

*Adopted in Geneva, Switzerland, 12 December 2012*

## **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; and 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 African Court on Human and Peoples' Rights 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 African Commission on Human and Peoples' Rights 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 establishment of

requirements of human rights expertise, independence, impartiality and gender-balance.