

# International Commission of Jurists Annual Report 2016



**icj**

International  
Commission  
of Jurists

## Vision

A world in which a just, democratic and peaceful society is achieved through the rule of law, the arbitrary exercise of power is prevented, rights and freedoms are expanded, and social justice is embraced.

A world in which everyone is able, without discrimination, to realize and exercise his or her civil, cultural, economic, political and social rights, and in which the rights of the most marginalized are addressed.

A world in which everyone is equal before the law and protected from human rights violations by the law and in practice, where those in power are held accountable for human rights violations, where justice is administered in accordance with due process of law, where victims have access to effective remedies and justice, and where those who come before the courts receive a fair trial and never face the death penalty.

## Mission

To work for the progressive development and effective implementation of international human rights law and international humanitarian law, and to ensure that such law is utilized effectively for the protection of all people, including the most vulnerable.

To promote and extend the rule of law as a dynamic concept through which civil, cultural, economic, political and social rights are safeguarded and advanced.

To advance the understanding that the rule of law requires that States observe the principle of separation of powers, by establishing effective executive, judicial and legislative institutions and measures that serve as checks and balances, to protect the human rights of all people.

To assist judges, lawyers and prosecutors, acting under the highest ethical standards and professional integrity, to be independent, impartial, and free to carry out their professional duties.

## Table of Contents

<b>Foreword</b>	7
<b>Introduction</b>	9
<b>ICJ Global Reach</b>	12
<b>ICJ Strategic Goals</b>	15
Independence of Judges and Lawyers	15
Access to Justice for All	21
Accountability for Human Rights Violations and Abuses	26
The Rule of Law and International Standards and Instruments	29
International and Regional Standards: Domestic Implementation and Compliance	34
<b>The ICJ-European Institutions Office</b>	41
<b>Communications</b>	43
<b>Financial Report</b>	45
<b>List of Main Publications</b>	49
<b>Acknowledgments</b>	53
<b>Photographs &amp; Impressum</b>	57





## Foreword

I was appointed the Acting ICJ President under the sad circumstances of the untimely death of Professor Sir Nigel Rodley, the ICJ's former President. Nigel's loss continues to be felt deeply by the ICJ and the international human rights community, particularly at this time when the principles and ideals that the ICJ has promoted and upheld since its founding, and that Nigel was so passionately committed to, are under attack worldwide.

However, Sir Nigel would be proud of the work the ICJ has done this year and will continue to do to counter these attacks on the rights frameworks that the ICJ has promoted and protected throughout its existence.

In 2016 the ICJ adopted a new strategic plan for the next five years. The ICJ's work is now organized around the following five goals that together form part of a global defence of human rights and the rule of law: independence of judges, access to justice, accountability for human rights violations, rule of law and international standards, and domestic implementation and compliance.

In March of this year, the ICJ said goodbye to its former Secretary General, Wilder Tayler, and welcomed his successor, Sam Zarifi. For nearly a decade, Wilder steered the organization through some very turbulent times with wise counsel, a steady hand, and much needed sense of humour. I know that I speak for the entire ICJ family in thanking him for his years of outstanding service and in wishing him the very best in his future endeavours.

I am also pleased to welcome Sam as our new Secretary General. As many of you know, Sam is no stranger to the ICJ, having served since 2012 with great success as the Regional Director of our Asia and Pacific Programme. I look forward, together with the members of the Executive Committee, to working closely with Sam as we meet the considerable challenges that lie ahead.

Professor Robert K. Goldman  
Acting ICJ President





## Introduction

In 2016, the ICJ's mission gained new urgency as the organization countered a global assault on the concept of the rule of law and respect for the international human rights legal order. Having completed a smooth transition from one Secretary-General to another and with the implementation of its Strategic Plan for 2016-2020 well under way, the ICJ is well-placed to lead the development of better global standards and to help implement them concretely around the world.

The year started with the international community seeming to accept, via the adoption of Sustainable Development Goal (SDG) 16, the fundamental importance of the rule of law to the implementation of sustainable development around the globe. The inclusion of the rule of law in the SDGs emphasizes the need to develop the nexus between development and the legal framework of human rights; the ICJ has done this since our inception in 1952, and more consistently since the 1970s and the days of the New International Economic Order, and we will continue to do so in the context of the SDGs.

However, the optimism of the SDGs has been overshadowed by an unprecedented, if not entirely unforeseen, invocation by political figures around the world of fear-mongering, discrimination, and demagoguery to erode respect for human rights and undermine the basic notion of an international legal order. Even States that we could have relied on to defend human rights (perhaps rhetorically, and perhaps hypocritically at times) have questioned the relevance and value of international law and institutions. Whilst there has always been work to do in every country to promote and protect the standards and protection systems that had been built, most States had at least demonstrated some level commitment to these, even if that commitment has not always run as deeply as we should have liked.

As the year drew to a close, Burundi, the Gambia and South Africa initiated steps to withdraw from the Rome Statute of the International Criminal Court (though at the time of writing the withdrawals have either been reversed or suspended in all three countries, thanks in part to efforts by the ICJ). A new administration in the United States of America signaled policies, inside and outside the country, at odds with fundamental principles of nondiscrimination and constitutional checks and balances (and at the time of writing, the US courts remain an important bastion of stymying the implementation of such policies). Similarly, a new administration in the Philippines rapidly transformed the country from an important advocate for abolition of the death penalty to a country that has unapologetically embraced extrajudicial killings and taken steps to reintroduce the death penalty. Turkey responded to a failed coup d'état by initiating an arbitrary purge of the judiciary that has significantly weakened the State's judicial system. Egypt has undermined the concept of judicial accountability by systematically using the judicial system as a tool of oppression. Regrettably, there are many more examples of rights regression that can also be considered.

The anger about globalization is real and should not be ignored; in fact, the ICJ has for years pointed out the dangers of a global order that provides profit-making businesses with tremendous privileges but does not hold them to account, and we are currently engaged in the ongoing process for the elaboration of an international treaty on business and human rights. However the solution is not to throw out the international institutions and systems that have been targeted but rather to strengthen these to ensure that they are fit for purpose. The ICJ believes in the continued relevance of institutions such as the UN and the importance of the international standards that can be upheld through its mechanisms. The ICJ has been working to ensure that these are increasingly accessible to everyone and has been working on a project with individuals and organizations from ASEAN to encourage and facilitate access to UN mechanisms for victims of rights abuses from the region.

The ICJ remains dedicated to the rule of law as a “dynamic concept”, set out in its 1959 Declaration of Delhi, “for the expansion and fulfillment of which jurists are primarily responsible and which should be employed...to safeguard and advance rights.” The ICJ’s 2016 Geneva Forum explored the role of judges and lawyers in situations of large-scale movements of refugees and migrants and considered how the judiciary can uphold and protect the rights of those affected. The ICJ also undertook training workshops with European lawyers to enhance their capacity to protect the rights of refugees and migrants through domestic legal systems in compliance with relevant regional and international standards.

The ICJ believes that an independent and robust judiciary is essential to this dynamic concept of the rule of law but also considers that a judiciary that acts with impunity and is unaccountable for any rights transgressions committed by the judiciary itself undermines this concept. A new Practitioners’ Guide on judicial accountability was launched that addresses the complex and under-examined issues of how to ensure accountability for judicial misconduct whilst preserving the independence of the judiciary.

Judicial systems and processes can only be effective if they are accessible and the ICJ has been working to strengthen access to justice for particularly vulnerable and marginalized groups. For example, in 2016, the ICJ released new Practitioners’ Guides on women’s access to justice for sexual and gender-based violence and on refugee status claims based on sexual orientation and gender identity. Both guides are designed to support legal practitioners and human rights defenders in their work on relevant cases, as well as acting as advocacy tools for civil society and rights defenders to agitate for the legal enhancements necessary to improve rights accessibility.

The ICJ mourns the loss of its President, Professor Sir Nigel Rodley, who was a stalwart of the human rights movement and whose commitment to the promotion of human rights and rule of law has had a deep and lasting impact that continues to permeate the organization. We thank Professor Robert K Goldman for taking on the role of Acting ICJ President and appreciate his efforts in building upon Sir Nigel’s legacy and his dedication to the ICJ’s mission.

The ICJ is fortunate to be served by highly skilled and motivated staff and Commissioners, and their united efforts continue to fuel the ICJ’s struggle for justice. As 2016 transitions into 2017, the ICJ remains committed to its vision of a world where a democratic and peaceful society is achieved through the rule of law to which everyone is accountable and which everyone can access.




Wilder Tayler  
Former Secretary-General

Saman Zia-Zarifi  
Secretary-General

# ICJ Global Reach



Regions	Legal Submissions	UN Interventions	Advocacy Interventions	Capacity Building
Africa	2	2	13	17
Americas	19	3	14	9
Asia Pacific	46	24	90	37
Europe	4	8	12	10
MENA	3	1	17	5
Global	6	24	28	6
<b>Total</b>	<b>80</b>	<b>62</b>	<b>174</b>	<b>84</b>

 ICJ Offices  
 Countries where ICJ has ongoing projects  
 Countries where ICJ carried out interventions in 2016



## ICJ Strategic Goals

### 1 Independence of Judges and Lawyers

Independent, impartial and accountable justice systems are integral to the protection and promotion of human rights and the rule of law. Furthermore the effective and competent administration of justice is essential for the functioning of democratic societies and to the effective implementation of the SDGs.

Throughout the year, the ICJ has carried out advocacy to strengthen the independence of the judiciary, including the need to observe appropriate mechanisms for the selection, appointment, promotion, transfer, and discipline of judges and prosecutors in line with international norms and standards. The ICJ has also advocated for mechanisms to protect judges, prosecutors, and lawyers against interference, intimidation, and attacks and to ensure their security. In 2016, there was a worrying global trend of the increased use of the judicial system to harass and persecute lawyers, for example in Azerbaijan, Egypt, Guatemala, Turkey and Thailand among other countries.

#### 1.1 Turkey: the ICJ condemns the purge of over one fifth of the judiciary

An ICJ report, published in early June 2016, *Turkey: the Judicial System in Peril*, expressed deep concern at increasing government control of the Turkish judiciary and condemned arrests, transfers and dismissals of judges and prosecutors. The report concluded that the judiciary, weakened by increasing government control, was ill-equipped to provide a check on excessive executive power and as a consequence, violations of human rights were going unaddressed by the justice system.

Following the attempted coup on 15-16 July 2016, and the adoption of a state of emergency, these trends reached a crisis point: the government responded to the coup attempt with purges of the judiciary on an unprecedented scale. Over 3,300 judges and prosecutors - approximately one fifth of the total - were dismissed or suspended, and hundreds have been arrested, including members of the High Council for Judges and Prosecutors (HSYK). Allegations that the judges were in some way linked to the attempted coup were not supported by evidence. In the following weeks, Turkish authorities summarily dismissed or arrested more than 50,000 academics, teachers, and other public officials, amid credible reports of torture and ill treatment of detainees.

In a series of public statements and interviews following the coup, the ICJ condemned the dismissals and arrests of judges and prosecutors and urged that the state of emergency should not be used to subvert the rule of law. The research undertaken during the mission and the June report allowed the ICJ to respond and speak authoritatively on these issues as events unfolded.





In September, the ICJ delivered a statement at the UN Human Rights Council expressing concern for the dramatic escalation of the attacks on judicial independence and the undermining of human rights. The ICJ recalled that human rights needed to be respected in situations of emergency, and that certain rights could never be the subject of lawful derogation.

In December, following the renewal of the state of emergency, the ICJ issued a further statement, reiterating its grave concerns at the attacks on the judiciary and the legal profession. By December, over 500 lawyers had been detained, including four Presidents of regional bar associations. Hundreds of NGOs had been closed under emergency decrees, including a number of lawyers' associations, seriously undermining the rights of freedom of association and expression. The ICJ is continuing to follow events in Turkey and is planning to carry out trial observations and further reporting on legal developments there.

### 1.2 Thailand: ICJ condemns harassment of human rights lawyer, Sirikan Charoensiri

Throughout the year, Sirikan Charoensiri was subjected to constant government harassment in a series of unwarranted criminal cases brought by members of the police and army. Sirikan is a highly respected human rights lawyer with Thai Lawyers for Human Rights (TLHR). She is the legal representative of student activists from the New Democracy Movement who were arrested after staging a peaceful protest to mark the first anniversary of the military coup. It is widely considered that the charges against Sirikan are a consequence of her advocacy to protect the rights of the students, who should never have been arrested or face criminal proceedings.

In February, Sirikan was charged with two offences under the Thai criminal code. The ICJ brought the case to the attention of the Special Rapporteurs on the Independence of Judges and Lawyers and on the Situation of Human Rights Defenders.

In September, further charges were filed against Sirikan, including sedition offences. The sedition laws in Thailand can carry serious penalties, and the risk of a military trial. Sirikan had just returned from Geneva where she had attended the UN Human Rights Council. The ICJ and other NGOs issued a joint statement, calling for the government to immediately withdraw all proceedings against Sirikan and restore respect for human rights in Thailand. The ICJ will continue to carry out advocacy on this issue.

### 1.3 Cambodia: the ICJ calls for an end to the persecution of human rights defenders

Over the last few years, there has been a marked deterioration in the human rights situation in Cambodia, with new restrictive laws on freedom of assembly and association. Many human rights defenders and political opposition leaders are in exile, face legal proceedings or have been convicted in cases that appear politically motivated.



During 2016, the situation escalated with the killing of a well-known human rights defender, Kem Ley, in July, in circumstances that have not been properly investigated. The investigation into his death lacked transparency and there have been insufficient measures to protect witnesses and other persons providing information to the authorities. The ICJ observed the half-day trial of Oeuth Ang, who has been charged with Kem Ley's murder, and was concerned at the shortcomings in the investigation that were clearly apparent.

In September, the ICJ observed the trial of Ny Chakrya, Deputy Secretary-General of the National Election Committee and former head of the Human Rights Section of a leading NGO, ADHOC. He was convicted of crimes, including criminal defamation, in connection with his exposure of allegations of human rights violations. Ny Chakrya and four other members of ADHOC, who were all in detention, also face another investigation that appears politically motivated.

Speaking at the UN Human Rights Council in September 2016, the ICJ urged the government to uphold its commitments to ensure respect for human rights and fundamental freedoms as part of the Paris Peace Agreements that were signed 25 years ago. The fulfillment of these commitments is particularly important as Cambodia prepares for local and national elections scheduled for 2017 and 2018.

### 1.4 Egypt: judicial system in danger of wholesale political capture

In October, the ICJ issued *Egypt's Judiciary: a Tool for Repression - Lack of Effective Guarantees of Independence and Impartiality*, an analytical report based on trial monitoring and analysis of case files and judgments. It provides first hand evidence of the many ways in which the Egyptian authorities have used the judiciary as a tool to crack down on those suspected of opposing the military and the government. In many instances, prosecutors have initiated unwarranted charges, which judges have allowed to proceed. Both prosecutors and judges have routinely applied a presumption in favour of pre-trial detention, in contravention of international standards. The accused have systematically been denied adequate time and facilities to prepare a defence and convictions have frequently been based on a lack of credible or lawfully adduced evidence. Thousands of political opponents, human rights defenders, pro-democracy activists and journalists have been subjected to unwarranted prosecutions and convicted following unfair trials, of whom hundreds have been sentenced to death in violation of the right to life.

The report also documents how the crackdown has extended to those lawyers and judges perceived to be opposing the authorities. Judges who have spoken out against attacks on the rule of law and human rights violations have been subjected to unfair disciplinary proceedings and consequently removed from office. Lawyers have also been subjected to a sustained campaign of intimidation and harassment for the discharge of their duties. Many were abused, investigated and detained for attending police stations to defend clients, and referred for criminal investigation by judges. Others were subjected to serious human rights violations, including torture and other ill treatment.



The ICJ has documented numerous cases of lawyers who have been subjected to human rights violations and reprisals in relation to the representation of their clients, including the cases of Imam Afifi and Karim Hamdi, who were allegedly subjected to torture and subsequently died while in police custody. The ICJ has called for an immediate end to attacks against judges and human rights lawyers and will continue to monitor and document the situation.

#### 1.5 Libya: legal reforms are essential to a successful transition

In May, the ICJ, together with the Libyan Judges Organization, held a high-level conference in Tunis, bringing together senior judges, former ministers, and members of the Constitution Drafting Assembly, lawyers, prosecutors, and academics. Participants identified areas of law and policy reforms that can enhance judicial independence and accountability in Libya, and provided feedback on an ICJ draft report.



In June, the ICJ published *Challenges for the Libyan Judiciary: ensuring independence, accountability and gender equality*, providing a detailed set of recommendations on the need to revise the legislation governing the organization of the judiciary, the Supreme Judicial Council, the prosecutor's office and the use of military tribunals. The report emphasizes the importance of the Supreme Judicial Council operating independently of the Executive, with a pluralist and gender-representative membership.

The ICJ also called on the Constitution Drafting Assembly to revise the draft of the Constitution to fully accord with international standards. The report further underlines the importance of ensuring that the jurisdiction of military tribunals be restricted to cases involving members of the military for alleged breaches of military discipline only. It recalls that any alleged violations of human rights by the military or armed forces must be investigated and prosecuted by civilian authorities.

#### 1.6 Azerbaijan: the ICJ mission to support lawyers facing arbitrary sanctions

In June, an ICJ mission visited Azerbaijan to investigate systemic problems with the independence of the legal profession, resulting in the harassment and persecution of lawyers, in particular abusive disciplinary proceedings and arbitrary criminal convictions of lawyers. These have taken place in the context of a severe government crackdown on all human rights defenders, and the closure of most human rights NGOs in the country.

The ICJ met with lawyers against whom disciplinary proceedings had been initiated or who faced criminal charges or other sanctions. Many have been prominent in bringing human rights cases before the national and international courts. The mission also met with representatives of the Bar Association and Ombudsman. The ICJ observed a hearing before the Azeri courts challenging the disbarment of the lawyer, Alaif Ghasanov. Following the mission, the ICJ published *Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan*. The report, available in Azeri, English and Russian, details



failings in the transparency and accountability of the Bar Association and irregularities in the qualification procedures for lawyers. The report documents the multiple cases of harassment of lawyers.

The mission and associated advocacy have given much needed support to Azeri lawyers who have been embattled and isolated in recent times. The ICJ has contributed to shedding light on the systemic legal problems resulting in the harassment of lawyers, which previously had not been well documented or publicized.

### 1.7 The ICJ's Practitioners' Guide on judicial accountability

Published in June, the *Practitioners' Guide No 13 on Judicial Accountability* tackles the complex and previously under-examined issues of how to ensure accountability for judicial misconduct, such as corruption or complicity in human rights violations, while preserving the independence of the judiciary. The Guide reviews international standards on accountability mechanisms and procedures, illustrated by practical examples. It also includes specific sections on ensuring effective judicial accountability in situations of transition and in developing countries. Building on earlier Practitioners' Guides, it addresses situations affecting individual judges, the judiciary as an institution and State responsibility under international law, particularly in relation to the rights of victims of human rights violations by judges. The Guide draws on consultations with international judges' and lawyers' associations from a diverse selection of countries and other outside expertise, including during the annual ICJ Geneva Forum of Judges and Lawyers held in December 2015.

### 1.8 Swaziland: Judicial independence and accountability

In February, the ICJ published *Justice Locked Out: Swaziland's Rule of Law Crisis* based on the findings of an international mission held in 2015 by the ICJ together with other organizations. The report catalogued the flaws in the constitutional and legislative framework of Swaziland, which fails to respect the separation of powers and safeguards for judicial independence. The report finds that the lack of judicial independence has created conditions conducive to abuse and corruption.

At the June session of the UN Human Rights Council, the Swazi lawyer and human rights defender, Thulani Maseko, delivered a statement on behalf of the ICJ and eight other NGOs during the interactive dialogue with the UN Special Rapporteur on the Independence of Judges and Lawyers. He raised important issues around judicial accountability, highlighting the situation in his own country where he had been victimized. The ICJ also made an oral statement during the discussion of the outcome of Swaziland's Universal Periodic Review, expressing concern at the lack of follow up on the recommendations previously accepted by the government.



## 2 Access to Justice for All

The ICJ promotes access to justice, in particular for the most marginalized, disadvantaged, discriminated against, and socially excluded groups in society. Throughout the year, the ICJ has urged governments around the world to take coordinated action to protect the human rights of migrants and refugees, which was the focus of this year's annual Geneva Forum of Judges and Lawyers. The ICJ has also continued its focus on the impact of the operations of business enterprises on human rights, including in rural communities and among indigenous peoples. Lack of adequate global and domestic governance frameworks and legal oversight, particularly in the context of transnational operations, has amplified the potential and scope for harmful impacts on human rights. At national level, the ICJ has provided training on strategic litigation on business and human rights for lawyers and civil society partners, in Guatemala and Peru, East Africa and in South East Asia.

In many countries human rights defenders continue to face harassment and persecution, often for the exercise of internationally protected rights, such as freedoms of expression, association, and assembly. The ICJ has monitored and reported on violations of guarantees of due process of law or fair trial rights, such as the lack of access or inadequate access to a lawyer, denial of *habeas corpus*, hearings held in closed session without justification, and violations of the principle of equality of arms. The ICJ has also called for reform of laws and the end to the practice of the trial of civilians before military courts.

The ICJ has continued its innovative work in the area of women's access to justice in cases of gender-based violence and on deficiencies in human rights protections arising from sexual orientation and gender identity status.

### 2.1 The ICJ Geneva Forum on the role of judges and lawyers in situations of large-scale movement of refugees and migrants

The seventh annual Geneva Forum met from 17-18 November to identify key challenges, principles and recommendations on the role of judges and lawyers in situations of large-scale movement of refugees and migrants. The meeting brought together over forty judges, lawyers and refugee and migrant experts as well as relevant UN agencies. While the Forum addressed the wide variety of circumstances in which participants operate, of particular concern were situations where governments have departed substantially from ordinary procedures necessary to protect the rights of migrants and refugees. Invoking exceptional circumstances, governments have reduced judicial protections and guarantees. In particular, rights have been undermined in relation to procedures for the determination of a person's entitlement to international protection and refugee status; decisions about detention or criminal proceedings based on entry point or presence in the country; and decisions about expulsion or onward transfer.



Guy Goodwin-Gil, Emeritus Professor of International Refugee Law at the University of Oxford was interviewed during the meeting. He spoke of the dangers of executive discretion and said that the first challenge for judges and lawyers is to assert their responsibility to ensure that whatever measures are taken are in accordance with the law. In Europe, he noted that there were inadequate laws and a general lack of political will. He stated: *“there is a need to see a greater manifestation of that solidarity upon which the EU is founded in accordance with the rule of law because rights have been violated.”*

Informed by the discussions at the Geneva Forum and subsequent research and consultations, in 2017, the ICJ will publish a set of principles and guidelines on the role of judges and lawyers in relation to large movements of refugees and migrants, to complement the ICJ’s *Practitioners’ Guide No 6 on Migration and International Human Rights Law*.

## 2.2 Peru: Extractive companies, human rights and social protests

Following a mission to Peru in November 2015, together with the Association for the Promotion of Human Rights (APRODEH), the ICJ published a report analysing the impact of the mining industry on the economic, social, and cultural rights (ESCR) of local communities, mainly indigenous communities. The study analyses the response of State authorities to the abuses generated by mining activities, as members of the affected communities seek justice. It sets out recommendations to the Peruvian authorities to ensure the protection of human rights of members of local communities, safeguards for the environment and an end to human rights abuses caused by business operations.

The ICJ also produced a series of video interviews with human rights lawyers and community leaders about the impact of mining activities, the absence of State authorities in negotiations with the communities and mining companies and the effective criminalization of social protest. The ICJ has provided legal advice to the Inter-American Association for the Defense of the Environment (AIDA) in a case concerning the La Oroya copper, lead, and zinc high altitude smelter. A complaint has been submitted to the Inter-American System of Human Rights concerning the devastating health impacts of contaminated water supplies on local residents, particularly young children.

## 2.3 South East Asia: Advancing corporate accountability through strategic litigation

In May, the ICJ convened a workshop in Yangon, Myanmar for a group of lawyers and activists from Cambodia, Lao PDR, Myanmar, Thailand, and the Philippines to share experiences and build their capacity to hold business enterprises legally accountable for their human rights impacts and to address the prevailing culture of impunity. Unresolved and endemic disputes over land in Cambodia, Lao PDR, and Myanmar have given rise to many human rights abuses in the sub-region. Unlawful labour practices, particularly in relation to migrant workers, are widespread, but because companies often operate in multiple jurisdictions, holding them to account in legal proceedings is







complicated and State officials abdicate their protective obligations. Furthermore, individuals, often through collective community action, who oppose economic development projects on their lands, may face legal action, intimidation, and violence as a result of asserting their rights.

Participants considered the means by which strategic litigation could bring about significant changes in law and practice, particularly when combined with social mobilization, awareness-raising and skillful use of media. For example, in Cambodia and the Philippines, lawyers worked in strategic collaboration with civil society, which supported the litigation process through social mobilization. The workshop also was an opportunity to strengthen an incipient regional network on strategic litigation and business and human rights.

#### 2.4 Guatemala: The ICJ provides support for victims of the effective criminalization of social protest

In Guatemala, the ICJ has engaged in cases where State officials have misused criminal law with the aim of effectively criminalizing the activities of human rights defenders. The ICJ has involved itself through third party interventions and trial monitoring, and advocacy at national and regional levels.

Seven prominent indigenous community leaders have acted since 2012 to oppose the construction of the Ecoener Hidralica/Hidro Santa Cruz hydroelectric plant in the municipality of Barillas, in the Department of Huehuetenango. They were accused of threatening acts of violence against judges and court officials. The ICJ acted as a third party legal expert in the criminal case against them. In July 2016, the detainees were absolved of the crimes and Judge Yassmin Barrios, in her ruling, recognized the value of the evidence provided by the ICJ and referred explicitly to the phenomenon of the criminalization of social protest in Guatemala.

In June 2014 three leaders of the Committee for Peasant Development (CODECA), Mauro Vay, Blanca Julia Ajtúm, and Mariano García Carrillo, were accused of subversion of national security and attempted fraudulent activities, a crime that does not exist in Guatemalan law. CODECA had protested against the operations of the ENERGUATE electricity company on indigenous lands in the Department of Huehuetenango. The ICJ carried out prison visits and presented a report on the case to the UN Working Group on Arbitrary Detentions. In April 2016, the Working Group issued an opinion, stating that it considered the detention to be arbitrary and recommended that the Guatemalan government provide reparations for the harm caused. In March 2016, the ICJ monitored the trial and noted numerous procedural deficiencies in contravention of international standards.

#### 2.5 Access to justice for women victims of gender-based violence: the ICJ's Practitioners' Guide No 12

Realizing access to justice for victims of gender-based violence requires States to recognize that violence against women is a crime and therefore to ensure accountability and access to justice for women

subject to violence. Launched to mark International Women's Day, March 8, this Guide is designed to support legal practitioners and human rights defenders in their work on cases related to gender-based violence and it can also be used as an advocacy tool. It provides information about regional and international law and standards relevant to gender-based violence, advice on implementing these standards domestically and examples of existing good practice. Since its on-line launch, it has been widely consulted by practitioners from across the globe.

#### 2.6 Tunisia: realizing women's right to access justice

Despite some progress with legal reforms in Tunisia in recent years, there are still many barriers facing women seeking access to justice, in particular laws that fail to fully protect women's human rights. In a legal memorandum published in June, the ICJ highlights some of these barriers, such as the Criminal Code's discriminatory definition of rape and sexual harassment and other laws perpetuating gender discrimination, such as child custody provisions.

The ICJ also drew attention to the need to amend Tunisia's Draft Law on Violence against Women to ensure that rape, including marital rape, sexual assault and harassment are considered criminal offences and that there are adequate protection measures and legal aid available.

A further barrier is women's disadvantaged economic and social position and discriminatory attitudes of some judges and the police force. The memorandum was informed by a series of focus group discussions with women, who recounted the difficulties they faced. As a victim of domestic violence stated: *"I complained more than ten times. The last thing I heard from the police was 'go back to your home and take care of your family'. I was afraid to go back home but I did because I had no other option"*. The ICJ is also supporting training programmes for judges, prosecutors, and law enforcement officers on access to justice for women.

#### 2.7 Refugee Status Claims based on Sexual Orientation and Gender Identity (SOGI): the ICJ Practitioners' Guide No 11

In February, the ICJ published its Practitioners' Guide No 11 on Refugee Status Claims based on Sexual Orientation and Gender Identity. The Guide is designed to provide an exposition of standards and jurisprudence on refugee status claims on grounds of SOGI status. In particular, it aims to give legal and practical advice on these issues. Claims on these grounds are likely to increase in all regions, in part because there is a greater willingness of LGBTI persons to assert their rights, in spite of continued risks. At the Geneva launch in April, a senior UNHCR official affirmed the importance of the Guide as a well-researched resource that effectively addressed an important and developing area of international refugee law.

The ICJ also successfully intervened as a third party expert in a number of cases to support claims for refugee status, leading to judgments that advanced the progressive development of law in this area. For example, in a case in Sweden, the authorities recognized the applicant



as a refugee based on his well-founded fear of persecution for reasons of his membership of a particular social group, namely one defined by his same-sex sexual orientation. In an immigration case in Romania, the court has referred it to the EU Court of Justice. Furthermore, a case challenging the criminalization of consensual same-sex relations in Belize, in which the ICJ intervened in 2013, resulted in a landmark ruling in August 2016 in which the country's Supreme Court effectively decriminalized same-sex conduct. Also significantly in July, the European Court of Human Rights affirmed, in a case in which the ICJ had previously intervened, that State authorities must consider the risks faced by LGBT asylum-seekers before ordering their detention.

### **2.8 India: the ICJ advocacy on non-discrimination on grounds of sexual orientation and gender identity**

Over the last 15 years, the ICJ partner in India, the Naz Foundation, has engaged in efforts to challenge the constitutionality of the Indian Penal Code that criminalizes same-sex relations. The case has slowly worked its way through the courts. In 2009, the Delhi High Court effectively decriminalized consensual same-sex intercourse. However, in December 2013, on appeal to the Supreme Court, the decision was reversed. However, in February 2016, the Supreme Court decided to review its earlier ruling and referred the case to a larger bench. In March, the ICJ issued a briefing paper in connection with this latest decision of the Indian Supreme Court. By the end of the year the case was still pending.

In April, a second briefing paper called for the implementation of another Supreme Court ruling dating from 2014, which provided for the protection of transgender persons. Although two years have passed, the central government and State governments have still not implemented these measures, including the legal recognition of transgender persons, affirmative action in educational institutions, transgender health services, and public awareness programmes, among others.

In August, the ICJ issued another briefing paper on the recently released Transgender Persons (Protection of Rights) Bill 2016. While welcoming the decision to introduce the bill, the paper pointed to a number of major flaws. The ICJ followed this up with a submission to the Universal Periodic Review of India, including a section on discrimination and violence on grounds of SOGI. In this way, the ICJ has provided consistent legal arguments for the Indian courts and governments to uphold international human rights law related to the prohibition of discrimination on grounds of SOGI.

## **3 Accountability for Human Rights Violations and Abuses**

The ICJ works to prevent impunity and make the truth known by ensuring those responsible for serious human rights violations and crimes under international law are brought to justice. The ICJ considers

that “transitional justice” mechanisms and other measures complement but cannot replace or supersede the ordinary justice system. The combination of these measures and ordinary judicial proceedings must be capable of ensuring access by individual victims to an effective remedy and reparation, and the State's obligations to bring those responsible for violations to justice. Accountability also acts as a deterrent to prevent human rights violations.

The ICJ advocates for legal reforms to ensure accountability laws, procedures, and mechanisms are in line with international law and standards. The ICJ supports legal cases against perpetrators and to that end provides expert opinions in cases of serious human rights violations, such as torture and ill treatment, including sexual violence, extrajudicial executions and enforced disappearances. The ICJ also works to empower communities and individuals to demand truth, justice, and reparations. The ICJ is working on accountability issues in several countries, including Colombia, Guatemala, Myanmar, Nepal, Pakistan, Thailand, Tunisia, and Sri Lanka.

### **3.1 Guatemala: The ICJ supports emblematic cases to end decades of impunity**

During 2016, the ICJ conducted trial observations in a series of important cases concerning accountability of high-ranking military accused of genocide and crimes against humanity during the 1960-1996 internal armed conflict. These trial observations have contributed to ensuring that fair trial standards and the rule of law are followed and that the public and victims have confidence in the fairness and effectiveness of the legal system in Guatemala, which has for so long been enmeshed in corruption and failures.

The ICJ carried out a trial observation to ensure fair trial standards were met during the hearings in the landmark case of Lieutenant General Esteelmer Reyes and former Military Commissioner Heriberto Valdez Asij. In March 2016, the retired army officer and former soldier were sentenced to imprisonment for over 100 years each and required to pay substantial compensation to 11 indigenous women victims, survivors of rape and sexual slavery at the Sepur Zarco military base during 1982-83. This was the first case of a Guatemalan court reaching a conviction for sexual crimes that had occurred during the internal armed conflict.

In January, just prior to the inauguration of President Jimmy Morales, 18 high-ranking military were arrested on charges of crimes against humanity. One case refers to the enforced disappearance of a 14-year-old boy, Marco Antonio Molina Thiessen and the torture and sexual violence perpetrated against his sister, Emma Guadalupe, who subsequently escaped from her detention. Four military officers were accused of criminal responsibility for these acts, as they were the commanding officers at the time. The ICJ conducted observations at pre-trial hearings and in March 2017, Judge Victor Hugo Herrera Rios ruled that the case would go to trial.



### 3.2 Tunisia: victims still waiting for justice in the country's incomplete transition

Five years on from the ousting of former President Ben Ali, the legacy of serious human rights violations committed under his regime is yet to be satisfactorily addressed and impunity is rampant. Conduct involving serious crimes under international law have not been adequately prosecuted and nor have victims been able to exercise their right to remedies and reparations. In May, the ICJ published *Illusory Justice, Prevailing Impunity*, a report that catalogued the many ways in which the legal system has failed victims. The report underscores the inappropriate use of military courts rather than civilian courts to hear human rights cases and the lack of independence of the judiciary. It also exposed many other flaws in the system, including inadequate laws on the definition of crimes and the responsibility of superior officers for violations committed by their subordinates; and the broad discretionary powers of the public prosecutor to dismiss cases without giving sufficient reasons, as well as inadequate legal protection for victims and witnesses. The report makes recommendations on how to ensure accountability in accordance with international law and standards. During the transition period, most cases of human rights violations were and continue to be adjudicated before military courts, resulting in acquittals or sentences that are not commensurate with the gravity of the crimes committed.

In a video interview with the ICJ, Sihem Bensedrine, the President of the Truth and Dignity Commission concluded: *"What was left was a feeling of resentment because the courts did not dispense justice"*. The Truth and Dignity Commission received over 60,000 allegations, an indication of the widespread human rights violations under the former regime. These allegations will be referred to the Specialized Criminal Chambers (SCCs), which were established in 2015. In November, the ICJ published a memorandum on *Specialized Criminal Chambers in the light of International Standards*. It calls for a clear framework to regulate the mandate of the SCCs and a number of other legal and policy measures for their effective functioning. The ICJ argues that these reforms, combined with sufficient political will, can ensure that the SCCs provide accountability and deliver meaningful justice for the victims who have waited so long.

### 3.3 Nepal: the ICJ and partner work with local communities to support investigations into enforced disappearances

The ICJ has conducted advocacy around the work of the Truth and Reconciliation Commission and Commission of Inquiry on Enforced Disappearances in partnership with the Center for Legal Studies (CLS). During 2016, a team visited 10 districts to monitor the submission of complaints with the Commissions and to ensure that the procedures comply with international standards of due process. The team interviewed victims, local peace committee members, civil society, local political party leaders, and members of the commissions and observed the submission process in those districts. A preliminary report was prepared and circulated to the diplomatic community.

The ICJ also partnered with the CLS to produce a quarterly newsletter focusing on transitional justice, *"Nirupan"*, published by CLS. It documents the transitional justice process and the challenges it still faces in Nepal. It also contracted a local radio to produce a regular programme on the transitional justice process to reach out to remote rural communities where many of the victims' families live.

### 3.4 Sri Lanka: Holding the Government to account on its commitments on transitional justice

The ICJ has continuously engaged in public advocacy at both the national and international level to ensure that the Government of Sri Lanka honours commitments voluntarily undertaken in Resolution 30/1 adopted by the UN Human Rights Council in October 2015. In June this year, the ICJ addressed the Human Rights Council and conducted consultations with national civil society partners, international human rights advocates, the UN and bilateral diplomatic missions, to coordinate strategies. The ICJ also launched a five-month justice and accountability project to engage with the judiciary, legal profession and human rights defenders, to help strengthen their capacity to investigate, prosecute and adjudicate serious human rights cases, in particular torture and sexual and gender-based violence relating to conflict-era abuses as well as on-going abuses. The ICJ draws on decades of experience, in addressing the rule of law and human rights in Sri Lanka as well as relevant experience from transitional societies in the region and around the world, to bring to this work.

## 4 The Rule of Law and International Standards and Instruments

The ICJ engages with international human rights systems and mechanisms to further their effectiveness, as well as to guard against attacks aimed at diminishing the scope and effectiveness of their mandates. The ICJ seeks to strengthen the institutions of the UN Treaty Bodies, including the individual complaints procedures, and the UN Human Rights Council, and its Special Procedures. In partnership with other civil society organizations, it has carried out advocacy to ensure that emerging systems in the League of Arab States (LAS) and ASEAN regions for the monitoring and protection of human rights are transformed into robust and effective systems and that the longer-established systems in Europe, Africa and the Americas are not undermined.

The ICJ has condemned a global tendency to use "states of exception," to justify departures from normal legal processes and human rights protections. It has also continued to produce a monthly e-bulletin on counter-terrorism and human rights news from around the world. At the international level the ICJ is engaged with the different processes to strengthen the normative and operative framework to prevent human rights abuses by businesses and ensure remedies to victims. In another increasingly important area of concern, the ICJ has worked in cooperation with UN Women to develop new guidelines on judging

with a gender perspective. The ICJ also conducted a project that addressed the recent wave of counter-terrorism and national security laws, policies and practices that pose new threats to the rule of law and protection of human rights.

#### 4.1 ASEAN: Enhancing victims' access to justice through UN human rights mechanisms

Over a two-year period (mid-2016 to mid-2018), the ICJ is training human rights lawyers from Myanmar, Cambodia, Thailand, Vietnam, and Lao PDR, to use United Nations human rights mechanisms to better secure justice for victims. The ICJ is organizing workshops with human rights lawyers in the region, as well as hosting practical mentorships for some lawyers with the ICJ's office in Geneva during the sessions of the UN Human Rights Council and other mechanisms. The ICJ has also prepared translations of key UN guides for use in the project, which have been made available on the ICJ's website for a wider audience.

In September, the ICJ hosted a human rights lawyer from Lao PDR for a mentorship programme of 15 days. The programme was structured around training and strategic and practical advice relevant to the lawyer's work on the issues of land and labour rights, and the rights of women and children in rural communities. In addition to advice concerning engagement with UN mechanisms, activities during the mentorship included: observation of sessions and events at the Human Rights Council and other UN bodies; meetings with OHCHR officials, treaty body members, civil society representatives, and other lawyers and human rights defenders from the ASEAN region in Geneva for the Human Rights Council. The programme also included meetings with lawyers from the Geneva Bar Association and a visit to the Geneva courthouse with observation of part of a civil trial. The participant gave very positive feedback about the experience, and the ICJ Geneva and Asia Pacific regional offices are providing follow-up support.

#### 4.2 European Union: Advocacy on proposed EU directive on counter-terrorism

During 2016, the trend to extend European counter-terrorism laws to criminalize certain forms of travel, expression or association with groups defined as terrorist continued with worrying consequences for freedom of expression, association and freedom of movement, and for discrimination against minority communities. In particular, the EU expedited consideration of a proposed Directive on counter-terrorism, published at the end of 2015, which addresses issues related to foreign fighters. The ICJ, in co-operation with other NGOs, worked throughout the year to press for the legislation to include stronger human rights safeguards, with language of sufficient precision to avoid arbitrary or discriminatory interference with human rights. A briefing paper, issued in February jointly by ICJ, Amnesty International, and Open Society Justice Initiative (OSJI), analysed the offences to be established under the Directive including offences of travelling for the purposes of terrorism and receiving training for terrorism, and made recommendations for amendments.

In parallel, the ICJ and the other NGOs held advocacy meetings with EU Member State representatives and MEPs. On 26 May, the ICJ, together with Amnesty International and OSJI, held a joint advocacy seminar on the proposed EU Directive on Combatting Terrorism, bringing together representatives of the EU institutions as well as national and international experts. This work influenced the proposal, in particular through the inclusion of stronger human rights safeguard clauses in the draft. However, in November in a joint statement, the ICJ and other NGOs highlighted that the final text of the Directive could lead to criminalizing public protests and other peaceful acts, to the suppression of the exercise of freedom of expression, including expression of dissenting political views and to other unjustified limitations on human rights.

#### 4.3 Advocacy at the UN on business and human rights

The ICJ has consistently called for the development of an international legally binding instrument to address the conduct of business enterprises and their impact on human rights, the State role in regulating business activities and ensuring victims of abuse with access to justice. This will complement and build on the existing UN Guiding Principles on Business and Human Rights. Coupled with effective national action, such an instrument would achieve a great advance in the protection of human rights in the context of global business operations. In engagement with the UN Human Rights Council, through official and informal meetings and side events, the ICJ urged the UN and Member States to facilitate civil society participation, particularly from the Global South, in the deliberations of the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with respect to Human Rights (OEIWG). The ICJ also called on States where major transnational corporations are headquartered to take part.

In October, the ICJ published *Proposals for Elements of a Legally Binding Instrument on Transnational Corporations and other Business Enterprises* prior to the second session of the OEIWG. The report recommends a series of substantive elements that it considers key to the contents of an effective treaty. The ICJ has also been an active member of global and regional advocacy networks on business and human rights.

During 2016, together with the Child Rights International Network (CRIN), the ICJ also published a practical guide on how to use the UN Committee on the Rights of the Child's 16th General Comment, which focuses on State obligations with regard to the impact of the business sector on children's rights. It is illustrated with practical examples of how NGOs have intervened on behalf of children, with advice on litigation, advocacy, and social mobilization. The ICJ and its partners are developing capacity building activities using the practical guide.

#### 4.4 Advocacy and training on counter-terrorism legislation, policies and practices

Recent counter-terrorism developments have demonstrated an almost unopposed resurgence of the militarized counter-terrorism paradigm at





a global level. The ICJ considers three main issues to be symptomatic of the global tendency to rely on a militarized response to the terrorist threat and to abandon the criminal justice centred approach:

- Increasing resort to states of exception, extraordinary and special procedures and measures bypassing the ordinary justice system, and military and special courts in countering terrorism;
- Recent global discussions and actions on countering the ‘foreign terrorist fighters’ phenomenon; and,
- Increased use by several countries of armed drones for targeted killings based on unclear, non-transparent, and unaccountable legal frameworks.

*The Counter-terrorism Legislation and Human Rights Advocacy Sharing and Strategizing (CLASS) project* aimed to ensure that counter-terrorism laws, policies and practices are in accordance with international standards of human rights law, particularly with regard to the administration of justice. The project specifically aimed to provide national civil society organizations (CSOs) with increased support from international CSOs in developing and implementing advocacy strategies, and to coordinate advocacy and litigation strategies among national and international CSOs.

To this effect, the ICJ organized a roundtable on resort to states of exception, use of extraordinary procedures and measures, and military and special courts in countering terrorism in Budapest, Hungary; a strategy meeting on the “foreign terrorist fighters” response and the administration of justice in Brussels, Belgium; and a consultation meeting on the development of an international advocacy and litigation strategy on targeted killings, also in Brussels.

From discussing successes and difficulties in advocacy and litigation in the field, participants were able to develop common advocacy and litigation goals, with a view to enhancing overall effectiveness of the efforts to promote the primacy of a criminal justice based approach, both domestically and internationally.

#### **4.5 South East Asia: Judicial workshop on guidelines on judging with a gender perspective**

In June, the ICJ in collaboration with UN Women, convened a workshop on “Judging with a Gender Perspective”, where representatives from the judiciaries of the Philippines, Indonesia, Thailand and Timor Leste, developed and adopted the *Bangkok General Guidelines for Judges in Applying a Gender Perspective*. The idea for these guidelines was first discussed at an ASEAN Judicial Dialogue hosted by the ICJ, UN Women, and the Supreme Court of Indonesia in Jakarta in October 2015. On that occasion, the Supreme Court of the Philippines volunteered to assume a leadership role in developing the guidelines. The ICJ worked with the Philippines Justice Teresita De Castro, providing substantive advice and support throughout the drafting process.

The Bangkok Guidelines take inspiration from an earlier text adopted by the Supreme Court of Mexico. They make clear that traditional and customary practices, and religious practices do not supersede



human rights protections and may not serve as a basis to undermine women's human rights. Therefore, they can be invoked to counter the emerging culturally relativist discourse in South East Asia that seeks to undermine the universality of human rights. Since their adoption, the Bangkok Guidelines have been widely shared throughout judicial networks of the region beyond the four countries initially involved. In the Philippines, the Guidelines have been used to evaluate gender responsiveness in the judiciary as part of the statutory gender audit of all Philippines government offices.

#### 4.6 Africa: Rights on arrest and pre-trial detention: a guide to international human rights standards

Published in September, this guide explains the content and scope of rights protections relevant for those detained, suspected or charged with a criminal offence, from the time of their arrest until trial, as established in African Union and UN standards. Arbitrary detention is prevalent in the African region, and many legal practitioners, human rights defenders, judges and policy makers possess insufficient knowledge of international standards. The original recommendation for this resource came out of a regional conference of the Southern African Chief Justices Forum (SACJF). The guide is a useful resource for those conducting trial observations and as an education and training tool for the legal profession in the African region.

## 5 International and Regional Standards: Domestic Implementation and Compliance

This new strategic direction was adopted as part of the ICJ's 2016-20 operational plan, in recognition of the need to support initiatives to ensure that international human rights law, which is universal in scope and application, is fully reflected in domestic law, policies, and practices around the world. The ICJ considers that judges and lawyers must play a principal role in responsibility for national implementation that can only be carried out by an independent judiciary and legal profession. In focus countries, the ICJ seeks to work with domestic actors in order to enhance national advocacy on the development and implementation of human rights compliant laws, policies and practices, through knowledge exchange and networking, country-level initiatives, support for human rights defenders and through advocacy and litigation.

In the countries of focus, the ICJ is also working with local partners and civil society organizations in order to respond to emerging human rights threats as they unfold. The ICJ has made practical interventions on institutional reforms, policies and measures where there is a risk of degradation of human rights protections. In this way, the ICJ has responded in Myanmar, the Philippines, Pakistan and elsewhere, as well as on the human rights situation of refugees, asylum seekers and migrants.



#### 5.1 Pakistan: Asia bibi's blasphemy case continues unresolved

In October, the ICJ issued a briefing paper concerning the blasphemy case against Asa Noreen (known as Asia bibi), a 45-year old Christian woman, sentenced to death for allegedly defaming the Prophet Muhammad in 2010. The Lahore High Court rejected her appeal in 2014 and the Supreme Court of Pakistan was scheduled to hear the case in October 2016 but the hearing was postponed after one judge recused himself. The Supreme Court has so far not upheld any convictions for blasphemy under Section 295-C of the Penal Code (defamation of the Prophet Muhammad). It has also raised concerns that individuals accused of blasphemy "suffer beyond proportion or repair" in the absence of adequate safeguards.

The briefing paper explains the allegations against Asia bibi and details the violations of international fair trial standards during her trial and the appeal. The case has become a touchstone of contention between liberals and Islamists and there have been frequent demonstrations by Islamist groups, calling for Asia bibi's execution. An earlier ICJ report, published in 2015, documented the systematic and widespread violations of the right to a fair trial in blasphemy cases in Pakistan. It also detailed many cases of judges who were harassed or intimidated, if they acquitted defendants in blasphemy cases. Taking this past situation into account, the ICJ has therefore called on the government of Pakistan to ensure judges and lawyers in Asia bibi's case are given adequate security to perform their duties independently and impartially.

#### 5.2 The Philippines: the ICJ condemns killings in the "war on drugs"

Following the inauguration of President Rodrigo Duterte in June 2016, there has been a marked erosion of respect for human rights in the Philippines, most dramatically highlighted in a campaign of extrajudicial killings that has resulted in over 7,000 killings of alleged drug users in police operations.

The ICJ has engaged intensively with policymakers (including at the highest levels of the executive and the legislature) and civil society, with a view to taking measures to prevent and redress these widespread violations. The ICJ has communicated to the President calling for him to clearly denounce arbitrary killings, carry out impartial investigations and to provide reparation to the families of victims. The ICJ briefed legislators on the investigation of extrajudicial killings, outlining the minimum investigatory procedures that should be carried out. The briefing was designed to increase awareness following a Senate hearing and it called for a Prosecutor-led investigation or an independent commission of inquiry.

#### 5.3 The Philippines: the ICJ opposes plans to reintroduce the death penalty

The Philippines government in 2016 has been seeking to restore the death penalty, reversing the country's abolition of capital punishment in clear breach of the country's international legal obligations. The Philippines abolished the death penalty in 2006 and became the first



ASEAN member to become a party to the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed at the abolition of the death penalty. However, in November 2016, the House of Representatives Sub-Committee on Judicial Reform began a hearing on a bill to restore the death penalty. A representative of the ICJ spoke at a hearing of the Sub-Committee, explaining that the reintroduction would breach the Philippines' international legal obligations, including under the 2nd Optional Protocol, which provides that a State may not reintroduce the death penalty once it has been abolished. The ICJ called on legislators to reject the initiative, especially at a time when the country is facing an unprecedented number of extra-judicial killings with apparent government complicity as part of the so-called "war on drugs".

#### 5.4 Europe: capacity building for access to justice for migrants and refugees



During 2016, the ICJ worked with lawyers across Europe to build their capacity for protecting the human rights of migrants and refugees. In October, together with the Organization for Security and Cooperation in Europe (OSCE) and the Serbian NGO *Grupa 484*, the ICJ held a three-day training on migration and international human rights law in Zlatibor, Serbia. The training focused on international protection of migrants and asylum seekers, access to territory and asylum and the principle of *non-refoulement*, in light of the mass movement of migrants and refugees. The training was based on the jurisprudence of the European Court of Human Rights, the UN human rights systems and EU law.

Also in 2016, the ICJ and ICJ-European Institutions worked to advance access to justice for migrant children in Europe through the project *Fostering Access to Immigrant Children's Rights* (FAIR project). Seven practical training modules were developed to enable lawyers to apply international human rights law when defending the rights of migrant children in national courts and to bring cases before international human rights mechanisms. The modules covered issues including the child's right to be heard, detention of children, economic, social and cultural rights such as rights to education, health and housing, as well as techniques for effective communication with child clients.

The first of a series of national trainings on these issues was held in November in Madrid, Spain. Implemented in cooperation with *Fundación Raices*, the course focused on the right to be heard and related procedural rights, age assessment and access to international human rights mechanisms, the best interests of the child, and the presumption of minority. A second course in Pisa, Italy, in cooperation with *Scuola Superiore Sant'Anna*, focused on the right to family life and on how to access international mechanisms effectively.

#### 5.5 Turkmenistan: seminar on human rights law in national courts

On 9 June, the ICJ conducted a seminar in Ashgabat, on international human rights obligations and national courts. Judges of the Supreme Court, representatives of the Prosecutor General's office, the Ministry of Justice, lawyers, and representatives of other institutions attended



the seminar, organized in cooperation with the Supreme Court of Turkmenistan and in coordination with the EU Liaison Office in Turkmenistan. ICJ commissioners and staff members participated in the event, including Justice Azhar Cachalia, judge of the Court of Appeals of South Africa, Justice Radmila Dacic, judge of the Supreme Court of Serbia, and Professor Andrew Clapham, Professor of the Graduate Institute of International and Development Studies in Geneva. Participants discussed international human rights law and standards, and shared comparative experiences from different jurisdictions. The event, the first held by the ICJ in Turkmenistan, was followed by the publication in November of the Turkmen translation of the ICJ Practitioners' Guide N° 1 *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*. This became the first comprehensive analysis of universal and regional instruments on this topic available in Turkmen and provides a foundation for future ICJ engagement on rule of law and the national implementation of human rights law in the country.

#### 5.6 Guatemala: the ICJ supports Constitutional reform in relation to the justice sector

In April, the government with the support of the UN Office for the High Commissioner for Human Rights (OHCHR) and the International Commission against Impunity in Guatemala (CICIG) issued a set of Constitutional reform proposals concerning the justice sector and launched a national dialogue on the subject. These reforms are designed to strengthen judicial independence, by making appointment procedures more transparent, establishing a clear judicial career path and strengthening the role of the prosecution services. In addition, the reforms include proposals to introduce legal pluralism, which would officially recognize the existence of indigenous jurisdictions to the extent that their operations accord with Guatemala's international human rights obligations, as reflected in, and the rights established by, the Constitution.

The ICJ is one of the civil society organizations whose advocacy is helping to drive the Constitutional reform process in Guatemala. To this end, the ICJ has participated in all stages of the national dialogue at both regional and national level, amounting to more than 20 round table sessions. It has also convened or co-hosted public forums, and attended advocacy meetings in Congress and with the CICIG.

In July, the ICJ convened a public forum in Guatemala City on Article 203 on the recognition of indigenous legal jurisdictions. Speakers included national indigenous judicial authorities and lawyers and an indigenous Congress representative. Judge Mariana Yumbay from Ecuador shared the experience of her country since Constitutional reforms incorporating legal pluralism were adopted.

The ICJ was also a member of the civil society Pro-Reform Alliance that met on a regular basis to discuss strategies in relation to the national dialogue process. In addition the ICJ participated actively in the weekly round table meetings convened by indigenous authorities to discuss strategies regarding the reform process on legal pluralism.



## The ICJ-European Institutions Office

The ICJ-European Institutions (ICJ-EI) Office is a non-profit organization established in Belgium in 2012, which shares the mission and vision of the ICJ to promote human rights through the rule of law. While independent of the ICJ, it is closely linked and co-operates with the ICJ and its partner organizations in the promotion and protection of human rights and the rule of law around the world.

In 2016, the ICJ-EI and the ICJ made representations to the institutions of the European Union and Council of Europe on issues of migration, counter-terrorism, and criminal justice. In particular, it made written and oral representations on human rights concerns regarding the proposed EU Directive on Combatting Terrorism. It also issued comments on the proposed Dublin IV regulation, regulating the country in which asylum seekers arriving in the EU should register their asylum application. The briefing highlighted the need to protect the right to an effective remedy, the principle of *non-refoulement*, and economic, social, and cultural rights.

The ICJ, in co-operation with ICJ-EI, also continued its work as a member of the Frontex Consultative Forum on Human Rights, with a particular focus on accountability of Frontex for violations of human rights.

In 2016, the ICJ-EI implemented a number of projects, including on the independence of the judiciary in Lebanon (jointly with Legal Agenda); on protection against discrimination of asylum seekers and unaccompanied child migrants in Serbia (jointly with *Grupa 484*); on access to justice and the rule of law in Swaziland (jointly with the Swazi Lawyers for Human Rights) and on strengthening civil society capacity for legal advocacy on socio-economic rights in South Africa (jointly with Lawyers for Human Rights).

In Europe, the ICJ-EI implemented an EU funded project on fostering access to immigrant children's rights (FAIR project) with partners in Bulgaria, Germany, Greece, Italy, Malta and Spain and on the rights of persons in need of international protection jointly with the Greek Council for Refugees. The ICJ-EI also co-operated with the ICJ on the implementation of human rights training courses and exchange programmes to improve the national justice systems in Central Asia.





## Communications

During 2016, the ICJ continued to improve its media coverage, with a significant increase in the number of press hits (40% increase) and presence in international media outlets (75% increase).

The gender and age profile of the visitors to the ICJ's website provides some interesting insights as to the inclusive nature of the ICJ's work and its capacity to attract a broad-based audience, including women and young people. During 2016, 57% of the ICJ's website visitors were female and 43% were male. In addition, women visitors consulted the website for longer periods of time and 60% of visitors were under the age of 35.

First started in 2014, multimedia has now become an indispensable communications tool for the ICJ. Video interviews were again produced for the Geneva Forum, through our partnership with True Heroes Films.

Video interviews are also supporting a new series of profiles introducing testimonials of ICJ women Commissioners and Honorary Members about their work to promote women's rights. The series was launched on 25 November 2016 to coincide with the International Day to Eliminate Violence against Women and the first day of the 16 Days of Activism Against Gender-Based Violence Campaign. In 2016, interviews were posted with Radmila Dragicevic-Dicic, Justice of the Supreme Court of Serbia and Hina Jilani, Advocate of the Supreme Court of Pakistan. Both women discuss their work to eliminate gender-based violence and despite the different socio-cultural challenges in the two countries, the two Commissioners share a similar commitment to promoting women's access to justice. Radmila and other women judges worked on issues of organized crime and human trafficking in Serbia despite the considerable personal risk involved, as the State could not guarantee their security. Hina was a co-founder of Pakistan's first all-female legal aid practice, and has worked tirelessly on women's access to justice, particularly in relation to domestic violence.

The interviews are inspirational in intent, and the Commissioners conclude with some remarks addressed to young women lawyers hoping to work in the area of women's human rights and looking for role models. This storytelling approach will be pursued in 2017.



## Financial Report

The ICJ's financial statements for the year ending 31 December 2016 were prepared in accordance with the Swiss Generally Accepted Accounting Principles applicable to charitable non-profit organizations (Swiss GAAP FER 21) and have been audited by the accounting firm Berney & Associates.

The consolidated financial statements comprise the ICJ International Secretariat, based in Switzerland with six regional and country offices (in Asia, Africa, Europe and Latin America), and its sister organization, the ICJ EI (ICJ European Institutions), based in Belgium.

Activities implemented during 2016 resulted in a slight decrease (8%) in expenditure, with a total operating expenditure of 8.4 million Swiss Francs. Of that total operating expenditure, 85.5% was earmarked for project activities and 14.5% was spent on global programme activities, governance, quality control and support services.

The majority of contributions are paid in Euros or other foreign currencies so the ICJ has continued to reduce costs incurred in Switzerland in order to mitigate the negative effect of the Swiss Franc appreciation. In addition, since only a small proportion (13%) of expenditure in 2016 was financed through contributions received in previous years, exchange losses due to the appreciation of the Swiss Franc were significantly lower than in 2015 and the result for the financial year was positive (a small surplus of 22,042 Swiss Francs).

Projections for 2017 are good, with a number of major multi-year projects and programme partnerships ongoing and new initiatives under discussion. Meanwhile, the ICJ continues to align financial and risk management policies and procedures with an effective results-based programme management framework and looks forward to working with partners to achieve the mission of the ICJ.

The consolidated Balance Sheet and Statement of Financial Performance for the Year Ended 31 December 2016 are provided here and a copy of the full audited financial statements may be obtained from the ICJ office in Geneva.



### Consolidated balance sheet as at 31 December 2016

(with comparative figures for 2015, in Swiss Francs)

Assets	2016	2015
<b>Current assets</b>		
Cash & cash equivalents	949'638	1'607'033
Grants receivable (short term)	3'772'754	5'205'864
Other current assets	43'317	251'073
Related-party debtor	111'727	1'793
<b>Total current assets</b>	<b>4'877'436</b>	<b>7'065'763</b>
<b>Non-current assets</b>		
Grants receivable (long term)	1'254'877	692'417
Tangible and intangible assets	-	107'353
Financial assets	69'331	69'884
<b>Total non-current assets</b>	<b>1'324'208</b>	<b>869'654</b>
<b>Total assets</b>	<b>6'201'644</b>	<b>7'935'417</b>
<b>Liabilities</b>		
<b>Short-term liabilities</b>		
Bank overdrafts	213	96
Operating liabilities	485'259	656'884
Accrued liabilities	105'854	62'338
Contributions received in advance	1'780	1'798
Financial commitments	-	436'000
<b>Total current liabilities</b>	<b>593'106</b>	<b>1'157'116</b>
<b>Restricted funds</b>		
Funds restricted to projects	5'542'724	6'735'004
<b>Total restricted funds</b>	<b>5'542'724</b>	<b>6'735'004</b>
<b>Capital of the organization</b>		
General reserves	44'424	494'159
Income / (loss) for the year	22'042	(449'735)
Currency translation differences	(652)	(1'127)
<b>Total capital of the organization</b>	<b>65'814</b>	<b>43'297</b>
<b>Total liabilities &amp; funds</b>	<b>6'201'644</b>	<b>7'935'417</b>

### Consolidated statement of income for the year 2016

(with comparative figures for 2015, in Swiss Francs)

Income	2016	2015
Contributions for projects	5'671'383	5'247'076
Contributions for the commission	1'844'446	1'958'847
<b>Total income</b>	<b>7'515'829</b>	<b>7'205'923</b>
<b>Operating expenditure</b>		
Staff	4'487'476	4'742'141
Meeting & travel costs	1'754'019	2'007'320
Consultancy fees	1'293'045	1'438'470
Publication and promotion costs	62'904	67'215
Communication costs	71'304	80'335
Office premises	614'863	626'821
Other administrative expenditures	103'122	85'154
Depreciation	108'231	83'380
<b>Total operating expenditure</b>	<b>8'494'964</b>	<b>9'130'836</b>
<b>Operating result</b>	<b>(979'135)</b>	<b>(1'924'913)</b>
Non-operating result, net	65'107	23'734
Financial expenses, net	(256'210)	(696'166)
<b>Intermediate result before change in funds</b>	<b>(1'170'238)</b>	<b>(2'597'345)</b>
Attribution to restricted funds	(5'671'383)	(5'247'076)
Use of restricted funds	6'863'663	7'394'686
<b>Change in restricted funds</b>	<b>1'192'280</b>	<b>2'147'610</b>
<b>Result for the financial year</b>	<b>22'042</b>	<b>(449'735)</b>

## List of Main Publications

### **Challenges for the Libyan Judiciary: ensuring independence, accountability and gender equality**

In this report, the ICJ calls on the Libyan authorities to revise the legislation governing the organization of the judiciary, the Supreme Judicial Council, (SJC), the prosecutor's office and the use of military tribunals in line with international law and standards on the independence and accountability of the judiciary and on gender equality.

### **Defenseless Defenders: Systemic Problems in the Legal Profession of Azerbaijan**

This report, published in Azeri, English and Russian, identifies the systemic weaknesses in the legal profession in Azerbaijan that have undermined its independence, leading to the harassment of independent lawyers and preventing them from playing their role in the protection of human rights.

### **Egypt's Judiciary: a Tool of Repression. Lack of Effective Guarantees of Independence and Impartiality**

The report documents the many ways in which the judiciary has been used as a tool to silence those suspected of opposing the military and executive in Egypt.

### ***El Quimbo: megaproyectos, derechos económicos, sociales y culturales y protesta social en Colombia***

The report (in Spanish) documents the impact of the El Quimbo dam project on the environment and on the economic, social, and cultural rights, of the people living in the Department of Huila, Colombia.

### **Handbook on Habeas Corpus in Myanmar**

This handbook describes legal practice in Myanmar since the reintroduction of the writ of habeas corpus in the country's 2008 Constitution.

### **ICJ Recommendations on the Independence of the Legal Profession in the Republic of Tajikistan**

Following an ICJ roundtable discussion held in Dushanbe in 2015, the ICJ was requested by the participants to provide an analysis of the reform process in that country and present its recommendations.

### **Illusory Justice, Prevailing Impunity**

Five years after the toppling of former President Ben Ali, this report highlights how legal and practical obstacles continue to undermine victims' rights to remedy and reparations in Tunisia.

### ***Industrias extractivas, derechos humanos y conflictos sociales en Perú***

The ICJ published a new report (in Spanish) providing an analysis of the impact of extractive companies on the economic, social, and cultural rights of many local communities in the country. Mining activities have resulted in massive social protests in Peru recently.

### **Judicial Accountability in Developing Countries**

Following a consultation meeting in Tunis on the topic of judicial accountability held in 2015, the ICJ published a thematic summary of the discussions held over the course of the two-day meeting.

### **Justice Locked Out: Swaziland's Rule of Law Crisis**

The report is a result of the International Fact-Finding Mission in Swaziland held in 2015 by the ICJ, in collaboration with the Africa Judges and Jurists Forum (AJJF), Judges for Judges Netherlands (J4J) and the Commonwealth Magistrates' and Judges' Association (CMJA). It provides findings and recommendations regarding the independence and accountability of the judiciary in the country.

### **Nepal: Human Rights Impact of the Post-Earthquake Disaster Response**

This report presents the results of a fact-finding study conducted in 2015 by the ICJ, in collaboration with the Nepal Bar Association. It focuses on the three disaster-affected districts of Gorkha, Dolakha and Okhaldungha with the aim of assessing the humanitarian response in the earthquake's immediate aftermath on the basis of international human rights law and standards.



**Practitioners' Guide No 1: International Principles on the Independence and Accountability of Judges, Lawyers, and Prosecutors**

The Turkmen version of this Practitioners' Guide was published in 2016. It is a comprehensive analysis of the existing standards and compilation of universal and regional instruments.

**Practitioners' Guide No 6: Migration and International Human Rights Law**

The Russian version of this Practitioners' Guide, published in 2016, is a comprehensive resource, with information on the protection afforded to migrants by international law and the means to implement it at national and international levels.

**Practitioners' Guide No 10: Enforced Disappearance and Extrajudicial Execution: the Rights of Family Members**

Initially published in Spanish in 2015, this Practitioners' Guide has now been translated into English.

**Practitioners' Guide No 11: Refugee Status Claims Based on Sexual Orientation and Gender Identity**

This Practitioners' Guide describes each element of the refugee definition under the Refugee Convention that is critical to understanding and delivering justice regarding claims based on grounds of sexual orientation and gender identity.

**Practitioners' Guide No 12: Women's Access to Justice for Gender-Based Violence**

This Practitioners' Guide is designed to support legal practitioners and human rights defenders involved, or interested, in pursuing cases of gender-based violence.

**Practitioners' Guide No 13: Judicial Accountability**

This Practitioners' Guide seeks to help practitioners ensure accountability for serious judicial misconduct, such as corruption or complicity in human rights violations, while preserving the independence of the judiciary.

**Pre-Trial Rights in Africa: A Guide to International Human Rights Standards**

This publication summarizes and explains the rights of those who are suspected of, or charged with, a criminal offence from the time of arrest until trial, as set out in standards of the African Union and United Nations.

**Serbia's judges and prosecutors: the long road to independent self-governance**

The report assesses the current state of the independence and accountability of the Serbian judiciary and prosecution service, and, in particular, the self-governance of the two professions under the High Judicial Council and the State Prosecutors' Council.

**State Obligations Regarding the Impact of the Business Sector on Children's Rights**

Jointly elaborated by the ICJ and Child Rights Information Network (CRIN), this guide explains how to make practical use of the United Nations Committee on the Rights of the Child's 16th General Comment.

**The Birth of a New Advokatura in the Kyrgyz Republic**

The report sets out the ICJ's observations and provides recommendations on the issues that should be addressed as a matter of priority in the course of the reform of the legal profession in the Kyrgyz Republic and creation of a unified bar association.

**Turkey: the Judicial System in Peril**

In this paper, the ICJ raises concerns regarding measures that erode the independence of the judiciary, prosecution, and legal profession in Turkey, because of their serious consequences for the protection of human rights.

**Uncharted Transition: the "Integration" of the Justice System in Kosovo**

This briefing paper provides a first assessment of the process of transition of the judicial system in Northern Kosovo from the Serbian to the Kosovar legal system.

**Newsletter**

ICJ E-Bulletin on counter-terrorism and human rights – nos. 99-107

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