



**INTERNATIONAL COMMISSION OF JURISTS**  
**Commission Internationale de Juristes - Comisión Internacional de Juristas**  
81A, avenue de Châtelaine, P.O. Box 216, CH-1219 Châtelaine / Geneva (Switzerland)  
Tel: (4122) 979 38 00 – Fax: (4122) 979 38 01 – <http://www.icj.org> - E-mail: [info@icj.org](mailto:info@icj.org)

## **NARRATIVE REPORT 1999**

**June 2000**

**NARRATIVE REPORT 1999**

The International Commission of Jurists (ICJ) is an international, non-governmental organisation whose global mandate is to promote and protect human rights through the Rule of Law. The Rule of Law is not a mere application of legal rules. It is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible. Its goal is to promote and protect civil, political, social, economic and cultural rights in a democratic society.

**The ICJ 's priority objectives for 1999-2003 are:**

- Promotion of effective human rights mechanisms, norms and their implementation
- Fighting impunity
- Promoting and protecting all human rights with an emphasis on economic, social and cultural rights
- Promotion and protection of the independence of judges and lawyers
- Ensuring the observance of the rule of law in the context of globalisation

The activities listed here are programme activities detailed in the Final Programme of Activities 1999-2000. One-off and parallel activities, such as participation in conferences and other forms of representation, are not listed in this document but are reported regularly in the monthly Secretary General's report and the « Quarterly Digest ».

**The ICJ achieves its mission by:**

- influencing policy makers, in particular at the UN and in regional intergovernmental organisations, for effective standard-setting and the observance of human rights norms;
- holding seminars and training workshops to empower target groups;
- organising fact-finding missions to highlight situations adversely affecting the rule of law;
- undertaking trial observations to assess the fairness of trials;
- Participating in human rights mechanisms, the preparation of amicus curiae and legal opinions to build and strengthen human rights jurisprudence;
- Training young jurists in the human rights field;
- Carrying out research and publishing studies.



## PRIORITY OBJECTIVE ONE:

### PROMOTION OF EFFECTIVE HUMAN RIGHTS MECHANISMS

At the universal level: United Nations

Project n°1999.05: UN Commission on Human Rights
--

#### Objectives for 1999:

- To draw specific human rights violations to the attention of the international community through interventions and lobbying on specific resolutions
- To lobby for the establishment of an open ended working group on the adoption of the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
- To garner support for a resolution on the abolition of the death penalty tabled by Germany on behalf of the EU
- To support moves to establish a Special Rapporteur on Human Rights Defenders
- To ensure that the review of the Human Rights Commission mechanisms results in their strengthened operation
- To support the work of the UN Special Rapporteur on the independence of judges and lawyers

#### Activities:

Oral interventions were delivered with the aim of:

- Denouncing human rights violations in Mexico, the Democratic Republic of the Congo and the Republic of Congo and urging the prosecution of their perpetrators; welcoming the despatch of human rights monitors to Kosovo and the adoption of a public 1503 procedure on Sierra Leone; and calling on all states to ratify the Statute on the International Criminal Court.
- Assessing the report on the High Commissioner's visit to Colombia and calling for the establishment of a Special Rapporteur for Colombia
- Publicising the findings of *Attacks on Justice*, the CIJL annual report on the harassment of judges and lawyers around the world
- Expressing support for the UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, who faces legal actions arising from the discharge of his duties-contrary to international law, the Courts of Malaysia have, to date, refused to respect his immunity from legal proceedings.
- Strengthening the UN human rights mechanisms and using the opportunity provided by the Review of Mechanisms to reinforce the effectiveness of the Commission

Two written statements were submitted with the aim of:

- Calling on the Commission to urgently consider the impact of globalisation on human rights.
- Denouncing the use of torture, detention and arbitrary arrests, land confiscation and property demolition by Israel. The statement "Violation of human rights in the occupied Arab territories, including Palestine" was drafted in conjunction with our Palestinian affiliate, LAW.

#### Parallel events

- A roundtable on the Death Penalty sponsored by the European Union (funded by the British and German Governments) and the Council of Europe was held in parallel to the Commission. Attended by 110 participants from national delegations, IGOs and NGOs, discussion was aimed at garnering support for a resolution against the death penalty tabled by the EU. The resolution was passed and the roundtable proceedings have been published.

## Human Rights Defenders

- The ICJ lobbied governments to support the establishment of a special rapporteur on Human Rights Defenders to promote and monitor the implementation of the Declaration on Human Rights Defenders adopted by the UN General Assembly in December 1998. The ICJ co-organised a meeting with key NGOs to build strategic alliances around this issue and joined an NGO statement on this matter.

## Review of the UN human rights mechanisms

- An oral intervention was made with the aim of reminding delegates that concern for the victims of human rights violations and not political expediencies must be the guiding principle of the review process. Concern was expressed at moves to weaken existing mechanisms and stalling or obstructing the reform process.

## Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

- The ICJ delivered an oral intervention and actively lobbied governments to strengthen the implementation of economic, social and cultural rights through the adoption of a draft optional protocol to the ICESCR which would provide a system of individual and group complaints.

## Conclusion

The assessment of the 55<sup>th</sup> session of the UN Commission on Human Rights by the ICJ was detailed in its press release dated 5 May 1999. Overall, results were mixed.

The adoption of a resolution against the death penalty was welcomed. It was stronger in substance than prior resolutions, calling, *inter alia*, on retentionist countries to observe a moratorium on the death penalty and urging States not to extradite where an accused may face capital punishment. The resolution was also passed with a greater margin than in previous years. This was, in part, due to the ICJ roundtable and to intense NGO lobbying on the issue. The publication of the roundtable papers will constitute a useful contribution to the campaign against the death penalty.

Progress on the appointment of a special rapporteur for human rights defenders stalled. Nonetheless important groundwork was laid and the issue can be pursued with greater vigour in 2000. Debate on the review of human rights mechanisms became bogged down in political considerations and the ICJ lobbied hard to ensure that governments not lose sight of the imperative of ensuring effective and efficient mechanisms. The Commission did not establish an open-ended working group on the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. However some modest progress was achieved. At the initiative of the ICJ, a request to the High Commissioner for Human Rights to submit a report to the Human Rights Commission 2000 on options to move the draft Optional Protocol forward, was included in the resolution on economic, social and cultural rights.

**Project n°1999.06: United Nations Sub-Commission for the Promotion of Human Rights**

## Objectives

- To highlight human rights violations in specific countries, especially Indonesia and Mexico
- To encourage Guyana, Trinidad and Tobago, Jamaica and Peru to re-accede or withdraw reservations to universal and regional human rights treaties
- To call for the support of the Sub Commission for progress towards the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights
- To further consideration of the role of transnational corporations in globalisation and their impact on human rights

## Activities

The ICJ delivered a number of interventions addressing our principal objectives namely: economic, social and cultural rights (in particular the right to adequate food) and their justiciability through an optional protocol to the ICESCR, broad principles on the administration of justice and impunity of perpetrators of gross human rights violations, the role of transnational corporations in the globalised economy; to urge Guyana, Trinidad and Tobago, Jamaica and Peru to recognise the jurisdiction of the Inter American Court of Human Rights.

## Parallel meetings

- The ICJ arranged meetings on the human rights situation in Indonesia and Mexico. These were attended by government representatives, Sub-Commission members, IGO and NGO representatives.
- At the initiative of the ICJ and together with Habitat International Coalition and FIAN International, a brainstorming meeting chaired by Sub-Commission expert Abjorn Eide was held in order to discuss strategies towards a global NGO campaign for the adoption of the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

## Conclusion

The ICJ contributions sensitised the Sub Commission members to the human rights situation in Mexico and Indonesia. These concerns were largely reflected in the relevant Chairman's statements.

Although no major progress was achieved during the Sub-Commission towards the adoption of the draft Optional Protocol to the ICESCR, the oral intervention, lobbying and brainstorming session ensured that the matter remains high on the agenda. The brainstorming session sensitised NGOs from all regions of the world to the necessity to strengthen lobbying efforts in a global civil society to combat the opposition to the initiative by so many states.

Concerns persist about the integrity of the Sub-Commission deliberations. Established ostensibly as a committee of experts, the intense politicisation of both its composition and deliberations diminishes its perceived effectiveness. An impartial and expert Sub-Commission adds value to the UN human rights system. Through lobbying and interventions, the ICJ seeks to ensure that members are presented with the objective evidence required to make progress in their valuable work.

## Project n°1999.08: Standard-Setting exercises

Priority attention was given to four draft human rights instruments many of which have been pioneered by the ICJ. Through the provision of technical legal expertise and effective lobbying, some modest advances in the progress towards the adoption of these instruments was achieved.

## Objectives

- Adoption of Basic Principles and Guidelines on the Right to Restitution, Compensation and Rehabilitation for Victims of Violations of Human Rights
- Adoption of an International Convention on the Protection of all Persons from Enforced Disappearances.
- Adoption of Principles and Guidelines for the Promotion and Protection of Human Rights through the Fight against Impunity
- Adoption of an optional protocol to the Convention against Torture to permit onsite inspection of detention facilities to prevent torture
- Adoption of an optional protocol to the ICESCR

## Activity

The ICJ delivered a number of interventions regarding the adoption of the instruments listed above. The legal officers extensively briefed two experts preparing the resolution on impunity guidelines and organised briefing sessions with key governments to discuss Commission proceedings. The ICJ cosponsored with the Association for the Prevention of Torture (APT) an experts' workshop to discuss a protocol to the CAT to establish a visit mechanism.

## Conclusion

Despite its best efforts the ICJ was unable to secure substantial progress on these instruments given the lack of political will by governments. Alongside continuing work on improving the substance of these draft instruments, renewed efforts will be made to ensure greater support from governments in 2000.

## Project n°1999.11: United Nations Treaty Bodies

### Objective

- To positively influence deliberations of the Treaty Bodies by briefing committee members and supplementing the periodic reports provided by national governments (especially Peru and Mexico).

### Activities

The ICJ distributed a report on discrimination faced by indigenous and black Peruvians to the members of the Committee on the Elimination of all forms of Racial Discrimination (CERD). This information was material to the consideration of Peru's periodical report.

Prior to the consideration of Mexico's governmental periodic report by the Human Rights Committee, the ICJ (in conjunction with six Mexican NGOs ) held consultations with Committee members. Copies of the Conclusions and Recommendations of the March 1999 ICJ Mission to Mexico were distributed and were used to extensively question Mexican representatives.

A copy of "Attacks on Justice", the CIJL annual publication, was distributed to all members of the Human Rights Committee. It provided valuable background briefing on the independence of judges and lawyers used in questioning government officials and consideration of periodic reports.

### Conclusion

The Human Rights Committee's conclusions on Mexico were consistent with the findings of the ICJ fact-finding mission.

The quality of the periodic reports provided by governments to various treaty bodies is variable. For both political and technical reasons, the reports are rarely the product of an inclusive consultation process and may not provide a comprehensive picture of the national situation. The ICJ provided valuable input to ensure the integrity of the Treaty Body process. With regard to both CERD consideration of Peru and HRC consideration of Mexico, committee members were given access to impartial and objective evidence necessary for proper deliberations. That ICJ input was reflected in the respective committee's eventual conclusions.

## At the regional level

### Africa

#### Project n°1999.29,30: African Commission on Human and Peoples' Rights (ACHPR)

##### Objective

- To continue an ongoing effort towards the effective participation of civil society in the work of the African Commission on Human and Peoples' Rights and the promotion of the African Charter on Human and Peoples' Rights.
- To assess the human rights situation in Africa and develop strategies with the African Commission to deal with issues of concern.

##### Activities

The Legal Officer for Africa represented the ICJ at the 25<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Bujumbura, Burundi on 26-30 April 1999. The ICJ made an oral intervention urging the African Commission to speed up the process of the elaboration of an additional protocol of the African Charter on the rights of women. The intervention also called for an integrated approach involving the various organs of the OAU in establishing an early warning mechanism to prevent massive human rights violations.

The 13<sup>th</sup> Workshop on Participation in the African Commission on Human and Peoples' Rights (ACHPR) was held in collaboration with the ACHPR from 28-30 October 1999, in Kigali. The theme of the workshop was "Human Rights in Africa: Coping with Challenges and Perspectives for the Future". There were 60 participants including NGO representatives, ACHPR members, national human rights institutions, representatives of the International Tribunal for Rwanda and the media. The conclusions, recommendations and resolutions from the workshop were presented to the Commission at its 26<sup>th</sup> Ordinary Session of the Commission (which immediately followed).

The Legal Officer for Africa attended the 26<sup>th</sup> session of the African Commission on Human and Peoples' Rights held in Kigali from 1-15 November. Through her participation, she brought forward workshop deliberations in line with ICJ's concerns.

##### Conclusion

At the 13<sup>th</sup> Workshop recommendations and resolutions were adopted on different subjects of immediate concern. One requested the sending of a fact-finding mission to Kenya due to the rapidly deteriorating human rights situation there. Other resolutions dealt with justiciability of economic, social and cultural rights; the rights of migrants (with a call for the ratification of the UN Convention on the rights of migrant workers and their families'); the rights of women in Africa with emphasis on progress of the draft protocol to the African Charter on the rights of women; preparation by African states to the UN World Conference on Racism in 2001.

Participation in the work of the African Commission by NGOs through participatory workshops is an important channel for strengthening the African Human Rights System. It also provides an opportunity to determine issues of concern and possible ICJ action.

#### Projects n°1999.31,32,33: Participation in OAU Council Meetings and Summits

##### Objectives

- To ensure that human rights are integrated into all levels of the OAU policy process
- To lobby for the ratification of the Protocol establishing the African Court on Human and Peoples' Rights as well as drafting a new Protocol on the rights of women.

## Activities

On 19-23 March 1999 the Legal Officer for Africa attended the 69<sup>th</sup> Ordinary Session of the Council of Ministers of the OAU meeting in Addis Ababa. The ICJ used the occasion to push for maximum high-level government participation at the Ministerial conference on Human Rights held in April 1999. Also as a result of effective ICJ lobbying, the Council of Ministers passed a resolution requesting the OAU Secretary General to convene a government experts meeting for the elaboration of the protocol on the rights of women.

The Secretary-General and the Legal Officer for Africa participated in the 70<sup>th</sup> ordinary Session of the OAU Council of Ministers and the 35<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers from 8-14 July 1999. The ICJ presented a memorandum to the Secretary -General of the OAU raising issues of concern and making recommendations for the strengthening of the African Human Rights system. The memorandum was the subject of a parallel joint meeting between the ICJ and representatives of the legal division of the OAU and Secretariat of the African Commission.

## Conclusions

The ICJ participates in meetings of the OAU Policy organs with a view to lobby OAU Member States to ratify instruments such as the Protocol on the Establishment of the African Court on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. Early ratification by the required number of states is essential for their eventual operation. The ICJ has had a positive impact on the development of a human rights culture in Africa. As the only human rights organisation with a formal working relationship with the OAU, the ICJ has continued to place the rule of law and human rights on the OAU agenda. As a result of the value added by the ICJ to the policy process, the OAU has requested advice in determining modalities for the increased participation of civil society NGOs in its future meetings.

<b>Project n°1999.89: NGO Forum Nairobi</b>
---

## Objective

- to determine NGO input into issues slated for discussion at the First OAU Ministerial Conference on Human Rights.

## Activity

At the request of the OAU, and in consultation with the African Commission on Human and Peoples' Rights, the ICJ organised in Nairobi, Kenya, a forum for NGOs from 7-9 April 1999, prior to the Ministerial Conference on Human Rights (see below 1999.34). This was the first time that the OAU organised a meeting of NGOs involving organisations with which it had not formal working relationship. The forum brought together 125 participants which included representatives of international and national NGOs and the media.

The Chairman of the ICJ Executive Committee, Professor Kofi Kumado, the Legal Officer for Africa and the Assistant to the Secretary-General represented the ICJ at the Forum.

## Conclusion

The Forum facilitated the preparation of NGO statements and draft resolutions which were later presented to the Conference and used as principal lobbying tools. NGO participation in the Ministerial Conference was made possible through representatives delegated by the Forum.

**Project n°1999.34: OAU Ministerial Conference and Follow-Up, Mauritius**

**Objective**

- to evaluate the situation of human rights in Africa
- to evaluate the implementation of the African Charter on Human and Peoples' Rights and other international human rights instruments
- to analyse the root causes of human rights violations, and
- to define the strategies for better implementation of international human rights standards and protection of human and peoples' rights in Africa.

**Activity**

The first OAU Ministerial Conference on Human Rights in Africa was held in Mauritius from 12-16 April 1999. The Conference gathered African Ministers responsible for human rights issues at the national level and was preceded by a two day meeting of government experts (12 & 13 April 1999). Given the importance of the meeting, three ICJ representatives attended as observers: the Chairman of the ICJ Executive Committee, the Legal Officer for Africa and the Assistant to the Secretary-General. An NGO Forum, which preceded the Conference, was held in Nairobi, Kenya, and was facilitated by the ICJ (see above 1999.89).

**Conclusion**

The Declaration issued by the Conference reaffirmed the commitment of African governments to the promotion, protection and observance of human rights obligations contained in the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child; the Protocol on the establishment of an African Court on Human and Peoples' Rights; the UN Convention against Torture, and the Statute of the International Criminal Court. The ICJ issued a press statement welcoming NGO/civil society participation and the reaffirmed commitment of governments to ratify and implement vital international human rights instruments.

**Project n°1999.95: Publication on Domestic Implementation of International Human Rights Norms, Lusophone Countries**

The ICJ noted the scarce application of international human rights law in the national legal regimes of Lusophone African countries. Though these countries may have ratified international human rights instruments they have fallen short in the domestic implementation of their obligations.

**Objective**

- To publish and disseminate the proceedings of a training seminar on the domestic application of international human rights norms in Lusophone Africa. The publication is a useful sourcebook for judges, prosecutors, public defenders, legal professionals, academics and human rights activists to assist in the domestic implementation of international human rights obligations.

**Activity**

The Report of a Training Seminar on the Domestic Application of International Human Rights Norms in Lusophone Africa, held from 1-4 October 1996, in cooperation with the Supreme Court of Mozambique, was published in July 2000. The Report contains papers on the following subjects: Legal Value of the Sources of International Human Rights Law; The legal Status of International Human Rights Law with respect to Domestic Law. Monism v. Dualism; International Obligations

Deriving from the Ratification or Adherence to an International Treaty; National Criminal Justice Systems and Human Rights; An Overview of Protection Mechanisms in the Universal Human Rights System; An Overview of the African Human Rights System; The Role of National and International NGOs in the Promotion and Protection of Human Rights; The Role of Judges in the Protection of Human Rights, and the Role of the Jurist in the Context of the Social and Legal Reality of the Region.

### **Conclusion**

The Report was disseminated throughout Lusophone Africa and is to enhance the human rights knowledge of jurists in Angola, Mozambique and Guinea-Bissau and update them on recent developments in this field of the law.

### **Europe and the CIS**

<b>Council of Europe: Protocol to Article 14 of the European Convention on Human Rights</b>
---

### **Objective**

- To promote and secure the adoption of a Protocol to Article 14 of the European Convention on Human Rights (ECHR) on the prohibition of discrimination; this protocol contains a free standing right to equality and freedom from discrimination. This would widen the scope of the prohibition of discrimination which currently only concerns those rights already contained in the ECHR.

### **Activity**

The ICJ attended the Committee of Experts for the Development of Human Rights (DH-DEV) in Strasbourg which focused on draft Protocol 12. The ICJ was the only NGO present as observer. It lobbied in favour of the broadest possible provisions which would include the principle of equality before the law and equal protection of the law. A statement on the Protocol was adopted by the European Sections of the ICJ in April 1999 and submitted to DH DEV for consideration.

A further statement on draft protocol 12 was submitted to the Steering Committee on Human Rights (CDDH) of the Council of Europe in June 1999.

### **Conclusion**

Close to the drafting of this narrative, the Committee of Ministers of the Council of Europe was expected to adopt protocol 12. This was a good outcome for which the ICJ had lobbied and campaigned vigorously. The International Secretariat, together with European Sections of the ICJ and other national NGOs will work to ensure its early signature and ratification.

## Ad hoc project: European Conference against Racism

### Objective

- To secure commitments from the 41 member States of the Council of Europe to reinforce measures to combat racial discrimination and intolerance
- To ensure NGO input into the European Conference on Racism - "All Different All Equal: From Principle to Practice, European Contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance" - to be held on 11-13 October 2000.
- To ensure maximum input of European NGOs and European States at the World Conference against Racism to be held in 2001

### Activity

The ICJ took part in the NGO consultation organised by the Council of Europe in January 1999 and was selected (with six other NGOs) to form the NGO resource group tasked with the preparation of both the NGO Forum and NGO input into the intergovernmental European Conference of October 2000.

Following the first meeting of the NGO Resource group in July 1999, the ICJ compiled a list of human rights instruments and their status of ratification by the 41 Member States of the Council of Europe to be used as a reference document by NGOs and governments. Following the second meeting, the ICJ took charge of drafting, together with another member of the NGO resource group, the NGO proposal for the political declaration to be adopted by the 41 member States of the Council of Europe during the Conference. This proposal was presented to governments by the ICJ in December 1999, when it was one of the two NGO representatives at the second meeting of the Governmental Technical Working Group in charge of the Preparation of the European Conference.

### Conclusion

The ICJ will continue to play an active role in the substantive preparations for the NGO Forum and the European Conference on Racism.

## Project n°7272: Publication on Domestic Implementation of International Human Rights Norms , Kyrgyzstan

### Objective

- to disseminate information in the Russian language on the domestic implementation of international human rights norms in States of the CIS , most of which have had little or no direct experience of international human rights instruments and mechanisms.

### Activity

A seminar on the Domestic Implementation of International Human Rights Standards was held in Bishkek, Kyrgyzstan, in November 1996. It was organised in cooperation with the Kyrgyz Constitutional Court and gathered 70 participants, including judges of the Constitutional and Supreme Courts, prosecutors, government officials, law academics and representatives of local NGOs. The Report contains papers given during the seminar on the following subjects: Sources of International Human Rights Law; The legal Status of International Human Rights Law with respect to Domestic Law. Monism v. Dualism; International Obligations Deriving from the Ratification or Adherence to an International Treaty; An Overview of Protection Mechanisms in the Universal Human Rights System; The Role of National and International NGOs in the

Promotion and Protection of Human Rights; The Role of Judges in the Protection of Human Rights, and the Role of Lawyers.

**Conclusion**

The 285-page Report in Russian, contains papers from the Seminar and relevant international instruments. It is primarily intended to be a reference for judges, prosecutors, advocates, law academics and NGOs dealing with the legal promotion and protection of human rights.

## PRIORITY OBJECTIVE TWO:

### FIGHTING IMPUNITY

#### **Project n°1999.12: International Criminal Court Preparatory Commission**

The ICJ has been deeply involved from the outset - over a decade ago - in the institutional process leading up to the 1998 Rome Conference of Plenipotentiaries which drafted a Statute for the International Criminal Court.

#### **Objective**

- To ensure, through participation in standard-setting, the establishment of an effective, impartial and independent international court to prosecute perpetrators of gross violations of human rights namely, war crimes, crimes against humanity and genocide.

#### **Activity**

In February 1999, the CIJL Director attended the ICC PrepCom in New York and contributed substantively to deliberations, through written submissions, on the Elements of Crimes and the Definition of Crimes with special emphasis on genocide, and war crimes. At the PrepCom in August, the ICJ addressed the elements of war crimes in internal armed conflict and various procedural and evidential issues. The ICJ sought to ensure that the definition of torture was sufficiently broad that it extended beyond actions of government agents during internal conflicts and also addressed the issue of summary executions.

#### **Conclusion**

Progress at the Prepcom is slow but advances are being made. The ICJ has successfully ensured that its position on a range of issues won wide support and were reflected in proceedings. But there are concerns that some states have sought to weaken the statute by insisting on the addition of new elements. The ICJ has worked hard to ensure that such efforts do not succeed. Work on the Rules of Procedure needs to be expedited if the PrepCom is to conclude its work on schedule by June 2000.

#### **Project n°1999.15: Campaigning for the Establishment of the International Criminal Court**

#### **Objective**

- To promote the early ratification of the Statute by the (minimum) 60 states to ensure the establishment of the International Criminal Court by 2010.

#### **Activity**

On 3 March 1999, a letter was sent to the 76 signatories of the Statute of the International Criminal Court seeking advice on the procedural requirements for ratification and progress to date. National sections and affiliates were encouraged to lobby their respective governments to ratify. Many governments responded and their answers forwarded to the NGO coalition database( linked to [www.icj.org](http://www.icj.org)).

The ICJ participated in the American Society Panel on the International Criminal Court and rebutted US arguments against ratification.

A roundtable on the ICC was convened in conjunction with Human Rights Watch during the 55th Session of the UN Commission on Human Rights on 19 April 1999, at the UN Office at Geneva. Around 100 representatives of governments, NGOs and IGOs attended the discussion. The roundtable discussion addressed some of the more contentious issues arising from Prepcom deliberations.

## Conclusion

Though no direct ratification can be attributed exclusively to the ICJ action, the letter campaign maintained political momentum for the ratification process and contributed to informed debate on ICC issues.

Project n°7316: Publication <i>Pinochet faces Justice</i>
---

To provide an authoritative reference which

- details the incontrovertible evidence against Pinochet
- tracks progress of the case through the Spanish and British legal system
- explores the scope of universal jurisdiction and the limits of immunity
- provides a comprehensive analysis of the relevant judicial judgements including minority decisions not to extradite.

A 128-page report was published in August 1999 entitled "Crimes against Humanity: Pinochet Faces Justice" and provides an authoritative reference on the Pinochet case and beyond on the widening scope and jurisprudence on universal jurisdiction for the three core international crimes: crimes against humanity, war crimes and genocide. Available in English and Spanish, it widely distributed to jurists, diplomatic representatives, the press, academic institutions and other interested groups and individuals and received substantial press coverage.

### PRIORITY OBJECTIVE THREE

#### PROMOTING AND PROTECTING ALL HUMAN RIGHTS WITH AN EMPHASIS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

<b>Project n°1999.09: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights</b>
---

In its 1995 Bangalore Plan of Action, the ICJ stated that great efforts should be directed towards the adoption of an Optional Protocol to the ICESCR to permit the determination of individual and group complaints by the treaty body. This would give rise to a significant body of jurisprudence which is indispensable if economic, social and cultural rights are to be taken seriously. An individual complaints procedure would provide the best opportunity, by means of developing case law, to define the precise meaning and the limits of economic, social and cultural rights.

#### **Objective**

- to provide a forum for discussion on the draft Optional Protocol
- to develop strategies to ensure its adoption

#### **Activities**

On 26 February 1999, a half-day Workshop on the Draft Optional Protocol (DOP) to the International Covenant on Economic, Social and Cultural Rights (ICESCR) was organised by the ICJ under the auspices of the UN High Commissioner for Human Rights. 55 States sent 61 representatives of their Permanent Missions in Geneva and 11 international NGOs attended. It was the first meeting ever organised for the promotion of the DOP. The meeting was opened by Dr. Bertrand G. Ramcharan, UN Deputy High Commissioner for Human Rights. Among the experts were Virginia Bonoan Dandan and Eibe Riedel, respectively chairperson and member of the UN Committee on Economic, Social and Cultural Rights.

#### **Conclusion**

The workshop of February 1999 provided the first opportunity for States to express their views on the draft optional protocol and variously articulated substantive objections to such an instrument or support. Several states expressed support for the establishment of an open-ended working group to be appointed by the Commission. The ICJ views the establishment of such a working group as the only way forward towards the adoption of the draft optional protocol.

A direct outcome of the lobbying activity of the ICJ in this area was the inclusion in Resolution 1999/25 of the UN Commission on Human Rights of a request to the UN High Commissioner for Human Rights to report to the Spring 2000 session of the Commission on options relating to the proposal for a draft optional protocol.

<b>Project n°1999.60 : Collective Complaints Under the European Social Charter</b>
--

#### **Objective**

- to establish a precedent for the use of collective complaints under the European Social Charter, thus promoting this new important mechanism as well as the Charter itself
- to highlight the problem of child labour in Europe with a view to its eradication.

## Activity

In October 1998 the ICJ was the first NGO to avail itself of the collective complaints mechanism under the European Social Charter when it lodged a complaint against Portugal on child labour. On the basis of the evidence submitted by the ICJ, the European Committee of Social Rights - a body of independent experts- found that Portugal was indeed in breach of the Charter. The Committee noted that the 25,000 children performing unpaid work in family businesses, mainly in agriculture and the restaurant sector, fell within the scope of the Charter.

Notwithstanding this finding and contrary to the provisions of the 1995 Additional Protocol providing for a system of collective complaints, the Council of Ministers, in a patently political decision, declined to take firm action against Portugal. Instead, it merely reiterated a prior 1998 resolution in which Portugal was cited for the same breach. It also declined to award costs to the ICJ.

## Conclusion

The timid decision of the Committee of Ministers undermines both the substantive content of the Charter and the efficacy of its collective complaints mechanism. It is inconsistent with the unequivocal finding of the European Committee of Social Rights and reflect political expediencies rather than sound legal process. However, an important precedent was established both in terms of Portugal's recorded breach of the Charter and the use of the collective complaint procedure to redress such breaches. The first complaint lodged by the ICJ has paved the way for other complaints.

### Project n°1999.62: Seminar – Revised European Social Charter, Russia

## Objective

- to encourage local NGOs to lobby for the signature and ratification of the Revised European Social Charter and the 1995 additional protocol on collective complaints.
- to encourage the use of the RESC by civil society in Russia to protect economic and social rights
- to provide training for local jurists and human rights defenders focusing on specific rights protected by the Charter and according to the local needs

## Activity

A seminar on the Revised European Social Charter (RESC) was organised by the ICJ in cooperation with the Council of Europe and the Saratov-based Inter-Regional Association of Women Lawyers, in Saratov (Russian Federation) on 13 and 14 July 1999. Around 40 participants from 11 different regions of the Russian Federation (Saratov, Moscow, St-Petersburg, Astrakhan, Krasnodar, Mordovia, Novosibirsk, Penza, Rostov, Volgograd, Tatarstan) - either advocates, law academics, or human rights defenders - took part. Presentations were made by the two representatives of the Council of Europe on the RESC and on Cooperation Development in the Social Field between the Council of Europe and the Central and Eastern European Countries (CEEC). The ICJ Legal Officer for Europe presented a paper on a comparative assessment of the various universal and European instruments and mechanisms for the protection of economic and social rights. A special focus was put on the system of collective complaints provided in the additional Protocol of 1995 to the European Social Charter. Case studies focusing on the right to just conditions of employment, the protection of women, children, elderly persons, disabled persons and migrants were examined in working groups. A representative of the Russian Foreign Ministry presented a paper on « Economic and Social Rights in the Russian Context: prospects for ratification of the Revised European Social Charter ».

## Conclusion

The Seminar in Saratov was the first activity organised in the Russian Federation by the Council of Europe in cooperation with an international NGO for NGOs focusing exclusively on the European Social Charter. It provided Russian NGOs with the unprecedented opportunity to enter into a dialogue with governmental representatives both at the Federal and the regional level on the crucial issue of promotion and protection of economic and social rights. The participants discussed various ways to obtain Russian signature and ratification of the Charter and related instruments and to publicise the Charter and related instruments in civil society.

Two Moscow-based NGO participants were identified as future partners in a programme of promotion of fundamental social rights in the Russian Federation through international instruments, i.e the International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

### **Project n°1999.92 : Promotion and Protection of Economic, Social and Cultural Rights, Macedonia**

#### Objective

- to encourage civil society to use the Revised European Social Charter as an instrument for the protection of fundamental economic, social and cultural rights.

#### Activity

A seminar on "Promoting Fundamental Social Rights in south-eastern Europe: the Revised European Social Charter" was organised in cooperation with the Helsinki Committee of the Human Rights of the Former Yugoslav Republic of Macedonia (FYROM) and the Human Rights Directorate of the Council of Europe (CoE) with the assistance of the Skopje Information and Documentation Centre, from 9-11 December 1999. It was the fourth event of this kind organised by ICJ and the CoE since 1998. Around 30 participants from 11 countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Kosovo, FYROM, Moldova, Romania, Federal Republic of Yugoslavia and Slovenia) - advocates, law academics, human rights defenders and trade unionists took part. Special focus was put on the contribution of the CoE to the Stability Pact in south-eastern Europe which aims at strengthening countries in the sub-region to foster peace, democracy, human rights and economic prosperity. The participants had the opportunity to discuss and devise ways of ensuring that fundamental social rights get the attention they require in the first two Working Tables (WT) of the Stability Pact (WT1 on democratisation and human rights and WT2 on economic reconstruction, development and cooperation).

#### Conclusion

In the context of the Stability Pact, participants agreed to recommend the establishment of a relevant taskforce to address social and economic rights. A set of conclusions and recommendations to NGOs, trade unions, lawyers, judges and law academics, governments and IGOs was adopted by the participants. Participants committed themselves to organise follow up activities to the seminar in their respective countries.

### **Project n°1999.35: Report of the African Regional Seminar on Economic, Social and Cultural Rights**

#### Objective

- To publish the proceedings of a regional seminar on economic, social and cultural rights

### **Activity**

The Report of a Regional Seminar on Economic, Social and Cultural Rights in Africa held in Abidjan, Côte d'Ivoire in March 1998, in conjunction with the African Development Bank. was published in June 1999, in English and in French. The seminar and publication are designed as a follow-up to the 1995 Conference on Economic, Social and Cultural Rights and the Role of Lawyers organised in Bangalore, India. Contributors to the publication comprise members of the African Commission, the UN Committee on Economic, Social and Cultural Rights, regional intergovernmental institutions such as the ECOWAS and SADEC, multilateral development banks and financial institutions, national and regional NGOs, some members of the legal profession and academia.

### **Conclusion**

The Report has already been brought to the attention of OAU policy organs at the level of the Council of Ministers and Summit of Heads of State and Government. As a result, the Summit requested the OAU Secretary-General in cooperation with the African Commission to convene a high level meeting of Experts to consider ways of removing obstacles to the enjoyment of economic, social and cultural rights, including combating corruption and impunity, including through legislation. The report is expected to be of ongoing use to the various national and regional actors and to the OAU mechanism tasked with the implementation of the African Economic Treaty.

<b>Project n°1999.94 : Seminar on State Reporting to United Nations Treaty Bodies with Focus on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, Sri Lanka</b>
---

### **Objective**

- to familiarise regional participants and encourage NGO participation in the reporting mechanisms of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CROC)

### **Activity**

The ICJ organized a seminar on State Reporting to the UN Treaty Bodies, in collaboration with the Centre for the Study of Human Rights (CSHR) of the University of Colombo, from 13-15 December 1999. The meeting focused on the reporting procedures provided under the ICESCR and CROC. It provided an opportunity to urge governments who have not yet acceded to these human rights instruments to do so. The Seminar brought together representatives of governments and/or NGOs from Afghanistan, Bangladesh, Bhutan, India, Nepal, Maldives, Pakistan and Sri Lanka. Experts directly involved in the working of the treaty bodies concerned, i.e. the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, also participated.

### **Conclusion**

The members of the official delegations of the Maldives and Pakistan gave an assurance that their governments would soon take the necessary steps to ratify the ICESCR and CROC. Good working relations were established between civil society and officials and will provide a solid base for productive consultations in preparing periodic reporting to the respective treaty bodies.

**Project n°1999.44 : Fact-Finding Mission to Mexico**

**Objective**

- to gather firsthand information from governmental and non-governmental sources on human rights in Mexico
- to examine closely the human rights situation in the states of Chiapas, Guerrero and Oaxaca with special regard to the situation of indigenous communities.
- to submit a report with recommendations to the United Nations Commission on Human Rights and to the Inter-American Commission on Human Rights of the Organisation of American States.

**Activity**

The ICJ sent a Mission to Mexico from 9-19 March 1999. This activity constitutes a follow-up to the ICJ Mission to Chiapas which took place in February 1994. The first mission was sent in the aftermath of the January 1994 armed indigenous insurrection. Its objective was to investigate violations of human rights and international humanitarian law committed by both parties - the Mexican Armed Forces and the Zapatista National Liberation Army (EZLN) - and to offer its services to promote a solution through constructive dialogue. This follow-up activity took place within the framework of the International Decade of the World's Indigenous Peoples, proclaimed by the UN in December 1993.

The ICJ Mission was composed of: Dr. Eduardo Duhalde Hubert (Argentina), Judge, consultant on human rights for the UN; Dr. Roberto Garretón (Chile) UN Special Rapporteur on the Democratic Republic of Congo, Member of the UN Working Group on Arbitrary Detention; and Dr. Alejandro Artucio, ICJ Senior Legal Officer.

**Conclusion**

The Conclusions and Recommendations of the Mission were presented on 31 March to the UN Commission on Human Rights and widely distributed among participants. From 12-30 July 1999, the UN Human Rights Committee met in Geneva. Before examination of the periodical report submitted by the Government of Mexico (15-16 July), the ICJ took part, along with six Mexican NGOs, in discussions with members of the Committee. Copies of the Conclusions and Recommendations of the Mission to Mexico were distributed to the members of the Committee. The document provided by the ICJ was extensively used by the experts in questioning Mexican representatives. Based on that information, the Committee expressed strong concern over the human rights situation in Mexico.

The Report of the Mission was published in Spanish at the end of the summer and distributed to the diplomatic community as well as the press.

**Project n°1999.56 : Fact Finding Mission to Indonesia**

**Objective**

- To formulate recommendations to the post-Soeharto government on structural reform of the judiciary to enhance the legal promotion and protection of human rights under the rule of law.

**Activity**

The ICJ sent a Mission to Indonesia from 22 March-2 April 1999, to assess the rule of law and legal protection of human rights situation in the country. The Mission placed particular emphasis on the

independence of the judiciary. The Mission met with former President Habibie, the Minister of Justice, the Attorney-General and other officials, as well as the opposition, professional legal associations, legal aid organisations, unions, journalists, women's organisations and student leaders. The Mission was composed of: Professor Dalmo de Abreu Dallari (Brazil), ICJ Member and Head of Mission; Professor Maurice Kamto (Cameroon), ICJ Member; Professor Spencer Zifcak (Australia), Member of the Australian Section of the ICJ; Ms. Haydee Yorac, Attorney-at-Law, (Philippines); Ms. Elizabeth Biok (Australia), Member of the Australian Section of the ICJ, Secretary of the Mission. The Mission also visited the troubled region of Aceh and the city of Palembang in Sumatra.

### Conclusion

The ICJ released the Report of the Mission in November 1999. Entitled «Ruler's Law», the Report analyses constitutional arrangements and sets out the observations and conclusions of the Mission. The report *inter alia* advocates the establishment of a new Constitutional Court. It argues that a clear division of responsibility should be created between the Ministry of Justice and the courts and that an independent inquiry should be established into judicial corruption. The ICJ welcomed the government's decision to embark upon a five-year plan of action to strengthen human rights including through the ratification of all major human rights treaties within a year. The Report provides a foundation for ongoing discussions between the ICJ and the new Government of Indonesia with a view to ensuring good governance through the rule of law.

## Project n°1999.42: Trial Observation: Botswana

### Objective

- To ensure fair trial in a case involving the possible application of the death penalty through international monitoring of judicial process.

### Activity

The ICJ mandated Mr. Lloyd Siame, Senior Advocate and Chairman of the Lands Tribunal of Zambia, to observe the hearings on 2-6 August 1999, and on 4 October 1999, in Lobatse, Botswana, in the case of Mr. Tlhabologang Maauwe and Gwara Brown Motswetla.

The two men were convicted by the High Court in Lobatse in 1997 on a charge of murder and sentenced to death. Their appeal to the Court of Appeal was denied as was their appeal to the President of the Republic. They were to be executed on 16 January 1999, when the Botswana Centre for Human Rights (DITSHWANELO) made an application for stay of execution of the death sentences on grounds of a prior mistrial and constitutionality of capital punishment. The prosecution argued that DITSHWANELO had no *locus standi* and that the application for a stay should be dismissed.

### Conclusion

The trial observer reported to the ICJ that:

- The prior flawed convictions were quashed and a new trial ordered
- He had met with the trial judge, legal counsel, the Attorney General, the relatives of the defendant and the press, urging fair trial
- The new trial judge had demonstrated impartiality and fairness

## PRIORITY OBJECTIVE FOUR

### PROMOTION AND PROTECTION OF THE INDEPENDENCE OF JUDGES AND LAWYERS

Through its extensive network of judges and lawyers' associations, bar associations and human rights groups, the CIJL mobilises support for persecuted judges and lawyers through the issue of CIJL alerts. The CIJL also writes directly to the government (i.e. an intervention) and calls for remedial action if there are sound reasons to believe that the independence of the judiciary is under threat.

#### **CIJL Cases - Alerts and Interventions**

##### **Objective**

- to intervene with governments to ensure that the independence of the judiciary is respected and that the individual rights of judges and lawyers are not violated.
- to mobilise public support for judges and lawyers who are harassed and persecuted in the discharge of their professional duties through alerts and press releases

Djibouti - 15 January: Aref Mohamed Aref, an active human rights lawyer and defender from Djibouti, was prevented from travelling to attend a forum of human rights defenders in Paris. The CIJL urged the lifting of restrictions placed on his freedom of movement.

Paraguay - 5 February: the CIJL wrote to the Government of Paraguay concerning the bombing and armed attacks against Supreme Court members Judge Raul Sapena and Judge Elixeno Ayala. The CIJL urged that an independent and impartial investigation be ordered and measures taken to protect and guarantee the independence, physical security and integrity of the two Supreme Court judges.

Bahrain - 11 February 1999: the CIJL wrote to the Government of Bahrain concerning Judge Abdel Amir Al-Jamri. For more than three years, Mr. Al-Jamri has been detained without charge or trial. The Centre requested that an observer be enabled to attend his eventual trial.

Northern Ireland - 17 March: the CIJL expressed shock over the assassination of human rights lawyer Rosemary Nelson in Northern Ireland on 15 March 1999. It called for a credible, effective and impartial investigation into the murder and called on the UK Government to launch a broader inquiry into intimidation of defence lawyers by the police in Northern Ireland.

Pakistan - 16 April: the CIJL intervened with Prime Minister Nawaz Sharif to express grave concern over attacks on human rights lawyers Asma Jahangir (an ICJ Member) and Hina Jilani.

Dato' Param Cumaraswamy - 30 April: the CIJL issued a press statement welcoming the binding opinion issued by the International Court of Justice confirming the immunity to legal proceedings of Dato' Param Cumaraswamy, the Special Rapporteur on the Independence of Judges and Lawyers of the United Nations Commission on Human Rights. The Special Rapporteur, a Malaysian national, was being sued before Malaysian Courts following a press interview in which he commented on the state of the judiciary in Malaysia. Those comments were made in his capacity as a Special Rapporteur.

- On 8 September CIJL expressed serious concern that legal proceedings were continuing against the Special Rapporteur despite the earlier and binding opinion of the International Court of Justice.

Sudan -9 August: the CIJL wrote to Sudanese President Omar Hassan Al-Bashir to enquire about the case of advocate Mustafa Abdu who was abducted from his office. The CIJL sought an assurance that the physical integrity of Mr. Abdu be respected at all times.

Tunisia - 2 September: the CIJL intervened with the Tunisian government with regard to its refusal to permit the release of the second edition of the country's bar association of young lawyers' internal bulletin, known as *Aklam*.

Northern Ireland - 14 September: the CIJL Director wrote to British P.M. Tony Blair regarding the murder of lawyer Patrick Finucane on 12 February 1989. The CIJL recalled that since the death of Mr. Finucane, evidence had emerged that strongly suggested collusion in his murder between military intelligence agents and loyalist paramilitary organisations. The CIJL called for a judicial inquiry into the murder and a broader investigation into police harassment of lawyers in Northern Ireland.

Pakistan -20 September: the CIJL issued a press statement to say that it had sent a letter to the Chief Justice of Pakistan informing him that it intended to send an observer to the trial of Judge Rana Bhagwandas. His appointment to the bench was being challenged on the grounds of his being a non-Muslim. The CIJL recalled the UN Basic Principles for the Independence of the Judiciary which state that in the selection of judges, there shall be no discrimination *inter alia* on the grounds of religion.

Democratic Republic of Congo - 6 October: the CIJL wrote to the DRC government expressing deep concern over the fate of Lambert S. Djunga and Pierre Risasa, partners in the Kinshasa office of US law firm. The two lawyers were put on trial before a military court for "treason in time of war", which carries the death penalty. Their arrest arose from their representation of a mining company that owned mining concessions in the DRC. When the concessions were appropriated by the State, the company initiated arbitration proceedings against the government. The CIJL invoked the UN Basic Principles of the Role of Lawyers which state that lawyers must not be identified with their clients causes as a result of their work and called for their release.

Malaysia - 21 October. the CIJL, the Lawyers Committee for Human Rights, Human Rights Watch, Amnesty International, and British Irish Rights Watch, sent a letter to the UN Secretary-General, urging him to take measures to ensure that Malaysia abides by the opinion of the International Court of Justice concerning the immunity of UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy (see above).

Serbia - 27 October: the CIJL wrote to the Serbian government and issued an Alert expressing concern over attacks against Serbian judges and their denial of freedom of association. The President of the Supreme Court had threatened judges who were members of the Association of Judges of Serbia with removal from the Bench unless they revoked their membership of the Association.

Northern Ireland: 9 December: the CIJL, Amnesty International, British Irish Rights Watch, the Committee on the Administration of Justice, Human Rights Watch, and the Lawyers Committee for Human Rights and other NGOs, called for an impartial enquiry into Rosemary Nelson's Murder in a joint statement to the British government. Loyalist paramilitaries claimed responsibility for the car bomb which killed her earlier in the year (see above).

## Conclusion

Alerts and interventions on behalf of harassed judges and lawyers provide some protection and remedy. The CIJL is routinely asked to undertake this protection work - a testimony to its perceived utility and value. The alerts and interventions build political momentum for the protection of human rights and sensitise governments to the fact that such attacks on the judiciary or lawyers cannot proceed unnoticed.

## Project n°1999.64: Workshop on Northern Ireland and Judicial Reform

The Good Friday Agreement provides for a "wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British government through a mechanism with an independent element, in consultation with the political parties and others". The Review Group started its work on 27 June 1998 and was to report to the Secretary of State for Northern Ireland in autumn 1999. Taking account of the aims of the criminal justice system as set out in the Agreement, the Review addresses the structure, management and resourcing of the criminal justice system, covering, *inter alia*, judicial appointments, guarantees of judicial independence, the prosecution process and safeguarding for its independence; lay participation in, the criminal justice system".

### Objective

- to explore practical ways for the ICJ/CIJL to express support for the Good Friday Peace Agreement
- to encourage a frank and open discussion around the review of criminal justice in Northern Ireland.

### Activity

On 8 and 9 June 1999, the ICJ convened a Workshop on the Review of the Criminal Justice System in Northern Ireland in cooperation with the Committee on the Administration of Justice (CAJ) and the Centre for International and Comparative Human Rights Law of Queen's University, Belfast.

The Workshop was attended by members of the Criminal Justice Review Group, foreign and local experts, and representatives of the organisers. Eleven experts participated in the meeting including a commissioner of the ICJ - the UN Special Rapporteur on the Independence of Judges and Lawyers - and members of the Canadian, British, Irish and Dutch section of the ICJ.

### Conclusion

The ICJ/CIJL actively participated in discussions relating to the independence of the judiciary and the need for credible guarantees. Papers presented during the meeting will be published by the CIJL in the winter of 2000-20001. It is hoped that the discussions will have an impact on policy makers in this transitional period.

## Project n°1999.19: CIJL Fact-Finding Mission to Malaysia

### Objective

- to examine the legal guarantees for the independence of the judiciary and assess the respect afforded to such guarantees (contained in the 1985 UN Basic Principles on the Independence of the Judiciary )
- to examine the ability of the lawyers to render their services freely use the 1990 UN Basic Principles on the Role of Lawyers
- to examine any impediment, either in the law or in practice which could jeopardise the proper administration of justice.

### Activity

The CIJL, together with the International Bar Association (IBA), the Commonwealth Lawyers' Association (CLA) and the Union internationale des avocats (UIA) sent a joint mission to Malaysia following reports that the independence of the judiciary was under threat and that lawyers were facing difficulties in carrying out their work freely and independently in the country. The high profile trial of Mr Anwar Ibrahim, former Deputy Prime Minister, highlighted

some of these problems. The mission, which visited Kuala Lumpur from 17- 27 April 1999, was headed by Lord Abernethy, Judge of the Court of Session (Supreme Court), Scotland, immediate Past President of IBA Judges' Forum. Other members were Justice N.J. McNally, Appellate Judge of the Supreme Court, Zimbabwe, and Dr Rajeev Dhavan, Senior Advocate and Member of the ICJ, India.

The mission met a wide variety of persons concerned with the administration of justice in Malaysia including the Chief Justice, President of the Court of Appeal, Deputy Minister in the Prime Minister's Department, officers of the Bar Council of Malaysia, UN Special Rapporteur on the Independence of Judges and Lawyers, senior lawyers and representatives of non-governmental organisations.

### **Conclusion**

The report concluded that though the Executive generally respected the independence of the judiciary, this did not always extend to cases involving important political or economic questions. There was occasional and unhealthy Executive interest in the appointment of judges and progress of cases through the courts. The mission recommended the repeal of certain restrictive legislation (eg the Internal Security Act, the Sedition act) and Malaysia's ratification of a number of human rights treaties. A joint report on the findings and conclusions of the mission was to be presented at the 56th Session of the United Nations Commission on Human Rights in April 2000, and made public through the media. Press conferences were to be held simultaneously in Geneva, London and New Delhi.

## **Project n°1999.93: Fact-Finding Mission to Turkey**

### **Objective**

- To assess the limitations on the independence of the judiciary and the role of lawyers and their effectiveness;
- To assess the effectiveness of judges and lawyers in eliminating the culture of impunity
- To assess the role of the international financial institutions, as well as development agencies, in promoting and protecting the independence of judges and lawyers in Turkey.

### **Activity**

The CIJL conducted a Mission to Turkey from 14 -25 November 1999. During that time it held meetings with judges, public prosecutors, lawyers, physicians, human rights advocates and government officials in Istanbul, Adana, Izmir, Diyarbakir and Ankara. The Mission was composed of: Justice Frank Orton (Sweden), head of the delegation, former Vice-President of the Swedish Section of the ICJ, former judge and Ombudsman on Ethnic Discrimination; Justice Rodney Madgwick (Australia), Judge of the Federal Court of Australia; and Barrister Paul Richmond (UK), Member of Justice (British Section of the ICJ), who acted as the Mission's Rapporteur.

### **Conclusion**

The Mission received full co-operation from the government. The mission reported on torture, conditions of detention, disappearances or extra-judicial executions; the legal protection of human rights; and the independence of the judiciary and the legal profession. The mission reported also on the extent to which Turkey complied with the European Convention on Human Rights and the other international instruments to which it is a party. The mission acknowledged that the government had shown concern for human rights and taken, or is in the process of taking, steps to remedy shortcomings. Much, however, needs to be done to substantially improve the situation and punish past human rights violations. The report of the mission will be presented to the government for comments and will be published in 2000.

The CIJL observes the trials of lawyers or judges who are prosecuted for carrying out their professional functions, or when critical questions related to judicial and legal independence are at stake. Experience has demonstrated that the presence of international observers ensures the government is aware that its compliance with international standards of a fair trial and independent judiciary are being scrutinised. This can deliver a positive outcome for an accused.

#### **Radhia Nasraoui, Tunis**

The ICJ/CIJL mandated Swiss advocate Olivier Cramer, Member of the Geneva Bar, to observe the trial in Tunis, before the Tribunal of First Instance, starting on 14 May 1999, of Tunisian advocate and human rights defender Ms. Radhia Nasraoui. Ms. Nasraoui, a leading human rights defender and lawyer and Council Member of the Bar Association of Tunisia, was charged with "providing assistance to the gathering of an association which promotes hatred" on the basis of Article 52 bis of the Criminal Code and Art. 29 of the Law on Associations. The charge related to the non-violent political activities of Ms. Nasraoui's husband and appeared politically motivated. Twenty others were also charged with Ms. Nasraoui - many of them students. Several, including Ms. Nasraoui's husband, went into hiding. On 10 July 1999, Me Cramer, observed the appeal hearing in the case of Ms. Nasraoui. She had been charged and sentenced to a six months suspended sentence in the first instance.

#### **Conclusion**

On 12 August 1999, the CIJL expressed its deep concern over the 6 August 1999, decision of the Court of Appeal of Tunis which confirmed the sentence passed at first instance, imposing a six months suspended sentence on Ms. Nasraoui. Other defendants were sentenced to 15 months imprisonment and those in hiding to nine years. Me Cramer submitted two reports to the ICJ in which he concluded that some of Ms Nasraoui's co-defendants had been tortured. He was not satisfied with the due process observed in the trial and concluded that it had not been fair. The report was made public through posting on the ICJ website.

### **Attacks on Justice**

#### **Objective**

- To document, on an annual basis, the harassment of judges and lawyers around the world.
- To train young jurists in legal research, drafting and human rights protection work.

#### **Activity**

Each year the CIJL publishes its flagship, Attacks on Justice, which documents the harassment and persecution of judges and lawyers around the world. It also includes a brief synopsis describing the specific legal context in which the harassment occurs. The CIJL engages 4 interns to produce the publication all of whom are trained in legal research, drafting and human rights protection. The publication is widely distributed and is an authoritative, up-to-date reference.

**Africa: 1999 Follow-Up Visit - and Training Seminar in Monrovia -  
to the 1998 Fact-Finding Mission to Liberia**

**Objective**

- To provide advisory services and other forms of technical assistance to Liberia in the field of role of law and human rights.
- To consult with government and local officials; members of the judiciary; NGOs; civil society, including women's groups; and others with a view, inter alia, to: strengthening of the judiciary and the legal system through organising training workshops for the judiciary and the legal community on issues such as domestic implementation of international human rights norms; assisting the authorities in developing human rights norms and monitoring their subsequent implementation; providing legal services for disadvantaged groups such as the rural and urban poor, women, etc(is this necessary).

**Activity**

From 7-10 March 1999, the ICJ held a three day Training Seminar for Magistrates and Justices of the Peace, in cooperation with the Supreme Court of Liberia and the Liberia National Bar Association, as a follow-up to the ICJ fact-finding and needs assessment mission that was conducted in May 1998 in the country. The 1998 Mission and follow-up in 1999, are based upon the premise that the return of Liberia to stability after years of civil war requires normal democratic institutions and an independent judiciary, the observance of the rule of law being the condition for the sustenance of democracy. The Secretary-General held a meeting with the President of Liberia and the Chief Justice. He met with the Head of the EU Delegation in Monrovia to discuss assistance for the Judiciary in the country.

**Conclusion**

A workplan was elaborated in consultation with the relevant bodies in Liberia. The report and workplan was submitted to the European Union and other donors with the view of conducting further follow-up activities.

## PRIORITY OBJECTIVE: FIVE

### GLOBALISATION AND THE RULE OF LAW

#### **Project n°1999.01: CIJL Publication on the Judiciary in a Globalised World**

##### **Objective:**

- to examine accountability, corruption, and protection of the judiciary within the context of globalisation

##### **Activity**

In carrying out its work, the CIJL has mainly focused on the role of the State. However, new forces are entering the scene which impact on judicial and legal independence. During the last few years, various international financial institutions, as well as development and funding agencies have been deeply involved in judicial reform. Their activities have direct impact on the independence of judges and lawyers. This is why Volume VII of the CIJL Yearbook focuses on the subject of « The Judiciary in a Globalised World ». The issue explores how globalization affects the functioning of the judiciary in many countries. There are contributions from Justice Ismail Mahomed (South Africa), Dr. Diego Garcia-Sayan (Peru), Justice Michael Kirby (Australia), Dato' Param Kumaraswamy (Malaysia), Justice P.N. Bhagwati (India), Mr. Jerome J. Shestack (USA), Justice Claire l'Heureux-Dubé (Canada), and Justice Marie José Crespin (Senegal).

##### **Conclusion:**

The papers focus on two trends in the globalisation debate which the ICJ will continue to study in the year 2000: the impact of the activities of the international financial institutions on the independence of the judiciary and the legal profession and measures to address judicial corruption.

#### **Project 1999: Publication: Globalisation and the Rule of Law**

##### **Objective**

- to examine the Rule of Law in a changing world

##### **Activity**

The ICJ published "Globalisation, Human Rights and the Rule of Law" which contained papers addressing WIPO and the Rule of Law, Globalisation and the Rule of Law, Transnational Corporations and their direct application of human rights and the operation of international criminal tribunals.

##### **Conclusion**

The publication was widely disseminated and promoted discussion on the imperative of the Rule of Law in the new globalised economy. The publication was a timely adjunct to the deliberations of the UN Sub-Commission on this same theme. ( see priority objective one)

## MISCELLANEOUS

### **Project n°1999.82: Strengthening Networks of ICJ National Sections and Affiliates**

#### **Conference of the European Sections of the ICJ**

##### **Objective**

- to identify priorities for future ICJ action with regard to crime control and its impact on human rights; discrimination; access to justice; and corruption.

##### **Activity**

The Conference of the European national sections and affiliated organisations of the ICJ, entitled «New Europe - Making Rights Real», was held from 30 September - 3 October 1999, in Popowo, near Warsaw, Poland. It was organized by the Polish Section in cooperation with the Swedish Section. The conference gathered 90 jurists from 22 European countries including: Albania, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, Ukraine, and the UK. The Secretary-General, the Legal Officer for Europe and the Press and Publications Officer, represented the secretariat.

The sessions were held in four parallel working groups. Participants of the first group considered the effects on human rights of the introduction of new means of crime control. The second group considered the role of the State in the elimination of all forms of discrimination in employment, housing or education. The third group focused on the judiciary and limitations of access to court. The fourth identified priorities in fighting corruption and developing mechanisms of transparency for all public structures.

##### **Conclusion**

The Conference adopted recommendations and a plan of action addressing these four priority areas requiring recommendations to the EU and the Council of Europe and to national governments, the establishment of a pressure group to lobby for adoption of the 12th Protocol to the European Convention of Human Rights, extending the scope of its Article 14 on non-discrimination; formation of a network of experts in individual areas; and appraisal of implementation of the plan at the next working meetings of the European national sections (the next meeting was scheduled for June 2000 in London).

Alarmed by the human rights situation in Belarus, the participants unanimously adopted a resolution addressed to Mr. Alexander Lukashenko and his cabinet. In the resolution, the participants condemned gross human rights violations in the country and urged due vigilance and action on the part of international organizations and democratic governments. The Resolution was subsequently sent as a press statement on 5 October 1999.