

**United Nations Human Rights Committee
106th Session, Geneva
15 October to 2 November 2012**

**ICJ Oral Statement during the Half-Day of General Discussion in Preparation for a
General Comment by the Human Rights Committee on article 9 of the ICCPR**

25 October 2012

Check against delivery

Madam Chair,

The International Commission of Jurists (ICJ) welcomes the convening of this half-day of general discussion in preparation for a General Comment by the Human Rights Committee on article 9 of the International Covenant on Civil and Political Rights (ICCPR).

The ICJ intends to be actively engaged in the process leading to the establishment of this General Comment. We have at this stage provided a short submission concerning the issues identified by the Committee's Special Rapporteur on the General Comment. In due course, the ICJ intends to provide more detailed comments in response to the first draft of the General Comment.

The ICJ believes that the list of issues for potential expansion within the General Comment forms a sound basis for the preparation of a first draft.

- Concerning article 9(1) – on the meaning of “arbitrary”, as applied to arrest and detention – we note that the Working Group on Arbitrary Detention is preparing a Deliberation on the scope and definition of arbitrary deprivation of liberty under customary international law. The ICJ's submission to the Working Group appears as Annex 1 to our submission to this Committee.
- Concerning article 9(3), this Committee's jurisprudence has expressed that the period of time between arrest and being brought before a judge or other authorised officer is to be determined on a case-by-case basis and must not exceed a few days. We have suggested in our submission that the Committee should take a more precise position in this regard, including by identifying what factors would be relevant in the case-by-case approach to be taken. Pertaining to the same article of the ICCPR, we have also suggested that further clarity would be welcomed on the meaning of the expression “other officer authorized by law to exercise judicial power”.
- Concerning article 9(4) – on *habeas corpus* – we note that the Working Group on Arbitrary Detention was recently tasked by the Human Rights Council to prepare draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of her or his liberty. The Council has requested the Working Group to seek the views of all stakeholders in this regard, including this Committee.

In addition to the technical approach of considering article 9 clause-by-clause, the ICJ suggests that express consideration be given to the discussion in the General Comment of thematic issues and the way in which these are impacted upon by article 9, and in some cases by article 9 in combination with other provisions of the ICCPR. We note that other stakeholders have raised a number of thematic issues. For our part, we have identified five thematic issues in our submission to this Committee:

- In the case of one of those themes (the detention of asylum-seekers and irregular migrants), our submission includes as Annex 2 a chapter from a recent publication of the ICJ's Europe Programme on 'Migrants in Detention'.

- As part of a project being undertaken with the University of Essex Human Rights Clinic, the ICJ is in the process of preparing memoranda on three further issues:
 1. The application of article 9 in international and non-international armed conflicts;
 2. Administrative detention; and
 3. Control orders and surveillance orders.
- A further issue not raised in our submission is that of the role and accountability of legal entities. This is a thematic issue the ICJ believes should also be considered within the General Comment. Two particular contexts arise. The first concerns the role and accountability of legal entities running State detention centres, whether penal or administrative. The second concerns the role and accountability of private security where persons might be detained in private premises, as might be the case, for example, in shopping malls or in compounds operated by extractive industries where conflicts might arise with local communities or with prospect miners not working for the company operating in a certain area.

The ICJ would be happy to share the results of this further research with the Committee and the Rapporteur. The ICJ will otherwise use this as the basis of providing comments to the Committee on the first draft of the General Comment.

Madam Chair,

The ICJ is committed to supporting the process of establishing a General Comment on article 9 to the fullest extent possible. We look forward to working with the Committee to that end.

To assist us in doing so, and I am sure that this is a question on the minds of all persons present at this meeting, it would be very useful if the Committee or the Special Rapporteur could set out the intended time-line and steps to be taken between now and the ultimate adoption of the General Comment. This must recognise, of course, that there needs to be some flexibility. But this would be invaluable for planning purposes of stakeholders. If the Committee is not in a position to answer this question in full at this time, perhaps a short note to this effect could later be posted on the Committee's website?

I thank you.

Statement delivered by: [Mr Alex Conte, ICJ UN Representative (alex.conte@icj.org +41 79 957 2733)]
