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**INTERNATIONAL COMMISSION OF JURISTS WRITTEN STATEMENT**

**ACCESS TO JUSTICE AND RIGHTS TO A REMEDY IN INTERNATIONAL AND  
REGIONAL HUMAN RIGHTS SYSTEMS**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **ICJ Written Statement to the UN Human Rights Council**

### **ACCESS TO JUSTICE AND RIGHTS TO A REMEDY IN INTERNATIONAL AND REGIONAL HUMAN RIGHTS SYSTEMS**

This year marks the twentieth anniversary of the Vienna Declaration and Programme of Action (VDPA), as adopted by the consensus of all UN Member States at the World Conference on Human Rights on 25 June 1993. As stated by the then UN Secretary-General, Boutros Boutros-Ghali, the VDPA stands as “a reaffirmation of the solemn commitment of all States to promote and protect all human rights and fundamental freedoms”.<sup>1</sup>

The International Commission of Jurists (ICJ) observes that one of the key focuses of the VDPA is on the need for every State, individually and collectively, to ensure that victims of human rights violations have access to justice, including through the provision of effective remedies and reparations.<sup>2</sup> It further notes that the General Assembly has since affirmed by consensus that this obligation is incumbent on all States.<sup>3</sup> The universal nature of this obligation thus renders it a key feature of the mandate of the Human Rights Council to promote respect for human rights and fundamental freedoms for all, without distinction of any kind.<sup>4</sup>

The ICJ marked its 60<sup>th</sup> anniversary in December 2012 by adopting the “Declaration on Access to Justice and Rights to a Remedy in International Human Rights Systems”. In the Declaration, the ICJ noted with encouragement the development of an impressive architecture of international human rights standards and mechanisms at the universal and regional levels since the establishment of the UN.<sup>5</sup> The ICJ similarly welcomed the deposit on 5 February 2013 of the tenth instrument of ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as an historic boost to the international protection of these rights and the provision of access to justice for rights-holders. The ICJ is hopeful that Optional Protocol to the Convention on the Rights of the Child will also come into force within the next year.

The ICJ is nonetheless concerned that large gaps remain in systems, standards and mechanisms aimed at ensuring access to justice, including the unavailability of any judicial mechanism on human rights at the universal level. This is equally true in the Asia Pacific and most of the Middle East and North Africa regions. Considerable obstacles to access to judicial mechanisms exist in the Africa Region. Efforts to weaken the judicial and non-judicial mechanisms in the Inter-American and European systems also risk undermining their effectiveness in providing for access to justice..

The ICJ is also concerned that States have failed to implement the full range of obligations under the various international and regional human rights instruments to which they are parties. Both universal and regional human rights systems have recently been subject to politically driven attacks and measures aimed at or having the consequence of degrading the effectiveness of those systems, including their capacity to deliver justice to victims of human rights violations.

At the universal level, the outcome of the treaty body strengthening process must make it possible for the human rights treaty bodies to work more effectively to protect the human rights recognized by the universal treaties. Access to existing UN human rights mechanisms must be improved, including through the universal acceptance of individual communications procedures of the treaty bodies and more effective and accessible operation of those procedures. States must also fully implement decisions on interim measures and final views. There is likewise a need to enhance and support the transparent, independent and timely

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<sup>1</sup> UN Doc A/49/668 (1994), para 2.

<sup>2</sup> VDPA, paras 24, 27, 29 and 59.

<sup>3</sup> GA Res 60/147 (2005).

<sup>4</sup> GA Res 60/251 (2006), para 2.

<sup>5</sup> Available at URL <http://www.icj.org/icj-world-congress-adopts-landmark-declaration-on-access-to-justice-and-right-to-a-remedy/>.

operation of the communications functions of the Special Procedures and improved compliance by States with their recommendations, as well as the systematic and non-selective pursuit by the Council of access to justice in all areas of its work.

The ICJ takes the view that true access to justice for victims of human rights violations calls upon the international community to work towards the establishment of a World Court of Human Rights which, acting in complementarity with existing universal and regional mechanisms, would allow for rights-holders to have access to an independent judicial body to seek remedies and reparations for violations of human rights guaranteed in the principal universal human rights treaties. The establishment of such a Court was one of the first priorities of the very first sessions of the Commission on Human Rights in the 1940s, and the Council should now take steps towards accomplishing this long awaited objective.

It is notable that the VDPA calls for regional arrangements to reinforce universal human rights standards, endorsing efforts to strengthen existing mechanisms and identifying the need for establishing regional and sub-regional arrangements where they do not already exist.<sup>6</sup> The ICJ Declaration identifies the following non-exhaustive key objectives in that regard:

1. Achieving full ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and the entering of declarations pursuant to article 34(6) of the Protocol allowing individuals to complain directly to the Court; as well as speedier procedures and more robust follow-up procedures in the Court's adjudication of individual complaints. There is also a need to strengthen the capacity and effectiveness of sub-regional courts, including the East African Court of Justice, the Economic Community of West African States Court of Justice, the Southern African Development Community (SADC) Tribunal and the Economic Community of Central African States Court of Justice. In the case of the SADC Tribunal, there is an urgent need to reverse the removal of the Tribunal's jurisdiction to hear individual complaints.
2. "Reforms" that that serve to undermine the inter-American human rights system must be opposed, including attempts to erode the autonomy and independence of the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. Access to the inter-American system should also be strengthened, including through the provision of legal aid. Mechanisms for better implementation of human rights standards and compliance with decisions of the Commission and Court are needed.
3. Denouncing the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration as a fatally flawed instrument that undermines universal human rights law and standards. Any follow-up to the Declaration, such as by the development of a human rights treaty, must ensure that that process of elaboration is undertaken in full consultation with all stakeholders, and that its provisions enhance, or at the very least do not fall below, universal human rights standards. In the Pacific Region, efforts should be accelerated by the Pacific Islands Forum towards the development of a human rights system for Pacific States. The South Asian Association for Regional Cooperation similarly needs to work towards the establishment of a regional human rights system.
4. The ongoing reform process for the European Court of Human Rights must ensure protection of the Court's independence and effectiveness, and avoid any restriction of the Court's jurisdiction, as well as ensure that undue burdens are not placed on petitioners. Stronger action in supervision of the execution of Court judgments is called for. Ratification of the Revised European Social Charter is needed, as well as acceptance of the right to collective complaints to the European Committee on Social Rights. There is also a need for increased human rights protection through the Court of Justice of the European Union.

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<sup>6</sup> VDPA, para 37.

5. Amending the Arab Charter on Human Rights with a view to establishing full conformity with universal human rights standards, along with establishing protocols on specific thematic areas. An Arab Court of Human Rights, empowered to receive complaints from individuals, groups and organizations, and able to issue binding decisions in respect of violations of universally accepted human rights is needed. The Arab Human Rights Committee requires reform by enhancing its independence, mandate and competences to receive and adjudicate individual complaints on violations of the Arab Charter.

### **Call for action**

The ICJ calls on the Human Rights Council and its members and observers, individually and collectively, to:

- Ensure that regional standards and mechanisms reinforce rather than undermine universal human rights standards, including by taking action towards the above-stated objectives concerning regional human rights arrangements;
- Ensure that the outcome of the treaty body strengthening process makes it possible for the human rights treaty bodies to work more effectively to protect the human rights recognized by the universal treaties;
- Actively promote universal acceptance of individual communications procedures of the treaty bodies;
- Ensure more effective and accessible operation of individual communications procedures, including the full implementation by States of decisions on interim measures and final views;
- Support the transparent, independent and timely operation of the communications functions of the Special Procedures and improved compliance by States with their recommendations;
- Systematically and non-selectively pursue access to justice in all areas of the work of the Council; and
- Initiate an intergovernmental process for the elaboration and adoption of a statute for a World Court of Human Rights.