



INTERNATIONAL  
COMMISSION  
OF JURISTS

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COUNCIL.

# Just Law

Network Newsletter of the International Commission of Jurists

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## Letter from the Secretary-General

After intense public pressure, the inaugural session of the new United Nations Human Rights Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearances. The Council then referred it to the UN General Assembly for final adoption this year. This historic step came after more than a decade of work, in which the ICJ (especially through its Deputy Secretary-General Federico Andreu-Guzman) has played a leading role. In the uncertain days leading up to the adoption, the ICJ organised a public event featuring Marta Ocampo de Vasquez (founder of the Mothers of the Plaza de Mayo in Argentina) and Mary Aileen D. Bacalso (Coordinator of the Asian Federation Against Involuntary Disappearances), as well as Ambassadors from Chile, Argentina, France and Spain. An [open-letter to all Member States](#) of the Council urging adoption of the draft convention (signed by more than 400 personalities and organisations around the world) was handed to the President of the Council. The convention sets out steps states should take to prevent and criminalize disappearances, affirms that the widespread or systematic practice of enforced disappearances is a crime against humanity, and empowers an international committee of experts to intervene in urgent cases.

The ICJ also welcomed the decision of the Council finally to move ahead to draft an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to allow individuals to complain to international experts about violations of the Covenant, as is already possible for civil and political rights. The ICJ is a major actor in the NGO coalition for an optional protocol, and has stepped up its work on ESCR with a dedicated legal officer (Christian Courtis, [courtis@icj.org](mailto:courtis@icj.org)) now working in this area.

After more than 11 years of negotiation,

the Council also adopted a Declaration on the Rights of Indigenous Peoples, which reaffirms, the right to self-determination of indigenous peoples, the right to be consulted on decisions and actions that have an impact on indigenous peoples' rights and interests and the right to traditional land and resources. The Declaration should be adopted by the General Assembly in September.

Buffeted by competing objectives to keep the first session "uncontroversial" but also not to ignore the real world, the Council did briefly discuss what it called "pressing human rights issues": the situation in the occupied Arab territories, including Palestine; avoiding incitement to hatred and violence for reasons of religion or race; and the role of human rights defenders in promoting and protecting human rights. Ten days later, the Council held its first Special Session on Palestine, and decided to dispatch the Special Rapporteur on the occupied Palestinian territories to undertake a fact-finding mission.

Difficult discussions started during the first session on mechanisms and working methods the Council will have one year to develop: the role and mandates of Special Procedures, rules of procedures, a new Universal Periodic Review procedure and the future of an Expert body (former Sub-Commission). The ICJ will continue actively to present its views on how to create effective mechanisms and procedures that do not weaken protection. The mandates of all Special Procedures, the main independent voices for victims of human rights violations in the Council, were extended for one year to avoid a protection gap during the transition to a fully functioning Council.

Nicholas Howen, Secretary-General

## ICJ Plan of Action to End Renditions and Secret Detentions

READ THE  
12  
RECOMMENDATIONS  
ONLINE

Swiss Senator Dick Marty's report on behalf of a Committee of the Council of Europe Parliamentary Assembly, "[Renditions and Secret Detentions in Europe](#)" was debated by the Parliamentary Assembly on 27 June. The report documented a "spider's web" of illegal renditions organised by the CIA through European states and concluded it was likely that other secret detention centres continue to exist in Council of Europe Member States. [Witness documentation](#) supports the report.

The system of US renditions that has been tolerated (and in some cases reportedly actively supported) by European states involve serious violations of human rights, possibly including torture, inhuman and degrading treatment, enforced disappearances and arbitrary detention.

The ICJ, working with Amnesty International, Human Rights Watch, and the Association for the Prevention of Torture, has developed a 12-point set of recommendations to European governments to ensure that violations

can never happen in the future. The joint statement was released on 27 June. It calls on European governments to terminate all involvement in renditions or illegal detentions, and make public, unequivocal declarations to the United States Government to end these practices. Public, independent bodies should be established to investigate government involvement in renditions and secret detentions, effective remedies and compensation for victims of such practices ought to be provided, and states should ensure that all officials, both foreign and national, involved in illegal activity are brought to justice. Where necessary, the law and policy on military bases and the regulation of civil aircraft should be reviewed and reformed.

Inquiries into reported European complicity in renditions and secret detentions continue in both the Council of Europe and the European Union. The ICJ will continue to press for European governments to take progressive measures to avoid the violations of human rights that these practices entail.

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## Trial of Argentinean Military Dictatorship Nearing an End

*"It will be the first  
judicial ruling after  
20 years of  
impunity laws and  
pardons precluding  
justice and due  
process in  
Argentina."*

In June 2006, trials for human rights violations carried out by Argentina's military dictatorship in the 70's and 80's reconvened. After 20 years, a leading figure of the dictatorship is facing accusations of crimes against humanity. Julio Héctor Simón, known by victims as "el Turco Julián" (Julian the Turk), is being tried for the forced disappearance of Gertrudis Hlaczik, José Poblete and the abduction of their daughter, Claudia Victoria.

At the end of 2000, the Center for Legal and Social Studies (CELS, ICJ Affiliated Organisation) brought an action on behalf of the couple and their child. The lawsuit reached the Supreme Court of Justice, which, in 2005, declared null and void the unjust Due Obedience and Full Stop laws. This historical ruling reopened the possibility of bringing justice to a repressive period of Argentina's history. With this ruling,

Argentina also became a leader in allowing national courts to try crimes against humanity carried out in the country. On 4 August, the tribunal dealing with the case will render its ruling. It will be the first judicial ruling after 20 years of impunity laws and pardons precluding justice and due process in Argentina.

Since 1978, CELS has pursued justice for the crimes against humanity committed during the military dictatorship. The CELS has created a blog (<http://memoria.cels.org.ar>) to provide information about the context of the case, follow the proceedings and make relevant documents available. All are invited to make use of the blog both before and after the trial.

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## International Administration in Post-Dictatorial Situations

by Vojin Dimitrijevic, ICJ Commissioner and Member of the Executive Committee

The task of dismantling dictatorial and authoritarian systems is daunting. The situation may appear quiet and promising immediately after the demise of the dictator(s). But often it resembles the sudden removal of a valve from a highly pressurised vessel. One can never know which social agents the repressive system had kept at bay. Well-meaning people believe that the former loudest and most persecuted challengers of the dictatorship – the liberal dissidents - will now come to the fore, win free elections and lead the country toward a better future. However, the previous regime had other, more sinister enemies: irrational movements less bold and articulate in times of danger but more aggressive in a less perilous atmosphere and very attractive since they can rely on historical myths and on self-victimization.

This has frequently happened after the fall of autocratic rulers of the “Left” who had sought to gain legitimacy through projects of modernisation. After the collapse of communism, extreme nationalists and religious obscurantists have emerged as a potent political and cultural force: democratic dissidents and victims of Stalinist terror were eclipsed by the former and the apparatchiks turned populist demagogues. In some former Soviet republics in Central Asia corrupt and brutal governments, led by former communist party secretaries, have Islamic fundamentalists as their only adversary.

The advocates of democracy in the former Yugoslavia have met a similar fate. What remained of the communist dictatorship collapsed under the assaults of its primordial ideological enemies from the nationalist and clerical Right: its liberal and social-democratic critics have remained lonely and isolated.

The developments in Iraq have been similar (the rhetoric of Saddam Hussein and the Baath Party was originally leftist and secular). If one is allowed to resort to zoological jargon, it appears that harmful species in a society tend to spread in the absence of a natural enemy, a major predator – in this case an authoritarian government.

If dictatorship was brought down by Foreign intervention, the intervening power must restrain the evil spirits

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released from the authoritarian bottle. Great powers now tend to delegate the task of running post-intervention societies to international organisations. However, it is improbable that international institutions are capable of governing whole societies. Normally, states live under constitutions, which are products of internal value consensus. A system of values constitutes a political ideology, whether we like or dislike the term. Instead of an autochthonous ideology, the international governor has to rely on a “universal” set of principles. Today, it is the Western-type of liberal democracy with free elections and respect for human rights. However, this sensitive plant does not flourish easily even in Europe, as demonstrated by Bosnia and Herzegovina and Kosovo, where the European Convention for Human Rights still does not apply! In some other countries democracy has been perceived as an imposition from the outside with democratic politicians regarded as Quislings. Countries just liberated become weak states, with governments unable to prevent or suppress violence, organised crime and corruption. If this goes on, the inhabitants may begin to wish that the dictators return – and see their wish fulfilled.

The size of internationally administered territories is growing and the international administration will probably last longer than expected. International NGOs should therefore prompt the international community to approach the matter more studiously – at least not to allow that territories “liberated” from oppressive rule remain without an internationally supervised system of human rights protection.

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## ICJ Steps up Work on Economic, Social and Cultural Rights

The ICJ has stepped up its work on Economic, Social and Cultural Rights. Part of the International Law and Protection Program, and led by Christian Courtis, an Argentine lawyer with extensive academic and practical experience. The work is being developed in these areas:

1. The ICJ is a leading member of the Steering Committee of the NGO coalition for the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which would allow individual or collective complaints regarding the violation of the rights enshrined in the ICESCR. Advocacy work involves both strengthening and recruiting new members and working with governments essential to the drafting and adoption of the Optional Protocol.

2. The ICJ is preparing a report on the justiciability of ESC rights. It will respond to traditional objections about

the justiciability of ESC rights and offer practitioners, NGOs, judges and other audiences a well-documented panorama of the experiences of justiciability of ESC rights before domestic, regional and international courts.

3. Strategic litigation and interventions: the ICJ will promote litigation in ESC rights before different domestic, regional and international *fora* by sponsoring cases, submitting *amici curiae* and affidavits, expert testimonies and other legal means. The proposed fields for action include –among others– training NGOs, lawyers and judges on strategies for the justiciability of ESC rights, intervening in academic, and NGO and governmental initiatives related to ESC rights.

The programme welcomes information and initiatives regarding national and regional situations.

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## Upcoming Conference on SOGI Rights

The ICJ, in partnership with the International Service for Human Rights (ISHR), will be co-hosting an expert legal conference on sexual orientation and gender identity (SOGI) on November 6-9, 2006 in Yogyakarta, Indonesia at Gadjadara University. The conference will bring several distinguished international human rights jurists together to produce an authoritative statement of principle and good practice on human rights concerning sexual orientation and gender identity.

This conference is only one of many projects in the new project for sexual orientation and gender identity under the ICJ's International Law and Protection Program. With its new Legal Officer, Philip Dayle, the ICJ will work to develop and consolidate the legal arguments that surround the human rights issues of sexual orientation and gender identity. For example, the ICJ joined the Equal Opportunities Commission (EOC) of

Hong-Kong in submitting an *amicus* brief in the case of *Secretary of Justice v. William Leung* before the Hong Kong Court of Appeal. This case considered the unequal ages of consent between heterosexuals and gay males. The Court reserved judgment after hearing submissions on 6-7 July, 2006.

Also in July, the ICJ partnered with the International Gay and Lesbian Human Rights Commission (IGLHRC) in making legal submissions before the UN Working Group on arbitrary detention concerning 11 allegedly homosexual men who were detained for eleven months for homosexual offences under article 347 of the Cameroon Penal Code. The Working Group will issue its written findings later this year.

The ICJ has also produced a comprehensive compilation of UN jurisprudence on sexual orientation and gender identity.

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## Profile: the Arab Center for the Independence of Judiciary and Legal Profession (Egypt)

The Arab Center for the Independence of the Judiciary and the Legal Profession is a regional organization established in Cairo in March 1997. It works for the reinforcement of the independence of the judiciary and the legal profession, the rule of law, and the respect for human rights and basic freedoms in Egypt and Arab countries. International human rights standards are the foundation of its activities.

### Objectives of the Center:

- To support and reinforce the rule of law and the independence of the judiciary in the Arab region through calling for sufficient safeguards for the judiciary
- To support and reinforce the situation of lawyers and the legal profession in the Arab region
- To improve legislation in the Arab region and revoke the laws that restrict freedoms and violate human rights, particularly those related to the right of individuals to be tried before competent judges.
- To promote human rights standards ratified by Arab states and to promote using these standards by national courts in the Arab region.
- To raise the awareness of the safeguards given to the legal profession by various constitutions as well as by international standards on the legal profession; and to raise lawyers' defence skills in human rights cases.

### Activities:

This year the Center held many activities including workshops, training programmes and conferences within the framework of its campaigns. The most important include the campaign to



Participants to the training course "developing the needed skills for working in judiciary", held at the ACIJLP from 21<sup>st</sup> to 25<sup>th</sup> May in the context of the campaign: "Enabling woman to assume judicial positions"

enable Egyptian woman to assume judicial positions and the campaign for constitutional reform.

The former was launched by the Center in January 2006 and will last until December 2006. Among other activities, the Center held 2 conferences: "Egyptian women assumption of judicial positions in Egypt... Legislative and actual obstacles" on 30<sup>th</sup> January 2006; and "Criteria of selection and hiring in the judicial bodies" on 9<sup>th</sup> March 2006.

As part of the campaign for constitutional reform, launched by the Center earlier this year, the Center hosted one conference on "The constitutional and legislative rules of emergency status" (6<sup>th</sup> May 2006), and the second one on "The significations of constitutional values and concepts in the constitution of 1971" (16<sup>th</sup> July 2006)

In 2005-2006, a programme of 14 training courses in three semesters brought together approximately 400 female and male lawyers from all over Egypt. It was entitled: Supporting skills in the field of human rights.

The Center will also organize a meeting for North African countries to set a work strategy to promote the African Court on Human and Peoples' Rights. The conference will be held in Cairo on 2d and 3<sup>rd</sup> August. The Secretary-General of the ICJ, Nicholas Howen, will participate and give an opening speech.

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1952 to the  
primacy, coherence  
and implementation  
of international law  
and principles that  
advance  
human rights "*



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**Briefs from the Network***From Africa*

Advocate Ronnie Selvan of the Johannesburg bar travelled to Zimbabwe on 15 June 2006 on behalf of the ICJ to observe the trial of Arnold Tsunga and the other Voice of the People Radio Trustees prosecuted under the Broadcasting Services Act. The hearing was adjourned to 25 September on application of the prosecution, which could not produce its key witness.

On May 4, ICJ Commissioner Abdullahi An-Na'im (Sudan) spoke at the conference "Cross-Cultural Dialogue, Islam and Human Rights", co-hosted by NJCM (ICJ Section in the Netherlands). He denounced the notion of a "clash of civilisations" and argued that we must focus on the universality of human rights and solidarity amongst different cultures.

*From Latin America*

On 31 May, the ICJ presented its position on a draft law on military tribunals to the Guatemalan Congress. If passed in its current form, the law would grant military courts jurisdiction to try all offences committed by military personnel, including human rights violations.

On 4 July, the ICJ expressed its concern at the decision by the Constitutional Court of Guatemala to grant an injunction (*amparo*) to former president Ríos Montt that protected him and other defendants from being interrogated by a Spanish judge in a case related to human rights violations committed during his presidency. [www.icj.org](http://www.icj.org)

On 6 July, the ICJ submitted an *amicus curiae* brief to the Chilean judiciary setting out the provisions of international law related to extradition for human rights violations in the case of former Peruvian President Alberto Fujimori.

*From Europe & CIS*

ICJ-Switzerland rejected the proposed revision of Swiss asylum legislation and called on the Swiss Federal Council to pursue a more coherent human rights policy both at national and international level. Consult the resolution issued on 17 May 2006 on [www.icj-ch.org](http://www.icj-ch.org)

Last month, NJCM (Dutch Section of the ICJ) and the Dutch CEDAW-network released "Taking women's rights seriously?", an examination of the fourth periodic report by the Netherlands government on the implementation of the UN Convention on Elimination of all forms of Discrimination Against Women (CEDAW). It will be presented to the UN-Committee in August. The text is available on [www.njcm.nl](http://www.njcm.nl)

*From North America*

As part of its ongoing global inquiry on counter-terrorism and human rights, the ICJ Eminent Jurists Panel will visit the United States and Canada in September. The Panel will hold a public hearing on US counter-terrorism laws and policies on 6-8 September in Washington, D.C., hosted by the American University School of Law. <http://ejp.icj.org>

*From Asia-Pacific*

On 29 June, US Senator Patrick Leahy presented to Congress the [Advocacy Forum's recent report](#) on human rights violations in Nepal. Appalled by the fact that such atrocities continue to occur in the 21<sup>st</sup> century, he asserted that new laws conforming to international standards will be needed to better protect Nepalese human rights.

In July the ICJ, with Advocacy Forum (ICJ Affiliate in Nepal) and Amnesty International UK, supported two Nepalis to present information on disappearances in Nepal to the Working Group on Enforced and Involuntary Disappearances (WGEID) in Geneva.

The Asia-Pacific Programme welcomed two new staff: Rohan Burdett (Projects Director) based in Bangkok, Thailand and Heidi Steffensen (Legal Officer) based in Kathmandu, Nepal.

*From the Middle-East & North Africa*

Isabelle Scherer (ICJ Programme Officer for the Middle East and North Africa) attended the conference "The New Palestinian government and Human rights", organised on 28 June by ICJ Affiliate Palestinian Centre for Human Rights (whose director is ICJ Commissioner and EXCO member Raji Sourani). Dialogue has been constructive and the government showed an interest in the role of civil society, NGO's and the UN.

On 27 July, the ICJ wrote to the King of Bahrain, urging him not to promulgate a law on counter-terrorism that risks creating a legal framework prone to abuse, specifically the scope of new offences and the exclusion of judicial scrutiny over arrest and detention, which increase considerably the risk of torture and other human rights violations. See [www.icj.org](http://www.icj.org)

*From International Economic Relations Programme*

In August 2007, the ICJ Expert Legal Panel on Corporate Complicity in International Crimes will launch Online Consultations through which anyone who is interested can make an online submission to the Panel. For more information please contact Leah Hctor at [hctor@icj.org](mailto:hctor@icj.org).