requests for assistance by human rights lawyers in Zimbabwe, the ICJ exposed the attacks internationally and worked with other lawyers' networks to increase the protection of human rights lawyers there, in some instances collaborating in the evacuation to safety of lawyers where it was clear the threat factors against such lawyers could no longer be domestically mitigated.

A number of evacuations out of Zimbabwe were undertaken in collaboration with domestic and international partners, and other lawyers and magistrates facing persecution were assisted in domestic short-term relocations.

The ICJ has been engaged in problems arising from the Charities and Societies Proclamation Law – the “NGO Law” – and its subsequent passing by the Ethiopian government. After reviewing it, the ICJ concluded that this law presents a potential threat to human rights defenders in Ethiopia and may create conditions that will allow the government to persecute human rights defenders and their organizations with

impunity under the guise of regulatory and administrative oversight.

The ICJ carried out several legal interventions and trial observations in efforts to increase protection of human rights defenders and activists. In the trial of Advocate Eric Matinenga at Rusape Magistrates Court in Zimbabwe, the ICJ met with presiding magistrates and public prosecutors to assist the domestic lawyers on strategic issues. The presence of ICJ observers put the State counsel under pressure to comply with fair trial principles and made it easier for the magistrate to throw out the case.

Improving administration of justice

As part of an expanding plan of action, the ICJ Africa Regional Programme began activities aimed at improving domestic administrative, policy and legal frameworks that provide for independent, impartial and effective judicial systems in Africa. The Programme contributed to a campaign against xenophobia in South Africa, through advocacy and media work, identifying policy gaps on the migration policies and administrative frameworks in June 2008. The Programme also contributed to addressing the global policy gap on small arms and ammunition, collaborating with South African organisation HURISA and the International Association on Small Arms in a press conference in Johannesburg on Southern African governments' policies on small arms sales. As small arms and ammunition contribute to increased threats to security and rule of law, and to the climate of impunity currently pervading the African continent, the ICJ and its partners called for a moratorium on small arms trade in the Southern African region.

Improving capability and capacity of human rights defenders

The Africa Regional Programme undertook several training sessions for judges, magistrates, lawyers, and public prosecutors in 2008, and distributed ICJ publications aimed at providing guidelines for

practitioners and clarification on important international human rights instruments. One series of sessions was organized for police and prison officials in Zimbabwe in order to contribute to the maintenance of procedural justice, where more than 40 participants attended each session. After one session addressing the rights of pre-trial prisoners, the judges, magistrates, prosecutors and prison staff attending constituted a court hearing in the following weeks to look at cases of pre-trial detainees, with the stunning result that the presiding Justice released over 80 pre-trial detainees in Mutare.

In December the ICJ, partnering with the Southern African Chief Justices Forum (SACJF) organized the first Southern and East African Judges Conference, and held the judges summer school at club Makokolo, Mangoche Malawi. The conference was well-attended by the judiciaries in Southern and Eastern Africa, with over 50 participants including Chief Justices of Malawi SC, the Chief Justice of South Africa and Chairperson of the Southern African Chief Justices Forum, the Chief Justice of Zambia and Deputy Chairperson of the Southern African Chief Justices Forum, a Former Chief Justice of Malawi, and the Registrar of the SADC Tribunal. Also present were members of the diplomatic community, including from Zimbabwe, Zambia, and South Africa.

The ICJ distributed over 400 rule of law resource publications to lawyers, judges, prosecutors and African Commissioners, during various training sessions in Botswana, Nigeria, Zimbabwe, South Africa, Malawi and Swaziland.

The ICJ has been involved with the Southern African Development Community (SADC) Lawyers Association including supporting the Association's training programmes and capacity-building activities. Currently the ICJ Africa programme offers technical advice on two key committees of the SADC LA: the SADC Laws Harmonisation

Committee and the SADC LA Human Rights Committee. The Africa Programme has begun discussions about prospective collaboration with the East African Lawyers Association. The Programme also signed a memorandum of understanding with the Southern African Chief Justices Forum (SACJF) to develop and implement professional development programmes for judges in Southern Africa.

Strengthening the African human rights system

The ICJ participated in the 43rd and 44th sessions of the African Commission on Human and Peoples Rights (ACHPR) held in Swaziland (May) and Nigeria (November), where advocacy centred on adoption of a resolution on elections, democracy, and rule of law. The ICJ and other NGOs held a Forum immediately prior to the formal session of the ACHPR and made submissions to the ACHPR during the session. It gave advice on procedure and substantive issues to affiliates with cases that they are pursuing in the ACHPR. The ACHPR adopted a resolution that the ICJ sponsored on elections and the rule of law in Africa at its Abuja session.

The ICJ Africa Programme participated in the Coalition for an Effective African Court on Human and Peoples Rights (CECHPR), where it advocated with the African Union (AU) to ensure the functioning of the court without undue delay. The CECHPR held a meeting in Swaziland in May 2008 and in Abuja in November 2008 on the sidelines of the ACHPR and dealt with the issue of the election of judges to the court and strategies for future advocacy work on the AU.

The ICJ also encouraged governments to ratify international treaties on human rights and to incorporate these conventions into national legislation, including the African Charter on Democracy, Elections and Governance, and the Protocol to the African Charter on the Rights of Women. The States were also urged to adopt the African Union Convention on Internally Displaced Persons. At the international level, States were urged

to ratify the United Nations Convention on Enforced Disappearances and to commit themselves to the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Finally the ICJ emphasized the need for the rapid establishment of the African Court on Human and Peoples' Rights, whose statute entered into force in 2004 but which is still not fully operational.

Country-Specific Advocacy Activities

South Africa: There has been increasing concern in South Africa at what is seen as a prolonged assault on independent institutions. Events that put pressure on the rule of law included efforts to disband a law enforcement agency established to investigate and prosecute organised crime, the prosecution of a National Police Commissioner, the dismissal of a Director of Public Prosecutions, and significant internal disputes among judges. The ICJ engaged on these issues together with local human rights defenders. The ICJ also advocated for the ratification of the Convention on Enforced Disappearances by the South African Government.

Uganda: The Programme worked with the Human Rights Foundation Initiative of Uganda and FIDH to produce an international assessment of the state of preparedness of the judiciary in Uganda to deal with serious cases of human rights abuses and violations mainly arising from the conflict in the northern part of Uganda involving the Ugandan Peoples Defence Forces (UPDF) and the Lord Resistance Army (LRA). The ICJ also worked on issues such as the rising tension between justice and peace in Northern Uganda, where there is high uncertainty arising from the reality that the comprehensive peace agreement between the government and the LRA remains to be signed by the principals. The Programme engaged in addressing the loss of credibility of the ICC in the eyes of the ordinary people of Gulu due to a lack of capacity to execute its warrant against

Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen.

Zimbabwe: The ICJ worked extensively with domestic lawyers in conjunction ICJ affiliate Zimbabwe Lawyers for Human Rights. This work included a pre-election assessment, and letters to the Commissioner of Police, the Minister of Justice, and the Attorney General on issues regarding the right to fair trial and the independence and accountability of judges and lawyers. The ICJ issued press releases addressing gross human rights violations such as arbitrary arrest and detention, enforced disappearances, extra judicial killings, and politically motivated displacements, and monitored threats to the rule of law and human rights defenders, offering protection where necessary. The ICJ facilitated the international travel of lawyers and judges from Zimbabwe to increase awareness and internationalise key rule of law challenges facing Zimbabwe. The ICJ co-sponsored and participated actively in two parallel events at the UN Human Rights Council on the topic of election in Zimbabwe.

Swaziland: The ICJ emphasized the need for the Swaziland government to involve itself in a process of constitutional reform open to broad public participation, in terms of process, substance, and expected outcomes. During an NGO Forum on the sidelines of the African Commission on Human and Peoples Rights attended by several governments including the Swaziland government, ICJ gave an overview of the human rights and democracy situation in Africa. The ICJ also raised concerns about the refusal, of a number of judges of the High Court in Swaziland to be involved in a case by the Swaziland Concerned Citizens Association on the suitability of persons appointed to run upcoming elections.

Ethiopia: Following the result of research the ICJ concluded that the regulatory framework of the legal profession and the process of appointment, promotion and disciplining of members of the judiciary do

not comply with international standards. The legal profession is not self-regulating, but is regulated by the Minister of Justice, who also has the ultimate power in the appointment, promotion, and oversight of members of the judiciary. The Ethiopian Bar Association is in fact not a bar association but merely an NGO of lawyers with no regulatory functions. Consequently the ICJ drafted plans for an intervention that will result in a bill on the self-regulation of the legal profession.

PLANS FOR 2009

In 2009, the Programme will focus on a number of activities including the following: (a) international advocacy with an emphasis on participating actively in the sessions of the United Nations Human Rights Council (UNHRC) and engaging with its mechanisms for human rights monitoring and enforcement; (b) Engaging with judicial and political organs of sub-regional bodies including the South Africa Development cooperation (SADC), the East African Community (EAC), and the Economic Community of West African States (ECOWAS) as well as at the level of the African Union (AU); and (c) Providing specialised training for the development of the judiciaries in Africa, including convening an annual conference of judges. More generally, the ICJ will continue to promote the independence of the judiciary and legal profession, as well as continue to monitor threats against human rights defenders and act to ensure their protection in extraordinary circumstances.

ACKNOWLEDGMENTS

The ICJ Africa Regional Programme recognizes the work of Commissioners, network members, affiliates, interns, and other partners in the field for support in activities undertaken by the Programme during 2008. This includes contributions by ICJ Commissioners Arthur Chaskalson, Solomy Balungi Bossa, Unity Dow, M'Inoti Kathurima and Umozurike Oji; Sanji Mongeng; Duarte Lobo de Pina; the Kenya

Section of ICJ; and ICJ Affiliate Zimbabwe Lawyers for Human Rights (ZLHR). The Programme also partnered with the South African Judges Forum (SAJF), the SADC Lawyers Association (SADCLA), the East African Law Society (EALS), the Coalition for an effective African Court on Human and Peoples' Rights, Amnesty International (AI), Human Rights Watch, and the International Federation of Human Rights (FIDH).

EUROPE REGIONAL PROGRAMME

The ICJ's Europe Regional Programme uses research and analysis of international human rights law and standards to influence the development of law and policy in Europe, particularly in relation to counter-terrorism and human rights; to support the European system for human rights protection; and to support and protect the independence of judges and lawyers.

In the course of the year, the European Programme's work helped to maintain the issue of renditions and secret detention on national and international political agendas, and to influence legal and policy debates on counter-terrorism and human rights. The programme has strengthened engagement with institutions of the Council of Europe and the European Union, and with UN mechanisms, and has worked increasingly co-operatively with the ICJ's European Network to address national level developments.

ACHIEVEMENTS 2008

Renditions and secret detentions

In 2008, the ICJ's Europe Programme worked to secure effective investigations into allegations of renditions and secret detentions engaging the responsibility of European states and to initiate policy reforms to prevent violations of human rights through such practices. Such practices include torture and other ill treatment, enforced disappearance and arbitrary

detention. The ICJ activities included advocacy to support proposals for further policy research and development on intelligence accountability, in particular in European states, and continued advocacy for independent investigations of European states' involvement in renditions and secret detentions, for full accountability, and for reparations for victims. In relation to countries such as Poland, Spain and Sweden, the ICJ has used the reviews by the UN treaty bodies, and the Universal Periodic Review (UPR) ensuring that questions of renditions and secret detentions have featured in the debate and conclusions of UPR Working Groups and Concluding Observations of treaty bodies.

In 2008, the ICJ provided support to the first CIA renditions case to come before the European Court of Human Rights, intervening, jointly with Interights, in *Boumediene v Bosnia and Herzegovina* concerning the positive obligations to seek the return of six men transferred to Guantanamo with the assistance of Bosnian officials.

The Court made reference to the ICJ and Interights' analysis but did not address the substance of the arguments, finding that the Bosnian government had taken sufficient steps to secure the return of the applicants. In Italy, the ICJ monitored and attended hearings of the trial of US and Italian intelligence officials allegedly involved in the kidnapping and rendition of Abu Omar. The trial remained under threat from a series of Italian government challenges pending before the Constitutional Court, including one alleging violations of state secrecy by prosecutors, and the ICJ will continue to follow progress closely in 2009.

Torture, non-refoulement and diplomatic assurances

A renewed attempt to seek European level approval for deportations on the basis of diplomatic assurances against torture was initiated by the Danish Minister for Justice in

statements made in May 2008. The ICJ participated in an NGO coalition that wrote to the Minister, cautioning against the reliance on diplomatic assurances and opposing any move to have such assurances agreed or approved at the EU level. A Danish government committee is now considering the issue. In the course of the year the ICJ also drew attention of UN treaty bodies to questions of diplomatic assurances in regard to Denmark, and the UK, and influenced critical assessments of legal definitions of torture and the criminal offence of torture in reviews of periodic reports to the Committee against Torture (CAT) of Sweden and Iceland. The ICJ submitted a third party intervention before the Norwegian Supreme Court in the case of Nadeem Dar, an important case concerning *refoulement* to face a risk of torture, contrary to interim measures requested by the Committee Against Torture, and argued for the binding nature of such interim measures in international law. The Court found however that such measures did not bind the State, establishing a worrying precedent at a time when many governments are increasing their efforts to return non-nationals at risk of serious human rights violations, in particular those suspected of or linked with terrorism.

Counter-terrorism laws

The European Commission's proposals creating an offence of provocation of terrorism were published in November 2007, and in March 2008 the ICJ produced and submitted a briefing paper on the proposals, pointing out the need to protect freedom of expression and association. The European Parliament Committee on Civil Liberties, Justice and Home Affairs followed with amendments addressing these concerns, subsequently approved by the European Parliament. The ICJ has also produced human rights legal analysis of counter-terrorism law and practice at the country level, including a submission on the periodic review of Spain, submissions to human rights bodies on the Russian Federation raising issues of impunity for serious violations of rights, the impact of counter-terrorism and counter-extremism laws on

freedom of expression and association, and co-operation in the transfer of terrorism suspects in the framework of the Shanghai Co-operation Organisation. In April, the ICJ, jointly with Interights, submitted a third party intervention before the European Court of Human Rights in the case of *Finogenov v Russia*, brought by victims and relatives of victims of the Nordost theatre siege.

Administration of justice and the independence of judges and lawyers

In 2008, the European programme developed interventions on issues of judicial independence and the role of lawyers, laying the foundations for more intensive work in the coming years. The ICJ responded to attempts by the Italian government to interfere with judicial independence in June 2008. In a press release, it condemned a security decree that would have postponed the trial of Prime Minister Silvio Berlusconi, as well as the attempt to secure the recusal of the judge in his case. The ICJ also wrote to the Italian Senate urging it not to approve the security decree. ICJ statements were covered in both the Italian and international press. In the event, alternative measures were agreed which afford the Prime Minister immunity from prosecution. The ICJ also raised concerns regarding judicial independence in Gibraltar (in written submissions to a tribunal established to consider the removal from office of the Chief Justice), and in UPR submissions on Serbia, Uzbekistan, and Russia.

During 2008, the debate on how to ensure effective proceedings before the European Court of Human Rights, while protecting the right of individual petition, gave rise to several new proposals for reform, including a Statute for the Court. The ICJ participated in the debates on these issues, attending meetings of the Council of Europe Steering Committee on Human Rights as well as the Reflection Group on Reform of the Court. It will continue to seek to influence debate on these issues, in co-operation with other NGOs, in 2009.

Immigration law and policy

Interventions in 2008 drew attention to worrying developments in immigration law and policy in several European states. In July, the ICJ urged opposition to an Italian emergency decree on immigration and the criminal justice process, expressing particular concern at a provision which makes it an automatic aggravating factor in sentencing on any criminal charge, if a crime is committed while illegally present on the national territory.

In November, the ICJ provided comments on the proposed new Danish Aliens Act to the Minister for Integration and the Parliamentary Committee debating the proposal. The legislation was introduced at great speed, following political pressure in Denmark to impose restrictions on the movements of two non-nationals suspected of threatening the artists of cartoons alleged to be blasphemous. The non-nationals are subject to deportation orders but cannot be deported for reasons of *non-refoulement*. The ICJ expressed concerns that the measures could lead to disproportionate interferences with rights to freedom of movement and to respect for private and family life.

PLANS FOR 2009

In 2009, the ICJ will build on its programme of interventions and advocacy on counter-terrorism matters in Europe, and expand its research and advocacy on related issues, including immigration and asylum, criminal justice co-operation in the European Union, and will in particular address issues of judicial independence and harassment of lawyers.

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Denmark and ICJ Poland as well as ICJ Affiliate Organisation the International Protection Centre. The ICJ is grateful for the contribution of interns on this Programme in 2008: Neeltje Eekhout and Belma Yasharova; and for research support: the SOAS International Human Rights Clinic.

LATIN AMERICA REGIONAL PROGRAMME

The ICJ Latin America Regional Programme was initiated in 2004 to promote the independence of the judiciary in the region, focus on the administration of justice, struggle against impunity in Central and South America. The ICJ opened an office in Guatemala in 2007. This Programme constitutes one of the few international human rights NGOs presences in Central America. The Programme's primary objectives are to contribute to strengthening the administration of justice and to incorporate international human rights law and standards in domestic legal systems throughout the region.

ACHIEVEMENTS 2008

Honduras: In Honduras the ICJ worked to ensure that the new Supreme Court was independent and constituted through a transparent procedure, according to international standards. In 2008 the ICJ undertook three missions to observe the appointment of Supreme Court Magistrates.

Two of these missions included high-level experts. During these missions the ICJ met with the organs entrusted with selecting candidates and with Parliamentarians, charged with appointing Magistrates. The ICJ's activities enjoyed high profile media coverage, including participation in televised debates on the issue. A follow-up mission to Honduras has been planned for early 2009, when the appointments take place. As part of its ongoing advocacy, the ICJ issued a press release in September condemning a physical attack against a Honduran prosecutor and

calling on the relevant authorities to investigate the alleged crime and bring those responsible to justice.

Guatemala:

In Guatemala the ICJ has concentrated its efforts on promoting the independence of the judiciary, including by monitoring the security of judges, lawyers and prosecutors, and working to end impunity in cases of human rights violations. In March, the ICJ organized the first meeting in Guatemala of judges from Honduras, El Salvador, Costa Rica and Guatemala, who comprise the Central American Network of Judges for the Democratization of Justice (REDCAJ), in order to reinforce the REDCAJ Network, to create an online forum for the Network, and to focus centrally on issues related to the independence of the judiciary.

Following up on this meeting, the ICJ launched a Spanish-version of the *ICJ Practitioners' Guide No. 1 International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors (Principios internacionales sobre independencia y responsabilidad de jueces abogados y fiscales)*. Following this, as part of its ongoing agreement with the School of Judicial Studies of Guatemala, the ICJ held a series of seminars with international and national experts on topics related to judicial independence as well as a specific focus on the death penalty (still in force in Guatemala, although under a moratorium). The seminars were addressed exclusively to judges, and some of them were co-organized with the Office of the UN High Commissioner for Human Rights.

As part of its monitoring and protection measures for judges, lawyers and prosecutors at risk, the ICJ regularly engaged with the UN Special Rapporteur on the independence of judges and lawyers. The ICJ also issued a press release condemning a wave of attacks against judges and prosecutors. The ICJ monitored specific

threats against a judge who had the testimony of witnesses in a case of involving gross human rights violations, which took place during the internal armed conflict, and made specific requests for official protection to be offered in this and other cases of threats. Lastly, the ICJ acted as an intermediary between international NGOs and a judge who received threats after hearing an extradition request in respect of a person accused of genocide.

The ICJ also provided legal advice on economic, social and cultural rights to a number of indigenous communities affected by large development projects. The ICJ was present at a trial of individuals accused of threatening the owner of a bus company, as credible suspicions were raised regarding the evidence presented in the case. The ICJ met with the Director of the UN-backed International Commission Against Impunity in Guatemala to inform him of several cases of criminalization of social discontent.

The ICJ provided advice to 28 communities affected by the construction of the Chixoy hydroelectric plant. ICJ Central America staff also participated in the victims' team in negotiating reparations with the Government, which met twice with the President of Guatemala and once with the First Lady. Advances were made in the case with the appointment of an independent consortium to evaluate damages and reparation. The ICJ will continue to follow this case, given the early signs that the consortium may not succeed in completing its mandate.

The ICJ coordinated an initiative to create a comprehensive list of cases where legitimate social protest had been criminalized in Guatemala and presented it to the Office of the Prosecutor, requesting that these laws be reformed. Subsequent to the presentation of this list, the cases of more than 40 persons who had been charged were dismissed, and the Office of the Prosecutor agreed to assess the remaining cases and hold a consultation to discuss them. The ICJ remains seized of this process.

As part of its work against impunity for past human rights violations, the ICJ continued to participate in strategy meetings with local NGOs currently engaged in litigation, primarily by providing legal advice on international law. In April the ICJ submitted an *amicus curiae* brief on enforced disappearances to a local court in Chimaltenango, as the case was among the few in which a human rights violation committed during the conflict was tried in an ordinary court. The submission included analysis on the nature of the crime of enforced disappearance under international law, its permanent character, and the obligation to punish those responsible. This case remains currently pending. In March the ICJ held a seminar on the role of prosecutors in protecting human rights, with the participation of prosecutors from Honduras, Guatemala and Costa Rica. Following the seminar, the ICJ concluded an agreement with the Prosecutor General of Guatemala, in his capacity as President of the Council of Central American Prosecutors, to conduct a number of capacity-building activities relating to topics in international law and human rights to be held at the Council's facilities.

Nicaragua: In Nicaragua the ICJ has primarily concentrated its efforts on fully implementing the law on judicial career and more generally contributing to the independence of judges and lawyers. This objective involved two visits to Nicaragua in 2008, the first in order to coordinate with the Association of Judges and Magistrates in Nicaragua (AJUMANIC) and with the Prosecutor-General for the implementation of an agreement signed with the Council of Prosecutors-General of Central America, and the second in order for the ICJ Acting-Secretary General to meet with a Magistrate of the Supreme Court and request that the legislation for the application of law on judicial career be pursued. These actions culminated in an open letter sent by the ICJ to the Supreme Court calling for the regulation of the law on judicial career.

Mexico: In Mexico the ICJ has primarily concentrated its efforts on the independence of the judiciary in the State of Oaxaca and military tribunals, and the failure to protect against violations observed during a mission in 2007. The ICJ has been concerned that military tribunals continue to be used for trials that should be addressed in ordinary courts. The ICJ participated in a joint mission with the Due Process of Law Foundation to the State of Oaxaca in July in order to evaluate the independence of the judiciary. This was a follow-up to a mission that took place in 2007 to look into reports of arbitrary detentions and enforced disappearances (led by Roberto Garretón, now an ICJ Commissioner). This mission held meetings with relevant authorities, including the President of the Supreme Court, the Prosecutor General, and local civil society organisations. At the end of the mission, the ICJ issued a public statement with preliminary conclusions, including that executive interference in the functions of the judiciary undermines judicial independence and that systemic problems exist in the judicial system. A full report of the findings will be released in early 2009. In September, during the 9th session of the Human Rights Council, the ICJ co-hosted a parallel event on the human rights situation in Mexico, particularly in the States of Guerrero and Oaxaca.

Colombia: In Colombia the ICJ has concentrated its efforts on impunity for human rights violations and questions regarding judicial institutions. As regards the latter, the ICJ submitted an *amicus curiae* brief on states of emergency measures related to a judicial strike. Pursuant to consultations on this issue with the Colombian Commission of Jurists (an ICJ affiliate), the ICJ presented a report to the Human Rights Council in the framework of the Universal Periodic Review. The report focused on a series of attacks against the judiciary by Government officials. Pursuant to a state of emergency declared by President Álvaro Uribe after the judiciary went on strike, the ICJ presented an *amicus curiae* brief to Colombia's Constitutional Court

analyzing whether such a declaration was consistent international law, concluding that the conditions for such a declaration were not met.

The ICJ submitted an *amicus curiae* brief on enforced disappearance as a crime under customary international law and on the retroactive applicability of national legislation defining the crime. The case related to the enforced disappearance of 33 people during the Army takeover of the Justice Palace after an armed group assaulted it. Pursuant to this brief, the judge declared its competence to try the crime, a substantial success. The ICJ has also provided legal advice to a group of local NGOs currently litigating the alleged unlawful killing of approximately 3,000 members of a political opposition party.

Venezuela: In Venezuela the ICJ has concentrated its efforts on ensuring the independence of the judiciary and lawyers. The ICJ submitted a letter to the President of the Supreme Court after a ruling that effectively dismissed the Board of the Caracas Bar Association. The ICJ called on the Court to abstain from interfering in the Bar's internal affairs under the UN Basic Principles on the Role of Lawyers. Although there was good media coverage and interest within the legal community, the concerns expressed have yet to be addressed adequately by the judicial and other institutions.

Peru: In Peru the ICJ has primarily concentrated its efforts on the case against former President Alberto Fujimori.

The ICJ's General Counsel Federico Andreu and Commissioner Martín Pallín participated as expert witnesses, appointed by the Supreme Court, in the trial of former President Fujimori. Testimony was rendered on command responsibility and evidence in cases of state crimes.

In May the ICJ published a report on the observation of three hearings of the trial, based on the observation of ICJ Commissioner Roberto Garretón. The report examined respect for the due process of law and Peru's international obligation to combat impunity for serious human rights violations were examined. According to the trial observation report, the rights of the accused were respected throughout the proceedings and as a landmark case it may have a positive effects on other such cases.

Chile: In Chile the ICJ has concentrated its efforts on preventing the trial of civilians by military tribunals. After consultations with local NGOs, the ICJ presented a report to the Human Rights Council for the Universal Periodic Review. The report focused on military justice and its incompatibility with international human rights law, and argued that civilians should never be tried by military tribunals and that the independence and impartiality of these tribunals should be strengthened by separating judges from the military hierarchy.

Regional and International Activities

At the regional and international levels, the ICJ Latin America Programme is primarily focused on independence of judges and lawyers, and provision of support for local NGOs from the region to conduct direct advocacy at the international level. The ICJ, jointly with a group of Colombian NGOs, requested protection measures for two Colombian examining magistrates who had received death threats. These requests were granted by the Inter-American Commission on Human Rights. In August the ICJ issued a joint press release with the Due Process of Law Foundation (DPLF) commenting on a ruling by the Inter-American Court of Human Rights in a case where both organizations had submitted a joint *amicus curiae* brief. A number of arguments on the independence of judges presented in the brief were adopted by the Court, and the brief was acknowledged in the judgement. The ICJ Legal Officer for the region participated as an expert witness on a case

concerning the arbitrary removal of a temporary judge in Venezuela.

At the level of the United Nations, the ICJ also organized and accompanied a number of NGOs from the region to meetings with different human rights mechanisms. This coordination has resulted in a number of actions and communications from international protection mechanisms, firmly raising important concerns that are grounded in issues and cases which are ongoing.

PLANS FOR 2009

In 2009 the ICJ plans to undertake a number of activities related to the rule of law in Latin America. In Guatemala and El Salvador, the ICJ will monitor the appointment procedure of Supreme Court Magistrates by advocating for the full implementation of international standards in this area. In respect of Guatemala, the ICJ will publish a report on judicial independence and impunity as a follow-up to its 2005 report. The ICJ will publish a manual on fair trial standards and re-print its *Practitioners' Guide No. 2; The Right to a Remedy and to Reparation for Gross Human Rights Violations*. In Mexico, the ICJ will monitor the system of military justice and produce a report on its compatibility with international standards. The ICJ will also hold seminars with the Council of Central American Prosecutors and with the Guatemalan School of Judicial Studies.

More generally, the Programme will continue developing and implementing activities as part of a strategy to increase protection measures for judges, lawyers, prosecutors and public defenders, improve administration of justice in areas related to human rights, push for more effective prosecutions of persons accused of serious human rights violations and greater compatibility of domestic military justice systems with international standards, and encourage ratification of or accession to international human rights instruments throughout the countries of the Latin America region.

ACKNOWLEDGMENTS

The ICJ Latin America Regional Programme recognizes the work of Commissioners, network members, affiliates, interns, and other partners in the field for support in activities undertaken by the Programme during 2008. This includes contributions by ICJ Commissioners José Antonio, Martín Pallín, Pedro Nikken, E. Raúl Zaffaroni and Roberto Garretón, and ICJ Affiliates IELSUR, Andean Commission of Jurists (through its President, Carlos Ayala Corao) and the Colombian Commission of Jurists; and Mónica Pinto, Thomas Roerdam, Jaime Araújo Rentería, Eduardo Cifuentes Muñoz, Hugo Lorenzo, Alfredo Chirino, Alejandro Salinas, Florentín Meléndez, Lucy Turner, Claudia Paz, Marco Antonio Canteo and Andrés Sánchez.

MIDDLE EAST AND NORTH AFRICA REGIONAL PROGRAMME

In 2008, the ICJ set out to continue its work on human rights advocacy and monitoring of rule of law and human rights developments throughout the Middle East and North Africa (MENA) region. Among other activities, this included a high-level mission to Israel and the Occupied Palestinian Territory, seminars for judges and lawyers on the independence of the judiciary and the rule of law in Egypt, and substantive submissions to the UN Human Rights Council. The ICJ worked to strengthen its presence in the region, contribute to the protection of human rights and the rule of law, and promote international human rights standards, with a special focus on the independence and accountability of the judiciary.

The ICJ's objectives in the MENA region included: support for independent and impartial judiciaries in the region; reduction of the abusive invocation by governments of states of emergency, extraordinary laws, and military and special courts for civilians; advocacy for inclusion of human rights standards in legislation; and development of

a constituency among Arabic-speaking judges and lawyers in order to achieve the objectives mentioned above by reinforcing and expanding the capacity of the ICJ Network and partners in the region.

ACHIEVEMENTS 2008

The MENA programme activities in 2008 addressed human rights violations in the conflict in Israel and the Occupied Palestinian Territory and attacks on the independence of judges, lawyers and human rights activists in other areas of the region. The missions and seminars allowed the ICJ to deepen its engagement with the legal and human rights community, through its affiliated organizations and commissioners from the region. The ICJ also conducted advocacy work at the UN level reflecting the conclusions of ICJ activities in the region.

Mission to the Occupied Palestinian Territory and Israel

Following on a previous mission headed up by ICJ Secretary General Nicholas Howen, the ICJ carried out a high-level mission to Israel and the Occupied Palestinian Territory (OPT) in March of 2008, led by ICJ Commissioners Professor Pedro Nikken and Professor Rajeev Dhavan. The ICJ delegation met with senior Palestinian officials, the Chief Justice of the Supreme Court, the Public Prosecutor, and representatives of local NGOs and the legal community. In Israel, the delegation met with senior governmental and military officials and the Chief Justice of the Supreme Court of Israel. The mission also visited Israeli settlements and the separation wall in the West Bank.

With Palestinian officials the ICJ discussed the alleged practice of torture and ill treatment and arbitrary detention, in particular by the Palestinian General Intelligence Service and the Preventive Security Forces, urging representatives of the Palestinian Authority to take measures to prevent such violations, and to hold those responsible accountable. The ICJ mission became increasingly concerned that an

effective division of the Palestinian legal system, now with two separate governments in Gaza and the West Bank respectively, two higher Judicial Councils, and executive forces in Gaza and the West Bank, undermines human rights protections and impedes the emergence of an independent Palestinian judiciary.

In the West Bank and East Jerusalem, the ICJ mission observed that Israel, in contravention of international law, continued to confiscate Palestinian land and expand settlements. The ICJ mission addressed the situation in Hebron, where Israeli security forces were imposing a regime of separation between Israeli settlers and Palestinians, severely restricting the right of Palestinians to freedom of movement, and preventing them free access to their homes, schools, health facilities, and sources of livelihood. The ICJ mission also observed the continuing construction of the wall of separation in the West Bank and Jerusalem.

Seminars on independence of the judiciary and rule of law

In March the ICJ held a seminar on the independence of the judiciary and the rule of law in Sudan. Participants set out recommendations on urgent legal and judicial reforms that aimed to ensure the effective administration of justice pursuant to international standards in Sudan as whole and in Darfur specifically. They also highlighted the role of the International Criminal Court on ending the impunity of those responsible for the war crimes and crimes against humanity in Darfur.

Iran

In June the ICJ called on the Iranian authorities immediately to release or charge with a recognisable offence six leaders of the Baha'i faith in Iran arbitrarily arrested in Tehran on 14 May 2008 and held incommunicado. The ICJ called for Iran to adhere to its international human rights obligations ensuring individuals are not detained on the basis of their religion or belief.

The ICJ held seminars on the independence of the judiciary and the rule of law in Egypt and Sudan. Judges, public prosecutors, lawyers, academics and representatives of the Egyptian governments and local NGOs participated. Participants called on the Egyptian authorities to end immediately the use of military and state security tribunals for civilians and expressed their deep concerns about the 2007 new constitutional amendment (article 179) that gives sweeping powers of arrest to the police and allows the Egyptian president to bypass ordinary courts and refer people suspected of terrorism to military and special courts, in which they would be unlikely to receive fair trials. They also called for an immediate end of the state of emergency laws that have been in effect for almost three decades, for an end to the impunity of state officials responsible for the gross human rights violations, and for an end to intimidation and harassment of independent judges.

Darfur

In July the ICJ welcomed the decision of the International Criminal Court Prosecutor to present a case against the President of Sudan, Omar Hassan Ahmad AL Bashir, for genocide, crimes against humanity, and war crimes in Darfur, Sudan. The ICJ urged the Sudanese Government to comply with UN Security Council resolutions 1769 and 1593, and fully cooperate with the ICC and its investigation of the situation in Darfur.

Mauritania

In August the ICJ called on those responsible for the military coup in Mauritania to ensure respect for the rule of law and Mauritanian Constitution immediately by restoring executive power to legitimately elected Government of President Sidi Ould.

Israel/OPT

In May, the ICJ sent a letter to the Israeli Prime Minister to express its concern regarding the arbitrary travel restrictions on Palestinian human rights advocates from Al

Haq, an NGO and ICJ affiliate in the West Bank, and urged the Israeli Government to lift the arbitrary travel restrictions on Mr Jabarin immediately. In July the ICJ sent a letter to the President of the Palestinian Authority to express its concern about the use of military courts for civilians in Gaza and the West Bank, and to urge the Palestinian Government to reform the legislative framework to bring it in line with international human rights standards, especially regarding the independence of the judiciary and the use of the death penalty. This letter came after a military court in Gaza sentenced Eyad Ahmed Diab Sukkar to death for carrying out “hostile activities against Palestinian revolutionists and military operations of the Palestinian revolution.”

PLANS FOR 2009

The objectives and activities of the MENA programme for the next year include: support for the development of an independent and impartial judiciary in countries through the region; research and activities targeted to end abusive use of the states of emergency and military and special courts for civilians; contributions to the inclusion of human rights standards in the domestic legislation; reinforcement and expansion of ICJ Network in the MENA region to develop a constituency among Arabic-speaking judges and lawyers. The ICJ plans to undertake these activities in Israel and the OPT, Morocco, Egypt, Syria, Bahrain, Tunisia and Lebanon.

ACKNOWLEDGMENTS

The ICJ recognizes the work of Commissioners, network members, affiliates, and other partners in the field for support in activities undertaken by the MENA Regional Programme during 2008. This includes ICJ Commissioners: Michèle Rivet; Pedro Nikken; Rajeev Dhavan; Ghanim Al Najjar; Raji Sourani and Hesham Bastawisi, and ICJ Affiliates the Moroccan Organisation for human rights; the Arab Center for the Independence of the Judiciary and Legal Profession (Egypt); Al Haq, and the Palestinian Centre for Human Rights (Israel and the OPT).

ANNEX I

ICJ DECLARATION AND PLAN OF ACTION ON UPHOLDING THE RULE OF LAW AND THE ROLE OF JUDGES AND LAWYERS IN TIMES OF CRISIS

ADOPTED 3 DECEMBER 2008 BY THE INTERNATIONAL COMMISSION OF JURISTS, INCLUDING ITS COMMISSIONERS, HONORARY MEMBERS, NATIONAL SECTIONS AND AFFILIATED ORGANISATIONS, AT ITS WORLD CONGRESS IN GENEVA, SWITZERLAND

Reaffirming its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary and the legal profession and human rights;

Recalling that the principles of the separation of powers and the independence of the judiciary are bedrock components of the Rule of Law and must remain invulnerable in times of crisis;

Emphasising the universality, indivisibility and interdependence of all human rights and the need in times of crisis to protect civil, cultural, economic, political and social rights;

Recognising that in times of crisis, the capacity of judges and lawyers, including prosecutors and government counsel and advisers, to fulfil their essential role as protectors and guarantors of human rights may come under enormous strain;

Aware that such crises may consist in or arise out of, among other situations, a declared or undeclared public emergency, armed conflict, internal political instability, period of transitional justice, civil unrest, generalised situation of violence, terrorism, social, economic or financial upheaval, or natural disaster;

Recalling the critical role of the legal community in opposing impunity for violations of human rights and international humanitarian law;

Reaffirming that the victims of violations of economic, social and cultural rights must be protected, including by means of access to effective judicial remedy;

Recalling its commitment to take effective steps to promote the abolition of the death penalty, and urging retentionist states to abolish the death penalty and in the interim to observe a moratorium on the practice;

Recalling its Declarations, resolutions and conclusions adopted at previous Conferences, in particular, the Act of Athens on *the Rule of Law* (1955), the Declaration of Delhi on *the Rule of Law in a Free Society* (1959), the *Law of Lagos* (1961), the Resolution of Rio de Janeiro on *Executive Action and the Rule of Law* (1962), Declaration of Bangkok (1965), the Conclusions of Vienna on *Human Rights in an Undemocratic World* (1977), the *Caracas Plan of Action on The Independence of Judges and Lawyers* (1989) and the Berlin Declaration on *Upholding Human Rights and the Rule of Law in Combating Terrorism* (2004) and the principles and standards to which the ICJ is committed;

Recalling principles and standards of international law, including the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, the UN Guidelines on the Role Prosecutors;

The International Commission of Jurists proclaims the following principles and plan of action:

Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis

1. The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency. The judiciary serves as an essential check on the other branches of the State and ensures that any laws and measures adopted to address the crisis comply with the Rule of Law, human rights and, where applicable, international humanitarian law. In times of crisis, the principle of judicial review is indispensable to the effective operation of the Rule of Law. Judges must retain the authority within the scope of their jurisdiction as final arbiters to state what the law provides. The judiciary itself must have the sole capacity to decide upon its jurisdiction and competence to adjudicate a case.
2. In times of crisis, the executive, legislative and judicial branches must preserve and guarantee, in law and practice, the independence and effective functioning of the judiciary in carrying out the fair administration of justice and the protection of human rights. They must ensure effective remedies and full reparation for violations. They must not take any decision or action the effect of which would be to nullify, invalidate or otherwise revise or undermine the integrity of judicial decisions, without prejudice to mitigation or commutation of sanctions by competent authorities consistent with international law.
3. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to restrict the competence or capacity of the judiciary to carry out its essential functions, to transfer those functions to non-judicial bodies or to circumvent judicial proceedings, control or review. They must not:
 - (a) remove from the jurisdiction or supervision of ordinary tribunals the capacity to adjudicate complaints concerning human rights violations or to provide fundamental judicial remedies; or
 - (b) place the administration of justice under military authority; or
 - (c) confer on the military any power or authority to carry out criminal investigations in matters within the jurisdiction of ordinary justice.
4. To safeguard the Rule of Law and the indivisibility of all human rights, all measures adopted to address the crisis, including those taken pursuant to a declared state of emergency or to prevent social dissent in times of economic crisis, must be subject to judicial oversight and review. Affected persons must have the right to fair and effective judicial proceedings to challenge the legality of these measures and/or their conformity with national or international law.
5. In times of crisis the stability and continuity of the judiciary is essential. Judges should not be subject to arbitrary removal, individually or collectively, by the executive, legislative or judicial branches. Judges may only be removed, by means of fair and transparent proceedings, for serious misconduct incompatible with judicial office, criminal offence or incapacity that renders them unable to discharge their functions. The right of judges and lawyers to freedom of association, including the right to establish and join professional associations, must at all times be respected.
6. The establishment of temporary or interim judges during times of crisis should be avoided. In respect of exceptional circumstances where it may become necessary to augment the capacity of the judiciary by expanding the number of active judges or through the creation of special chambers or units, the fundamental principles regarding the appointment and security of tenure must be strictly respected. Considerations of merit must remain essential criteria for appointments.

Appropriate terms of tenure, protection and remuneration of judges must be ensured and the judiciary must have adequate resources to discharge its functions.

7. Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights of their clients and in promoting the cause of justice and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients.

8. In times of crisis, lawyers must be guaranteed prompt, regular and confidential access to their clients, including to those deprived of their liberty, and to relevant documentation and evidence, at all stages of proceedings. All branches of government must take necessary measures to ensure the confidentiality of the lawyer-client relationship, and must ensure that the lawyer is able to engage in all essential elements of legal defence, including substantial and timely access to all relevant case files.

9. In times of crisis, anyone who is deprived of liberty or any person with a legitimate interest has the right to challenge the lawfulness of detention (*habeas corpus*, *amparo*) before an ordinary tribunal or court and to be released if the detention is arbitrary or otherwise unlawful. Deprivation of liberty must at all times be under judicial control or supervision. Judges, prosecutors, lawyers and other competent authorities must do all in their power to ensure that detainees enjoy the right to prompt access to lawyers, contact with family members, and when necessary, access to adequate and prompt medical attention.

10. In times of crisis, only courts and tribunals should dispense justice and only a court of law or tribunal should try and convict a person for a criminal offence. Every person has the right to a fair trial by an independent and impartial tribunal or court established by law. In times of crisis, civilians must only be tried by ordinary courts or tribunals, except when special rules of international law allow military tribunals to try civilians. All such proceedings must respect the inherent minimum guarantees of a fair trial. In particular, governments must not, even in times of emergency, derogate from or suspend the presumption of innocence, the right to be informed of the charge, the right of defence, the right against self-incrimination, the principle of equality of arms, the right to test evidence, the prohibition against the use of information obtained under torture or other serious human rights violations, the non retroactivity of criminal liability and the right to judicial appeal.

11. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to deprive victims of human rights violations and/or their relatives of their rights to effective access to justice, effective judicial remedies and full reparation. The adoption of measures to remove jurisdiction or the judicial remedies for human rights violations from the ordinary courts constitutes a serious attack against the independence of the judiciary and basic principles of the Rule of Law. State secrecy and similar restrictions must not impede the right to an effective remedy for human rights violations.

12. The integrity of the judicial system is central to the maintenance of a democratic society. Impartiality of the judiciary requires that cases be decided only on the basis of lawfully and fairly

obtained evidence and of the application in good faith of the law, free from any extraneous influences, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

13. Members of the legal profession, including members of the judiciary and their legal staff, prosecutors, legal advisers to the executive and legislature, public defenders, members of the private bar, and lawyers' associations have a legal and ethical responsibility to uphold and promote the Rule of Law and human rights and to ensure that in carrying out their professional functions they take no measures that would impair the enjoyment of human rights. Judges in times of crisis are under a special duty to resist actions which would undermine their independence and the Rule of Law. Judges are entitled to protection to enable them to discharge their professional duties. A lawyer who knowingly gives advice which would foreseeably lead to a violation of human rights or international humanitarian law or to a crime under international law breaches his or her professional responsibility. When such advice leads to a crime under international law, the offending lawyer should incur civil and criminal responsibility.

Plan of Action

The International Commission of Jurists, including its Commissioners, Honorary Members, National Sections and Affiliated Organisations, in pursuance of its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary, the legal profession and human rights:

1. Reaffirms that the judiciary and legal profession have an enhanced responsibility during times of crisis to ensure the Rule of Law, the protection of human rights and the effectiveness of the administration of justice.
2. Calls on all members of the Judiciary, the legal profession and bar associations around the world to support the primacy of the Rule of Law in countries facing times of crisis and in particular to support judges and lawyers who may be under attack, persecution or harassment;
3. Decides as a global network to work collectively:
 - (a) To monitor situations where the institutional independence and effectiveness of the judiciary or the legal profession are threatened or under attack;
 - (b) To intervene, by appropriate means, to support and protect judges and lawyers who are harassed or persecuted as a result of carrying out their professional duties in times of crisis;
 - (c) To challenge, through advocacy and litigation, any legislation, measures or other actions contemplated, established or implemented in times of crisis at the national level, which place at risk or undermine the independence and effectiveness of the judiciary and the legal profession and their essential missions to protect human rights and the Rule of Law;
 - (d) To provide to the United Nations and regional organisations relevant information on the independence of the judiciary and the legal profession in times of crisis and to request from them action to protect judges and lawyers under attack.
4. Charges its Centre for the Independence of Judges and Lawyers (CIJL) with the responsibility:
 - (a) To act as a focal point in all matters concerning the independence and effectiveness of the judiciary and the legal profession in times of crisis;
 - (b) To initiate and implement the above Plan of Action;
 - (c) To work with the ICJ Network to assist efforts and initiatives to support and protect judges and lawyers in times of crisis; and,
 - (d) To disseminate this Declaration and the Plan of Action of the Conference to national, regional and international associations of judges and lawyers (including ICJ National Sections and Affiliated Organisations), to intergovernmental organisations and to governments.

ANNEX II: PUBLICATIONS, ADVOCACY AND LEGAL OUTPUTS

A. Major ICJ Publications Completed in 2008

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| <i>Corporate Complicity and Legal Accountability: Report of the International Commission of Jurists' Expert Legal Panel on Corporate Complicity in International Crimes</i> (Volumes 1, 2 & 3). | English / 1 st Edition | 2008 |
| <i>Legal Commentary to the ICJ Berlin Declaration; Counter-terrorism, Human Rights and the Rule of Law</i> (Human Rights and Rule of Law Series: No. 1). | English / 1 st Edition | 2008 |
| <i>Courts and the Legal Enforcement of Economic, Social and Cultural Rights; Comparative Experiences of Justiciability</i> (Human Rights and Rule of Law Series: No. 2). | English / 1 st Edition | 2008 |
| <i>Impunidad y Graves Violaciones de Derechos Humanos</i> (Guía para Profesionales No. 3). | Spanish / 1 st Edition | 2008 |
| <i>Comentario del Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales.</i> | Spanish / 1 st Edition | 2008 |
| <i>Study on the Reform of the United Nations Treaty Bodies System.</i> | English, French and Spanish / 1 st Edition | 2008 |
| <i>Sexual Orientation, Gender Identity and International Human Rights Law</i> (Practitioners' Guide No. 4). | English / 1 st Edition | 2008 |
| <i>Comments on the Nepal Army Act of 2007.</i> | English and Nepali / 1 st Edition | 2008 |
| <i>Nepal: Justice in Transition.</i> | English and Nepali / 1 st Edition | 2008 |

B. ICJ Legal and Advocacy Outputs Completed in 2008

Project on Global Security and Rule of Law

Strategic Legal Interventions/Submissions:

- ICJ Legal Intervention: Joint intervention before the United States Court of Appeal for the Third Circuit in *Sameh Khouzam v. Michael Chertoff, Secretary, Department of Homeland Security*. United States of America (April 2008).
- ICJ Legal Intervention: Joint intervention with ICJ International Economic Relations Programme and REDRESS before the United States Court of Appeal for the ninth circuit in *Binyam Mohamed and others v. Jeppesen Dataplan, Inc.* United States of America (July 2008).
- ICJ Briefing Paper: "Amendment to the Framework Decision on Combating Terrorism - Provocation to Commit a Terrorist Offence," European Union (March 2008).
- ICJ Legal Intervention: Intervention before the Norwegian Supreme Court in the case of Nadeem Dar, Norway (March 2008).

Media/Press Releases:

- ICJ Press release: "ICJ urges Tunisian Government to refrain from interference with judicial independence and from abusive counter-terrorism practices," Tunisia (April 2008).

Other:

- ICJ Publication: *E-Bulletin on Counter-Terrorism and Human Rights* (bi-monthly Jan.-August 2008; monthly Sept.-December 2008). (See: http://icj.org/article.php3?id_article=3513&id_rubrique=37?=en).
- ICJ Letter: Joint letter to the Committee on Legal Affairs and Human Rights (CLAHR), on national investigations into allegations of renditions and secret detentions (March 2008).
- ICJ Briefing Paper: “Briefing Paper on the European Commission’s Proposals to Create an Offence of Provocation of Terrorism,” circulated to MEPs and relevant EU officials and institutions, European Union (March 2008).
- ICJ Letter: Joint letter to Minister of Justice of Denmark - and diplomatic assurances against grave violations of human rights, Denmark (June 2008).

Project on International Economic Relations**Strategic Legal Interventions/Submissions:**

- ICJ Legal Intervention: Joint intervention with ICJ Global Security and Rule of Law Programme and REDRESS before the United States Court of Appeals for the Ninth Circuit in *Binyam Mohamed and others v. Jeppesen Dataplan, Inc.* United States of America (July 2008).

Media/Press Releases:

- ICJ Press release: “International Commission of Jurist makes public report on Corporate Complicity in International Crimes,” Switzerland (September 2008).

Projects on the United Nations Human Rights Council and the UN Treaty Monitoring Bodies**Human Rights Council****Submissions to the Universal Periodic Review**

- ICJ Submission: to the Universal Periodic Review of Romania, 2nd UPR Session of the Human Rights Council, (February 2008).
- ICJ Submission: to the Universal Periodic Review of Sri Lanka, 2nd UPR Session of the Human Rights Council, (February 2008).
- ICJ Submission: to the Universal Periodic Review of Guatemala, 2nd UPR Session of the Human Rights Council (February 2008).
- ICJ Submission: to the Universal Periodic Review of Pakistan, 2nd UPR Session of the Human Rights Council (February 2008).
- ICJ Submission: to the Universal Periodic Review of Burundi, 3rd UPR Session of the Human Rights Council (July 2008).
- ICJ Submission: to the Universal Periodic Review of Colombia, 3rd UPR Session of the Human Rights Council (July 2008).
- ICJ Submission: to the Universal Periodic Review of Israel, 3rd UPR Session of the Human Rights Council (August 2008).
- ICJ Submission: to the Universal Periodic Review of Uzbekistan, 3rd UPR Session of the Human Rights Council (July 2008).
- ICJ Submission: to the Universal Periodic Review of Serbia, 3rd UPR Session of the Human Rights Council (July 2008).
- ICJ Submission: to the Universal Periodic Review of Jordan, 4th UPR Session of the Human Rights Council (September 2008).
- ICJ Submission: to the Universal Periodic Review of Saudi Arabia, 4th UPR Session of the Human Rights Council (September 2008).
- ICJ Submission: to the Universal Periodic Review of the Russian Federation, 4th UPR Session of the Human Rights Council (September 2008).
- ICJ Submission: to the Universal Periodic Review of the Former Yugoslav Republic of Macedonia, 5th UPR Session of the Human Rights Council (November 2008).
- ICJ Submission: to the Universal Periodic Review of Malta, 5th UPR Session of the Human Rights Council (November 2008).
- Joint submission by the Institute for Legal and Social Studies of Uruguay and the ICJ to the Universal Periodic Review of Uruguay, 5th UPR Session of the Human Rights Council (November 2008).
- ICJ Submission: to the Universal Periodic Review of Chile, 5th UPR Session of the Human Rights Council (November 2008).

Statements to the Special Sessions of the Human Rights Council

- ICJ Statement: “Human rights and humanitarian situation in Palestine,” (January 2008).
- ICJ Statement: “Impact of the worsening world food crisis on the realization of the right to food,” (May 2008).
- ICJ Statement: “Situation of Human Rights in the East of the Democratic Republic of the Congo,” (December 2008).

Statements to the Regular Sessions of the Human Rights Council

- ICJ Statement: “Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General,” (March 2008).
- ICJ Statement: Interactive Dialogue with the Chairperson of the Working Group on Enforced or Involuntary Disappearances (March 2008).
- ICJ Statement: “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar,” (13 March 2008)
- ICJ Statement: “Human Rights Situations that require the Human Rights Council’s Attention – Kenya, Sri Lanka, Pakistan, Zimbabwe, Uganda,” (March 2008).
- ICJ Statement: “The Situation of Human Rights in the Democratic Republic of the Congo,” (March 2008).
- ICJ Statement: “Human Rights Situation in Palestine and Other Occupied Arab Territories - Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,” (March 2008).
- ICJ Statement: “Follow-up and Implementation of the Vienna Declaration and Programme of Action – Human Rights Situation in Tibet,” (March 2008).
- ICJ Statement: “Interactive Dialogue with the Special Rapporteur on Human Rights and Transnational Corporations and other Business Enterprises,” (June 2008).
- Joint ICJ/COHRE Statement: “Human Rights Situations that require the Human Rights Council’s Attention – Zimbabwe and Tibet,” (June 2008).
- ICJ Statement: “Review, Rationalization and Improvement of the Mandate of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” (June 2008).
- ICJ Statement: “Review, Rationalization and Improvement of the Mandate of the Special Rapporteur on the Independence of Judges and Lawyers,” (June 2008).
- ICJ Statement: “Follow-up to the 5th Human Rights Council’s Special Session on Myanmar,” (June 2008).
- ICJ Statement: “Outcome of the Universal Periodic Review of Tunisia,” Intervention de l’Organisation Mondiale Contre la Torture sur la Tunisie, soutenue par Human Rights Watch et la Commission Internationale des Juristes (June 2008).
- ICJ Statement: “Outcome of the Universal Periodic Review of Poland,” (June 2008).
- ICJ Statement: “Outcome of the Universal Periodic Review of the Netherlands,” (June 2008).
- ICJ Statement: “Outcome of the Universal Periodic Review of Pakistan,” (June 2008).
- ICJ Statement: “Outcome of the Universal Periodic Review of Sri Lanka,” (June 2008).
- ICJ Statement: Interaction with the UN High Commissioner for Human Rights (September 2008).
- ICJ Statement: Interactive Dialogue with the Special Rapporteur “The situation of human rights in the Sudan,” (September 2008).
- ICJ Statement: “Human Rights Situations that require the Human Rights Council’s Attention – Zimbabwe, Tibet, Georgia and Sri Lanka,” (September 2008).
- ICJ Statement: “Follow-up and Implementation of the Vienna Declaration and Programme of Action – Human Rights Situation in Mexico,” (September 2008).
- Joint written statement for the United Nations Human Rights Council: ICJ, Human Rights Watch, Amnesty International, ActionAid, EarthRights International, Friends of the Earth, ESCR-Net, RAID, OXFAM International, FIDH, on Human Rights and Transnational Corporations and other Business Enterprises (May 2008).

Submissions to the Human Rights Council’s Special Procedures

- ICJ Legal Intervention: Assistance to Conflict Victim Committee Bardiya on submission of 207 individual communications to the Working Group on Enforced and Involuntary Disappearances (March – October 2008).

Human Rights Treaty Monitoring Bodies

Country Submissions

- ICJ Submission: to the Committee Against Torture on the Periodic Report of Iceland (April 2008).
- ICJ Submission: to the Committee against Torture on the Fifth Periodic Report of Sweden (April 2008).
- ICJ Submission: to the Human Rights Committee on the Periodic Report of Spain (June 2008).

- Legal Intervention: Joint Letter to the Human Rights Committee on the Periodic Report of Denmark (June 2008).
- ICJ Submission: to the Human Rights Committee on the 6th Periodic Report of the United Kingdom (July 2008).
- ICJ Submission: to the Human Rights Committee on the Periodic Report of Spain (October 2008).
- ICJ Submission: to the Human Rights Committee on the Periodic Report of the Russian Federation (December 2008).

Thematic Submissions

- ICJ Concept Paper: Strategy paper on Measures for Improvement and Harmonization of Operation of the UN Human Rights Treaty Monitoring Bodies (April 2008).
- Draft General Comment: “Submission on the draft General Comment No. 33 by the Human Rights Committee on the nature of States parties’ obligations under the Optional protocol on the communication procedure” (July 2008).
- Draft General Comment: “Submission on the draft General Comment No. 20 by the Committee on Economic, Social and Cultural Rights on the rights to equality and non-discrimination as contained in Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights” (December 2008).

Statements

- “Address to the 93rd Session of the Human Rights Committee – United Kingdom” (July 2008).
- “Address to the 94th Session of the Human Rights Committee – Spain, Denmark and Freedom of Expression” (October 2008).

Africa Regional Programme

Country/Thematic Reports:

- Assessment of the Rule of Law Situation in Zimbabwe in the Context of the 29th March Elections 2008, (February 2008).

Strategic Legal Interventions/Submissions:

- Addressed letter to Mr. Patrick Chinamasa, the Zimbabwean Minister of Justice, Legal and Parliamentary Affairs referenced: “Appeal for the Respect of the Independence of the Legal Profession in Zimbabwe,” (March 2008).
- ICJ Submission: Submission to the 43rd Ordinary Session of the African Commission on Human and Peoples’ Rights, “The Situation of Human Rights Defenders in Zimbabwe,” Swaziland (May 2008).
- ICJ Submission: Submission to the 44th Ordinary Session of the African Commission on Human and Peoples’ Rights, “Human Rights in the Context of Elections in Africa and the Emerging Concept of Coalition Governments in Africa,” Nigeria, (November 2008).

Media/Press Releases:

- ICJ Press Release: “Death Threats against the Observers and Defense Lawyers at Maheshe Trial in the Democratic Republic of Congo,” (April 2008).
- ICJ Press Release: “ICJ Calls for the Independence of the Legal Profession in Zimbabwe,” (March 2008).
- ICJ Press Release: “ICJ Concerned as Zimbabwe Gravitates towards Chaos,” (April 2008).
- ICJ Press Release: “ICJ Supports the Stand up for Zimbabwe Campaign,” (May 2008).
- ICJ Press Release: ICJ Condemns the Harassment of Opposition Leaders and Human Rights Defenders in Zimbabwe,” (June 2008).

Other:

- ICJ Event/Programme: The Inaugural Annual Southern Africa Judges Annual Symposium, Malawi, (December 2009).

Asia-Pacific Regional Programme

Country/Thematic Reports:

- ICJ Briefing: Legal Memorandum on Hearsay Evidence and International Fair Trial Standards, Thailand (October 2008).

Strategic Legal Interventions/Submissions:

- ICJ Legal Intervention: Technical assistance on habeas corpus application in case involving enforced disappearance in Mayateng Maranoh, Yala Provincial Court, Thailand (July-August 2008).
- ICJ Legal Intervention: Technical assistance to family of victim seeking compensation in case of shooting death involving security officials, Yala Provincial Court, Thailand (January 2008).
- ICJ Legal Intervention: Technical assistance provided in drafting claims for compensation in case of death during custody by security officials, Yala Provincial Court, Thailand (June-July 2008).
- ICJ Legal Intervention: Technical assistance and Submission of an appeal to the Administrative Court in the Case of Nang Num, challenging discrimination and seeking compensation from the State for work-related injuries, Thailand (February-April 2008; Submission April 2008).
- ICJ Legal Intervention: Legal memorandum submission on amendments to the Thai Criminal Procedure Code, in support of litigation participants raising concerns on use of second-hand hearsay evidence in the case of Buraheng in the Na Thawi Provincial Court, Thailand (June 2008, public distribution October 2008).
- ICJ Trial Observation: In a case dealing with the post-mortem inquest into the death of a Muslim cleric during military custody, Yapa Kaseng, Narathiwat Provincial Court, Thailand (September and November 2008).
- ICJ Trial Observation: In a case dealing with the post-mortem inquest into a shooting death of a Shan refugee in a refugee camp in Saw U; Mae Hong Son Provincial Court, Thailand (November 2008).
- ICJ Letter: Open Letter to the Speaker of the Constituent Assembly, raising human rights concerns in the Disappearance Bill, Nepal (February 2008).
- ICJ Legal Intervention: Technical assistance on Habeas Corpus Submission relating to detentions to the Supreme Court of Nepal in *Kelsang v. The government of Nepal*, Nepal (June 2008).
- ICJ Legal Intervention: Technical assistance provided in filing of FIR, and Submission to Supreme Court of Nepal regarding failure of District Police Office to file FIR in case involving extrajudicial killing by Army personnel, in *Ram Bhandari v. DPO Lamjung*, Nepal (May 2008).
- ICJ Legal Intervention: Technical assistance provided to file mandamus writ in the Supreme Court of Nepal regarding the decision of Attorney General, on refusal to prosecute case of enforced disappearance of 25 people, Nepal (August 2008).
- ICJ Legal Intervention and Trial Observation: Legal assistance provided to legal representatives of the Blue Diamond Society in case of dismissal from Military Tribunal on basis of sexual orientation, Nepal (June 2008). Trial observation provided in same case, Nepal (June 2008).
- ICJ Legal Intervention: Legal assistance provided to legal representatives of the Blue Diamond Society in filing Mandamus writ with Supreme Court challenging decision of Military Tribunal in case involving dismissal based on sexual orientation, Nepal (September 2008).
- ICJ Legal Intervention: Draft and submission to Supreme Court of Nepal of FIR and petition in a case alleging torture in a detention center; provision of technical assistance to legal team from Advocacy Forum; Nepal (May 2008).
- ICJ Legal Intervention: Investigation, preparation and submission with FOHRID of amicus curiae brief to Supreme Court of Nepal in case of labourers killed by security forces, resulting in Supreme Court order for enactment of comprehensive law to address human rights and humanitarian law violations and reparation, Nepal (May 2008).
- ICJ Legal Intervention: Trial observation conducted in case of an extra judicial execution of 10-year old Maina Sunwar, Supreme Court of Nepal, Nepal (September 2008).
- ICJ Legal Intervention: Trial observation conducted in case of an extra judicial execution of Sanjeef Kumar Karna, Supreme Court of Nepal, Nepal (August 2008).
- ICJ Legal Intervention: Technical assistance and joint submission with Conflict Victim Committee of First Information Reports, District Police Office, Bardiya, regarding Maoist cadres involved in killing Dil Bahadur Khadka and Narayan Sapkota in 2004 (Case not registered due to security problems), Nepal (2008).
- ICJ Legal Intervention: Legal assistance provided to Advocacy Forum in drafting arguments for case of extrajudicial execution of Arjun Lama, Nepal (March 2008).

Media/Press Releases:

- ICJ Press Release: “ICJ Urges United Nations to Remain Vigilant in Disappeared Lawyer Case,” Thailand (March 2008).
- ICJ Press Release: “Regional ASEAN Colloquium Reaffirms Independence of Judges and Lawyers,” Thailand (August 2008).
- ICJ Press Release: “ICJ urges human rights amendments to the Disappearances Bill,” Nepal (November 2008).

- ICJ Press Release: “Disappearances Commission and Truth and Reconciliation Commission should meet international human rights standards,” Nepal (February 2008).
- ICJ Press Release: “The ICJ Calls for Urgent Action to Strengthen Rule of Law,” Nepal (February 2008).

Europe Regional Programme

Country/Thematic Reports:

- ICJ Briefing Paper: On Amendments to the EU Framework Decision on Combating Terrorism, European Union (April 2008).

Strategic Legal Interventions/Submissions:

- ICJ Legal Intervention: Third Party Intervention in Case no. 2007/677 (case of Nadeem Mohammed Dar), Norwegian Supreme Court, Norway (March 2008).
- ICJ Legal Intervention: Third Party Intervention, European Court of Human Rights, *Finogenov v Russia* (April 2008).

Media/Press Releases:

- ICJ Press Release, *Italy: ICJ calls for end to government interference with judicial independence*, Italy (June 2008).
- ICJ Press Release: “Universal Periodic Review of Poland: ICJ urges complete response to questions on secret detentions and renditions of terrorism suspects,” Poland (April 2008).
- ICJ Publication: “Bulletin: Counter-terrorism and Human Rights,” *European Human Rights Law Review*: (published bi-monthly 2008); London: Sweet & Maxwell, 2008. See: <http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=388&productid=6823>.)

Other:

- ICJ Open Letter: Joint letter to Minister of Justice of Denmark on Diplomatic Assurances (June 2008).
- ICJ Open Letter: Letter to Members of Italian House of Representatives on security decree (July 2008).
- ICJ Open Letter: Letter to Members of the Italian Senate on security decree (July 2008).
- ICJ Open Letter: Letter to Danish Minister for Integration on amendments to Aliens Law (November 2008).

Latin America Regional Programme

Country/Thematic Reports:

- ICJ Country Briefing: “*Informe de la observación del proceso contra Alberto Fujimori*,” Peru, March, 2007.
- ICJ Country Briefing: “*Conclusiones Preliminares de la Mision a Oaxaca de DPLF, CIJ, y FUNDAR*,” Mexico, (November 2008).

Strategic Legal Interventions/Submissions:

- ICJ Legal Intervention: *Amicus Curiae* brief submitted to the Constitutional Court of Colombia in the judicial review of the Declaration of the State of Emergency (August 2008).
- ICJ Legal Intervention: *Amicus Curiae* brief submitted to the Third Criminal Court of the Specialized Circuit of Bogota (Juzgado Tercero Penal del Circuito Especializado) in the trial of the former Colonel Plazas Vega and others for the enforced disappearance of 33 peoples in 1985 (Palacio de Justicia), Colombia (July 2008).
- ICJ Legal Intervention: Memorial en Derecho *Amicus Curiae* presentado por la Comisión Internacional de Juristas ante la Corte Constitucional de la República de Colombia en el marco del Expediente RE-132 (Magistrado Ponente: Humberto Sierra Porto), Colombia (2008).
- ICJ Legal Intervention: *Amicus Curiae* de la Comisión Internacional de Juristas Ante El Juzgado Tercero Penal Especializado de la República de Colombia en el Proceso Contra Luis Alfonso Plazas Vega, Radicado 003-2008-025, Colombia (July 2008).
- ICJ Legal Memorandum: “*Corte Interamericana de Derechos Humanos Caso Apitz Barbera y otros (‘Corte Primera de lo Contencioso Administrativo’) vs. Venezuela*,” Venezuela (August 2008).

Media/Press Releases

- ICJ Article: “*Honduras Expertos Internacionales Inician Misión Para Verificar Elección de Corte Suprema*,” Honduras, (September 2008).
- ICJ Press Release: “*Pronunciamento de la Comisión Internacional de Juristas en Ocasión de Finalizar su Visita a Honduras*,” Honduras (September 2008).

- ICJ Press Release: “*Inmediato Honduras: Juristas Condenan Atentado contra Fiscal,*” Honduras, (September 2008).
- ICJ Press Release: “*Comunicado de Prensa, Guatemala: Juristas Condenan Ataques y Amenazas contra Operadores de Justicia,*” Guatemala, (May 2008).
- “*Consejo de Derechos Humanos 3ª Sesión del Examen Periódico Universal, 1 – 12 de diciembre de 2008 Contribución de la Comisión Internacional de Juristas al Examen Periódico Universal de Colombia,*” Colombia, (July 2008).
- ICJ Press Release: “*Venezuela: CIJ Expresa Preocupación por Intromisión en Colegio de Abogados de Caracas,*” (July 2008).
- ICJ Press Release: “*La Comisión Internacional de Juristas (CIJ) y la Fundación para el Debido Proceso Legal (DPLF, por su sigla en inglés) destacan decisión de la Corte Interamericana de Derechos Humanos en el caso ‘Corte Primera de lo Contencioso Administrativo vs. Venezuela,’*” Venezuela (2008).

Other:

- ICJ Letter: “*Carta Abierta a los Entes Proponentes de Candidatos de la Corte Suprema,*” Honduras (August, 2008).
- ICJ Letter: Doctora María Claudia Merchán Gutiérrez, Juzgado Tercero Penal del Circuito Especializado, Ref: Proceso contra Luis Alfonso Plazas Vega, Radicado N° 003-2008-025, Colombia (2008).
- ICJ Letter: Magistrado Ovidio Claros Polanco, Consejo Superior de la Judicatura, Ref: colisión de competencias en los procesos contra Luis Alfonso Plazas Vega, Radicado 2009 – 00097 (2008).

Middle East and North Africa Programme

Strategic Legal Interventions/Submissions:

- ICJ Open Letter: Open Letter to the Prime Minister of Israel Regarding the Arbitrary Travel Restrictions by the Israeli Government on Mr. Shawan Jabarin, the General Director of Al Haq, a Palestinian human rights non-governmental organization Al-Haq and ICJ affiliate in the West Bank, Israel (20 May 2008).

Media/Press Releases

- ICJ Press Release: “A significant step forward towards ending impunity in Darfur: ICC Prosecutor Presents case against Sudanese President for genocide, crimes against humanity and war crimes,” Sudan (July 2008).
- ICJ Press Release: “Leaders of military coup must immediately restore rule of law,” Mauritania (August 2008).
- ICJ Press Release: “ICJ calls on Iranian authorities to cease harassment of Baha’i faith leaders,” Iran (June 2008).

ANNEX III

ICJ Staff List 2008

Management Team

| | |
|------------------------|--|
| Jeannette André | Director of Finance and Administration |
| Federico Andreu-Guzman | General Counsel |
| Nicholas Howen, | Secretary-General |
| Wilder Tayler | Acting Secretary-General |

Staff

Jumana Abo Oxa, Associate Programme Officer, Middle East and North Africa Programme
Bimal Acharya, Administration and Finance Officer, Nepal
Pooja Ahluwalia, Legal Officer, Asia-Pacific Programme
Susan Appleyard, Programme Officer, Asia-Pacific Regional Programme
Marie-Laure Bazerolle, Associate Legal Officer, Global Security & Rule of Law Programme
Saïd Benarbia, Legal Officer, Middle East and North Africa Programme
Ramón Cadena, Director, Central America Sub-region
Elaine Chan, Programme Officer, Thailand
Christian Curtis, Legal Officer, Economic, Social and Cultural Rights
Philippe Dayle, Legal Officer, Sexual Orientation and Gender Identity
Massimo Frigo, Associate Legal Officer, Global Security & Rule of Law and Europe Regional Programme
Mario Gomez, Country Director, Nepal
Paul Green, Legal Officer, Asia Pacific Programme
Patrick Hartmann, Finance Officer
Leah Hoctor, Programme Officer, Assistant to the Secretary-General
Griselda Hofer, Office Manager
Ami Latonal, Project Officer, Thailand
Carlos Lopez, Legal Officer, International Economic Relations Programme
Lukas Machon, ICJ Representative to the United Nations
Julie Marion, Associate Development Officer
Roger Normand, Director, Asia-Pacific Regional Programme
Martin Okumu-Masiga, Senior Legal Officer, Africa Programme
Darunee Paisanpanichkul, National Legal Officer, Thailand
Matias Pellado, Associate Legal Officer, Global Security & Rule of Law Programme
Hari Phuyal, National Legal Officer, Nepal
Radosh Piletich, Development Officer
Roisin Pillay, Legal Officer, Europe Regional Programme
Gisella Reina, Senior Development Officer
Sophie Richardson, Conference Coordinator
Clotilde Salomon, Human Resources Officer
Ian Seiderman, Senior Legal and Policy Adviser
Govinda Sharma, National Legal Officer, Nepal
Anothai Soma, Administration and Finance Officer, Thailand
Gerald Staberock, Director, Global Security & Rule of Law Programme
Laurent Tellier, Finance Officer
Angelica Torres, Administrative Assistant
Arnold Tsunga, Director, Africa Regional Programme
Yayoi Yamaguchi, Associate Legal Officer, Global Security & Rule of Law Programme
Priyam Yarnell, Programme Officer, Assistant to the Acting Secretary-General
José Zeitune, Legal Officer, Latin America Regional Programme

Auditors' report

REPORT OF THE STATUTORY AUDITOR

**To the Executive Committee of the
International Commission of Jurists, Geneva**

Report on the financial statements

As statutory auditor, we have audited the accompanying financial statements of the International Commission of Jurists, which comprise the balance sheet, statement of financial performance, statement of cash flow and notes for the year ended December 31, 2008. Prior year corresponding figures were audited by other auditors, who issued an unqualified opinion dated April 16, 2008.

International Secretariat's Responsibility

The International Secretariat is responsible for the preparation of the financial statements in accordance with the requirements of Swiss law and the Commission's articles of incorporation. This responsibility includes designing, implementing and maintaining an internal control system relevant to the preparation of financial statements that are free from material misstatement, whether due to fraud or error. The International Secretariat is further responsible for selecting and applying appropriate accounting policies and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Swiss law and Swiss Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers the internal control system relevant to the entity's preparation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control system. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements for the year ended December 31, 2008 comply with Swiss law and the Commission's articles of incorporation.


Report on Other Legal Requirements

We confirm that we meet the legal requirements on licensing according to the Auditor Oversight Act (AOA) and independence (article 728 CO) and that there are no circumstances incompatible with our independence.

In accordance with article 728a paragraph 1 item 3 CO and Swiss Auditing Standard 890, we confirm that an internal control system exists, which has been designed for the preparation of financial statements according to the instructions of the Executive Committee.

We recommend that the financial statements submitted to you be approved.

DELOITTE SA


Jean-Marc Jenny
Licensed audit expert
Auditor in charge


Lisa Watson
Licensed audit expert

May 20, 2009

Enclosures: - Financial statements (balance sheet, statements of financial performance, cash flow and notes)

INTERNATIONAL COMMISSION OF JURISTS, GenevaBALANCE SHEET AT 31 DECEMBER 2008
(with 2007 comparative figures)

(expressed in CHF)

| | NOTES | 2008 | 2007 |
|--|-------|-------------------------|-------------------------|
| <u>ASSETS</u> | | | |
| CURRENT ASSETS | | | |
| Cash and cash equivalents | 4 | 850,443 | 425,382 |
| Time deposits | | 739,775 | 557,478 |
| Receivables | | 776,537 | 632,482 |
| Publication stock | 3 | 0 | 32,585 |
| Prepayments | | 13,404 | 8,304 |
| Total Current Assets | | <u>2,380,159</u> | <u>1,656,231</u> |
| NON-CURRENT ASSETS | | | |
| Office, computer equipment and software, net | 2d/5 | 86,989 | 71,744 |
| Leased office equipment, net | 2d/5 | 26,983 | 39,556 |
| Rent deposit | | 57,409 | 57,085 |
| Total Fixed Assets | | <u>171,381</u> | <u>168,385</u> |
| TOTAL | | <u>2,551,540</u> | <u>1,824,616</u> |
| <u>LIABILITIES AND RESERVES</u> | | | |
| CURRENT LIABILITIES | | | |
| Payables | | 184,647 | 129,005 |
| Accruals | | 316,637 | 285,367 |
| Loan payable | 7 | 300,000 | 0 |
| Contributions received during the year carried forward | | 250,288 | 140,918 |
| Contributions received in advance for subsequent years | | 786,192 | 252,868 |
| Total Current Liabilities | | <u>1,837,764</u> | <u>808,158</u> |
| LONG-TERM LIABILITIES | | | |
| Lease liability | | 29,544 | 41,348 |
| Long-term contributions received in advance | 6 | 0 | 483,414 |
| Total Long-Term Liabilities | | <u>29,544</u> | <u>524,762</u> |
| RESERVE | | | |
| General reserve | 2e | <u>684,232</u> | <u>491,696</u> |
| TOTAL | | <u>2,551,540</u> | <u>1,824,616</u> |

INTERNATIONAL COMMISSION OF JURISTS, GenevaSTATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 31 DECEMBER 2008
(with 2007 comparative figures)

(expressed in CHF)

| | NOTES | 2008 | 2007 |
|--|-------|-------------------------|-------------------------|
| INCOME | | | |
| Donor contributions received in the year or carried forward from previous year | | 6,132,943 | 4,771,404 |
| Donor contributions received to be carried forward | | -250,287 | -140,918 |
| Donor contributions received in advance | | -786,192 | -252,868 |
| Donor contributions utilised in the year | 8 | <u>5,096,464</u> | <u>4,377,618</u> |
| Miscellaneous income | 6 | 507,271 | 14,316 |
| Financial income | | 5,199 | 19,614 |
| Exchange gain | | 127,441 | 44,786 |
| Other income | | 8,521 | 18,387 |
| Unused provision reversed | | 8,000 | 122,140 |
| Total income | | <u>5,752,896</u> | <u>4,596,861</u> |
| EXPENSES | | | |
| Staff expenses | 9 | 3,499,244 | 2,702,102 |
| Office premises | | 396,055 | 399,382 |
| Postage & telecommunication | | 78,093 | 86,588 |
| Fundraising, documentation & communication | | 4,127 | 73,226 |
| Consultancy fees | | 285,132 | 181,195 |
| Meeting & travel costs | | 709,842 | 730,034 |
| Printing & distribution | | 131,423 | 35,868 |
| Depreciation | 3 | 84,429 | 77,597 |
| Financial expenses | | 14,331 | 14,728 |
| Exchange loss | | 305,021 | 114,385 |
| Other expenses | | 52,663 | 21,112 |
| Total operating costs | | <u>5,560,360</u> | <u>4,436,218</u> |
| Operating Surplus | 8b | <u>192,536</u> | <u>160,643</u> |
| GENERAL RESERVE as of January 1 | | 491,696 | 331,053 |
| GENERAL RESERVE as of December 31 | 2e | <u>684,232</u> | <u>491,696</u> |

INTERNATIONAL COMMISSION OF JURISTS, GenevaSTATEMENT OF CASH FLOW
FOR THE YEAR ENDED 31 DECEMBER 2008
(with 2007 comparative figures)

(expressed in CHF)

| | NOTES | 2008 | 2007 |
|---|-------|-----------------------|------------------------|
| Operating activities | | | |
| Surplus | | 192,536 | 160,643 |
| Adjustments for: | | | |
| Depreciation of fixed assets | | 51,844 | 45,097 |
| Unrealised foreign exchange loss (profit) | | 0 | 13,302 |
| Operating cash flow before working capital changes | | <u>244,380</u> | <u>219,042</u> |
| Decrease (increase) in receivables | | -144,055 | -44,961 |
| Decrease (increase) in prepayments | | -5,100 | 37,824 |
| Decrease (increase) in publication stock | | 32,585 | 32,500 |
| Increase (decrease) in payables & accruals | | 86,913 | -119,298 |
| Increase (decrease) in contributions received in advance | | 159,279 | -319,206 |
| Net cash from (used in) operating activities | | <u>374,002</u> | <u>-194,099</u> |
| Investing activities | | | |
| Purchase of soft & hardware | | -41,699 | -19,392 |
| Purchase of office equipment | | -12,817 | 0 |
| Net cash used in investing activities | | <u>-54,516</u> | <u>-19,392</u> |
| Financing activities | | | |
| Loan income received | | 300,000 | 0 |
| Increase (decrease) in lease liabilities | | -11,804 | -11,804 |
| Net cash generated from (used in) financing activities | | <u>288,196</u> | <u>-11,804</u> |
| Net increase (decrease) in cash & cash equivalents | | 607,682 | -225,293 |
| Cash, cash equivalents and deposits at beginning of year | | 1,039,945 | 1,265,238 |
| Cash, cash equivalents and deposits at end of year | 4 | 1,647,627 | 1,039,945 |

INTERNATIONAL COMMISSION OF JURISTS, Geneva

NOTES TO FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2008 (with 2007 comparative figures)

(expressed in CHF)

1. ACTIVITIES

The International Commission of Jurists (ICJ) is an international non-governmental and non-political organisation dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. The commission was founded in Berlin in 1952 and its membership is composed of up to sixty eminent jurists who are representative of the different legal systems of the world. Based in Geneva, the International Secretariat is responsible for the realisation of the aims and objectives of the Commission.

The ICJ is registered as a non-profit, non-governmental association under articles 60-79 of the Swiss Civil Code. It is financed by voluntary contributions received from governments, foundations, non-governmental organisations, individual donations and revenue from its own membership and sale of publications. The voluntary contributions may either be for the general operations of the ICJ or earmarked for specific projects.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND DEFINITIONS

- a) Income – The Commission’s income consists primarily of contributions recognised on a cash basis. However, contributions received in the year but relating specifically to projects to be carried out in the following period are deferred. In any given financial year, if there is a shortfall in income versus expenditure, the ICJ’s general reserve may be used to compensate the shortfall.
- b) Expenditure – Costs are recorded on an accrual basis.
- c) Foreign Currency – The Commission maintains its accounting records in Swiss Francs as this is the Commission’s functional currency. Assets and liabilities denominated in foreign currencies are translated into Swiss Francs at the closing exchange rates. Contributions are generally received in foreign currencies and are translated into Swiss Francs at the rate of exchange prevailing on the date of receipt. Receivables in foreign currencies as at 31 December are revalued in Swiss Francs at the prevailing year-end exchange rate. Realised foreign exchange gains and loss as well as unrealised exchange losses are included in the statement of financial performance, whereas unrealised foreign exchange gains are deferred.
- d) Fixed Assets – Fixed assets are capitalised when the purchase price is CHF 500 or above and when ownership resides with the ICJ. Fixed assets are depreciated over the item’s estimated lifespan as follows :
- | | |
|---------------------------------|---------|
| Office furniture and equipment | 5 years |
| Computer equipment and software | 3 years |
- e) Reserves – At year-end, any deficit or surplus between programme income and expenditure is transferred to or from the General Reserve, subject to contractual conditions concerning the use of donor contributions.
- f) Programmes – ICJ Programmes have a substantial legal content and/or are designed to mobilise the ICJ network of national sections and affiliated organisations around key legal issues. All programmes (and their projects) are individually outlined in ICJ Appeal documents and are acquitted through narrative and financial reports submitted to donors based on their guidelines.
- g) Governance, management, finance and fundraising are all institutional activities. They do not appear as discrete projects in ICJ Appeal documents.

NOTES TO FINANCIAL STATEMENTS

(continued)

(expressed in CHF)

3. PUBLICATION STOCK

At the end of 2008, the ICJ has no capitalised stock of products or materials. The reserve of publications has been fully amortised over the past 3 years, to reflect the new distribution policy. The amortisation of the publication stock is included in the line item "Depreciation" for an amount of CHF 32'585 (2007 : CHF 32'500).

4. CASH & CASH EQUIVALENTS

Cash, cash equivalents and deposits for the purpose of the statement of cash flow consists of cash & cash equivalents, time deposits and rent deposits.

In 2008, the cash held within the field offices for an amount of CHF 20'957 is allocated to the cash and cash equivalents. To be consistent with this approach, an amount of CHF 10'256 consisting of cash held within the field offices in 2007 was re-allocated from receivables to cash and cash equivalents. This correction has no significant impact on the financial statements.

5. OFFICE EQUIPMENT

| | <u>2008</u> | <u>2007</u> |
|-------------------------------------|-----------------------|-----------------------|
| Computer Equipment and Software | 204'245 | 162'546 |
| Purchased & Leased Office Equipment | 133'510 | 120'693 |
| Accumulated Depreciation | <u>-223'783</u> | <u>-171'940</u> |
| Total, net | <u>113'972</u> | <u>111'299</u> |

The fire insurance value of the assets listed above is CHF 300'000.

6. LONG-TERM CONTRIBUTIONS RECEIVED IN ADVANCE, MISCELLANEOUS INCOME

Contributions received in advance amounting to CHF 483'414, have been deferred in the balance sheet for a period exceeding 10 years. In 2008, it was decided to release these deferred contributions based on management's assessment that the risk of reimbursement is highly remote. This amount has been recorded within miscellaneous income in the statement of financial performance.

7. LOAN

In August 2008, one of the ICJ's donors granted an interest free loan of CHF 300'000 to permit the bridging of a temporary cash flow gap. The loan was repaid in January 2009.

8. CONTRIBUTIONS UTILISED IN THE YEAR

The ICJ may receive contributions to its activities before, during or after the accounting year. Only those funds that are utilised for activities within the year are considered as income of the year. Unused funds for earmarked activities, if so authorised by the relevant donor, are carried forward to finance activities in the subsequent period. General funds that are in surplus are transferred to reserves, for the coverage of activities in subsequent years.

NOTES TO FINANCIAL STATEMENTS

(continued)

(expressed in CHF)

9. SALARIES AND SOCIAL CHARGES

The ICJ's activities are, by nature, human resource intensive. The time of legal staff is generally the biggest single element of any project. Salaries and social charges relate to all staff. These expenses are allocated to projects and institutional activities based on staff timesheets.

The ICJ Secretariat's employees are subject to Swiss income tax and social charges. Terms and conditions of employment are subject to Swiss labour law and standard Swiss practice.

On a frequently non-remunerated basis (pro-bono), lawyers participate in the implementation of ICJ projects as trial observers, members of fact-finding missions and legal advisors. These contributions in kind are not reflected in the financial statements.

10. LEASINGS, GUARANTEES AND OTHER COMMITMENTS

The leasing commitments are shown as Lease liabilities.

On 31 December 2008, the Commission has rental commitments for its premises up to 30 November 2010 of CHF 431'500 (2007 – CHF 656'250).

11. TAXATION

The association is exempt from federal, cantonal and communal taxes on income or capital.

The association is not VAT registered and therefore VAT incurred on expenses is charged to the statement of financial performance.

12. ATTRIBUTION OF EXPENSES TO ICJ PROGRAMMES

All ICJ expenses, both direct and indirect costs, are allocated to programmes. The allocation of expenses by the ICJ to programmes is undertaken respecting the stipulations and/or conditions specified by donors. Each ICJ programme contains a number of different projects.

Direct costs are allocated to projects when incurred. These include consultancy fees, office premises, telecom and postage, meeting and travel and publications. Staff costs are attributed directly to projects based on staff time sheet allocations.

The ICJ allocates to overhead expenses all indirect costs associated with infrastructure and support systems. These include finance, accounting, human resources management, fundraising, IT, and general administration. Governance and Management costs of the ICJ also are included in overheads, as well as financial costs, depreciation, leasing and exchange rate variances. The allocation of overheads is done according to the relative size of each programme or project in order to calculate the actual cost of each project for internal analytical purposes.

Individual financial reports are submitted for the acquittal of earmarked funds as agreed upon contractually with donors.

13. INTERNAL CONTROL SYSTEM AND RISK ASSESSMENT

ICJ has reviewed and documented its Internal Control System, covering both financial and administrative risks and operations. The ultimate goal is to provide a level of oversight and control with reasonable assurance that :

- Critical principles and components of an effective risk management process are defined, setting forth how all important risks should be identified, assessed, responded to and controlled ;
- The provisions contained in applicable laws and regulations are complied with fully ;
- The Strategic Directions and the Operational Plan of the ICJ are realised ;
- Financial and other transactions are accurately and appropriately documented ;
- Financial and other transactions are executed according to managerial directives ;
- Waste, fraud, and abuse risks are managed in a proactive manner ;
- Violations of policy and directives are appropriately addressed, including the implementation of sanctions for violations ;
- Best practices for operations are identified, evaluated, and, as appropriate, incorporated into operations.

On 8 October 2008, the Executive Committee has completed and approved the Internal Control System and Risk assessment.



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