

# ICJ 17th World Congress: The ICJ Declaration and opening speeches

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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## The ICJ Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems

Reaffirming its mission to advance the Rule of Law and the legal protection of civil, cultural, economic, political and social rights;

Recalling that the universal realization of human rights requires meaningful access to justice for all persons and it is the responsibility of States and other human rights duty bearers to act to remove barriers to the full access to justice;

Emphasizing that without the availability to rights holders of avenues to seek and obtain effective remedies and reparations for violations, human rights guarantees may be illusory and go unrealized;

Reaffirming the indispensable role played by a strong and independent legal profession, including judges, lawyers and prosecutors, as well as by National Human Rights Institutions, in ensuring the availability of and equal access to justice;

Encouraged by the development of an impressive architecture of international human rights standards and mechanisms at the universal and regional levels since the establishment of the United Nations and recalling the leading role that the ICJ has played over 60 years in the initiation, elaboration, adoption, defence and operationalization of these standards and mechanisms;

Recalling that States have an obligation to ensure effective implementation of universal and regional human rights instruments and decisions;

Recalling that during the first World Conference on Human Rights held in Tehran in 1968, the ICJ proposed the establishment of an International Criminal Court, an Office of a High Commissioner on Human Rights, and a World Court of Human Rights; and noting that of these three proposals only the World Court remains unrealized;

Appreciative of the substantial contribution made by the United Nations human rights system to advancing access to justice, including through its treaty bodies and their individual communication procedures and the special procedures of the Human Rights Council and its predecessor, the Commission on Human Rights;

Acknowledging the parallel development of regional human rights systems, including the human rights courts and quasi-judicial mechanisms, in the Council of Europe, Organization of American States, African Union, League of Arab States, and the Association of South East Asian Nations;

Concerned nonetheless that large gaps remain in systems, standards, and mechanisms aimed at ensuring access to justice at the international level, including the unavailability of any

judicial mechanism on human rights at the universal level or in the Asia Pacific and most of the Middle East and North Africa regions, and the obstacles to access to judicial mechanisms in the Africa region; and strains in the mechanisms in the Inter-American and European systems;

Concerned also that States have insufficiently implemented their obligations under the various international and regional human rights instruments to which they are parties and that the universal and regional human rights systems have recently been subject to politically driven attacks and measures aimed at or having the consequence of degrading the effectiveness of those systems, including their capacity to deliver justice to victims of human rights violations;

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), the Bangalore Declaration concerning Economic, Social and Cultural Rights and the Role of Lawyers (1995), The Cape Town Commitment (1998), the Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (2004), the Geneva Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008) and the principles and standards to which the ICJ is committed;

Recalling also principles and standards of international law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other universal and regional human rights treaties, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;

The International Commission of Jurists affirms that:

1. All persons, groups and peoples must be able to access justice effectively at the national and international levels. To this end, States must act to ensure equality in access to justice, including through the adoption of legislation and the establishment of judicial and non-judicial mechanisms such as National Human Rights Institutions to give effect to human rights obligations, including the right to a remedy and reparation.

2. States must take meaningful and effective measures to remove barriers that impede access to justice, including corruption and discriminatory laws, policies and practices; as well as slow, costly, ineffective or burdensome legal processes; and make available decisions in appropriate languages.
3. Ensuring effective access to justice also entails empowering the most marginalized and disadvantaged people, including through the design and implementation of strong promotional programmes to ensure that all persons are aware of and can exercise their legal rights and by making available services to enforce those rights. Such measures must address particular obstacles to justice faced by women and girls.
4. Persons seeking access to justice in judicial or administrative fora should be guaranteed access to legal advice and representation, including, where necessary, free legal aid. It is the responsibility not only of the State, but also of the legal profession, to act to facilitate such access.
5. Access to justice requires the availability of effective remedies. All persons have a right to an effective remedy for any violation of their civil, cultural, economic, political, and social rights. Remedies, to be effective, must be prompt, accessible, available before a competent, independent and impartial authority, and lead to cessation of the violation and to reparation.
6. States must provide victims of gross human rights violations with access to judicial remedies. Where administrative remedies are provided for in the first instance for other human rights violations, they must consist in legally binding decisions, and judicial review of these administrative decisions must be available, at least to ensure that the decision has comported with human rights obligations, due process, and the Rule of Law.
7. Reparations include, as appropriate to the violation, compensation, guarantees of non-repetition, rehabilitation, restitution, and satisfaction. Victims of human rights violations have the right to know the truth about the circumstances in which the violations took place. As a component of the duty to provide reparation, States must hold criminally responsible perpetrators of gross violations, in particular of those constituting crimes under international law, and such accountability may not be abridged by immunities, amnesties or statutes of limitations.
8. States have a duty to protect persons against the impairment of their rights by non-state actors, including business enterprises and armed groups. Where the conduct bringing about such impairment of rights is attributable to the State, or where the State has breached its obligation to protect, the State must be held responsible. The victims should have access to remedies against both the State and non-state actors.

9. The State has the obligation to ensure access to justice, including the right to remedy in its domestic laws and practice. As a complement, effective remedies, including judicial remedies, should be available at the international level to victims for breaches of international human rights obligations. Such remedies should be available where the State is unable or unwilling to provide remedies, or where such remedies are ineffective or have been exhausted. The State must protect persons from harassment or threats aimed at inhibiting access to or retaliation for the use of international mechanisms and remedies.

10. The United Nations and regional intergovernmental organizations having human rights treaties under their auspices should establish mechanisms, including judicial mechanisms, to provide for access to remedies for human rights treaty violations. Where such mechanisms already exist, the organization should take measures to enhance their effectiveness in delivering access to justice. Other organizations should move expeditiously towards elaborating general human rights treaties as well corresponding mechanisms to give them effect.

In pursuit of the aforementioned principles, the ICJ as a whole, including its Commissioners, Honorary Members, National Sections and Affiliated Organizations, will work towards and support efforts aimed at the following objectives:

### Universal Level

1. The establishment of a World Court of Human Rights, which, acting in complementarity with existing universal and regional mechanisms, will allow for rights holders to have access to an independent international judicial body to seek remedies and reparations for violations of human rights guaranteed in the principal universal human rights treaties. The ICJ will continue, in the interim, to promote and expand conceptual development and advocacy on the establishment of a World Court, with a view to the initiation of an intergovernmental process for the elaboration and adoption of a statute for such a Court.

2. The strengthening of the United Nations treaty body system by ensuring that the outcome of the process presently underway is one that makes it possible for the United Nations human rights treaty bodies to work more effectively and efficiently to protect the human rights recognized by the universal treaties.

3. The facilitation of access to existing United Nations human rights mechanisms for all victims of human rights violations, including through the universal acceptance of individual communications procedures of the United Nations human rights treaty bodies, through more effective and accessible operation of those procedures, and full implementation by States parties of decisions on interim measures and final views issued under those procedures. Promotion of the transparent, independent and timely operation of the communications

functions of the Human Rights Council's Special Procedures and improved compliance by States with their recommendations and the systematic and non-selective pursuit by the Human Rights Council of access to justice in all areas of its work.

4. The enhancement of the capacity of United Nations mechanisms, both the treaty bodies and the Human Rights Council and its Special Procedures, to ensure that perpetrators of crimes under international law are held criminally accountable and to address laws and practices that may provide for or result in *de jure* or *de facto* impunity. Promotion of the use by the Human Rights Council and its Special Procedures of effective and non-selective means to address all gross and systematic human rights violations so as to ensure accountability and a more effective means to follow-up on the timely implementation by States of recommendations concerning accountability for human rights violations.

### African Region

1. Achievement of full ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (ACtHPR) and the entering of declarations pursuant to article 34(6) of the Protocol allowing individuals and NGOs to complain directly to the ACtHPR. To this end, the ICJ will advocate that the African Commission on Human and Peoples' Rights (ACHPR) invoke its promotional mandate to engage Member States of the African Union to become party to the Protocol and for the full domestic implementation of their obligations under the African Charter.

2. Enhancement of the effectiveness and wider regional impact of the ACHPR in its adjudication of individual complaints by developing speedier procedures and more robust follow-up procedures, including by referring a greater number of cases for judicial consideration by the ACHPR to ensure that binding judgments are rendered in respect of its non-implemented decisions. Address in particular the low rate of implementation by States of decisions of the ACHPR and the role of the African Union in following up on such implementation.

3. Strengthen the capacity and effectiveness to deliver justice and human rights protection of the sub-regional courts, including the East African Court of Justice, the Economic Community of West African States (ECOWAS) Court of Justice, the Southern African Development Community (SADC) Tribunal and the Economic Community of Central African States Court of Justice.

4. Take steps to reverse the removal of the SADC Tribunal's jurisdiction to hear individual complaints.

## Americas Region

1. Reaffirm and defend the mission of the inter-American human rights system to protect the victims of human rights violations and, in view of the contribution of the Inter-American Commission and Court of Human Rights to the entrenchment of the Rule of Law in the region, mobilize efforts against reforms aimed at undermining the inter-American human rights system, as well as attempts to erode the autonomy and independence of the system initiated by some States and political organs of the Organization of American States (OAS), including its Secretary General. Since any action, other than by way of amendment of article 39 of the Convention, inconsistent with the Commission's sole authority to propose reform of its statute is *ultra vires*, urge all member States of the OAS, including during the upcoming extraordinary session of its General Assembly, to oppose these reforms and to support civil society and the media in the defence of the inter-American system.

2. Strengthen the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court on Human Rights by guaranteeing their full autonomy and independence, including in respect of the mechanisms of the inter-American system established to protect human rights. To this end, ensure that open and participative consultations are undertaken involving States, non-governmental organizations and other members of civil society, victims, and academia.

3. Achieve the full ratification or accession to all human rights treaties and their protocols by all member States of the OAS. Work to ensure that while progress is made towards such universal adherence, no State purports to justify a decrease in the levels of protection and cooperation with bodies and mechanisms of the Inter-American system by the failure by other States to become a party to these instruments. Reject the denunciation by any State of the American Convention on Human Rights and urge the Government of the Bolivarian Republic of Venezuela to withdraw its denunciation of the Pact of San Jose.

4. Enhance the access to the Inter-American system, including through provision of legal aid, for victims lacking the means to litigate their cases, through such means as the Victims' Legal Assistance Funds established by the IACHR and the Inter-American Court. Work to improve the mechanisms for the implementation of international human rights standards and for the compliance with the decisions of the IACHR and of the Inter-American Court by the concerned States, including those involving precautionary measures and provisional measures. Work also to preserve and enhance the follow-up procedures, including those supervising the compliance with the decisions of the organs of the Inter-American system. Strengthen the working capacity and autonomy of the IACHR and the Inter-American Court by allocating the resources sufficient to carry out effectively their respective mandates.



## Asia-Pacific Region

1. Development of a comprehensive regional system to ensure an effective remedy for all rights-holders in the region, including through appropriate sub-regional mechanisms that cover all countries in the region.
2. Reform the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR), and ensure that it has independent experts tasked to monitor the human rights situations in ASEAN States and an independent sub-body to adjudicate individual complaints and provide for access to remedies for individuals who allege their human rights have been violated. Sustain the denunciation of the ASEAN Human Rights Declaration as a fatally flawed instrument which undermines universal human rights law and standards. If the ASEAN moves to develop a human rights treaty, ensure that the process of elaboration is undertaken in full consultation with all stakeholders, and that its provisions enhance or, at the very least, do not fall below universal human rights standards.
3. In the Pacific Region, work to accelerate efforts by the Pacific Islands Forum towards the development of a human rights system for Pacific States, including a human rights body to develop standards and mechanisms to remedy individual complaints.
4. Within the South Asian Association for Regional Cooperation (SAARC), work towards the establishment of a regional human rights system, acting in conformity with international human rights law and standards.

## European Region

1. Protection of an independent and effective European Court of Human Rights, in the context of ongoing reform processes, so that the Court may fulfil its role in adjudicating remedies and interpreting States' obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In this regard, work to oppose initiatives that would have the effect of restricting the Court's jurisdiction; interfere with inherently judicial functions; impose new admissibility requirements unduly restraining an effective right to petition the Court; undermine equity between the parties to the case; or place any unwarranted burdens on individuals seeking to access the Court. In particular, act to ensure that the doctrine of the margin of appreciation does not undermine protection of rights under the ECHR. Support the efforts of the Court to increase its capacity, improve its efficiency and enhance access to justice, and work to direct the priorities in the reform process toward the provision of adequate funding and resources to enable the Court and Registry to process cases effectively and promptly. Ensure stronger action by the Committee of Ministers in the supervision of the execution of the Court's judgments, in particular by addressing more effectively structural or systemic deficiencies of the national systems in situations of repetitive violations.

2. Press for ratification of the Revised European Social Charter; for acceptance of the right to collective complaints to the European Committee on Social Rights; and work towards reforms to strengthen its competence and the legal authority of its findings.
3. At the European Union level, advocate for increased human rights protection through the Court of Justice of the European Union and for accession of the EU to the ECHR through a transparent and inclusive process; and for the European Commission to make more effective use of infringement procedures and of the Court of Justice of the European Union, when Member States fail to comply with their human rights obligations under the Charter of Fundamental Rights of the European Union.
4. At the domestic level, ensure prompt and effective execution and implementation of judgments of the European Court of Human Rights, especially in cases raising systemic human rights concerns, and establish effective national procedures for the implementation of judgments and ensure systemic legal reform in cases of repetitive violations. Such measures must ensure that national courts provide independent and effective redress for violations.

#### **Middle East and North Africa Region**

1. Amendment of the Arab Charter with a view to establishing its full conformity with universal human rights standards, including the right to life, the prohibition of cruel, inhuman or degrading punishment and freedom of thought, conscience and religion. Establishment of protocols under the Charter on specific thematic areas, including the abolition of the death penalty, the prevention of torture and ill-treatment, and the elimination of all forms of discrimination and violence against women.
2. Establishment of an Arab Court of Human Rights, empowered to receive complaints from individuals, groups, and organizations, and to issue binding decisions in respect of violations of universally accepted human rights.
3. Reform of the Arab Human Rights Committee, established under the Arab Charter on Human Rights, by enhancing its mandate and competences so as to allow the Committee to receive and adjudicate individual complaints on violations of the Arab Charter, as well as alternative reports regarding the human rights situations in States which are members of the League of Arab States; and work to ensure the independence of the Committee, including by reforming the procedures for election of its members. Such reform should involve increased procedural transparency, fair participation of civil society in the election process, and the establishment of requirements of human rights expertise, independence, impartiality and gender-balance.

## ICJ 17th World Congress, 11-12 December 2012: Speech of ICJ President Pedro Nikken

I feel very honoured to be addressing the Congress of the International Commission of Jurists. This is the only opportunity I have had to speak to you as your President because my very respected predecessor, Mary Robinson, opened the last Congress and, when the Congress we inaugurate today concludes, I will have the privilege to leave the Presidency in the hands of one of our most distinguished colleagues, Sir Nigel Rodley.

Sir Nigel is a pioneer of international human rights law who has proven his commitment to the values and mission of the ICJ, as well as to the Academy, the United Nations and organized civil society. We should congratulate ourselves for having elected him as our next President.

We are celebrating the sixtieth anniversary of the ICJ. We were born in a world that, after having defeated the totalitarianism of Hitler and Mussolini, was under threat from the totalitarianism of Stalin. Curiously, to fight Stalinism, the Western democracies did not promote democracy vigorously.

Instead, they often supported anti-communist military tyrannies, they refused to give their support to numerous liberation movements in Africa and Asia, and they were hesitant to oppose apartheid. We who experienced the Cold War from Latin America, Africa or Asia, often felt that this conflict was more a global power struggle than a struggle for democracy, the Rule of Law, human rights and fundamental freedoms for all. One of the features of that world, on both sides of the Iron Curtain, was that freely elected Governments did not rule in the majority of countries.

Today the picture is different. Elections and a respect for the will of the people are instead the general rule. However, in various regions of the world, a new threat has emerged against the Rule of Law and the enjoyment of human rights.

In several countries in Europe, Africa and the Americas, democratically elected governments have successfully attempted to transform their legitimate power into a way of ruling that does not respect the limits that are necessary components of the Rule of Law and human rights. In the words of the eminent Italian jurist Luigi Ferrajoli, it is the threat of wild powers against the constitutional democracy.

In short, it is the utilisation of the tools of democracy and the Rule of Law to destroy the values of democracy and Rule of Law.

For us, the International Commission of Jurists, it is crucial to defend the Rule of Law and the independence of judiciary, irrespective of whether their aggressors are primitive tyrants or elected Governments.

Therefore, we must remain alert and active to confront the new threats that emerge when democracy is perverted and that we see flourishing in several regions.

One of the ICJ's primary objectives is to ensure the effectiveness of international human rights law, for the protection of all people, particularly the most vulnerable. We have contributed substantially to this goal during our sixty years of existence.

However, in recent years, the effectiveness of international human rights law has also been under attack. Within the framework of the United Nations, the Human Rights Council adopted a code of conduct, the result of which has been the limitation of the mandate of the Special Rapporteurs.

In Africa, the SADC Tribunal was deprived of its competence to receive individual claims.

In the Americas, the Inter-American System of Human Rights is undergoing a process of reform to weaken the mandate and limit the independence of the Inter-American Commission on Human Rights.

In short, Governments try to avoid being condemned for their human rights abuses, as opposed to avoiding these violations in the first place and offering better protection to victims. Their aim is, instead, to weaken international control mechanisms.

After sixty years of struggle, the ICJ today faces new threats, which are also new challenges. New challenges require new answers, built upon the Rule of Law and international human rights law.

The creation of a World Court of Human Rights, which will be among the points that we will discuss in this Congress, is a tremendous opportunity to enlarge the international agenda in such a way that will promote and progress the fundamental goals of our organization.

I wish you every success and fruitful work during the Congress, which I declare now to be open.

Thank you very much. Merci beaucoup. Muchas gracias.

## ICJ 17th World Congress, 11-12 December 2012: Speech of Ms. Navi Pillay, UN High Commissioner for Human Rights

Dear Friends and Colleagues,

It is a privilege to join you at this 17th World Congress of the International Commission of Jurists in support of its call for stronger international human rights mechanisms to remedy human rights violations.

I also join you in mourning the death of the Honourable Arthur Chaskalson, former President of the International Commission of Jurists and Chief Justice of the South African Constitutional Court. Throughout his life, Arthur was driven by his belief in the Rule of Law and the necessity of strong and independent institutions to render justice; he will be remembered as a towering human rights activist and a leader who helped shape a new democratic South Africa. Under his presidency, the Constitutional Court delivered ground-breaking jurisprudence ensuring the protection of human rights, all rights, civil, political, economic, social and cultural rights. Personally, I lost a cherished friend and a fellow advocate against apartheid.

Earlier this year, in the context of impending legislation that would have impinged on the independence of the South African judiciary, Arthur stated in a public lecture: "One of the lessons of history is that rights are vulnerable, and when governments come under stress, there is a temptation for them to brush rights aside, in order to secure their goals and entrench their power." His statement not only asserted the need for independent national courts but underlined why we need strong and independent international human rights mechanisms.

Since its creation, 60 years ago, the ICJ has been a beacon of education and enlightenment for generations of lawyers and judges, including for me. The ICJ has made a significant contribution to fostering human rights through the Rule of Law. It has been widely commended over the years for its pioneering work in defining the Rule of Law on the basis of the different legal traditions in the world, while placing the legal protection of human rights at its core. Many of the concepts inspired by the ICJ found their way in the Declaration on the Rule of Law at the National and International Levels stemming out of the General Assembly's High-level Meeting on the Rule of Law held in New York on 24 September 2012. At that Meeting, World Leaders reaffirmed, *inter alia*, that human rights, the Rule of Law and democracy were interlinked and mutually reinforcing, and that all persons, institutions and entities were accountable to just, fair and equitable laws. All are entitled to equal protection before the law without discrimination. These are the ideals that have been promoted by the ICJ for decades and are now resonating world wide.

In one of its first International Congresses, in Rio de Janeiro in December 1962, the ICJ held out the challenge that in a changing and interdependent world, lawyers should give guidance

and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people.'

This message still resonates and challenges us to consider how to better prevent and remedy human rights violations through strengthened international human rights mechanisms. Our reflection on this important issue should be based on the fundamental legal concepts and principles that the ICJ, and many of its members assembled here, have been instrumental in developing.

Among these concepts and principles, the most important is that it is incumbent on the State concerned not only to hold perpetrators accountable, but also to provide accessible and effective remedies to victims of human rights violations. It is also crucial that these remedies be appropriately adapted so as to take account of the special vulnerability of certain categories of persons. This is an objective that you have worked to achieve for years, in particular through the efforts of some of your most distinguished members to draft General Comment 31 of the Human Rights Committee and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The implementation of this fundamental principle continues to face serious challenges. In practice, international human rights mechanisms are needed to compensate the failings and shortcomings of national judicial institutions and often constitute the last line of defence for victims of human rights violations who have not been granted a remedy at the State level. As such, international human rights mechanisms complement the work of State institutions, promote the exercise of greater State responsibility and ultimately serve to enhance human rights protection for all around the globe.

In many instances, the outcomes and recommendations of these international mechanisms have provided the impetus for important reforms at the national level that have led to concrete advances for rights-holders, including for victims of past violations.

As you know, as the United Nations High Commissioner for Human Rights, my office services the key international human rights mechanisms, namely, the Human Rights Council, treaty bodies and special procedures. Other components are regional bodies and courts, all of which provide insightful and authoritative interpretation of human rights law. In this context, the elaboration by pockets of States of sets of "principles and guidelines" on crucial human rights issues, such as detention by military authorities or other security-related issues, will gain greater acceptance when due regard is paid to the jurisprudence of international human rights bodies.

Ladies and Gentlemen,

I recall that it was at the World Conference in Tehran in 1968, that the ICJ proposed the establishment of a UN High Commissioner on Human Rights. As the High Commissioner for Human Rights, I am committed to follow my five predecessors to preserve and strengthen the independence, accessibility and effectiveness of existing international human rights mechanisms and to bringing human rights closer to the people.

Yet, I draw your attention to the negative effect of the current financial crisis on our work and seek your support to call for adequate funding for my office. A cut in our budget will negatively impact our capacity to provide proper service to the human rights mechanisms. The number of Special Procedures has increased from 28 thematic mandates in 2007 to 36 thematic mandates currently in 2012. There are also presently 12 country mandates. The number of treaty bodies has also doubled, without a commensurate doubling of our resources. At a time when there is heightened awareness of human rights, especially through the electronic and social media, and growing demands for our services by both Governments and civil society organisations, it is unfortunate that we are hamstrung by the lack of funds. Members of the ICJ have been instrumental in the creation and development of these important mandates and many of you have served in these offices, ranging from appointments as Special Rapporteurs on issues such as torture, summary executions, the independence of the judiciary, to holding country specific mandates ranging from Cambodia, to North Korea, Equatorial Guinea, Haiti, and Somalia. Therefore, you know that without proper resources and effective support, the mandates and mechanisms will not be able to fulfill their roles to their maximum.

The ICJ also has been at the forefront of creating and contributing to the crucial protection system constituted by human rights treaty bodies. I am sure you will agree that these bodies remain at the head of the universal human rights system. Two years ago, in response to the overwhelming workload of treaty bodies and huge backlogs in addressing complaints and State reports, I launched a treaty body strengthening process. Following extensive consultations with all stakeholders, member States, treaty body experts, national human rights institutions and NGOs, I produced a report which is now before the UN General Assembly for consideration and action by States. I have put forward a number of meaningful, yet realistic reform proposals. One key proposal, for instance, is the establishment of a comprehensive reporting calendar, which, if adopted, would enhance compliance and predictability, simplify reporting requirements and contribute to eliminating backlogs in the consideration of State reports.

In this time of austerity, while it is crucial to secure full resources for the treaty bodies, we must remind ourselves of why this is important. If human rights remain at the level of debates and discussions in Geneva, they will remain just that: theory. To have rhetoric

translated into reality on the ground, there must be national ownership. Hence, lack of or insufficient implementation of treaty body recommendations remains a fundamental concern. Despite the fact that States have voluntarily accepted the mandate of international human rights mechanisms, their rate of follow up remains poor. My office is very committed to assist in this regard through capacity-building, advocacy and monitoring work of our 58 field presences across the world. However, what is needed is greater commitment on the part of States to respect the decisions of the mechanisms they established, especially where these emanate from judicial processes or individual complaints procedures.

There is need for enhanced political will of Governments to ensure better protection of human rights all around the globe. The role of the Human Rights Council is essential in this regard, in particular as the second cycle of the Universal Periodic Review is dedicated to following up on the recommendations of the first cycle. I also hope that the Council will continue its efforts towards responding more effectively to human rights crises, including when alerted by early warnings from independent international human rights mechanisms.

Friends,

Strong regional mechanisms have an indispensable role in reinforcing the international human rights system, and I am very committed to our cooperation with these mechanisms. From tomorrow, for instance, OHCHR will host the Second International Workshop on Enhancing Cooperation between the United Nations and Regional Mechanisms. But in order for these regional mechanisms to be credible and effective, they require independent members, strong protection mandates, and frameworks that maintain and enhance universal human rights standards.

The Inter-American and European human rights systems made ground-breaking developments at the regional level. I commend the principled decisions taken in recent years by the Strasbourg and San Jose courts to uphold judicial independence and to protect the rights of indigenous peoples, undocumented migrants, and suspects of terrorist activities (to name just a few examples). I am very concerned, however, that certain governments have questioned the integrity of these courts and threatened to withdraw cooperation or exercised other undue pressure.

In this context, I am paying close attention to the follow-up that the Council of Europe's Committee of Ministers is giving to the Brighton Declaration on the future of the European Court of Human Rights. While the Court faces significant practical challenges, including a huge backlog of cases, I share the concerns of the President of the European Court about attempts of governments to define, in a prescriptive way, how the Court's case-law should evolve or how it should carry out the judicial functions conferred on it. I welcome the modification or deletion of some initial proposals which might have weakened the independence of the Court or its accessibility to complainants.



I also welcome recent developments resulting in the restoration of funding for the Inter-American Court of Human Rights. I met with officials of that Court in October and raised concerns over risks of withdrawal of membership and funds.

Regarding the African Court of Justice and Human Rights, I share the concern of the President of that Court over draft legislation before the AU purporting to modify its mandate. The realisation of the court's great potential will depend on its capacity and that of the African Commission on Human and Peoples' Rights to work out modalities of complementarity and close cooperation. It is equally crucial that the Court be provided with adequate resources and that it retain the targeted focus necessary to effectively hold States accountable for human rights violations. It must also be accessible, in legal and practical terms, to individual victims. I hope that all African states will make the declaration under the protocol establishing the African Court to allow individuals and NGOs to complain directly to the Court.

Courts of the sub-regional economic communities in Africa such as the ECOWAS Court, the East African Court of Justice and, until 2010, the Tribunal of the Southern African Development Community (SADC), also constitute forums where individual victims of human rights violations can have their cases heard. I remain very disappointed, however, that SADC leaders first suspended the SADC Tribunal - an action for which an advisory opinion of the African Court of Human and People's Rights has been sought - and then proceeded to curb its jurisdiction. I still hope that they will reconsider their decision and restore the Tribunal's jurisdiction to hear complaints by individuals against SADC Member States.

It has been encouraging to see how the Association of Southeast Asian Nations (ASEAN) has, over recent years, begun to integrate human rights into its community building process. However, the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Rights of Women and Children are composed of government appointees subject to removal at any time by their respective Governments. This lack of independence in membership will make it difficult for these mechanisms to evolve to address country situations or to engage fully in human rights protection work. The recent adoption at the ASEAN Summit in November of the ASEAN Declaration on Human Rights has also highlighted some of the potential pitfalls of regional human rights systems, with the inclusion of provisions in the text which may not conform fully to international standards.

It is my sincere hope that other regional organizations, such as the South Asian Association for Regional Cooperation or the Pacific Islands Forum, will also in time develop their own human rights mechanisms.

The Organisation of the Islamic Cooperation recently established an interregional human rights body, the Independent Permanent Human Rights Commission. Despite its name, it is composed of Government representatives and its functions are mainly advisory. My office will

continue to provide both Commissioners and the OIC Secretariat with technical assistance so as to support an evolution of the Commission towards becoming a fully independent mechanism.

OHCHR is also committed to working with the League of Arab States. We have worked together with Arab experts on universal mechanisms to help address the gap between the Arab Charter of Human Rights and international standards, and to enhance the understanding by the Arab Human Rights Committee of international practice, including reviewing States reports, entering into dialogue with civil society, and formulating conclusions and recommendations. I have recently provided OHCHR expertise to the League's ongoing consideration of an Arab Court for Human Rights.

Ladies and Gentlemen,

Let me conclude by expressing confidence that this event is certain to generate important insights on how to further strengthen international human rights mechanisms. Expertise and experience is assembled here, as many of you are or have been serving with distinction as international judges, Special Rapporteurs and treaty body experts. You will have ready appreciation of the imperative for strengthening international human rights mechanisms to address human rights violations.

The ICJ, with its commitment to the Rule of Law at the international and national level, has provided a shining example of what can be done in practical ways on these and other related issues. I look forward to learning about the outcome of your deliberations and the ideas you have on ways to advance these common objectives.

Thank you for your attention.

## ICJ 17th World Congress, 11-12 December 2012: Speech of H. E. Ms. Laura Dupuy Lasserre, President of the UN Human Rights Council

Monsieur le Maire de Genève, Rémy Pagani,  
Monsieur le Chef de Cabinet du Conseiller d'Etat,  
Madame High Commissioner, Navi Pillay,  
Sr. Presidente, Pedro Nikken,  
Sr. Secretario General, Wilder Tayler,  
Excellencies,  
Ladies and Gentlemen,

I am very honoured to participate in the 2012 World Congress of one of the most respected and influential non-governmental organizations in the field of human rights. Let me start by congratulating the ICJ for its 60th anniversary, which is already quite an achievement in itself.

For the past 60 years, the ICJ has relentlessly worked for the promotion and protection of human rights through the Rule of Law and it has undoubtedly contributed to the progress made in the development of human rights law and its implementation on the ground. 64 years after the adoption of the Universal Declaration on Human Rights, today, there are still millions of individuals who are denied their inherent rights and many are claiming for them, to improve their lives.

Much remains to be done to prevent and redress human rights violations throughout the world.

I therefore very much welcome the topic chosen by the ICJ for its Congress: "the call for stronger international mechanisms to remedy human rights violations".

Speaking today in my capacity as President of the UN Human Rights Council, I feel that the aforementioned topic is of particular relevance to the Council, given its specific mandate to "address situations of violations of human rights and make recommendations thereon" (OP2) and to "respond promptly to human rights emergencies" (OP5f), as per General Assembly resolution 60/251 which established the Council. While the Council is not a judicial mechanism per se, I nonetheless believe that it offers a political way to address States' accountability in the context of human rights violations and offers guidance to improve national capacities and institutions to prevent and remedy them. In 2013, the Council will address in a panel the issue of human rights and administration of justice, under the Rule of Law, from a technical cooperation perspective.

As you may all remember, the Council undertook a review of its work and functioning more than a year ago. Among the issues which received particular attention was the manner in which the Council addressed situations of human rights violations. And among the different

inputs received, the draft considered in February 2011 contained a creative proposal envisaging external, objective and independent triggers, which could initiate action by the Council in case of urgent situations. However, this proposal was finally dropped and therefore the Council continues to address urgent situations mainly through the convening of special sessions. There are still some other possible and more flexible tools or work formats, but using them requires broad acceptance, general consensus or the consent of the State concerned.

Vis-à-vis the Human Rights Council, an intergovernmental body, one has to recognize the independent role performed by the High Commissioner to address publicly through communiqués or directly with concerned countries different situations around the world, in a timely manner and based on international human rights standards.

Nevertheless, some steps have been taken lately by certain States willing to interact with the Council. One could mention for instance informal informative briefings with the presence of the High Commissioner and of the President of the Council (like the one called by the Maldives) or side-events organized by the States concerned (like Sri Lanka, which also has been reporting orally in plenary through a Ministerial representative), or formal stand-alone interactive dialogues in plenary [the first was Somalia, followed by Yemen] or even, to some extent, the regular correspondence sent to the Presidency aiming at informing the Council about specific situations (like Bahrain, which has been providing regular updates on the follow-up to the BICI recommendations). But again, these work formats, be it formal or informal – most of the time – are applicable in cases where States are still willing to engage with the Council. However for those States which do not wish to do so, the problem remains. During the UPR, a less politicized body, most States under review take the process seriously, present their national situation quite frankly and commit to improve in many areas, including regarding cooperation with the system. But unfortunately some choose to ignore their own wrongdoings or challenges and will not even provide an appropriate answer to questions or recommendations made to them.

To a certain extent, special sessions have proved rather successful at addressing urgent situations (the minimum of 16 Member States' signatures to convene the meetings has always been reached – and the 19 special sessions held to date testify to this - though the outcome has to be negotiated). Some may think that the holding of the last four special sessions did not really help enhance the situation on the ground in the Syrian Arab Republic. Yet, by holding these numerous special sessions plus an urgent debate, the Council has lived up to its political responsibilities by closely following the developments and by setting up a Commission of inquiry, which is tasked to collect information and gather evidence, in view of future potential criminal proceedings (at the national or international level) in relation to the on-going conflict. The Commission of inquiry has already and will, as per usual practice, hand a sealed letter with the names of those believed to be the most responsible

for international crimes to the High Commissioner, who could then use this information in criminal proceedings. After so many months of crisis and armed conflict, pressures are increasing not only to find a political solution but also to make accountable those responsible for international crimes, human right violations and International Humanitarian Law violations. There, the issues that should have priority come up: a political settlement, peace, justice and ending impunity.

In general terms, the way to address situations of human rights violations in the Council or at its margins has been changing.

At the 20th session of the Council, in June 2012, a cross regional group of States made a joint statement, expressing that where States are not willing to follow the path of constructive engagement, the Council cannot and should not remain silent and do nothing. The question is therefore what can the Council do in these cases of persistent non-cooperation?

The non-cooperation with some HRC tools (be it country or thematic Special procedures, including CoI or FFM), has not yet been addressed formally by the Council as such, apart from diplomatic contacts, including through the Presidency of the HRC – personally or through letters.

In fact due to a more explicit rule (paragraph 38 of the Institutional Building Package or Resolution 5/1), the Council, as early as January 2013, will probably need to address its first case of non-cooperation in the UPR context (while the 1st cycle enjoyed 100% of participation). There, the balance between universality and constructiveness and interactive dialogue with the State under review will come up and many countries, which oppose item 4 of the agenda, will also claim that nothing can be done without the consent of the country, even in the framework of the UPR.

Going back to the cross regional initiative, it is interesting to note the elements proposed to be considered when assessing whether a situation or specific issue merits the attention of the Council. Among others, they indicated their willingness to consider:

- whether there has been a call for action by the UN Secretary General, the High Commissioner or a group of Special Procedures;
- whether the State concerned has recognized the challenges it was facing and if so, whether it has put forward a set of credible actions to remedy the situation;
- whether the State concerned is facilitating or obstructing access to humanitarian actors, HR defenders and the media; and
- whether the State concerned has been cooperating with Treaty Bodies in the past.

Depending on the reply to these crucial questions, these States proposed that the Council should be seized, even in cases of non-cooperation by the State concerned.

Obviously, it is now difficult, if not impossible, to reopen the review outcome to include these objective elements or what was qualified as "external triggers", because of their non-governmental nature. Nonetheless, I believe the Council is an evolving body whose methods of work should be constantly reviewed and enhanced. In fact, some little steps have been taken in 2012 to address cases of intimidations and reprisals, and hopefully the public calls acted as a sort of protection, always depending on the good will of the authorities. Let me also tell you that the working methods or practice of the confidential complaint procedure have been significantly improved in 2012, through a joint meeting of the Working Group on Situations and on Communications, where the President of the HRC was invited, trying to be more focused on the potential victims and creating synergies with other relevant actors. We need other creative ideas and solutions to ensure that the Council addresses situations of gross and systematic human rights violations and their prevention.

The Secretary General of the United Nations invited the Human Rights Council, the Office of the High Commissioner and the treaty bodies system to reflect on how to alert and prevent international crimes, as a very least.

Ladies and Gentlemen,

As I said at the beginning, the Human Rights Council is not a judicial mechanism and therefore does not offer formal remedies to victims of human rights violations. However, Treaty Bodies are quasi-judicial mechanisms offering recommendations on remedies. As you may all know, treaty bodies are undergoing in New York an intergovernmental process, aimed to strengthen the system, hopefully to make it even more effective, including in dealing with individual communications. For instance, it would be important that the proposal to establish appropriate national mechanisms aiming at improving follow-up procedures to treaty bodies' views and recommendations, including on individual communications, be supported.

While the discussions on the strengthening of the treaty bodies system are held at the General Assembly in New York, and the treaty bodies do not report to the Council, one should not overlook the linkages between treaty bodies and the Council. Indeed, with the UPR, links have grown stronger and for the better. The UPR enables treaty bodies recommendations to get more visibility within the Council and therefore contribute to a more consistent follow-up. And vice-versa, the reviews of States may also provide interesting input to treaty bodies ahead of a State's examination. Therefore, strengthening treaty bodies will undoubtedly have a positive impact on the Council's work.

Let me point out that some treaty bodies have been working hand in hand with the relevant thematic Special Procedure, like the Committee Against Torture and the Special Rapporteur

against torture. Some others should enhance these synergies, since Special Procedures are universal and can resort to communications to States. It should be the case of the Committee on the Elimination of Discrimination Against Women and the new Working Group on discrimination against women, in law and in practice, to fill in any gap, especially during times of transition in many countries, which are adopting their Constitutions.

Finally, let me quickly mention here that the Council will also be interested in closely following developments on the proposal for a World Court of Human Rights, which will certainly be discussed during this Congress. A side-event in 2011, sponsored by the ICJ and the Geneva Academy of International Humanitarian Law and Human Rights, together with the Maldives, Switzerland and Uruguay, was organized in the margins of the 16th session of the HRC, to start reflecting on this possibility. In fact, more than 60 years ago, at the beginning of the UN, the Commission on Human Rights had already set up a Working Group to discuss the idea of a World Human Rights Court during its very first sessions. Overtime regional mechanisms and Courts developed, in Europe and the Americas (though the Court has rather a Latin-American scope, based on the recognition of its competence).

As you see, even at that regional level the universality is still an aim. Moreover, there is an inter-governmental review going on, basically with the role of the Inter-American Commission on Human Rights, which is the first filter to resort to the Court. Similarly, at the international level, many Optional Protocols establishing communications procedures are not widely ratified yet. In other regions, we are still at a more basic stage of a regional human rights declaration, like in the ASEAN, trying to avoid any cultural relativism that would undermine the Universal Declaration of 1948. That is why we welcome the seminar organized by the OHCHR to be held from tomorrow until Friday the 14th of December on these synergies or interactions with regional mechanisms, and that will be focused on national mechanisms of prevention of torture, women's rights and rights of the child.

Distinguished Delegates,

I very much hope that the discussions you will hold today and tomorrow may bring up some of those creative ideas and solutions, which may help the Council become better.

I wish you very fruitful discussions and thank you for your attention.

## ICJ 17th World Congress, 11-12 December 2012: Speech of Mr. Rémy Pagani, Mayor of the City of Geneva

Monsieur le Président de la Commission Internationale de juristes,  
Madame le Haut-Commissaire des Nations Unies aux droits de l'homme,  
Monsieur le Chef de cabinet du Conseiller d'Etat,  
Mesdames et Messieurs les membres de la Commission Internationale de juristes,  
Excellences,  
Mesdames et Messieurs,

Au nom des Autorités de la Ville de Genève, laissez-moi vous souhaiter à toutes et à tous une très cordiale bienvenue dans notre ville à l'occasion de votre Congrès mondial et de la célébration du 60e anniversaire de votre Commission, dont Genève a le privilège d'abriter le Secrétariat international.

Je tiens à vous exprimer mon très grand plaisir de vous accueillir à Genève et de pouvoir vous adresser ces quelques mots.

Le fait que vous fêtiez ce jubilé dans notre ville est plus qu'un honneur : c'est un véritable symbole !

Symbole d'une ville qui – comme vous le savez – a depuis longtemps été la ville du refuge, de l'arbitrage international et du droit humanitaire. Genève a su montrer en effet, de manière très précoce, la nécessité de lutter contre toutes les formes d'abus infligés aux droits de la personne.

Et depuis la création du Comité International de la Croix-Rouge il y a bientôt 150 ans, celle de la Société des Nations en 1919 puis l'installation, au lendemain de la Seconde Guerre mondiale, du siège européen des Nations Unies, notre ville n'a jamais cessé d'être une cité symbole de la Paix, des droits humains et des grandes négociations internationales. Les Conventions de Genève constituent des traités internationaux qui contiennent les règles essentielles fixant les limites à la barbarie de la guerre. Ces Conventions, ainsi que leurs Protocoles additionnels, continuent aujourd'hui de fournir le meilleur cadre disponible pour protéger les civils et les personnes qui ne combattent plus.

En ma qualité de Maire de Genève, j'ai eu moi-même ces dernières années – notamment en Afrique centrale, au Proche-Orient et en ex-Yougoslavie, ainsi que récemment à New York dans le cadre du Tribunal Russell sur la Palestine – la possibilité de réaffirmer, chaque fois que les circonstances l'ont rendu possible, l'importance des Conventions qui portent le nom de notre ville.

Car je suis convaincu que face aux violations des principes les plus élémentaires, la communauté internationale doit être en mesure de se mobiliser, d'intervenir et d'imposer le respect des libertés fondamentales partout où elles sont bafouées.



Bien sûr, il n'appartient pas aux villes d'intervenir dans la politique internationale qui est du ressort des Etats. Mais j'estime qu'il est tout à fait légitime, et que pour une ville comme Genève c'est même un devoir, d'appuyer des mouvements et des initiatives citoyennes de la société civile engagée qui revendiquent l'application universelle du droit international et des droits humains en général.

Je me réjouis d'ailleurs que l'idée de justice internationale soit devenue aujourd'hui une réalité concrète.

Ces tribunaux ont non seulement permis de juger et de punir les responsables de génocides, de crimes contre l'humanité et de crimes de guerre, ils ont aussi envoyé un message très clair et sans ambiguïté aux dictateurs et tortionnaires du monde entier. Face à l'inacceptable, la communauté internationale n'est désormais plus aveugle, elle n'est plus démunie et impuissante, elle a désormais la mémoire longue !

Il est évident par ailleurs que le système judiciaire d'un pays est bien sûr un élément central pour la protection des droits humains et des libertés fondamentales. Le rôle des avocats et des magistrats est crucial pour assurer la protection des victimes de violation des droits humains, pour que les auteurs de ces violations soient déférés devant les tribunaux et que les procès soient équitablement menés.

Sans votre travail opiniâtre, Mesdames et Messieurs, sans votre détermination, sans vos multiples interventions dans le cadre de la protection et de la promotion des droits humains, rien de ce qui ressemble à la démocratie et à l'état de droit ne saurait se construire.

Le Congrès de la Commission internationale de juristes constitue le lieu idéal où l'on peut débattre de toutes ces questions, où l'on peut affirmer les principes fondamentaux des droits humains, et où l'on peut élaborer les règles et fixer les conditions qui doivent permettre de garantir les libertés fondamentales.

Au nom des Autorités de la Ville de Genève, je tiens à vous féliciter pour l'engagement qui est le vôtre et à souhaiter encore une fois à votre Commission un très bel anniversaire.

Mesdames et Messieurs,

Toute l'histoire de l'humanité est traversée par la tension incessante entre la violence, la barbarie, la mort et la liberté, la paix et la vie. Les pessimistes diront que l'on ne peut rien y changer. Je suis persuadé que toute bataille pour les droits humains mérite d'être menée parce que la volonté peut toujours être plus forte que la fatalité, le droit peut triompher sur la force.

Je vous remercie.

## ICJ 17th World Congress, 11-12 December 2012: Speech of Theo van Boven, Honorary Member of the ICJ

Mr. President, distinguished members of the ICJ, ladies and gentlemen,

This Sixtieth Anniversary Congress of the ICJ is devoted to “The Call for Stronger International Justice Mechanisms to Remedy Human Rights Violations”. We will discuss this theme at this Congress from universal and regional perspectives. This leaves the national level where ultimately justice has to be done. It was suggested that I may at this occasion touch on historical perspectives in view of past ICJ work and achievements relating to the function of international human rights mechanisms, and on the thematic question of the right to a remedy.

First, some comments on a few historical dimensions regarding the work of the ICJ. From the outset, the ICJ applies itself to developing the Rule of Law within and among nations, to the development and strengthening of national systems for the protection of human rights, to the progressive development of international human rights law, and to the development of institutions of protection, internationally, regionally and nationally. These aspects come out forcefully in policy statements issued over the years by the ICJ.

The ICJ took a close interest in, and contributed substantially to the development of, new human rights instruments like the Convention Against Torture and its Optional Protocol as a preventive device based on regular visits to places of detention. Similarly, the ICJ played an active role in the establishment of bodies such as the African Commission and the African Court on Human and Peoples’ Rights and in championing the creation of the post of UN High Commissioner for Human Rights, in fighting world-wide patterns of impunity, in the protection for the rural poor, and in the implementation of economic, social and cultural rights. The ICJ did a pioneering study on Human Rights during States of Emergencies and, more recently after the events of 11 September 2001 which jeopardized the legal landscape throughout the world, the ICJ has been in the lead on the protection of human rights during counter-terrorism policies and practices.

It is fair to say that leadership in the identification of new challenges has been one of the defining characteristics of the ICJ over the past six decades. It is also fair to say that the ICJ has not been without imperfections. Its history during the early period of the Cold War is the subject of debate, and there are times when it has lost focus and strategic depth. Happily, these were occurrences of the past and increasingly the ICJ has demonstrated a keen awareness of the requirements of a world wherein peace and security, development and human rights are principal and interrelated components. The very fact that we are having a discussion at this juncture about the ICJ’s role in the future in advancing the cause of justice bears testimony to the actual centrality and vibrancy of the organization.

In looking to the future role of the ICJ we must keep in mind the likely contours of the world in the evolution of the twenty-first century. Allow me to mention a few points. By

the middle of this century the population of the world is likely to grow by several billions, with most of the growth in the developing world, and with declining birth rates in many of today's developed countries. In spite of the lofty goals proclaimed and targeted by world leaders in the United Nations Millennium Declaration at the dawn of the current century, the economic and social problems of the developing countries and their populations will continue to be acute, and more and more people will keep trying to emigrate to affluent societies. Climate change and attacks on a sustainable environment are likely to add to movements of people across boundaries, and there are estimates of hundreds of millions of people being forced to migrate if the seas continue to rise. There will be difficulties in feeding, clothing, housing, health care, and educating many of the poor and the marginalised, and problems of discrimination, exclusion and intolerance could well increase.

A great part of the miseries of humankind have to do with bad governance and practices of corruption. We do not know whether the quality of governance and the stopping of corruptive practices will improve markedly in many countries and it cannot be taken for granted that some of today's practices of gross violations of human rights will come to an end. Neither can we assume that, in spite of solemn pledges and undertakings, governments will be instrumental in strengthening the authority of institutions like the United Nations. Tomorrow's world is likely to be a perplexing and challenging one. In planning for the future justice agenda of the ICJ, we have to be aware that these are some of the elements we are facing. How should they influence the future justice initiatives of the ICJ? Against this background I should like to present some elements that might be worth considering, not only on the occasion of this Anniversary Congress but also as an assignment in the years to come.

In the first place, good governance as well as the exposure of corruption must be a strategic issue for consideration if we are to cope with the impending situation. While there has been significant discussion of global governance – there is an international journal devoted to it – and while poor governance and corruption have been recognized as prevailing in many parts of the world, I am not aware that there has been significant thinking on the issue of justice, integrity or equity in governance. What is at issue here is whether governments perform efficiently and with integrity so as to rise to the challenges of their people and also so as to secure equitable treatment of their peoples. This whole area of equity, integrity and justice in governance is one that could benefit from reflection and study within the ICJ. The ICJ may well help to identify norms in this area and shape thinking.

Closely related to this is the question of the performance of national justice systems and national institutions for the protection of human rights. The ICJ has done a great deal of constructive work on the protection and independence of judges and lawyers. This is most valuable but the issue I am raising is broader in scope as it deals with competence and fairness in the administration of justice. The ICJ could develop a role that makes it the natural institution to turn to for leadership and for guidance.

National Human Rights Institutions are, or should be, at the front line of protection inside each country. Courts usually wait for cases to be brought to them. National institutions do not have to wait. They can exercise their right of initiative. While improvements have been made in quite a few national institutions in recent times, yet in many countries they are either non-existent or non-performing. As an issue of justice, it is surely right that the ICJ seeks to make its mark in this area.

Then there is the plight of the poorest, so emphatically addressed in the United Nations Millennium Declaration. However optimistic we may be about the prospects of implementing the right to development, the hard reality is that poverty will continue to be a scourge on masses of humankind for quite some time to come. It is an imperative matter of justice that all organs of national and international society strive to find ways and means of alleviating the plight of the poorest and the most vulnerable. Influenced by the writings of leading economists, the UN Secretary-General has been seeking to focus attention on the need to alleviate the plight of the most needy. While economists and development specialists have their part to play in this, so do also lawyers and institutions such as the ICJ.

This brings me to the implementation of economic, social and cultural rights, an area which the ICJ has rightly taken up since quite some time as one of its priority concerns, notably also in campaigning for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights relating to the right of petition. I also refer in this context to the active role played by the ICJ in drawing up the Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, adopted last year in Maastricht.

I believe that it would help in future governance and equity for the courts to play a greater role in judicial protection of economic, social and cultural rights. If resources are scarce, if Governments might be either inefficient or inequitable, and if corporate responsibility is inadequate and leaves much to be desired, the people must be able to go to the courts and other legal institutions in order to obtain redress or to seek arbitration on their grievances. Some courts, such as the Indian Supreme Court, have developed significant practice in this regard. So have bodies like the South African Supreme Court.

There is need for new thinking in developing further the role of courts and other legal institutions in the protection of economic, social and cultural rights. The ICJ has already done significant work in this domain and is eminently qualified to offer further insights and guidance here. Then there is evidently, as a major issue on the justice agenda, the plight of women. Women undergo some of the worst deprivations and gross violations of human rights in the world. While norms have been developed and institutions established, their plight remains a matter of deep concern. It must be right to expect the ICJ to keep prominently under the spotlight ways and means of securing for women full access to justice.

We should not forget the plight of minorities, among them sexual minorities, indigenous peoples, and migrants. All these groups suffer grievously in today's world. The demands of justice for these groups are pressing and the ICJ can help by keeping their plight in the forefront, in partnership with other bodies.

I have already mentioned quite a list of issues that should remain or appear on our justice agenda. But there are two more that we should not overlook. We have to recognize that human rights continue to be at grave risk in emergency situations and it may be timely for the ICJ to revisit the work it did on this topic some years ago. This would be a natural complement to the work it is continuing to do on threats to human rights while facing counter-terrorism programmes and policies.

Then, finally, I should like to remind you that human rights protection work involves three dimensions: anticipatory or preventive; mitigatory or curative; and remedial or reparative. All these three dimensions are crucial in any justice strategy. Various bodies, such as the Special Procedures as the "eyes and ears" of the UN human rights promotion and protection system, are seeking to address issues of mitigation and cure, seeking to identify, curtail and stop gross violation of human rights.

As regard redress and reparation, the UN Basic Principles and Guidelines on Victims' Rights, in the development of which colleagues and myself received the active support of the ICJ, provides us with a good set of norms that we must strive to implement nationally, regionally, and internationally.

But special attention has also to be given to the other dimension which is often overlooked or underrated: prevention. Justice is best served by seeking to prevent violations, to the extent we can. This is a major theme expounded most prominently by Amartya Sen in his writings on Justice. I therefore think that preventive human rights strategies must always be kept in mind and made more explicit as a demand of elementary justice.



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