

Promotion and development of international law of human rights through appropriate instruments and mechanisms - The improvement of the functioning of regional human rights mechanisms - The strengthening of human rights through empowerment and education - Enhancing the independence of the judiciary, conceptually and practically - The promotion and protection of human rights and the rule of law through studies, fact finding missions and publications.

There is no choice between good and evil, right and wrong. When it is your duty to protest, those who remain silent are guilty.

Justice Dorab Patel 1924-1997

MISSION

The mission of the International Commission of Jurists (ICJ) is to promote the understanding and observance of the rule of law and the legal protection of human rights around the world.

NOISSIW



SPECIFICITY

What distinguishes the ICJ in the vast and expanding community of international non-governmental organisations is its specifically legal approach to human rights. It is composed of and staffed by jurists. This offers a unique perspective in addressing human rights problems.

The ICJ is composed of a Commission of up to 45 members who are outstanding jurists and human rights defenders (they include judges, lawyers and law academics) and are recognised as competent in their respective fields nationally and internationally. They are from different nations and represent the various legal systems and traditions of the world.

The ICJ has consultative status with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Council of Europe and the Organisation of African Unity.

SPECIFICITY

RECOGNITION

The ICJ has been awarded the first European Human Rights Prize by the Council of Europe in 1980, the Wateler Peace Prize in 1984, the Erasmus Prize for Human Rights (Netherlands) in 1989 and the United Nations Prize for Human Rights in December 1993.

RECOGNITION

IN MEMORIAM

NIALL MACDERMOT OBE (MIL), CBE, QC 1916-1997

Niall MacDermot passed away on 23 February 1996. Born in Dublin in 1916, the former Secretary-General of the ICJ between 1970-1990, was an internationally recognised and respected British jurist. In World War II he was awarded the Order of the British Empire for his role in the D-Day operations in Normandy. After the war, he was called to the English Bar and, in 1963, became a Queen's Counsel. He was twice a Member of the House of Commons (1957-59 and 1962-70). He was appointed Financial Secretary to the Treasury (1964-1967) and Minister of State for Planning and Land in the Government of Mr. Harold Wilson. At dire times when most were silent, Niall stood up to dictators to defend the oppressed. Never one to shy away from unpopular causes, he was driven by unfaltering ideals and utmost respect for legality. Due to his legal skills and scholarship, he was a prime force behind the drafting of many international instruments, notably to prevent torture and arbitrary detention. Deeply committed to universality and equality, he established practical programmes to help the disadvantaged and poor.

JUSTICE DORAB PATEL

1924-1997

Justice Dorab Patel, former Judge of the Supreme Court of Pakistan and ICJ Member passed away on 17 March 1997. He used to say: "There is no choice between good and evil, right and wrong. When it is your duty to protest, those who remain silent are guilty." Justice Patel was, without a doubt, one of the pillars of the country's judiciary. He was also an outspoken advocate of human rights and the rule of law and stood up many times in defence notably of the rights of women and of the oppressed in Pakistan. Justice Patel will be remembered for his courageous stance in defence of constitutional democracy against the attacks from the military dictatorship of Zia ul-Haq.

IN MEMORIAM

FOREWORD



1998 marks the forty-sixth anniversary of the beginning of the International Commission of Jurists, our Commission. It is also only two years away from the Third Millennium. On December 10 of this year, the international community will celebrate the fiftieth anniversary of the United Nations Universal Declaration of Human Rights.

To add to the historicity of this year, the Triennial of our Commission, the last one in this century, takes place in Cape Town in a democratic South Africa led by one of the greatest statesmen of all times, Nelson Mandela. Perhaps, we might be forgiven if we feel celebratory. Because there is much to be thankful for. But on sober reflection, we have to resist this urge. For a simple reason. Namely, that while the harvest remains plentiful, the true labourers remain few.

Forty-five years after the UN adopted the Universal Declaration, the world community gathered in Vienna and re-affirmed that Human Rights were universal, indivisible, inter dependent and inter-related. This was both a restatement and a confession that something was wrong with the way in which we have focused on the issue of Human Rights. That focus has tended to be fixed on civil and political rights. A few dedicated voices apart, ours included, not very much attention had been paid to the economic, social and cultural rights.

Vienna was thus both a reminder and a rebuke, inviting us to focus on this unattended set of rights. Three years ago, in the beautiful Indian city of Bangalore, our Commission responded by developing a set of principles to galvanise the legal profession world-wide to action.

The Report, to which this modest foreword is written, chronicles the activities of our Commission in the past two years, namely 1996 and 1997. The primary objective of our organisation and the fuel that fires our motivation is to promote understanding, institutionalization and observance of the Rule of Law, the Independence of the Judiciary and the legal protection of Human Rights world-wide. Evidence abounds in the Report of gains in these fields in the two years under review.

Professor Howard B Tolley Jr. notes, in the Preface to his book on our Commission, that critics around the world condemn privileged lawyers as arrogant, greedy, manipulative and self-serving. The present Report demonstrates that such stereotyping does not fit our Commission. We are self-selecting. Yes. But the Report shows amply that an exclusive

FOREWORD

professional elite motivated by noble ideals and working together with a dedicated and committed staff can provide the engine through which civil society can power itself in the search for solutions to societal problems through the law.

From the Report, one area to which the Triennial must devote some attention is finance. There is no doubt that our donors remain remarkably generous and supportive. And for this we are forever grateful to them. But we live in a world of dwindling resources. Fiscal prudence will not always be a sufficient strategy for pulling us through financial difficulty. Hopefully our deliberations in Cape Town will produce radical, even revolutionary, ideas for augmenting our resources.

For the past two years, the Commission has engaged itself on two major international initiatives. These are the International Criminal Court and the African Court on Human and Peoples Rights. Happily, the Protocol for the establishment of an African Court on Human and Peoples Rights was adopted by the Assembly of Heads of States and Governments of the Organisation of African Unity (OAU) at their June meeting in Ouagadougou, Burkina Faso. It was immediately signed by thirty States. We need a minimum of fifteen ratifications to make the Court operational. The International Criminal Court project has reached a critical stage. All are agreed that the world needs this court. And yet here are powerful voices whose misguided concerns with national interest may yet derail or delay the process. These therefore remain challenges for the Rule of Law from which we cannot flinch.

May the present Report and the Triennial which we are holding at the dawn of the Third Millennium provide us with fresh motivation and vigour to develop policies and strategies towards ensuring the realisation of a world under the Rule of Law in the Twenty-first century.

Kofi Kumado
Acting Chairman of the Executive Committee

Founded in 1952 in Berlin, in the wake of the Nuremberg Trials and the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights in 1948, the International Commission of Jurists (ICJ) is today one of the world's oldest non-governmental international human rights organisations.

Eminent jurists from 42 countries met in Berlin to establish the ICJ. In creating the organisation, they were moved by a firm conviction that justice and the law are two indispensable pillars of democracy. They had experienced that whenever law and justice are subjected to arbitrary force and violence, the protection of the freedom of the individual, which is guaranteed under democracy, is lost.

The aim of the newly-founded organisation was to strive for the establishment of *"The Rule of Law in a Free Society."* This objective stood as a determined response to the atrocities of

World War II and the resulting division of the peoples of the earth into two ideologically conflicting blocks. Throughout the years and the decades, the ICJ endeavoured to build bridges between East and West and South and North, always bearing in mind its founding ideal.

The turn of the 1990s witnessed the nascence of a new world order with the obliteration of the past East-West divide and a just return to democracy in Southern Africa, Central and Eastern Europe, Latin America, Central Asia and the Far East. But while the world had suddenly changed, the essential mission of the ICJ - to promote the rule of law and the legal protection of human rights around the world - remained unchanged. And as walls which kept people in were increasingly being replaced by walls that keep people out, as the rivalry between East and West was being replaced by conflict between North and South and rich and poor, the essential role of

the ICJ was enhanced once again. In 45 years of existence, the ICJ mission has remained unchanged.

For nearly five decades, the ICJ has worked with the belief that the rule of law serves all human rights. It has based its work on the conviction that the rule of law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible. The rule of law should be employed not only to safeguard and advance the civil and political rights of the individual in a democratic society, but also to establish social, economic, educational and cultural conditions under which her/his legitimate aspirations and dignity may be realised.

The ICJ functions upon the premise that since the fundamental freedoms of the individual are everywhere equally precious, and nowhere invulnerable, the vigilance of the lawyer must extend to all parts of the world.

1996 AND 1997 HIGHLIGHTS

Political upheaval, economic and social injustice, ethnic and other armed conflicts, and their repercussions on human rights persisted throughout the world in 1996 and 1997. The rhetoric of hatred, violence and intolerance spread. Political assassinations, torture and other gross violations of civil, political, economic, social and cultural rights have continued to claim a heavy toll on humanity.

Millions have been forced to become refugees or have been displaced in their own countries. More people, especially children, have been maimed by anti-personal landmines. An even greater number have been forced into bonded labour, exploitation and prostitution, or both. Extreme poverty and unemployment have devastated livelihoods in entire regions - not only in the south and in the east, but also increasingly in the industrialised countries of the north.

Yet whilst commerce is globalising, there is no similar globalisation of human rights and the rule of law - and of justice, fairness and equity. Furthermore, impunity is not only allowed to prevail, it is also encouraged to extend its pervasive grip as new armed



conflicts emerge or when old ones finally die out.

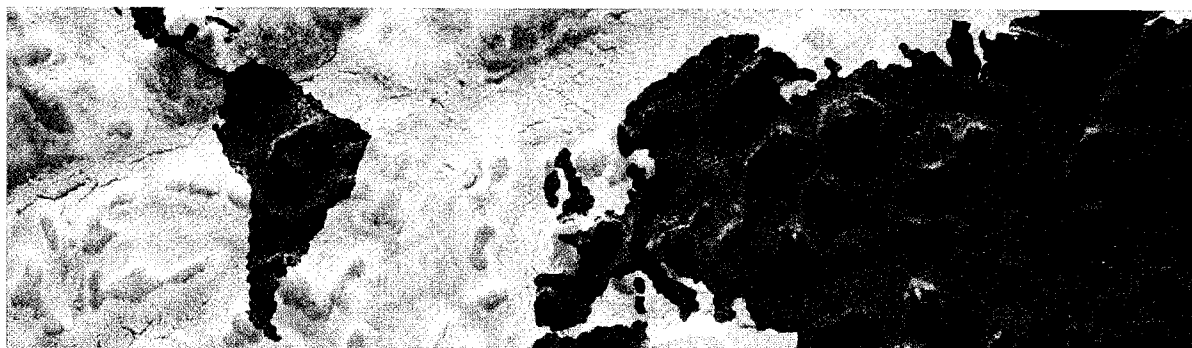
It is against this backdrop of violence and egregious human rights violations that the International Commission of Jurists (ICJ) continued to fulfil its mission globally to promote the understanding and observance of the rule of law and the legal protection of human rights around the world. Through the Centre for the Independence of Judges and Lawyers (CIJL), the ICJ also endeavoured to promote the independence of lawyers and the judiciary as well as to protect the human rights of persons working in all legal fields all over the world from Algeria to Vanuatu and from Malaysia to Venezuela.

The ICJ undertook a wide range of activities around the world in pursuance of its mission. In

1996 and 1997, the following can be highlighted as particularly momentous.

NORTH AMERICA

The question of the death penalty in the United States of America was prominent. The report of a mission on that subject, which took place in the US in January 1997, stressed that the administration of the death penalty was arbitrary and racially discriminatory and that prospects of a fair hearing for capital offenders could not be assured. The report also stated that mounting pressure from the general public concerning the imposition of the penalty had accentuated the likelihood of miscarriages of justice throughout the country. The report made a strong impact in many countries - and notably in the US itself. For example, the Washington DC-based Death



Penalty Research Center considered that the ICJ report would no doubt constitute a milestone in the area and a reference in the future.

LATIN AMERICA

In 1996-7, the ICJ continued to press for the recognition of indigenous peoples' rights in the American sub-continent. At a seminar organized in March in Cochabamba, Bolivia, indigenous members of trade unions, women's organizations, other civil society associations - as well as local and international experts - envisioned various ways of ameliorating social conditions and the provision of legal services in their constituencies. In May 1996, a workshop on economic, social and cultural rights was organized in Bogota, Colombia, which set forth much needed guidelines for future action both

in Colombia and on the international scene in the promotion and realisation of economic, social and cultural rights. A year later, in June 1997, a highly acclaimed Seminar on Domestic Implementation of International Human Rights Standards was organised in Sao Paulo, Brazil. The debates focused on the legal value of treaties, declarations and recommendations and access to international mechanisms, including regional OAS human rights mechanisms. Judges, prosecutors, lawyers, members of the Federal and State parliaments, law professors and students, took part in the discussions.

EUROPE/CIS

In 1996 the ICJ gave practical implementation to its programme of activities in one of the newly independent countries of the former Soviet Union. The

holding of a seminar in Kyrgyzstan, on the domestic implementation of international human rights norms, together with the Constitutional Court of Kyrgyzstan, can be seen as particularly important for a country that had long been deprived of international attention, isolated as it had been for the greater part of the century. The ICJ also expanded its involvement in a growing number of countries of the former USSR, namely Kyrgyzstan, Ukraine, Azerbaijan, Armenia and Georgia. In parallel, the ICJ substantially increased the level of its involvement in the elaboration of human rights policies, legislation and conventions and other promotion-related activities in the three main European regional fora: the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe.



AFRICA

The signing of a far reaching cooperation agreement between the ICJ and the Organization of African Unity (OAU) in the fall of 1996 signalled a new era in an already long-lasting bilateral relationship which can be traced back to the early sixties.

Preoccupied by the worsening condition of children in Africa, particularly of children in conflict with the law, a seminar on the rights of the child was held in Abidjan in March 1996 with a view to find much needed solutions.

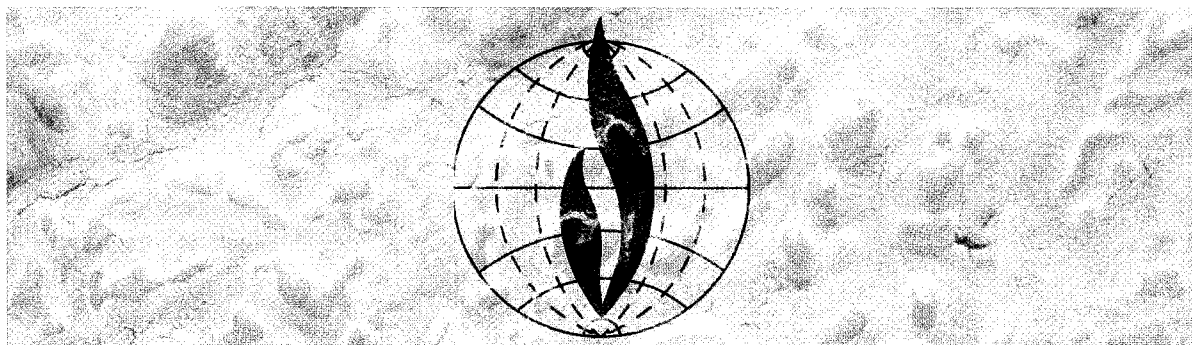
Democratisation and the Rule of Law in Kenya was published in August 1997. It casts light on the poor state of human rights in Kenya despite the return to pluralist constitutional democracy in 1991. Amongst other subjects, the report highlights governmental interference in the judiciary. Concluding that

Kenya must address the issue of constitutional and legal reform rapidly, the report makes recommendations for a peaceful return to a stable polity. The ICJ also continued to work towards the establishment of an African Court on Human and Peoples' Rights. For several years, the ICJ has been actively involved in promoting the creation of this novel mechanism.

ASIA

The human rights community kept vigil as the countdown towards retrocession continued in Hong Kong. The ICJ President visited Hong Kong in October 1996 to meet the territory's government, legal profession and the Legislative and Executive Councils. Issued in December 1996, the resulting report highlighted concern over the maintenance and the protection of the Rule of Law, respect

for human rights and the independence of the judiciary in Hong Kong after 1 July 1997 - under Chinese rule. Forecasting limitations on rights enjoyed under British rule, the report called upon the UK and the UN to remain vigilant over the future of human rights in the territory. A year later, in December 1997, a report entitled "Tibet: Human Rights and the Rule of Law" was issued. The ICJ recommended that China allow a UN supervised referendum in Tibet to determine the future of the region which it invaded in 1950 and occupied since. In this 370-page report, the ICJ describes the Tibetans as a "people under alien subjugation", and entitled under international law to the right of self determination. The report attracted immense media and political attention throughout the world - it will no doubt be remembered as one of the ICJ's landmark publications.



CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS

In 1978, in response to the growing number of attacks on judges and lawyers, the ICJ created the Centre for the Independence of Judges and Lawyers (CIJL) as a means to establish a much needed international intra-professional **solidarity network**.

The ICJ mandate and that of the CIJL are complementary. The ICJ mission is broad and flexible and enables it to deal with a range of matters related to human rights in various legal systems - international, regional, and domestic - their developments and evaluation. It allows the ICJ to tackle issues related to constitutional law, international law, criminal law, administrative law and other legal issues, all with the aim of

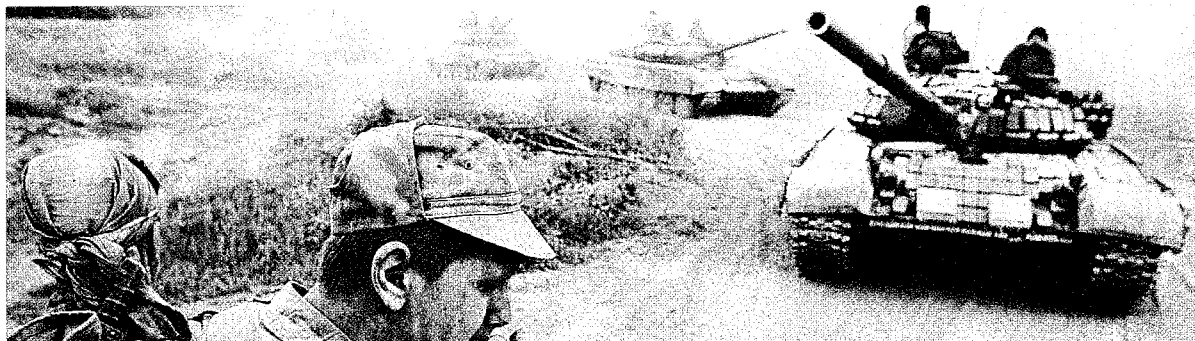
finding avenues for the achievement of the legal protection of human rights, which is the ultimate goal of the ICJ. The mandate of the CIJL is narrower, but falls within the mission of the ICJ. It is identified as promoting the **independence of the judiciary** and the legal profession and organising support for judges and lawyers who are harassed and persecuted. In carrying out the first part of its mandate, the CIJL deals with legal and constitutional structures and promotes reform.

Since its foundation, the CIJL has sought to develop practical mechanisms to promote and protect judicial and legal independence. The CIJL has several organisations of judges

and lawyers affiliated to it. The CIJL employs various methods in conducting its work. In addition to being instrumental in the formulation and adoption of the 1985 UN Basic Principles on the Independence of Judiciary and the 1990 UN Basic Principles on the Role of Lawyers, the CIJL has been intervening with governments in particular cases of persecution of jurists; organising conferences and seminars; and, publishing periodic reports. Such reports include the CIJL Yearbook which serves as a forum for discussion on the subject of independence of judiciary and the legal profession, and Attacks on Justice, on the harassment and persecution of judges and lawyers throughout the world.

**In 1996 and 1997 the activities
of the International Commission
of Jurists (ICJ) and of its Centre
for the Independence of Judges
and Lawyers (CIJL) have revolved
around 5 main areas :**

Promotion and development of
international law and of human
rights through appropriate
instruments and mechanisms.



ICRC-Eric Baner

For decades, the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers have contributed to the elaboration of universal and regional standards and been active in helping to ensure their adoption and implementation by governments. Although there now exists a myriad of universal instruments which relate to human rights much more still remains to be accomplished in this field.

UN STANDARDS THAT ARE STILL IN THE MAKING ...

In 1996 and 1997, the ICJ and its CIJL intervened during the UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as in various other fora, to participate in - or support the drafting and adoption of - new instruments such as:

- Optional Protocol to the UN Convention against Torture;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- Universal Declaration on the Protection of Human Rights Defenders;
- Convention on the Protection of All Persons from Enforced Disappearance;
- Basic Principles and Guidelines on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law.

ON-SITE MONITORING TO DEFEAT TORTURE

Slow but meaningful progress was reported in 1996-7 in regard to the draft Optional Protocol to the Convention Against Torture. The new text is designed to provide on-site

visiting missions to various countries by members of the relevant UN treaty body, the Committee Against Torture. The purpose would be to give more clout to the Convention and its Committee. The working group of the UN Commission on Human Rights which is drafting the optional protocol held a second reading of the text in October 1996. Only six articles were approved out of a total of twenty-five, and many important subjects still required further discussion to reach agreement between governments. The ICJ was one of six NGOs present at this important meeting.

JUSTICIABILITY FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights have been largely ignored in the last decades. As a result, the ICJ launched a worldwide



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campaign to bring these neglected rights to the frontstage at its triennial meeting in Bangalore - India - in 1995. Recalling the "Bangalore Plan of Action", the ICJ affirmed in different fora throughout 1996 and 1997 that it is essential to develop a legal framework for the implementation of this category of rights. At the May 1996 meeting of the Committee on Economic, Social and Cultural Rights, the ICJ insisted on the necessity of agreeing to an optional protocol to the International Covenant on Economic, Social and Cultural Rights which would give the right to individuals and groups to submit communications alleging non-compliance by State parties with the provisions of the Covenant. Instituting a "violations approach" to economic, social and cultural rights would hence greatly enhance the justiciability of these rights.

A meeting was jointly organized by the ICJ, the Urban Morgan Institute on Human Rights (Cincinnati, Ohio) and the Centre for Human Rights of the Faculty of Law of Maastricht University, from 22-25 January 1997, to draw up the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. Some 30 experts participated in the meeting held to commemorate the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. The aim of the Maastricht document is to elaborate on the Limburg Principles by providing guidelines for use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring

and adjudicating bodies at the national, regional and international levels.

Economic, Social and Cultural Rights - A Compilation of Essential Documents, was published in December 1997. The purpose of this compilation is to provide lawyers, inter-governmental organisations, non-governmental organisations, governments and academics with a ready reference tool when tackling problems in the field of economic, social and cultural rights. Reproduced in extenso in this compilation, is the International Covenant on Economic, Social and Cultural Rights - together with State reservations and dates of accession -, the current draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, the Limburg Principles on the implementation of the



Covenant, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, and the ICJ Bangalore Declaration and Plan of Action.

DEFENDING HUMAN RIGHTS DEFENDERS

Attacks on human rights defenders are universal and are of universal concern. Their crucial, sadly dangerous, work demands the respect, protection and support of the international community. All over the world, governments persecute and silence human rights defenders. For instance, they require NGOs to register officially and then deny applications. They raid offices, remove documents, destroy equipment and take away people who are sometimes never seen again. Some governments, para-military groups and other occult interest groups have reacted violently to any

attempt to carry out human rights work - including murder. Very often, the wholesale denial of the rights of human rights defenders makes it impossible for them to conduct their work except in exile.

For more than 13 years, the UN Working Group on Human Rights Defenders has endeavoured to draft a Declaration on Human Rights Defenders. And during this time, the ICJ has participated, through its representatives, in the Working Group - to try to have the most "defender-friendly" Declaration possible. The process has been repeatedly stalled by the reticent stance of some States. Paradoxically, the draft declaration does not go beyond the rights already enshrined in other universal human rights instruments such as the Universal Declaration of Human Rights and the International Covenants

on Civil and Political Rights and on Economic, Civil and Cultural Rights - it only constitutes the minimum in terms of protection of defenders, and does not contain new rules. Still, the ICJ has had to struggle to help finalise a norm which is necessary but rather unexceptional in scope. The cause of human rights defenders is a priority one for the ICJ which has national sections and affiliates, some of whom operate in an antagonistic environment. It is this commitment not only to the global human rights movement, but to its immediate constituency of sections and affiliates that has motivated the struggle of the ICJ in this field...

COMBATING ENFORCED DISAPPEARANCES

The disappearance of a person is perhaps the cruellest and most pernicious of all human



Photo ICJ

rights violations. The vanishing of a mother, sister, father, child, friend or colleague, is for a relative more difficult to bear sometimes than death because the disappeared person's fate remains unknown, possibly forever. Vanishing, as an instrument of terror and annihilation, is widely practised by government agents and political and other forces throughout many countries of the world. The suffering is epitomised by the ongoing plight of the "Mothers of the May Square" movement in Argentina. In December 1992, after many years of lobbying and involvement of the ICJ in the drafting process, a Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly. Since then, the ICJ has been working to promote the drafting and final adoption of a UN

Convention on the Protection of all Persons From Enforced Disappearance.

The ICJ has assumed a vital coordinating role in the drafting process leading to a new Convention. In June 1996, together with Amnesty International and the International Service for Human Rights, the ICJ organized a international meeting of experts at the ILO headquarters in Geneva to prepare the draft of the Convention.

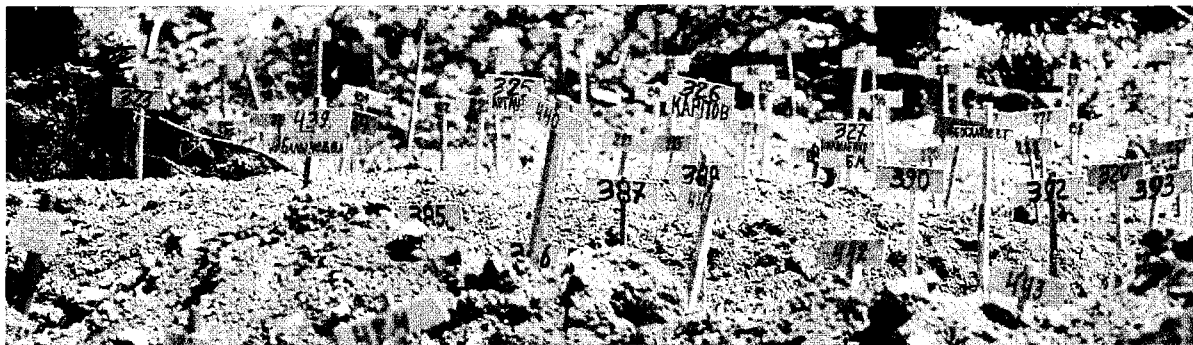
The debate's main focus was on defining disappearance, as well as discussing disappearance as a crime against humanity, the universal jurisdiction concerning the crime of enforced disappearance, and the most effective system to supervise the application of the provisions of the Convention. The draft Convention was submitted

in August 1996 - for the first time - before the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

COMPENSATING VICTIMS OF HUMAN RIGHTS VIOLATIONS

One of the most ambitious objectives of the ICJ has been to bring its campaign against impunity for gross violations of human rights and grave breaches of international humanitarian law to fruition. In doing so, the organization has advocated not only that perpetrators of these violations be brought to justice, but also that the voiceless victims of their abuses and their families be enabled to seek reparation.

That is why, in February 1996, a workshop on the draft Basic Principles and Guidelines was



ICRC-Eric Bouvet

organized in Geneva by the ICJ jointly with the Maastricht Centre for Human Rights of the University of Limburg, under the auspices of the UN Centre for Human Rights. The aim of the workshop was to gather the necessary expertise to assist Professor Theo van Boven, UN Special Rapporteur and ICJ Executive Committee member, in elaborating a revised draft of the Basic Principles and Guidelines on the compensation of victims of human rights violations. Seventeen legal experts from around the world took part in the workshop and adopted a revised text, calling it the "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law." The draft is wide in its application and covers various forms of reparation. It also

contains a provision recalling an obligation on States to provide for universal jurisdiction over gross violations of human rights and humanitarian law. The forms of reparation, restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition included in the draft are comprehensive but not exhaustive. They provide flexibility so that the appropriate form of justice is afforded to the victim or group of victims in each particular case. It is hoped that the revised Principles and Guidelines will soon provide hope for those who have lost trust in justice. In August 1996, the Sub-Commission approved the Principles and Guidelines and sent the text to the Commission on Human Rights, where it will be considered next. The ICJ will continue to lobby for the adoption of these

Principles and Guidelines so that "justice - not impunity" prevails.

ENSURING RIGHTS FOR REFUGEES AND RETURNEES IN THE CIS

The collapse of the former USSR has had repercussions on human rights. Armed conflict in many parts of the Commonwealth of Independent States has led to a massive flux of refugees and internally displaced populations. The restoration of the independence of ex-Soviet republics provoked entire populations to move to newly independent countries for ethnic, political, economic and other reasons. It is in this context that the CIS Conference - officially known as the Regional Conference to Address the Problems of Refugees, Returnees, Displaced Persons and Other Forms of Involuntary Displacement in the



UNHCR/T. Belstad

Countries of the Commonwealth of Independent States and Relevant Neighbouring States - organized by UNHCR, IOM and OSCE (ODIHR) took place in Geneva at the end of May 1996. At the Conference the ICJ called for the ratification by all the States of the former USSR of existing international human rights and humanitarian law instruments. The ICJ stated that if situations emerged in CIS countries which required the adoption of new definitions and norms, the starting point must be the application of existing universal human rights standards which relate to the human rights of refugees and persons who have been forced to leave their previous abode. Throughout 1996-1997, the ICJ took part in the follow-up activities of the CIS Conference and was consulted on the legal issues involved.

ENHANCING NORMS IN THE AREA OF CRIME PREVENTION AND CRIMINAL JUSTICE

The CIJL took part in the session of the United Nations Commission on Crime Prevention and Criminal Justice which was held in Vienna from 28-30 April 1997. Many norms were considered by the Commission, including: the Standard Minimum Rules for the Treatment of Prisoners; the Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Firearms by Law Enforcement Officials; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Basic Principles on the Independence of the Judiciary. In 1995, the UN Crime Prevention and Criminal Justice Division had circulated four surveys concerning these

important standards. In 1996, reports were issued summarising the results of these surveys. The CIJL assisted the Division in drafting the report on the Independence of the Judiciary. The CIJL reported that 66 States had responded. Intervening before the Commission on "The Use and Application of UN Standards and Norms", the CIJL commended the efforts of the States and the Division and urged that these efforts be further strengthened. A call was also made for the convening of an inter-sessional or pre-sessional working group to study concrete measures for implementing the standards and pledged continued involvement in the ongoing process.



ICRC/Ursula Meisner

In 1996 and 1997, convinced that the creation of an international system of justice would contribute to end the impunity granted to perpetrators of gross violations of human rights and grave breaches of international humanitarian law, the ICJ stepped up its campaign for the establishment of a permanent **International Criminal Court (ICC)**. Armed conflicts have all too often resulted in impunity being granted to war criminals in conflicts such as that in Chechnya, where the civilian populations and unarmed persons have been specifically targeted on a scale not witnessed for decades with an exceptionally high casualty rate. Unaccountability for human rights crimes is also a permanent feature of countries which undergo internal conflict or high levels of latent violence such as Colombia, where impunity in human rights-related cases

reaches 100%, according to the Bogota-based ICJ affiliate, the Colombian Commission of Jurists. It is unfortunately true that the persistence of impunity encourages actual and would-be perpetrators of human rights violations to commit more atrocities. A permanent International Criminal Court, on the contrary, would act as a deterrent. A rigorously objective and impartial justice system to judge war crimes and crimes against humanity is now essential.

The establishment of a permanent ICC has been a key objective of the ICJ for many years and activities have been undertaken to lobby support and mobilise public opinion in this respect. The ICJ has repeatedly called upon governments to support the establishment of a permanent ICC in its many interventions before the UN

Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. Its representatives regularly attend the Ad Hoc Preparatory Committee Meetings on the Establishment of an International Criminal Court at the UN in New York. They made several written submissions to this forum, detailing the position of the organization on the draft Statute of the ICC elaborated by the International Law Commission. The ICJ called upon States as well as other NGOs to place the permanent court project at the top of their list of priorities.

Great encouragement for the supporters of the project came on 29 November 1996, when the 6th Committee of the UN General Assembly adopted - by consensus - a resolution on the establishment of a permanent



ICRC/E. Bouvet

ICC, which envisages that a diplomatic conference of plenipotentiaries is to be held in June-July 1998, in Rome, with a view to establishing the ICC. The resolution also established a special fund for the participation of the least developed countries (LDC's) in the work of the preparatory committees and the Conference. The ICJ had lobbied intensely both for the 1998 Conference date and for the UN voluntary fund for LDC's.

INTERNATIONAL TRIBUNAL ON THE FORMER YUGOSLAVIA

Since the end of 1994 and throughout 1996-1997, the European Commission of the European Union has funded the ICJ project in which legal assistants are provided to the ad hoc International Tribunal on the Former Yugoslavia. This programme provides much

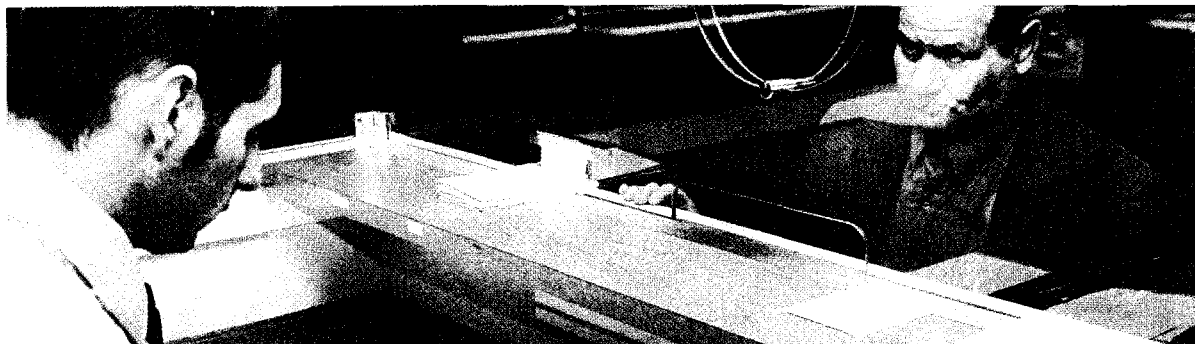
needed help to the chambers and the registry of the Tribunal as well the opportunity for young lawyers to acquire experience and expertise in international human rights and humanitarian law. Selection is made on the basis of academic qualifications and experience in international law, having regard to the particular needs of the Tribunal. The programme is open to nationals from EU countries, eastern and central European countries, and developing countries.

The Yugoslavia tribunal held its first trial in May 1996. On sending three observers to monitor the trial of Dusko Tadic, the ICJ voiced its conviction that the trial of the alleged Bosnian Serb war criminal, which was the first in its kind since the Nuremberg and Tokyo trials, heralded a turning point for accountability

in regard to the crimes committed in the former Yugoslavia as well as in the course of other contemporary conflicts.

THE ICJ AND OTHER UN MECHANISMS

Statements made by the ICJ during the 1996 and 1997 sessions of the **UN Commission on Human Rights** echoed the extreme gravity of the human rights situation in a growing number of countries. In sharp contrast, the UN Commission demonstrated again its inability to consider the reality of human rights in different countries. The difficulty in passing resolutions on human rights concerning the Security Council's permanent member States, namely Russia and China, seemed to suggest that Superpowers might benefit from de facto impunity. Against a backdrop of egregious viola-



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tions in all continents, the UN Commission was sometimes unable to avoid undue politicisation of debates and provide appropriate attention to urgent challenges. In various oral interventions made during the session, the ICJ focused on a number of countries and thematic issues of extreme urgency. The ICJ urged the appointment of a UN Special Rapporteur, or Commission representative, to assist Colombia in overcoming its serious human rights crisis. It also called upon the Commission to request Peru to repeal its Amnesty Law of June 1995 which grants total amnesty to all military, police or civilian personnel for abuses and crimes committed in the previous 15 years in the fight against terrorism. The ICJ urged that an effective mechanism be put in place by the UN to closely monitor the human rights disaster in Chechnya and

encourage Chechens and Russians to find a peaceful solution to their conflict. The ICJ also urged the UN body to appoint a Special Rapporteur on Nigeria, and called upon the military government of that country to release all political prisoners and stop the harassment of Ogoni people. The ICJ urged the Government of Bahrain to restore the Rule of Law in a country where the Constitution is suspended and ruled by executive decrees. The ICJ also condemned the suicide bomb attacks against Israeli citizens, criticised Israel for the sealing of the Palestinian Territories, and both Israel and the Palestinian Authority for their treatment of prisoners. In another intervention the ICJ denounced the attacks perpetrated on Israeli and Lebanese civilians and urged the Israeli withdrawal from south Lebanon.

Referring to the Plan of Action adopted by the ICJ in Bangalore, India, in 1995, the UN Commission was urged to provide much more attention to the realisation of economic, social and cultural rights. Once more, the ICJ spoke in support of the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. This new instrument would give the right to individuals and groups to submit communications alleging non-compliance by State parties with the provisions of the Covenant.

Because of the chronic instability which has beset the Great Lakes region of Africa, the UN Commission on Human Rights held a special session on the situation in Burundi, on 27 March 1996. The ICJ called upon the UN to take firm measures such as sending international



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military teams and human rights observers to Burundi.

The ICJ took the opportunity of the August 1996 and August 1997 annual sessions of the **UN Sub-Commission on Prevention of Discrimination and Protection of Minorities** to denounce gross human rights violations in many countries and territories. In 1996, the ICJ focused on Algeria, Bougainville, Burundi, Chechnya, Colombia, Tunisia and Turkey, and in 1997, on Belarus, Peru and, again, Turkey. Other ICJ interventions during the two sessions concerned areas such as women's rights in times of war, female genital circumcision, violence against children including within the family, and restrictions placed on the movement of Palestinians into Israel.

More than 100 governmental and non-governmental delegates

participated in a workshop on impunity which was jointly organized by the ICJ, the International Service for Human Rights and the World Council of Churches. The workshop, which was held on 5 August 1996, the first day of the Sub-Commission meeting in Geneva, focused on some of the measures which are envisaged by States in the battle against the world-wide phenomenon of impunity of perpetrators of violations of human rights, whether civil, political, economic, social or cultural. Experts from different continents spoke about impunity in their regions. The two UN Special Rapporteurs (Louis Joinet, France, and El Hadji Guissé, Senegal) appointed by the Sub-Commission to consider impunity participated in this highly successful meeting. During the session of the Sub-Commission itself, the ICJ intervened to lend support to

Mr. Joinet's proposal for a "Set of Principles for the Protection and Promotion of Human Rights through the Fight against Impunity".

On 16 August 1996, a meeting on the human rights situation in Guatemala was convened jointly by the ICJ, Amnesty International, the International Federation for Human Rights and Pax Romana. The meeting provided an opportunity for NGOs present at the Sub-Commission to meet with a high level Guatemalan governmental delegation. It emerged that the human rights situation had improved in the country but that there was still a long way to go before they would be totally respected.

The Sub-Commission's working group on the administration of justice and the question of compensation held sessions in



Photo [C]

which the ICJ intervened in support of the draft "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law", prepared by Special Rapporteur Theo van Boven, and the draft "International Convention on the Prevention and Repression of Forced Disappearances", prepared by Mr. Louis Joinet.

The participation of the ICJ in the **Human Rights Committee**, which held its 58th session from 21 October-8 November 1996 in Geneva, focused on Hong Kong and the future of human rights in that territory. The Committee considered the special report of the United Kingdom on Hong Kong. Of special concern to the ICJ was the continuation of reporting - under Article 40 of the International Covenant on Civil and Political Rights - on

human rights in Hong Kong after the territory reverts to China on 1 July 1997, as well as on the independence of the judiciary there. Justice Hong Kong, the local ICJ Section, made oral and written presentations to a special informal meeting on Hong Kong between Committee Members and NGOs. The 60th session of the Human Rights Committee was held in Geneva from 14 July-1 August 1997. The ICJ intervened before the Committee's working group to highlight concern over impunity and the functioning of the lower courts in India.

Intervening before the Committee on Economic, Social and Cultural Rights meeting held from 29 April-17 May 1996, the ICJ highlighted the necessity of an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

The organisation explained that it was essential to develop a legal framework for the implementation of economic, social and cultural rights, and re-emphasised the importance of a violations approach to the problem which would greatly enhance justiciability of the rights in question.

Office of the United Nations High Commissioner for Human Rights (UNHCHR) in Colombia - In 1996, the European Commission provided the ICJ with a grant to select and fund the five experts who were to work at the newly created UNHCHR office in Bogota. These experts were selected in early 1997 and commenced work in April of the same year. Since then the ICJ has continued the ongoing process of evaluating the work of the Office and its impact on Colombian society and government. ■

The improvement of the
functioning of regional human
rights mechanisms

The ICJ is involved in the drafting and adoption of some important human rights standards at the regional as well as at the universal level. Examples of direct ICJ participation include the European Convention for the Prevention of Torture and the African Charter on Human and Peoples' Rights.

Throughout 1996 and 1997, the ICJ worked closely with all regional bodies concerned with the implementation of human rights standards and the promotion and protection of human rights in the three regions/continents that do possess implementation mechanisms.



A Cooperation Agreement between the OAU and the ICJ was signed in Mauritius on 22 October 1996 by Dr. Salim Ahmed Salim, OAU Secretary-General, and Mr. Adama Dieng, his ICJ counterpart. The agreement signals a new era in a relationship which can be traced back to the early 1960s.

The role played by the ICJ in the elaboration of the African Charter on Human and Peoples' Rights since the process began in 1961 is widely acknowledged. Following the creation of a mechanism - the African Commission - in 1987, the ICJ has focused on ensuring Charter implementation. The NGO workshops organised by the ICJ since 1991, prior to the twice-yearly African Commission ordinary sessions, are a practical way in which the ICJ contributes to strengthening this mechanism. Another objec-

tive of the workshops has been to bolster NGO participation in the Commission.

In 1996/1997, the ICJ continued to work to strengthen the regional African human rights system. The evaluation of ICJ workshops for NGOs led the organisation to expand them to include other actors in the field - i.e., judges and representatives of African national human rights institutions. It was also felt that there was a need to further sensitize OAU policy-makers - hence the convening of the first seminar for African Ambassadors accredited to the OAU.

In 1996, the ICJ organised two workshops on participation in the African Commission. The 10th Workshop was held in March in Ouagadougou, Burkina Faso, in collaboration with the African Commission and the *Mouvement burkinabé des droits de l'homme et*

des peuples and brought together 70 participants including African Commission members, NGOs and the judiciary from 22 African countries as well as many international observers. The inclusion of judges, for the first time, aimed at encouraging the participation of institutions other than NGOs in the Commission. The Workshop focused on the role of the judiciary in the protection of human rights, the independence of the judiciary, and monitoring and documenting human rights violations.

The 11th Workshop was held in Mauritius in October 1996, before the 20th session of the African Commission. Ten resolutions were adopted and submitted to the Commission. Amongst others, subjects included detention conditions in Africa, women's rights, and the elimination of landmines. The UN High Commissioner for Human Rights, who participated in the meeting, announced that

cooperation with the African Commission, as well as African human rights NGOs, would be significantly increased.¹ The 12th Workshop, which was held from 30 October- November 1997, gathered 110 participants, including three African ambassadors and African Commission members. They debated on, and made recommendations concerning - amongst other subjects - the proposed permanent International Criminal Court. The first seminar for African Ambassadors on Strengthening the African Human Rights System was organized in collaboration with the OAU and the African Commission, from 6-7 May 1997, in Addis Ababa. The objective was to discuss how to strengthen human rights through support for the mechanisms established within the framework of the OAU. Participants included ambassadors or representatives of countries donors to the African Commission, UN agencies and the international community. Subjects discussed included: the mission and perspectives of the ACHPR; the role of OAU organs in implementing the African Charter; State Parties' obligations in implementing the Charter; the role of IGOs and

NGOs in implementing the Charter; domestic implementation of the Charter and the African court project.

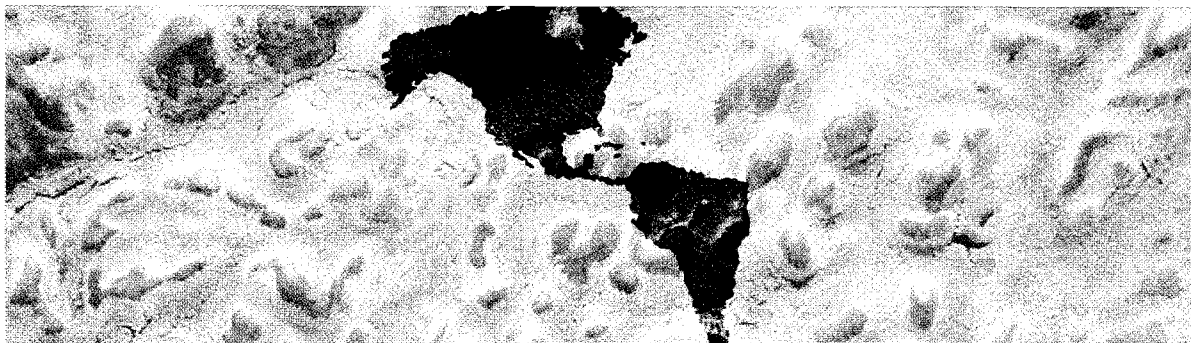
In 1996 and 1997, the ICJ devoted much time in striving to establish an African Court on Human and Peoples' Rights. A longtime involvement drew to a successful close on 12 December 1997, when the OAU States adopted the draft protocol to the African Charter on Human and Peoples' Rights establishing the Court. What is specially encouraging is that Article 5 of the draft protocol entitles the Court to receive cases directly from NGOs and individuals as well as State parties and African inter-governmental organisations. The new institution and the possibility offered to NGOs and people to have recourse to it constitute a victory for human rights in Africa. This will give practical meaning to the justiciability of human rights and help combat impunity. Some 45 African States participated in the OAU Legal Experts Meeting which discussed the draft protocol in Addis Ababa, from 8-11 December 1997. The draft protocol was approved by the Conference of Ministers of Justice and Attorneys General

which followed on 12 December. Earlier in the year - on 10 April 1997 - the ICJ had organised an Experts Meeting with the OAU and the African Commission in Nouakchott, Mauritania, which prepared comments for the OAU Governmental Legal Experts' Meeting that finalised the draft protocol.

Back in 1994, as a result of ICJ action, the OAU Assembly of Heads of State and Government asked the OAU Secretary-General to convene a meeting of governmental legal experts to draft the protocol creating the Court. Three meetings of legal experts followed, including the final one in Addis Ababa. The text will be formally adopted by the OAU Council of Ministers and Summit in June 1998.

In 1997, the ICJ started collaborating in the drafting of an additional protocol to the African Charter on Human and Peoples' Rights on the rights of Women. From 12-14 April 1997, the ICJ organised, jointly with the African Commission on Human and Peoples' Rights, a meeting of 15 experts in Nouakchott to discuss the proposed draft. They included members of the African Commission, NGOs representatives, as well as international observers.

1-Two publications were released by the ICJ on the occasion of this Workshop - which coincided with the 10th anniversary of the entry into force of the African Charter on Human and Peoples' Rights. Firstly, "The Participation of NGOs in the Work of the ACHPR: A Compilation of Essential Documents/1991-1996"; and secondly, the report entitled "A Critical Evaluation" of the workshops during the last ten years.



The ICJ has a strong, effective and influential network of national sections and affiliated organisations throughout the Americas. The International Human Rights Law Group, the Andean Commission of Jurists, the American Association for the ICJ, the Colombian Commission of Jurists, and the Minnesota Advocates for Human Rights, are but a few examples of organisations which relay ICJ activities in the "new continent".

The ICJ has continued to attend the meetings of the General Assembly of the Organisation of American States (OAS) and monitor the Inter-American regional human rights institutions such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, located in San José,

Costa Rica. The primary objectives of such participation were manifold. One of the most important objective was to strengthen the role of NGOs within the OAS, by enhancing collaboration with other groups seeking to attain official recognition. Other objectives have been to contribute to the drafting process of various regional human rights instruments such as the proposed American Declaration on Indigenous Peoples and a regional declaration on the protection of Human Rights Defenders.

As far as the Inter-American Court of Human Rights is concerned the ICJ continued to lobby for an additional protocol to the American Convention on Human Rights which would enable individuals - and not only as it is now States and the Commission -

to take their complaints before the Court.

The ICJ organized two seminars, one designed for civil society representatives in 1996, and one intended for the legal professions in 1997, which were both held with a view to encourage participation in the work of the mechanisms established by the OAS.

On 14-17 May 1996, the ICJ and the Colombian Commission of Jurists held a joint Seminar on Economic, Social and Cultural Rights in Bogota, Colombia, in which various indigenous peoples' organizations, NGO representatives and trade-unionists participated. One of the areas covered during the meeting was how to approach and utilise the opportunities offered by the UN and Inter-American institutions for redress of human rights



UNHCR/B. Press

violations, not only in the domain of economic, social and cultural rights, but also for civil and political rights.

Similarly, from 17-21 June 1997, a highly successful Seminar on Domestic Implementation of International Human Rights Standards was organised jointly by the ICJ/CIJL and the Brazilian

Section of the ICJ, under the auspices of the Law Faculty of the University of Sao Paulo, with the participation of the Brazilian Association of Judges for Democracy, the Office of the Procurator General and the Secretary of State for Justice of Sao Paulo. The debates focused, amongst other subjects, on the legal value of treaties, declarations

and recommendations and access to international mechanisms, including the regional OAS mechanisms. Around 80 participants, including judges, prosecutors, lawyers, members of the Federal and State parliaments, law professors and students, took part in the debates.



In 1996 and 1997 the ICJ substantially increased monitoring and lobbying activities in the three main European regional fora: the European Union (EU), the Council of Europe, and the Organisation for Security and Cooperation in Europe (OSCE). The objective was to participate in the elaboration of human rights policies, legislation and conventions and take part in other promotion-related activities.

The material scope of European Community Law has widely extended since the adoption of the Treaty of Rome in 1957. Following the creation of the European Union through the 1993 Maastricht Treaty, the scope of intergovernmental cooperation has also widened and the absence of an explicit system of protection of human rights in the EC/EU legal order

has become an even greater cause for concern. Hence the ICJ's stance is that much more attention should be devoted to the human rights implications of European policies and legislation. In the 1990s and beyond, as the Union grows and expands southwards and eastwards, such a step becomes all the more necessary and urgent. In 1996 and 1997, the ICJ lobbied for the adoption of amendments to the Rome and Maastricht Treaties which would further the promotion and protection of human rights and consolidate the rule of law as a basis for the Union. In this context a Meeting of the European Sections of the ICJ was held in London on 17 May 1996, to consult over issues for the European Union's Intergovernmental Conference which led to the adoption of the Treaty of Amsterdam. Human rights protection, the right to

privacy, measures to combat discrimination, the rights of third country nationals and the right to information were amongst the subjects debated under the theme of «A More Social Union». The meeting also discussed the need for a more democratic EU by examining its institutional framework.

The Council of Europe has long been a world leader in the field of human rights protection. Yet both the European Convention on Human Rights (ECHR) and the European Social Charter, as originally drafted and adopted, suffer from significant flaws which the Council of Europe has only recently begun to address.

In the 1990s, with the expansion eastwards of membership in the Council of Europe, emerged the prospect of a burgeoning of applications emanating from the new State

signatories of the ECHR. These developments were assessed in the context of the "widen versus deepen" debate - meaning also that some notable gaps in the normative framework had and still have to be remedied. A step in this direction was made with the adoption of a new Framework Convention for the Protection of National Minorities.

The ICJ made a presentation on "The Implementation of the Collective Complaints Procedure : Opinion of the Non-Governmental Organisations" during the intergovernmental colloquy organised by the Council of Europe on the European Social Charter on 14 May 1997. Prior to the intergovernmental colloquy, a two-day parallel NGO forum on the Social Charter was convened on 12-13 May 1997, in Strasbourg. The ICJ representative, the Legal Officer for Europe, acted as chairperson and rapporteur for one of the working groups organised during this forum. One of the objectives of the forum was to discuss and adopt an overall plan of action for NGOs on the promotion of the European Social Charter and of the 1995 additional

protocol on a collective complaints mechanism. The participants to the NGO forum adopted an open letter addressed to the Member States of the Council of Europe which called upon them to ratify the Revised European Social Charter and the Additional Protocol to the Charter providing for a system of collective complaints, as well as to recognise the right of national NGOs within their jurisdictions to lodge complaints. The letter was handed over by the ICJ representative, who led the NGO delegation, to Mr. Peter Leuprecht, Deputy Secretary-General of the Council of Europe. The ICJ is one of the three international NGOs which have consultative status with the Steering Committee for Human Rights (CDDH) of the Council of Europe. In October 1996, the CDDH discussed a review of its operation and decided that it would work in closer cooperation with NGOs. The ICJ took full advantage of this opportunity to increase its impact on the work of such an important body within the

Council of Europe system. In the meeting of the CDDH, on 3-6 June 1997, the ICJ made an oral intervention on the reinforcement of the non-discrimination clause of the European Convention on Human Rights through the adoption of an additional protocol. This was followed in October 1997 by a written statement on the same subject. The ICJ also took part in the meetings of the Committee of Experts on Developments in Human Rights (DH DEV).

In 1996 and 1997, the ICJ developed close links with the European Commission against Racism and Intolerance in fighting against racism and intolerance in Europe and monitored case-law developments in the European Commission and European Court of Human Rights.

In 1996 and 1997 the ICJ maintained close contacts with the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) which assists in the democratisation process in Eastern Europe and monitors the OSCE "Human Dimension" programme. ■

The strengthening of human
rights through empowerment and
education

a/ENHANCING THE FUNCTIONING OF LOCAL HUMAN RIGHTS GROUPS AND LEGAL SERVICES FOR DISADVANTAGED GROUPS



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Capacity-building of local NGOs is of paramount importance to the ICJ. The empowerment of national NGOs means also the strengthening of a network of leading local human rights groups. In doing so the ICJ objective is to act as a link between the United Nations, regional institutions, and grassroots organisations all over the world. This field of activity serves to promote information at the grassroots level in many countries, often in remote or rural areas of the world where legal human rights norms are mainly perceived as distantly theoretical and as having no bearing on reality.

The ICJ organises seminars and workshops on subjects such as the legal status of women, the rural and urban poor, the rights of the child, and indigenous peoples. These meetings are designed to acquaint

disadvantaged people with their legal rights, under international law. In recent years, the objective has changed from the creation of awareness in relation to human rights concepts, to the empowerment of specific target groups. The meetings also help the ICJ maintain and expand its links with local human rights NGOs and other direct beneficiaries who participate fully in them. They provide an opportunity for the ICJ to keep informed of the current concerns in these countries, and serve as fora for evaluating the ICJ's activities, setting its priorities and defining follow-up activities.

One example from Latin America is the workshop convened in Cochabamba, Bolivia, from 4-7 March 1996, on the Human Rights of Indigenous People, in the context of the Decade of the Indigenous Peoples proclaimed by the General Assembly of the

United Nations on 21 December 1993. Bolivia has an overwhelmingly indigenous population whose rights, whether, civil and political, or economic, social and cultural, have been neglected - if not completely forsaken - and who have had to face all forms of discrimination. During the workshop, three working groups were organised for a day each on three different areas of concern. The first was on the present situation of campesinos organisations and indigenous communities. The second studied legal concepts in the context of a plurinational and multiethnic country, including legal instruments in relation to the indigenous question.

The third workshop considered universal and regional mechanisms which serve to protect the rights of indigenous peoples.

The meeting was organised in collaboration with local and regional legal institutions,



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the La Paz-based Centre for Legal Counselling and Social Development, the Departmental Bar Association of Cochabamba and the Andean Commission of Jurists - based in neighbouring Peru. More than 100 participants attended the workshop including representatives of the region's different indigenous peoples - or as they prefer to be called "native peoples" (pueblos originarios), members of trade unions and women's organisations, as well as local and international experts. A report on the seminar entitled *Human Rights: Rights of the Indigenous Peoples* was subsequently published in Spanish and disseminated to a wide audience.

Over the last ten years support was given to local and national groups involved in the provision of Legal Services in Rural Areas in Latin America, Asia and Africa. A three day retreat was organised in Saly,

Senegal, at the end of July 1996, to round-up the evaluation of a decade of such activities in Africa. This resulted in January 1997, in the publication of *Legal Services in Rural Areas in Africa*, which provides a comprehensive review and evaluation of a series of ICJ enlightenment workshops and seminars held over the past ten years in Eastern, Western, Central and Southern Africa. The primary objective of these projects has been the training of paralegals to act as a bridge between lawyers - who are usually based in the towns and cities - and the urban and rural poor. The role of paralegals includes informing people about their rights under the law, helping them to assert and obtain these rights, negotiating on behalf of the people and where necessary, contacting a lawyer to assist in the process. The evaluation was inspired by the need to take stock of what has

been accomplished so far as to assist the ICJ in determining its focus for the future.

INTERNSHIPS

In 1996 and 1997, eight interns spent around six months each at the ICJ. The purpose of internships is to give an opportunity to jurists from the Third World to get practical experience in international law and procedures. The project has been renamed the "Niall MacDermot Fellowships", in memory of the former ICJ Secretary-General who passed away in February 1996. In 1997, the ICJ established an internship programme for skilled young law graduates from Eastern and Central Europe and the former Central Asian republics of the ex-USSR. The objective and duration is the same as that of the Third World internship programme.

b/ DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS NORMS

**3^a ATELIER DA COMISSÃO INTERNACIONAL DE JURISTAS
GENEVA - SUÍÇA
18^a SESSÃO DA COMISSÃO DOS DIREITOS HUMANOS
E DOS POVOS - BANJUL - GÂMBIA
PRAIA CABO VERDE - 29 SET^o / 11 OUT^o**



Photo ICJ

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Workshops on the domestic implementation of international human rights norms have been organised jointly with local organisations for many years. Initiated in Africa, Asia and Latin America, the programme has been extended to the Commonwealth of Independent States in 1996 and 1997. The aim of these workshops is to assist jurists and human rights defenders in reinforcing their domestic systems of administration of justice, particularly in countries in transition to democracy. In 1996 and 1997 such activities have taken place in Brazil, Hong Kong, Kyrgyzstan, Morocco and Mozambique. Each of these workshops usually gather from 50 to 100 participants, mostly from the host country, but they also include experts from other countries whose aim is to share their experience with a national audience. Although, due to the

subject matter in question, these forums inevitably have a theoretical component, the practical application of international human rights law through established mechanisms is their primary objective. Hence, the workshops rely mainly on practical exercises designed for participants to enhance their personal and collective skills.

A seminar on the Domestic Implementation of International Human Rights Norms was held in Sao Paulo, Brazil, from 17-21 June 1997.

The meeting focused on topics such as the legal value of international and inter-American human rights standards and access to international and inter-American mechanisms for the protection of human rights; the harmonisation of international norms with domestic law; the

role of human rights defenders; and human rights and military jurisdictions.

Judges, prosecutors, lawyers, the President of the Federal Supreme Court, the Vice-President of the Supreme Court of the State of Sao Paulo, the Minister of Justice of the State of Sao Paulo, a Federal Parliament member and State of Sao Paulo Parliament member, law professors and students, as well as eight international experts, took part in the different sessions. The event was organized by the ICJ/CIJL in collaboration with the Brazilian Section of the ICJ, under the auspices of the Law Faculty of the University of Sao Paulo, with the participation of the Brazilian Association of Judges for Democracy, the Office of the Procurator General and the Secretary of State for Justice of the State of Sao Paulo.



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A colloquium on the Domestic Application of International Human Rights Norms, which brought together lawyers from Hong Kong and around the world, was the last international human rights forum to take place in Hong Kong before the territory was handed over by the United Kingdom to the People's Republic of China on 1 July 1997. The Colloquium, was organised by the ICJ/CIJL in collaboration with Justice Hong Kong - the local ICJ Section - and Hong Kong's Law Society and Bar Association on 25-26 April 1997. The objective was to generate greater awareness of human rights among the judiciary and the legal profession before and during the transition period to Chinese rule. It was also a good opportunity for the ICJ to reaffirm its commitment to ensure that international human rights standards are effectively

maintained in the territory after 30 June 1997. The forum called upon judges and lawyers in Hong Kong to consider international jurisprudence in applying the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). China was urged to continue to submit reports in respect of Hong Kong to the relevant United Nations treaty bodies in accordance with the two Covenants - a task which had been previously undertaken by the United Kingdom when the territory was British.

A seminar on the domestic implementation of international human rights standards was held in Bishkek, Kyrgyzstan from 25-28 November 1996. The event was organised with the CIJL and in cooperation

with the Constitutional Court of Kyrgyzstan and included judges of the Constitutional and Supreme Courts, prosecutors, law academics, government officials and representatives of local NGOs.

A follow-up workshop on State Reporting and Individual Petitions to the United Nations Human Rights Treaty Bodies was organised in cooperation with the Ministry of Foreign Affairs of Kyrgyzstan, in Bishkek nearly a year later - from 13-15 October 1997.

Whereas the first seminar remained rather general in its approach, the follow-up workshop focused on State reporting to the different United Nations mechanisms charged with monitoring respect for universal human rights norms. The system of international human rights protection and reporting was scrutinised. The focus was on the relationship

B/ DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS NORMS

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between the International Covenant on Civil and Political Rights and the Human Rights Committee; the Convention against Torture and the Committee against Torture; the International Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights, etc. Practical exercises related to reporting before the relevant UN Treaty Bodies were organised. Senior officials of the ministries of Foreign Affairs, of Internal Affairs and of Justice, and the 14 members of the inter-ministerial working group in charge of drafting reports to the various UN Treaty Bodies, members of the Kyrgyz NGO community, as well as three international experts, one of whom a member of the Office of the UN High Commissioner for Human Rights, took part in the event.

A national training seminar on the domestic application of international human rights norms was organised in collaboration with the ICJ affiliate, the Moroccan Organisation for Human Rights, in Rabat, Morocco from 1-4 October 1997. The event gave participants the opportunity to

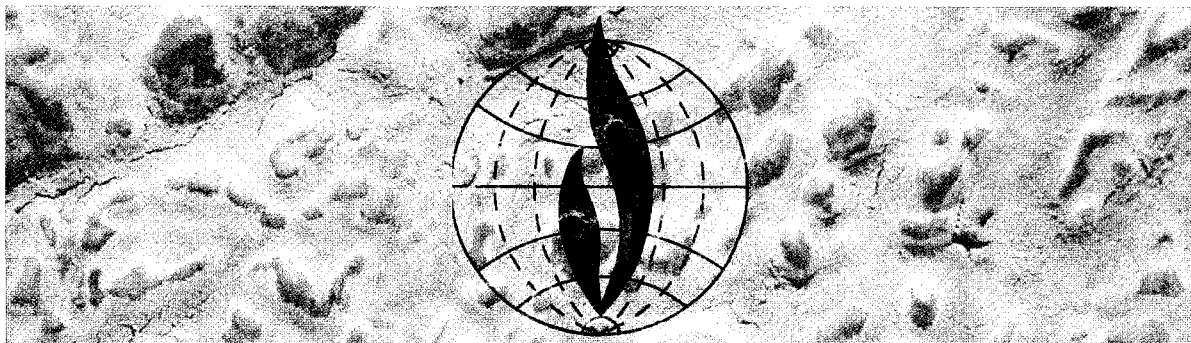
consider the legal value of the sources of international human rights law and international obligations deriving from the ratification or adherence to an international treaty. Also studied were the protection mechanisms in the universal human rights system and the independence of the judiciary as well as the national criminal justice system and human rights. Various recommendations were made. Participants chose to emphasise the human rights of women by calling for the establishment of practical ways for women victims of abuses to obtain recourse. The meeting also provided an opportunity to support the independence of the judiciary and issue a call for the teaching of human rights law in the country's law faculties.

The ICJ has not only organised workshops at the national level but also at the regional, sub-regional - or any other level. An example of a meeting organised for different countries which have a point in common is the Regional Seminar and Training Course on the Domestic Application of International Human Rights Norms in Lusophone African Countries, which was held in Maputo,

Mozambique, from 1-4 October 1996. The event was organized in collaboration with the Supreme Court of Mozambique. International norms and their application in Mozambique and other Portuguese-speaking countries on the continent was the core subject of the meeting. The participants also developed the subject of the independence of judges and lawyers and the role of judges in advancing human rights. Much attention was naturally devoted to some more regional-specific issues of interest, including the African human rights system and the support which should be given to the current proposal for an African Court of Human and Peoples' Rights - a new body that would complement the work of the African Commission on Human and Peoples Rights under the African Charter on Human and Peoples' Rights. ■

Enhancing the independence
of the judiciary, conceptually
and practically.

Enhancing the independence of the judiciary around the world is the objective of the Centre for the Independence of Judges and Lawyers (CIJL). The CIJL has focused on the monitoring of the state of the independence of the judiciary in all countries, and routinely endeavours to promote and protect the human rights of judges and lawyers as well as of all other persons working in the legal profession.



CIJL ALERTS & INTERVENTIONS

When a case of a harassed or persecuted jurist comes to the attention of the CIJL, the Centre verifies the facts and assesses the legality of the measure on the basis of the two UN Basic Principles on the Independence of the Judiciary and the Role of Lawyers. If it is found that the measure violates these standards, the CIJL writes to the government requesting it to immediately remedy the violation.

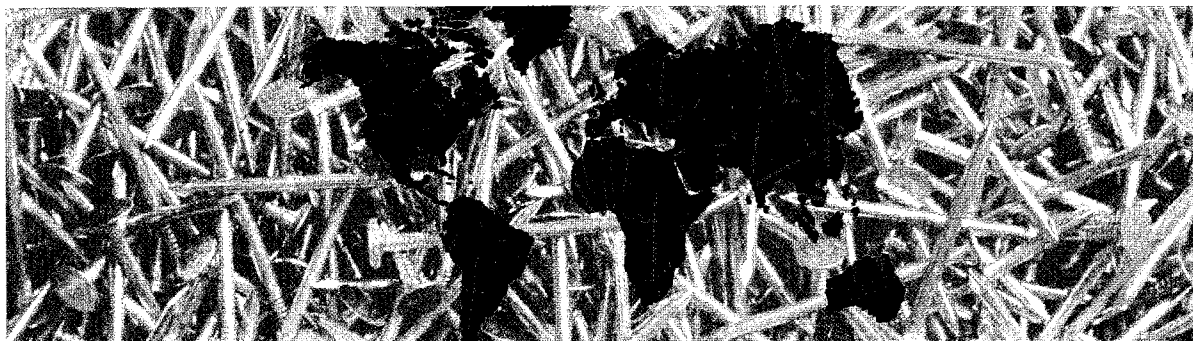
CIJL Alerts are issued to the press whenever the Centre believes that a situation is serious enough to warrant a public protest and an international call for action from jurists around the world. There are various reasons for releasing Alerts. Most of the time they serve to denounce the fact that a judge or a lawyer has

been subjected to harassment, arrested or even assassinated, and call upon the government under whose jurisdiction the event occurred to take action to provide adequate protection or remedy to the victim and/or bring the perpetrators of the act of violence to justice.

Sometimes Alerts also serve to denounce a general situation affecting the legal community as a whole. This was the case, for instance, in Sudan, where elections to the national Bar association were tampered with in clear pursuit of a hidden political agenda which had little to do with the freedom of association of the country's lawyers.

In 1997, more than 20 Alerts were issued on the situation in the following countries:

- **United Kingdom** - a proposed Crime (Sentences) Bill interfered with judicial independence (27.01.97)
- **Bahrain** - the detention of Judge Abdul Amir Al-Jamri (29.01.97)
- **Philippines** - the harassment and death threats against judges and lawyers working for the Free Legal Assistance Group (07.02.97)
- **Mexico** - the harassment of four attorneys, members of the Association of Democratic Lawyers which is involved in cases concerning indigenous rights (07.02.97)
- **Venezuela** - the harassment of human rights lawyers Adrian Gelves Osorio and Joe Castillo (18.02.97)
- **Tunisia** - the harassment of human rights lawyer Radhia Nasrawi (30.04.97)
- **Turkey** - requesting information on the charges laid against lawyer Hasan Dogan (15.05.97)
- **Algeria** - the disappearance of advocates Menniche Massoud and Tahri Mohamed (26.06.97)



- **Kenya** - the murder of lawyer S.K. Ndungi in Nairobi (26.06.97)
- **Peru** - the dismissal of three judges of the Constitutional Tribunal and the "constructive dismissal" of the President of that tribunal (26.06.97)
- **Lebanon** - the harassment of lawyer Muhamad Mugraby (04.07.97)
- **Egypt** - the prohibition of a workshop by the State Security. The workshop was to focus on "the role of a judge in achieving justice: controversies and solutions" and to be organised by the Arab Centre for the Independence of the Judiciary and the Legal Profession.
- **Iran** - the case of lawyer and professor Sayed Hassan Amin, who was prevented from leaving Iran (16.09.97)
- **Peru** - to welcome the abolition of the civilian "faceless" justice system (16. 10. 97)

- **Sudan** - the Bar elections in Sudan (28.10.97)
- **Malaysia** - In 1996 and 1997 several Alerts were issued concerning the case of Dato' Param Kumaraswamy. The UN Special Rapporteur on the Independence of Judges and Lawyers, a Malaysian national, faces libel suits in Kuala Lumpur because he once declared in a London-based magazine that he was investigating complaints that businessmen were manipulating the Malaysian judicial system. In its Alerts the CIJL pointed out that all UN Special Rapporteurs are accorded privileges and immunities and that Dato' Kumaraswamy was interviewed in his UN capacity when he made the remark. The Centre also called upon the Malaysian authorities to help put an end to the harassment of an internationally recognised

human rights advocate. The CIJL voiced support for Dato' Kumaraswamy through its interventions at the UN Commission on Human Rights and other international fora in 1996 and 1997, as well as other actions. On 28 June 1997, the CIJL issued a press statement expressing grave concern that a national court in Malaysia assumed jurisdiction over a matter which must be decided by the International Court of Justice - that of whether or not Dato' Kumaraswamy should be accorded immunity pursuant to the 1946 UN Convention on Privileges and Immunities. As from July 1997, the CIJL worked closely with the American Association for the International Commission of Jurists on this case. The Association has been in regular contact with the UN Legal Council's Office in New York.



It has been feeding the CIJL with information and helping it to develop its work and strategy. The work on this case is ongoing.

Before publicising an issue through its Alerts, the CIJL intervenes directly with governments. In 1996 and 1997, the CIJL intervened with governments in particular cases involving the persecution of jurists in countries such as Bahrain, Djibouti, Malaysia, Mexico, Philippines, Vanuatu and Venezuela.

FACT-FINDING MISSION

The CIJL sends missions to investigate situations of concern or the status of the bar and the judiciary in specific countries. Such missions make governments aware of the international vigilance in the observance of the principles of judicial and legal

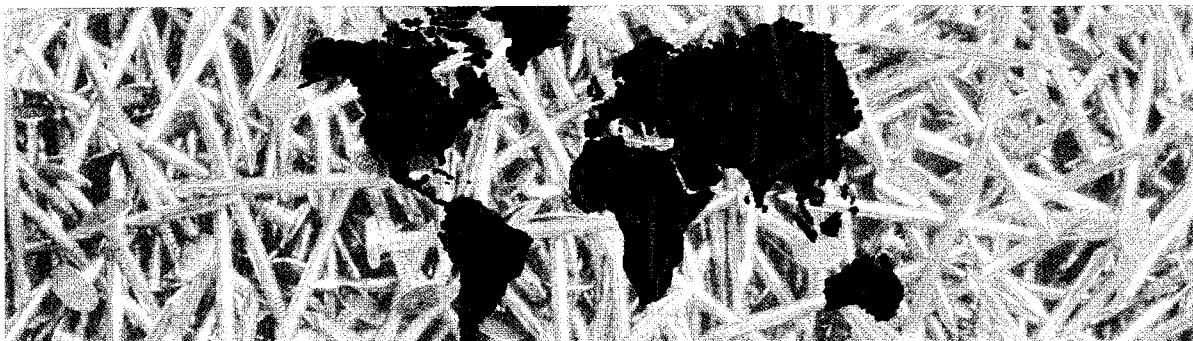
independence. A CIJL mission was conducted to Sri Lanka, from 14-26 September 1997, to assess the role of the judiciary and the legal profession in the war-torn country. When elected in 1994, President Chandrika Kumaratunga promised to end largescale human rights violations and the civil conflict and initiate Constitutional reform in Sri Lanka. Against a background of 14 years of civil war, and human rights violations by all parties to the conflict, the CIJL mission focused on the independence of the judiciary and the Bar as well as the effectiveness of the judiciary and lawyers in eliminating the culture of impunity which has developed over the last two decades.

TRIAL OBSERVATION MISSIONS

The CIJL sends observers to the trials of jurists. This method

exposes particular legal systems to international scrutiny. It is as well an effective way of demonstrating solidarity between jurists. As appropriate, the CIJL issues statements on the outcome of the trial. In any case, the reports of the trial observers are used in Attacks on Justice. In 1996 observers were sent to Croatia and Israel, in 1997 observers were sent to Egypt, Turkey and Malaysia.

- **Egypt** - A CIJL representative observed the hearing on 14 June 1997 of the trial of Mr. Azam Azam, an Israeli citizen accused of espionage in Egypt. The CIJL was concerned by allegations of harassment directed at Mr. Azam's lawyer, Mr. Farid al-Deeb, apparently as a result of his decision to represent Mr. Azam. For example, during a previous hearing of the trial of Mr. Azam on 18 May 1997, a prominent Egyptian lawyer



had asked the court to disqualify Mr. al-Deeb on the grounds that he was acting against national interests.

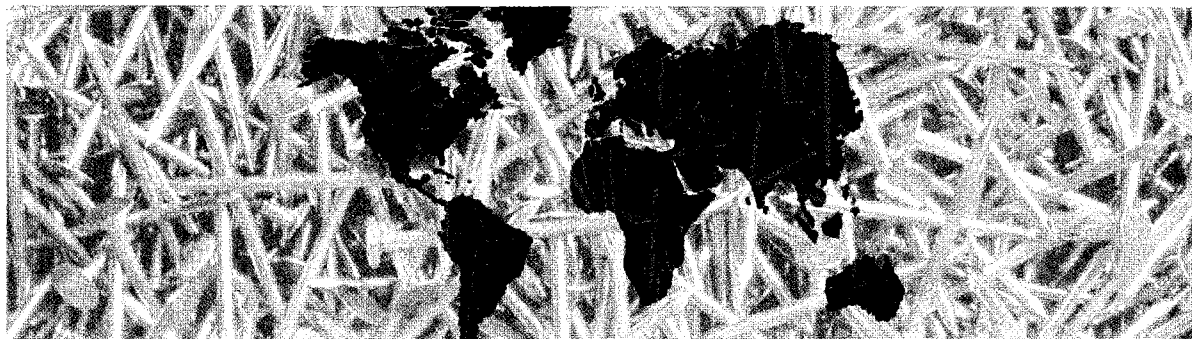
The court dismissed this application, and said that every accused had the right to be represented. Four more complaints were filed with the Bar Association against Mr. al Deeb. The CIJL observer reported that although the trial was politically charged as evidenced by the protests outside the courthouse, the procedures followed could not be considered unfair. Further, the CIJL was given assurances by the Bar Association that a complaint which alleged that Mr. al-Deeb had insulted Egyptians had been rejected. There would, however, be a hearing concerning the lawyer's alleged disclosure of information in the case. The Bar Association

stated that despite this hearing, any disciplinary action taken against Mr. al-Deeb would not interfere with his defence of Mr. Azam.

The new Egyptian CIJL affiliate, the Arab Centre for the Independence of Judges and Lawyers, was still following the case at the end of 1997.

- **Turkey - A CIJL representative** observed the "Diyarbakir Lawyers Trial" on 17 June 1997. On trial were 25 lawyers, 16 of whom were arrested in November and December 1993 and nine more shortly thereafter. Most of these lawyers had defended persons charged under the Anti-Terror Law before Security Courts. Some of the lawyers had filed complaints with the European Commission on Human Rights. The lawyers were

themselves charged under the Anti-Terror Act pursuant to allegations that they were members of the PKK. All first 16 lawyers arrested reported being tortured. Hearings were held throughout 1993, 1994 1995, 1996 and 1997. All the lawyers, save for three who were being detained on other charges in other cases, had been released on bail for some time. The hearing on 17 June 1997 was again adjourned - this time until September - the prosecution's witness did not appear. The CIJL observer reported that the judges assigned to the case did not want to convict the lawyers but were fearful not to do so. He visited the defendants, lead defence counsel, and local NGOs while in Turkey. This case was still continuing at the end of 1997 and the CIJL monitored further developments.



- **Malaysia** - On 20 August 1997, the CIJL sent a representative to observe the hearing of the appeal of Dato' Param Kumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers, concerning the defamation action against him. Dato' Kumaraswamy was appealing from the 28 June 1997 decision of the Kuala Lumpur High Court to dismiss his motion to strike out the defamation claim against him.

UN COMMISSION ON HUMAN RIGHTS

The CIJL actively participated in the work of the UN Commission on Human Rights in 1996 and 1997. The areas covered were the Administration of Justice and Gross Violations of Human Rights. Particular attention was given to the work

of the UN Special Rapporteur on the Independence of the Judiciary. In 1996 and 1997, the CIJL delivered the ICJ Statement to the Commission on the administration of justice and presented the findings of its annual report Attacks on Justice. The following country situations were highlighted: Bahrain, Belarus, Botswana, Brazil, Colombia, Djibouti, Hong Kong, Indonesia, Italy, Jordan, Kenya, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Sudan, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zaire.

The CIJL also made an oral intervention before the UN Commission on Human Rights to express concern regarding the law suit filed against the Special Rapporteur on the Independence of Judges and

Lawyers, Dato' Param Kumaraswamy and called upon the Government of Malaysia to respect the immunities provided to UN Special Rapporteurs under the 1946 Convention on Privileges and Immunities of the United Nations.

THE UN HUMAN RIGHTS TREATY BODIES

Because of its work on Attacks on Justice, the CIJL is in possession of an extensive amount of information which can be used by the human rights treaty bodies. The UN Human Rights Committee held its 60th session, in Geneva from 14 July-1 August 1997. During this session the Committee considered the country reports of India, France, and Slovakia. The CIJL intervened to highlight concern over impunity and the functioning of the lower courts in India.

During the October 1997 session of the UN Human Rights Committee, the CIJL submitted information regarding the situation of lawyers in Sudan and Belarus.

From 15-19 September 1997, the CIJL attended the meeting of the persons chairing the six human rights treaty bodies held in the UN Office at Geneva and made a statement to comment on the question of the follow up to the observations, conclusions and recommendations of the treaty bodies in the area of administration of justice.

ATTACKS ON JUSTICE

The Centre's annual report, *Attacks on Justice*, monitors the human rights of jurists in countries of all continents. It catalogues individual cases of lawyers and judges who have been harassed and persecuted, murdered or detained, and also provides an in-depth analysis of the particular political, social and legal contexts in which such violations occur. Moreover, the report identifies the structural defects in the legal systems which continue to hinder legal and judicial independence. By publicising violations, which have occurred

or continue to happen, the objective is to pressure governments into finding satisfactory solutions to situations of endemic violence as well as in personal cases. The publication includes the responses of governments to the concerns expressed in the report. In 1997, 21 governments had responded out of a total of 49 countries listed.

Published in 1996, the Centre's seventh annual report, *Attacks on Justice*, covers the period from January-December 1995. The report states that at least 337 jurists in 52 countries suffered reprisals for carrying out their professional duties in 1995. Of these 23 were killed, 4 "disappeared", 36 tortured, 142 detained, 30 attacked, 58 received threats of violence, and 44 were professionally sanctioned or obstructed ...

... A year later, the eighth edition of *Attacks on Justice* revealed a worsening situation. Spanning the period January 1996-February 1997, the report shows that at least 572 jurists in 49 countries suffered reprisals for carrying out their professional duties. Of these 26 were killed, 2 "disappeared",

97 were prosecuted, arrested, detained or even tortured, 32 were physically attacked, 91 verbally threatened and 324 professionally sanctioned and/or obstructed. Statistically these figures represent a 25% increase over the number of cases reported a year before...

Attacks on Justice has now become an authoritative source of reference in many countries. It is utilised by governments, inter-governmental bodies, judicial and legal organisations, and local and international human rights groups.

CIJL DATABASE

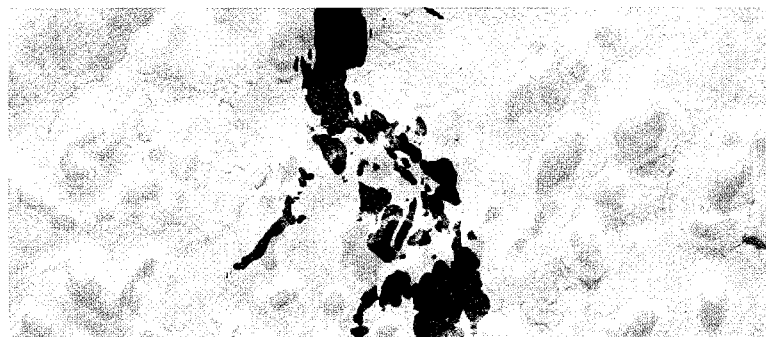
The CIJL started collecting and formulating a database of court decisions relating to the independence of the judiciary and the legal profession in November 1997.

The Centre also harbours a collection of constitutions and basic laws as well as laws on the organisation of the judiciary in various countries. In addition, the Centre has a collection of domestic laws that relate to the organisation of the Bar. The CIJL uses such data internally and makes it available to outside researchers.

In 1997, the CIJL and the Interdisciplinary Research Programme into the Root Causes of Human Rights Violations (PIOOM-Netherlands) jointly published two studies on the Philippines and on Burkina Faso.

The two studies form part of an ongoing collaborative project called Determinants of the Independence and impartiality of the Judiciary. The project is based upon the postulate that the relationship of the judiciary to human rights is fundamental. The respect for the various human rights and fundamental freedoms that are specified in authoritative international texts depends to a significant degree on the quality of the judiciary and the judicial process.

The Universal Declaration of Human Rights emphasises that every human being has the right of equality before the law, presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. These rights and guarantees are also guaranteed and further specified by the International Covenant on Civil and Political



Rights. The Centre's partner - PIOOM - is connected to the National University of Leiden, the Netherlands.

THE PHILIPPINE JUSTICE SYSTEM

In this study Dr. Willem Bakker analyses and evaluates the quality and development of the justice system in the Philippines. The independence and impartiality of the judiciary, the independence and integrity of lawyers, the protection and promotion of human rights and the access to swift and fair justice for all citizens have been key issues in his analysis. The CIJL/PIOOM study concentrates particularly on the period between 1986, when the late President Marcos was toppled by a popular uprising, and 1997. Dr. Bakker works with PIOOM as project coordinator and senior researcher.

INDÉPENDANCE DE LA JUSTICE ET DROITS DE L'HOMME - LE CAS DU BURKINA FASO

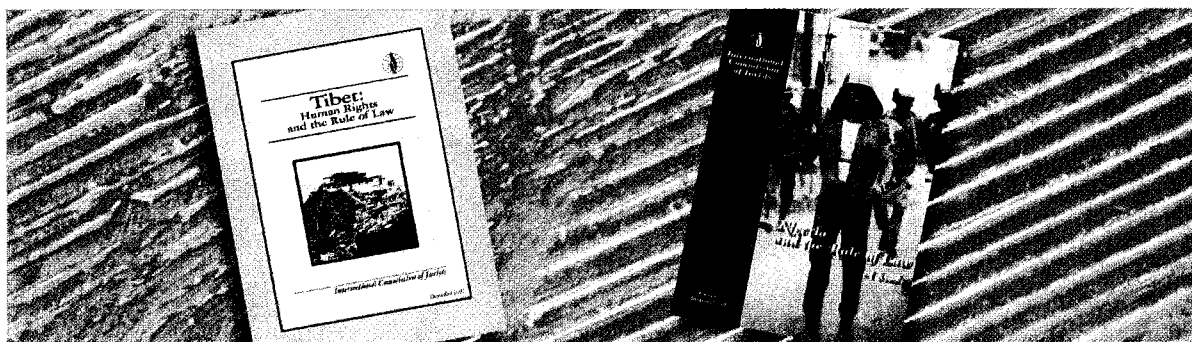
[Independence of the Judiciary and Human Rights - the Case of Burkina Faso]

In this study (in French) Professor Salif Yonaba analyses the factors which have influenced the quality of the judiciary in Burkina Faso as well as human rights in that country and makes a number of recommendations designed to improve the existing situation. The study fills an important gap because there are so few publications on the judiciary in Burkina Faso. However, the relevance of this study far exceeds the borders of Burkina Faso. In other African countries human rights and legal practitioners and researchers will no doubt find this study relevant to their activities. Professor Yonaba teaches public law at the University of Ouagadougou.

The promotion and protection of
human rights and the rule of law
through studies, fact-finding
missions, trial observation
missions and publications

As a professional organisation composed of lawyers, judges and law academics, the ICJ undertakes research on the different legal systems of the countries of the world. The aim is to elaborate concepts and assist in creating an atmosphere that serves to protect human rights in all countries through the advancement of the Rule of Law.

Through its research activities over the years, the ICJ has been identified as an authoritative legal resource. Research work is carried out by members of the Commission and staff of the international secretariat, or by local and international human rights experts, national sections and affiliated organisations.



The International Commission of Jurists and its Centre for the Independence of Judges and Lawyers conduct in-depth studies which involve research on the legal aspects of human rights situations in various countries. The aim of these studies is to provoke a change in the existing situation within the country's institutions as well as international action to make existing mechanisms more effective.

Nigeria and the Rule of Law was released in August 1996. This study documents the effects of military hegemony over all aspects of life in Nigeria from 1985-1995. It highlights interference by the military government in all areas, and particularly in the domestic system of justice, which has had the consequence of eroding the Rule of Law. The study recommends the abrogation of

all executive decrees - retroactive or not - which violate international norms and have plunged the country into chaos and misery. It also urges the abolition of the military tribunals which have usurped jurisdiction over all constitutional matters and the restoration of the legitimate jurisdiction of regular civilian courts throughout the country. In the study, the ICJ states that the military government must show unconditional respect for the recommendations and resolutions of international monitoring bodies to which it is affiliated as a member or State party. The harassment by State security forces of the Ogoni people is firmly denounced and it is urged that perpetrators of human rights violations against them be brought to justice and denied impunity. The study recalls the duty of the African regional institutions towards the

people of Nigeria and called upon the international community to demonstrate to the military regime that it could not continue to defy its calls without being sanctioned.

Tibet: Human Rights and the Rule of Law was released in December 1997. The study's main recommendation is that China allow a United Nations-supervised referendum in Tibet to determine the future of the region which it invaded in 1950 and occupied since. The study describes the Tibetans as a "people under alien subjugation", entitled under international law to the right of self determination. It was also found that the autonomy which China claims Tibetans enjoy is fictitious, as power is really, in effect, in Chinese hands. The study relates how Chinese repression in Tibet has escalated since the beginning of 1996,

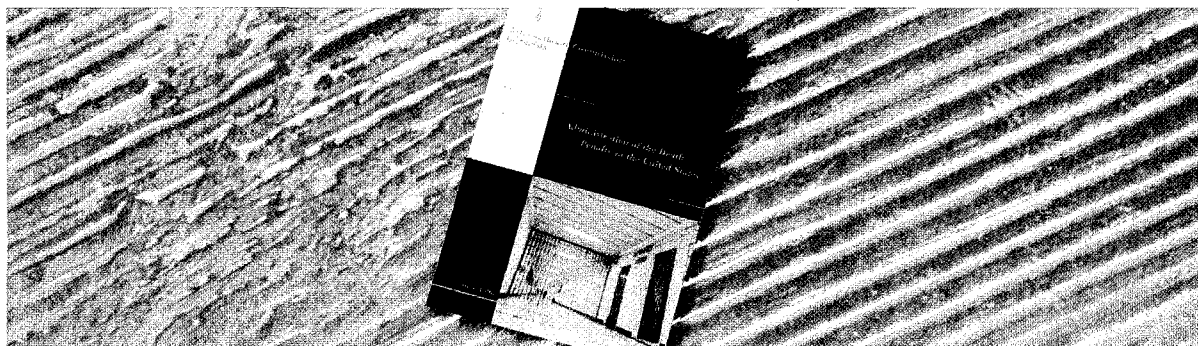


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together with the widespread use of torture and other forms of violence. Choekyi Nyima, the eight year old boy designated by the Dalai Lama as the reincarnation of the Panchen Lama, the second most important figure in Tibet's Buddhist hierarchy, remains in detention. At the same time, Chinese leaders have begun a campaign against certain aspects of traditional Tibetan culture identified as both obstacles to development and

links to Tibetan nationalism. China has sought to suppress Tibetan nationalist dissent and extinguish Tibetan culture by encouraging and facilitating the mass movement of ethnic Chinese population into Tibet, where they dominate the region's politics, security as well as the economy. Those eligible to vote in a referendum would be Tibetans and others resident in Tibet before 1950 and their descendants, as well as Tibetan refugees and their descendants.

The referendum should take place in the areas in which Tibetans historically constituted a majority and among the exile community and could lead to the restoration of an independent Tibetan State, a form of genuine internal self-government, continuation of Tibet's current status within China, or any other status freely determined by the Tibetan people.



The ICJ receives requests from around the world, including its national sections and affiliated organisations, to protect the human rights of individuals and groups, particularly lawyers and judges. The ICJ was a pioneer in human rights fact-finding and has published reports on the human rights situation and the administration of justice in many countries of all continents.

The decision to send a mission is either taken on the basis of information gathered over a period of time or in response to an emergency situation. In the latter case, the ICJ delegation acts as a watchdog against human rights abuses and brings its concerns to the attention of the relevant authorities and the international community. In January 1996, the ICJ sent a mission to the USA in order to investigate the administration of the death penalty. A report was

published in July 1996. In September 1996, the ICJ followed-up on its 1993 mission to Kenya. The follow-up had originally been scheduled for September 1995, but the ICJ was denied permission to conduct the mission, at that time, by the Government of Kenya. The mission resulted in the publication of a report in July 1997.

The Administration of the Death Penalty in the United States was published as the report of a fact-finding mission to the USA. The report, which examined the practice and procedure of death penalty sentencing in the various states and at the federal level, concluded that it was arbitrary and racially discriminatory and that prospects of a fair hearing for capital offenders could not be assured. The report of the mission revealed that mounting

pressure from the general public concerning the imposition of capital punishment accentuated the likelihood of miscarriages of justice. The report highlighted a number of disturbing trends. The excessive number of offences punishable by death at state and federal levels, and the circumstances in which the penalty could be imposed, continued to widen. The vast majority of cases where the death penalty was being sought, involved defendants who had no financial resources and were accused of murdering white persons. At the state level, their chances of receiving a fair trial were uncertain, especially where the state provided for court-appointed counsel. Prosecutorial discretion in deciding whether to ask for the death penalty had no prescribed limits or control and was often influenced by external factors, such as public opinion and



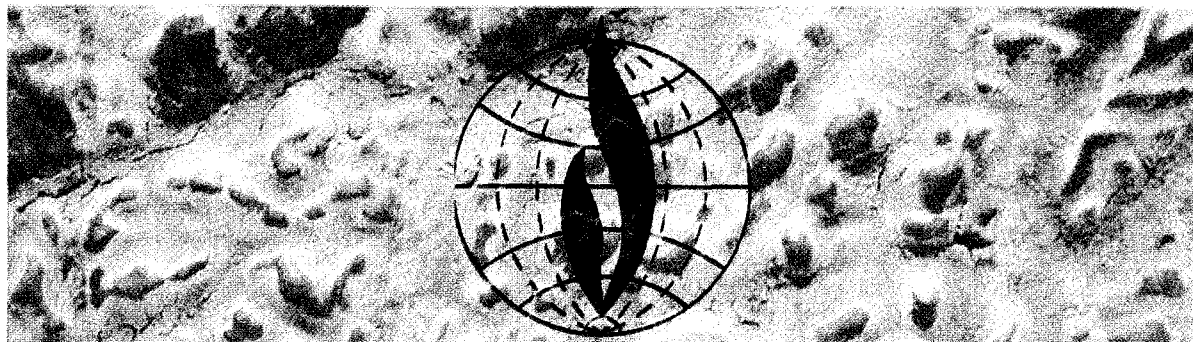
consultations with the victims' relatives. In practice, the special jury selection process in capital cases weighed heavily in favour of the prosecution in that it created juries perhaps predisposed to convict and to impose the ultimate sanction. In some States, the term of office of judges and prosecutors was dependent on periodic elections based on partisan lines. Judges and prosecutors had the tendency and temptation to respond to public pressure by "getting tough on crime" therefore placing an independent tribunal at risk. Restrictions continued to be placed on the traditional and necessary federal appellate procedures which provided state offenders with final protection against alleged unfair trials under state law. The report concluded that without prosecutorial discretion being controlled and

channelled, without the system of jury selection and jury determination being freed of racial and class bias, without meaningful and adequate means of legal representation being ensured to those accused of capital crimes, and without opportunity being provided through judicial processes to substantiate the impact of effect-based racial discrimination, the death penalty will continue to be imposed wantonly and freakishly in the US.

The ICJ Mission took place between 15-26 January 1996 and visited Washington DC and the States of Pennsylvania, Georgia and Texas.

Democratisation and the Rule of Law in Kenya was published as a report of a mission in August 1997. It casts light on the poor state of human rights in Kenya despite the return to

pluralist constitutional democracy in 1991. Amongst other subjects, the report highlights governmental interference in the judiciary. Concluding that Kenya must address the issue of constitutional and legal reform rapidly, the report makes recommendations for a peaceful return to a stable polity. Legislation which violates human rights must be repealed. Citizens must be allowed to appeal from decisions of the High Court in human rights cases to the Court of Appeal - the highest court in the legal system has no jurisdiction to receive human rights cases at present. The government must end ethnic violence and resettle people on lands from which they have been displaced. It should also ensure that all politicians are able to campaign freely throughout the country. It must tackle the question of



corruption in the judiciary and public service. The Attorney-General should have all the pending applications of political parties determined without delay. If registration is denied, the applicants must be given the opportunity to mount a judicial challenge. The government must live up to its obligations under the ILO Conventions and create an enabling environment for true, effective and efficient trade unionism to take root and flourish in Kenya.

The Office of the Attorney-General, which is so central to the maintenance of legality in Kenya, must be de-politicised. Transparency should prevail in the appointment, promotion and dismissal of judges. The machinery for the selection of judges, therefore, must be revamped. The response of the Attorney General of Kenya is published as part of the report.

The ICJ mission visited Kenya from 9-13 September 1996. It was preceded by another mission to Kenya which took place from 12-17 July 1993. The report is based on the findings of the two missions. The members of the two missions met with high-level government officials, members of the judiciary and of the legislature, NGOs and civil society representatives.

PALESTINE

In January 1996, the ICJ sent a mission to the Palestinian Autonomous Territories to observe the legislative elections there. The objective was to assist al-Haq, the West Bank affiliated organisation, to give an independent assessment of the fairness of the elections, in particular focusing on the human rights aspects of the election process.

From 14-21 October 1996, two Missions were sent by the ICJ and the CIJL to the Palestinian Autonomous Territories and to Israel. The ICJ Mission investigated the circumstances surrounding the violent events of late September 1996 that resulted in the deaths of more than 70 Palestinian civilians and police and 12 Israeli soldiers. The CIJL Mission, which was conducted during the same period, examined the judicial system in West Bank and Gaza under Palestinian self-rule. Both missions were held by the ICJ Swedish Section, in full cooperation with al-Haq - the affiliate in the West Bank, and the Palestine Centre for Human Rights in Gaza.

c/ TRIAL OBSERVATION MISSIONS

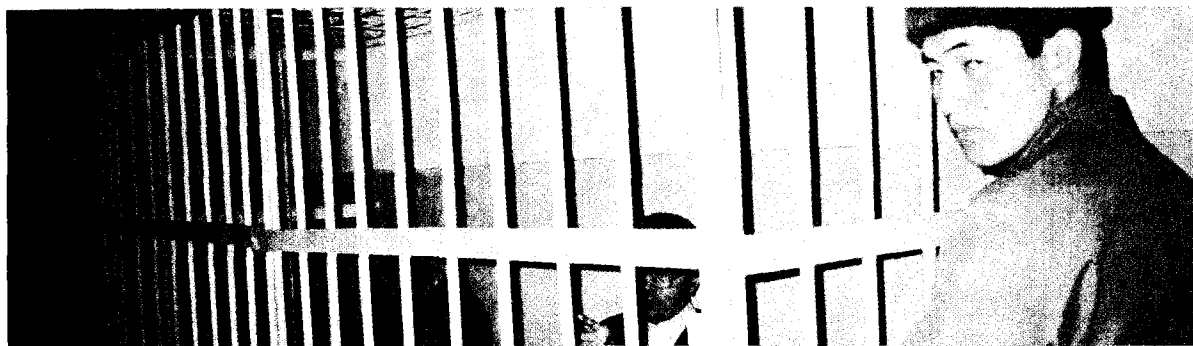


Photo ICJ/Shumbusho

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The ICJ sends observers to trials in which important human rights questions are at stake. The decision to send an observer is taken after considering the type of offence, the nature of the court or tribunal or the identity of the accused. The primary objective is to ensure that the right to a fair trial is respected. Such exercises are extremely useful in ensuring that respect for the rule of law remains on the international agenda. The presence of an observer during the trial exposes local legal systems to international scrutiny. It also ensures that the proceedings are held with greater respect of due process rights, in particular the right to defence. The trial may also highlight issues which merit future attention.

SOUTH AFRICA

In May 1996, an observer was sent to the trial of Magnus

Malan, former South African Minister of Defence, before the High Court of Durban.

MALAYSIA

In June 1996, the ICJ sent an observer to the trial of Irene Fernandez, charged for "maliciously publishing false news", in Kuala Lumpur. Ms. Fernandez, Director of Tenaganita, a Malaysian NGO, was charged in relation to statements made in a 1995 report entitled "Abuse, Torture, and Dehumanised Treatment of Migrant Workers at Detention Camps." The report was based on interviews with 335 ex-migrant-worker detainees and was critical of government action.

SWITZERLAND

In June 1996, an observer was sent to the revision trial held in Geneva of the 1990 trial of a Brazilian national, Sebastian

Hoyos, who was sentenced to 7 years' imprisonment for his alleged role in the robbery of 30 million Swiss francs from a bank in Geneva. Mr. Hoyos, who at the time was an employee of the bank, spent 4 years in prison claiming his innocence and was conditionally released in 1995. On revision the jury decided that he was innocent and the sentence was nullified.

ALGERIA

In July 1996 an observer was sent to the trial of journalist Chawki Amari and two colleagues, in Algiers on 29 July. Mr. Amari et al were on trial for the drawing and publishing of a caricature of the Algerian national flag in La Tribune - their newspaper. Mr. Amari was sentenced to a 3-year suspended term. The Managing-Director was sentenced to a 1 year suspended term, the Editor was



Photo ICJ/Shumbusho

acquitted and the paper was allowed to reappear. It is worth noting that this is the first time in a decade that an international organization managed to send an observer to an Algerian court.

TUNISIA

In July 1996, an observer was sent to the trial in Tunis of Khémais Chammari, human rights defender and opposition member of parliament. Mr. Chammari was charged with allegedly «disclosing national defence secrets to a foreign country or its agents.» Prior to being charged, Mr. Chammari and his wife had been continuously harassed by State security agents. It was widely believed that this harassment resulted from the Chammari's support of Mohammed Moada, an opposition political leader, who had been sentenced to 11 years in prison in February 1996

on charges widely believed to have been fabricated. Evidence against Mr. Chammari had been gathered through the interception of telephone and facsimile communications, contrary to Article 9 of the Tunisian Constitution. Other evidence collected should have been ruled inadmissible due to Parliamentary immunity. Further, several documents were only shown to defence counsel on the day of trial. The court convicted and sentenced Mr Chammari to five years' imprisonment. Both Mr. Moada and Mr. Chammari have since been released.

INDONESIA

In late January 1997, the ICJ appointed representatives to observe the trials of several trade-unionists - Mr. Budiman Sudjatmiko and others before the Central Jakarta District Court; Mr. Muchtar Pakpahan

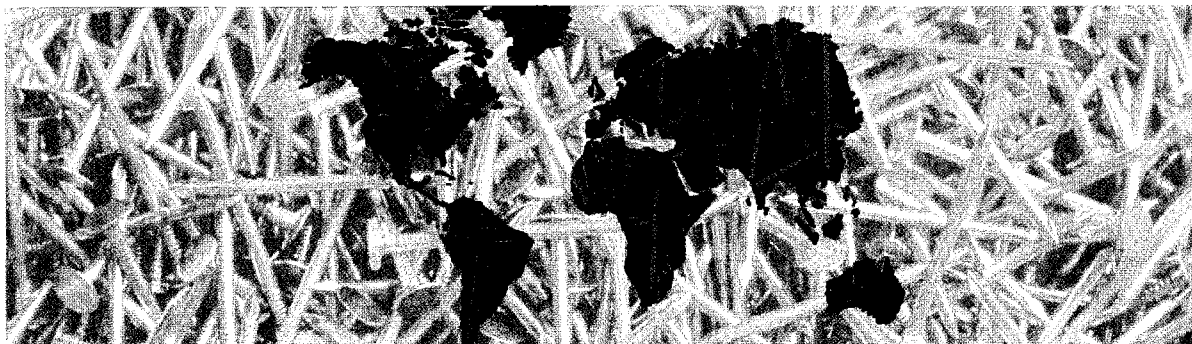
and Mr. Petrus Hariyanto before the South Jakarta District Court, and of Mr. Dita Sari and others before the Surabaya District Court.

RWANDA

In late January 1997, the ICJ sent an observer to the trial in Kigali of Mr. Karamira, former Vice-President of the *Mouvement des républicains*. Mr. Karamira was accused of inciting the genocidal acts which were perpetrated in 1994 in Rwanda. The observer reported that this particular trial appeared to be regular though the general context in which the judiciary had to function in the country was far from satisfactory.

KYRGYZSTAN

In February 1997, an observer was sent to the trial on appeal before the Supreme Court in Bishkek of the Chairman of the



Erkin Kyrgyzstan Party, Topchubek Turganaliyev. The ICJ observer reported that the sentence pronounced by the lower City Court - 10 years imprisonment - had been reduced by the Supreme Court to four years. It was reported later that Mr. Turganaliyev had been released. Mr. Turganaliyev was accused of embezzlement of public funds. However, the opposition, human rights NGOs and the media feared that the accusations levelled against him were politically motivated.

ZAMBIA

In February 1997, an observer was sent to the hearing in Lusaka of an election petition petitioning the election to the office of President of Zambia of Frederick Chiluba on 18 November 1996. The election petition was filed in the Supreme Court of Zambia by

five opposition political parties. The observer reported that the attitude of some of the judges was disconcerting in that they unashamedly displayed their opposition to the petitioner's case during the course of the hearing. He further reported his concern over the fact that, in Zambia, judges are appointed by the President, and that two cabinet ministers - even only a counsel - participated in the proceedings.

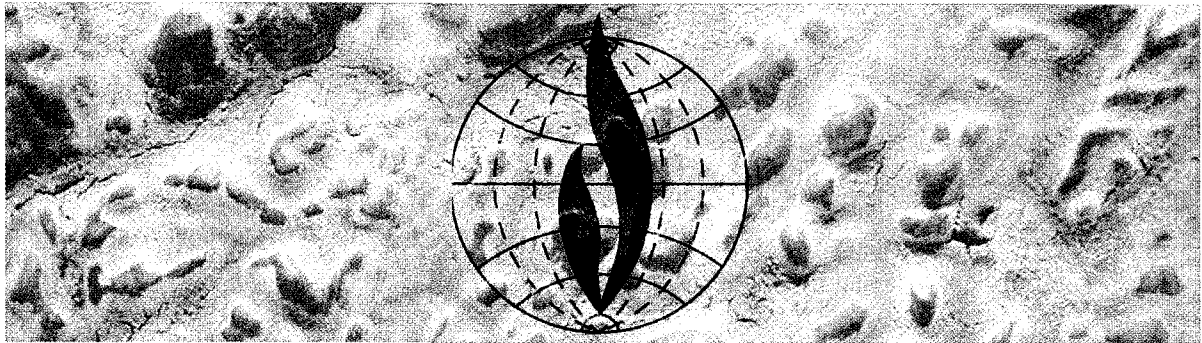
SRI LANKA

In July 1997, an observer attended the trial of J. Jayawardena before the High Court of Colombo. Dr. Jayawardena, an opposition member of parliament and outspoken human rights defender, was charged with two offences of criminal misappropriation. There was concern that the accusation resulted not from provable

evidence but was motivated by his human rights activities.

SINGAPORE

In August 1997, an observer was sent to the trial of J. B. Jeyaretnam before the High Court of Singapore. The observer had previously attended a hearing concerning the same case in June 1997. Mr. J. B. Jeyaretnam, a lawyer and leader of the opposition Worker's Party, is also a well-known human rights defender. He was sued for defamation by Prime Minister Goh Chok Tong, Senior Minister Lee Kwan Yew, and nine other governmental party members for allegedly defamatory remarks he made at an election rally on 1 January 1997. Concern was voiced over the growing practise of the use of defamation suits by government officials against opposition members who just seek to perform their public duty.



Preliminary missions are sent to countries where the organisation has not been present in the past and when necessary data and information are required for planning future activities. A needs-assessment mission was sent to Azerbaijan in July 1997. Whilst in Baku, the members of the Mission met with the President of Parliament and other parliamentarians, the President of the Supreme Court, the Deputy Minister of the Interior and the Deputy Minister of Justice, as well as with other high ranking officials in the Office of the President of the Republic, the Ministry of Foreign Affairs, and the office of the prosecutor. They also met with lawyers and representatives of national and international non-governmental and inter-governmental organisations. The mission met with internally displaced persons in a settlement near Sumgait. All the information gathered on mission will be used to prepare future activities in the country.

REGULAR PUBLICATIONS

- ICJ Review (biannual-three editions English/French/Spanish)
- CIJL Yearbook (three editions English/French/Spanish)
- Attacks on Justice (annual-two editions English/French)

AD-HOC PUBLICATIONS IN 1996 AND 1997

- La situation des droits de l'homme et de la justice en République du Congo
- Administration of the Death Penalty in the United States
- Nigeria and the Rule of Law
- Derechos Humanos: Derechos de los Pueblos Indígenas-Bolivia
- Derechos Economicos, Sociales y Culturales - Seminario en Colombia
- Democratisation and the Rule of Law in Kenya
- The Philippine Justice System
- Indépendance de la justice et droits de l'homme: Burkina Faso
- Tibet: Human Rights and the Rule of Law
- The Participation of NGOs in the Work of the ACHPR,

A Compilation of Basic Documents

- La participation des ONG aux travaux de la Commission africaine des droits de l'homme et des peuples - une compilation de documents essentiels
- ICJ Workshops on NGO Participation in the Work of the ACHPR: A Critical Evaluation
- Les droits de l'enfant en Afrique
- Legal Services in Rural Areas in Africa
- Services juridiques en zone rurale en Afrique
- Economic, Social and Cultural Rights: A Compilation of Essential Documents
- The Right to Reparation for Victims of Human Rights Violations: A compilation of Essential Documents

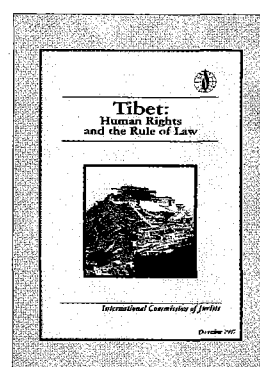
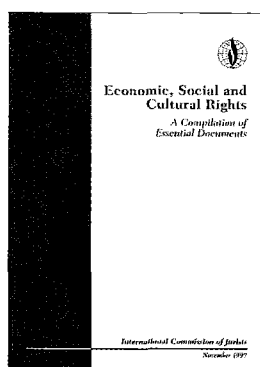
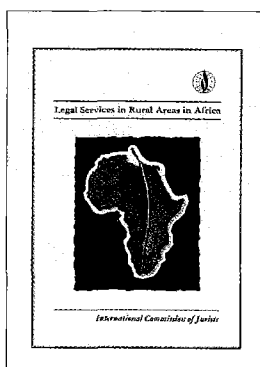
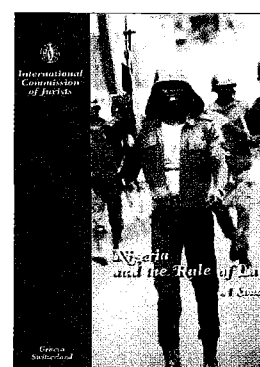
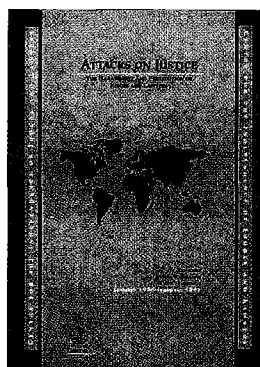
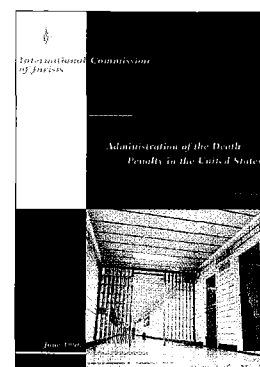
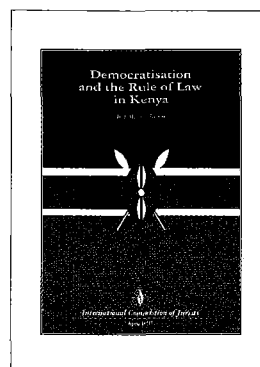
In addition in 1996 and 1997, press statements were released on the human rights situation in the following countries as well as on the following subjects:

1996

Algeria, Chechnya, Congo, Hong Kong, Israel, Lebanon, Madagascar, Nigeria, Palestine, Tunisia, United States of America — Attacks on Justice, the Opening of the Dusko Tadic Trial at the International Tribunal on the former Yugoslavia, the Assessment of the Work of the UN Commission on Human Rights, and the death of former ICJ Secretary-General Niall MacDermot.

1997

Algeria, Congo, Democratic Republic of Congo, France, Hong Kong, Indonesia, Kenya, Nigeria, Pakistan, Singapore, Switzerland, Tibet — the Assessment of the Work of the UN Commission on Human Rights, the Appointment of Mrs. Mary Robinson as new UN High Commissioner for Human Rights, and the question of the immunity of the UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, from prosecution in Malaysia.



ELECTION MONITORING

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MADAGASCAR

On 3 November 1996, the ICJ observed the first round of the presidential election. The Mission was held pursuant to a request made by the Government of Madagascar and was part of an ongoing European Union programme to support the democratisation process in the country. The observation mission comprised 31 experts from 20 countries in Africa, Asia and Europe. Observers covered the country's six provinces, and visited more than 1000 polling stations in both urban centres and rural areas.

On 29 December 1996, the ICJ observed the second round of the presidential elections. A total of 30 experts from 15 countries in Asia, Africa, Europe and North America, were deployed in all six provinces of the country and visited more than 1000 polling stations in rural and urban areas.

On both occasions, the observers stated that the poll had been generally conducted in conditions which allowed the people to fully accomplish their electoral duty and to exercise their choice freely. They, however, noted a few irregularities.



THE COMMISSION

The Commission presently consists of 36 distinguished jurists from all over the world who meet once every three years to define general policy guidelines. It elects from amongst its members an Executive Committee which serves as its executive organ during the interim period. The Executive Committee meets twice a year.

THE INTERNATIONAL SECRETARIAT

The ICJ programme of activities is implemented by the International Secretariat based in Geneva. The International Secretariat is led by the Secretary-General, and currently comprises 13 staff members, including legal and administrative staff. Voluntary interns also provide most welcome support.

NATIONAL SECTIONS AND AFFILIATED ORGANIZATIONS

The ICJ has an expanding network of more than 80 national sections and affiliated organisations. They operate independently from the ICJ and have their own statutes under domestic law. They, however, collaborate with the ICJ - as well as with one another - in their different spheres of interest, nationally, regionally and internationally.

FINANCES

BALANCE SHEET AS OF DECEMBER 31, 1996

(with comparative figures of the preceding year)
Currency - Swiss francs

	31.12.96	31.12.95
ASSETS		
GENERAL FUND		
Cash	898,749	173,447
Time deposits and money market fund (note 5)	2,297,216	4,450,000
Accounts receivable and prepaid assets	94,722	255,923
Prepayments and deposits	10,305	10,305
	3,300,992	4,889,675
DONOR-DESIGNATED SPECIAL PROJECTS FUND (note 2)		
Cash	1,061,998	1,196
Receivable from general fund	2,009,107	3,680,290
Other receivables	666,924	454,676
Prepayments	336,219	69,908
	4,074,248	4,206,070
LIABILITIES		
GENERAL FUND		
Bank overdraft	98,352	-
Accounts payable and accrued liabilities	380,156	311,264
Payable to donor-designated special projects fund	2,009,107	3,680,290
Other liabilities (including CHF 294,949 of bad debt provision)	361,668	13,783
Reserves		
Reserve for possible discontinuance of operations (note 4)	501,000	741,000
Fund balance	(49,291) 451,709	143,338 884,338
	3,300,992	4,889,675
DONOR DESIGNATED SPECIAL PROJECTS FUND (Note 2)		
Accrued expenses	20,908	14,828
Contributions received in advance (Note 2)	3,676,135	3,837,219
Donor-designated fund balance	377,205	354,023
	4,074,248	4,206,070



**STATEMENT OF ACTIVITY AND CHANGES IN GENERAL FUND BALANCE
FOR THE YEAR ENDED DECEMBER 31, 1997**

(with comparative figures of the preceding year)

Currency - Swiss francs

	1997	1998
INCOME		
GENERAL FUND		
Contributions (Note 1)	869,104	969,285
Publications	7,896	35,491
Interest income	45,461	27,096
Miscellaneous income	11,638	6,775
General expenses allocated to special projects (Note 2)	1,436,332	876,613
Exchange gain	53,276	152,284
	2,423,707	2,067,544
EXPENSES		
Staff costs	1,321,501	1,426,669
General overheads	594,794	453,746
Publications	252,139	210,380
Program costs	113,800	43,940
Exchange loss	99,580	17,787
	2,381,814	2,152,522
Excess of income over expenses before bad dept provision	41,893	(84,978)
Bad dept provision	(36,880)	(344,949)
Net result	5,013	(429,927)
FUND BALANCE, beginning of year	(49,291)	143,338
PRIOR YEAR LOSS FUNDING (Note 5)	49,291	
PRIOR YEAR ADJUSTEMENTS (Note 4)	(1,837)	(2,702)
TRANSFER FROM/(TO) RESERVE FOR POSSIBLE DISCONTINUANCE OF OPERATION (Note 4)	-	240,000
ATTRIBUTION TO (DISSOLUTION OF) OTHER RESERVES (Note 4)	-	-
FUND BALANCE, end of year	3,176	(49,291)

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* On 31 December 1997

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High Court of Australia

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Former Chief Justice of Zimbabwe
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President International Court of

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International Tribunal for the
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- Yozo Yokota Professor of Law;
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Professor of Law, Chile

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- Norman S. Marsh, United Kingdom
- William J. Butler, USA
- Keba Mbaye, Senegal
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Secretary-General

- Adama Dieng

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* On 31 December 1997

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	Param Kumaraswamy	<i>Chairman, Standing Committee on Human Rights, International Bar Association; Past President, Malaysia Bar Council.</i>
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* On 31 December 1997

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Nathalie Prouvez (*Europe/CIS*)
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This report has been edited and designed under the supervision of the ICJ Secretary-General, by Nicolas Bovay, press and publications officer.