

International Commission of Jurists
European Sections
Roundup of activity – Second Half 2011

International Commission of Jurists
Europe Programme, activities April – December 2011

Migration

The ICJ *Practitioners' Guide on Migration and International Human Rights Law* was published in April. The guide analyses international human rights law applicable to key aspects of migration, and is designed to support national lawyers and NGOs in using international human rights law effectively in national legal and political systems. The Guide has been distributed widely to individuals and organisations in Europe and beyond. It has received a very positive response from NGOs, IGOs and lawyers active in the field.

Following the publication of the Guide, a launch seminar was held in Brussels on 18 April, which brought together lawyers from six EU states, as well as NGOs active at an EU level, to discuss the crisis in the EU asylum system following the judgment of the European Court in *MSS v Belgium and Greece*. A report of the seminar was circulated.

At the September Human Rights Council, the ICJ organised, in co-operation with FIDH and Human Rights Watch, a side-event, *Migration and the Arab Spring*, addressing human rights concerns in migration from and within North Africa following the 2011 revolutions there.

In September, the ICJ undertook a mission to Malta, responding to concerns about protection of human rights of migrants and asylum seekers there. The mission included visits to closed detention centres and open reception centres, meetings with lawyers, NGOs, government and others. The ICJ also delivered three training seminars on human rights and migration for Maltese NGOs, organised jointly with the Maltese NGO Aditus and UNHCR.

Also in September, the ICJ published two Briefing Papers on the proposed recasts of EU Directives: the Asylum Procedures Directive and the Reception Conditions Directive, with detailed recommendations for amendment.

In October, the ICJ participated in a FRA seminar to plan for FRONTEX training in human rights. In November, the ICJ participated in a conference organised in Trieste by the Italian Association for Legal Studies on Migration about human rights and migration.

In October, the ICJ made written submissions for the Periodic Review of Greece by the Committee against Torture, addressing issues related to the asylum process and *non-refoulement*, and conditions of detention and living conditions for migrants.

Criminal Justice and Fair trial

In April, the ICJ sent an observer (ICJ Commissioner Gulnora Ishankhanova) to the appeal hearing of a controversial murder trial in the St Petersburg city court. Despite a decision to close the trial, the ICJ observer was able to meet with the judge and parties to the case. The appeal court quashed the conviction on the basis of procedural irregularities by the prosecution. A press release was issued at the conclusion of the trial and a full report is forthcoming. The ICJ also continued its observation of the trial of lawyer Sapiyat Magdomedova in Dagestan, Russia. In September, lawyer Tumas Misakyan observed, on behalf of the ICJ, hearings in the case of five police officers accused of assaulting Ms Magdomedova. The trial of Ms Magdomedova, in the case in which she is accused of insult and injury to the same police officers as part of the same incident, is expected to take place in 2012.

In April, the ICJ held a trial observation training seminar for 15 Russian lawyers in Nizny Novgorod, Russia, in co-operation with the Nizhny Novgorod Centre Against Torture, and with ICJ Norway. The same month, the ICJ also participated in a seminar organised by its affiliate organisation, the Independent Council For Legal Expertise, on jury trial in Russia.

In September, the ICJ finalised the Uzbekistan fair trial manual, designed as a tool for Uzbek criminal lawyers and setting out both national law and international standards relevant to the right to fair trial. The manual is now in the final stages of production and is expected to be published in December 2011.

In October, the ICJ produced a briefing paper on the Proposed Directive on Access to a Lawyer in Criminal Proceedings. In November, it submitted a written response, jointly with JUSTICE, on the EC Green Paper on Detention.

The ICJ held a five-day training course in Geneva, in October, for 25 lawyers from Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Armenia, on international human rights law relevant to the criminal justice process. The Training Seminar for Jurists from CIS Countries on International Case Law in National Criminal Proceedings, was organised in cooperation with ABA, and trainers included ICJ staff, Commissioners and other experts. The intensive course covered international law concerning fair trial, arbitrary detention, torture and ill-treatment and the right to life, and addressed the role and status of international human rights law in national law and court proceedings in CIS countries, as well as procedures for bringing individual complaints to UN treaty bodies. Participants held discussions with representatives of the UN treaty bodies and special procedures, and with Geneva-based NGOs, and attended a session of the UN Human Rights Committee.

Council of Europe Human Rights Mechanisms

The ICJ continued its work on reform of the European Court of Human Rights, in particular through advocacy in the run up to the Izmir Diplomatic Conference. The ICJ made written comments on the draft declaration, in co-operation with other NGOs, participated in a consultation meeting with the Turkish Presidency, and attended the Izmir Conference itself in April. The Conference's final declaration, though problematic, was in some aspects influenced by advocacy by NGOs including the ICJ. In November, the ICJ participated in an expert conference organised at Wilton Park by the UK Presidency of the Council of Europe, on the "2020 Vision for the European Court of Human Rights." The ICJ continued to work with a coalition of NGOs to influence proceedings of the Council of Europe Steering Committee on Human Rights on reform of the Court, through written submissions, and through participation in meetings of the Committee.

In June, the ICJ participated in an NGO consultation hearing of the Council of Europe / European Union committee responsible for drafting the EU accession agreement to the ECHR (CDDH-EU).

Conferences

The Programme also participated in a number of other conferences, including, in June, a conference organised by Interights and OSJI on enforcement of judgments of regional human rights courts; a high-level seminar on the role of National and Regional Mechanisms in the Implementation of UN Treaty Body Concluding Observations, organised by the University of Bristol; and a roundtable seminar of the International Centre for Counter

Terrorism and OSJI on Preventive Counter-Terrorism Measures and Non-Discrimination in the European Union.

Description of Some of the Main ICJ activities in the Period:

April to October 2011

This report is intended to cover the period April – October 2011 and will outline some of the highlights from the ICJ's programmatic activities during this period, beginning with the regional programmes and then turning to the thematic projects.

Regional Programmes

(i) Africa

The Africa Regional Programme continued to convene, and participate in, a wide range of seminars, missions, strategy meetings and colloquia over the last period.

For example, in May 2011 the ICJ co-hosted the annual general meeting of the Southern Africa Chief Justices Forum, in June 2011 in Senegal the ICJ co-hosted a Regional Symposium on the Enforcement of Judicial Decisions of the ECOWAS Community Court of Justice, in July 2011 in conjunction with the SADC Lawyers' Association and the Southern Africa Litigation Centre the ICJ hosted the 2nd Regional Legal Consultative Conference on recent developments pertaining to the SADC Tribunal and in September 2011 together with Citizens for Justice (CFJ) and the Judiciary of Malawi the ICJ hosted a Judicial Symposium on the Role of the Judiciary in the Enforcement of Economic, Social and Cultural Rights in Malawi. Meanwhile from 24-29 September the ICJ led a visit, financed by the Open Society Initiative of Southern Africa, by leading judges and lawyers from the Southern African region to the ICC in the Hague.

Also in the last period the Programme prepared a number of submissions and interventions.

For example, in August 2011, in the case of Judge Masuku in Swaziland, the ICJ sent a written brief to five senior judges in a variety of SADC countries and also sent an appeal to the Special Rapporteur on the Independence of Judges and Lawyers asking for urgent intervention in the case. The ICJ has continued to be particularly active in this case.

Meanwhile in May 2011 the Programme made a number of submissions during the annual session of the African Commission on Human and Peoples Rights.

(ii) Asia Pacific

ICJ work in Thailand continued during the last period although the ICJ is now winding down the extensive programme of work carried out during the last number of years. Recent activities included: an academic seminar for judges in September 2011 on the *Rule of Law and Strengthening Justice Administration in the Context of Emergency Laws Applied in the Southern Border Provinces*; a seminar in September 2011 for the Thai Ministry of Justice (MOJ) on *the Rule of Law and Human Rights in a Cross-Cultural Setting*; trial observations in key cases involving allegations of torture and violations of the freedom of expression. The ICJ also collaborated extensively with national human rights organisations in activities around the Human Rights Council's UPR of Thailand in October 2011.

In South Asia the ICJ's engagement focused on work with a regional network of national advocates to develop ICJ work on two key Rule of Law issues: statutory immunities that result in impunity in India, Nepal and Sri Lanka and judicial independence and accountability in Bangladesh and Pakistan. Meanwhile in September 2011 a high-level mission to Pakistan was carried out on the theme of judicial independence, with a particular focus on the Supreme Court. In Nepal core ICJ work on impunity, transitional justice and constitutional reform continued, including a number of strategy meetings and round-table workshops. An ICJ Report on Witness Protection in Nepal was also published in the last period.

Work has also begun to develop a new programme of work focused on ASEAN and the creation and strengthening of regional mechanisms for the protection of human rights in the ASEAN region.

(iii) Central America

In the last period, extensive work continued in Central American on the independence of the judiciary. For example, in July an ICJ Mission to Guatemala involving ICJ Commissioner José Martín Pallín was conducted concerning proposed constitutional amendments intended to ensure the independence of the judiciary. Among other things the mission met with high-level officials and legislators, as well as Supreme Court Magistrates. Meanwhile, also in July, ICJ President, Pedro Nikken, represented the ICJ on mission to El Salvador. Work on a report concerning the independence of the judiciary in Honduras is continuing.

Work on the abolition of the death penalty in Guatemala continued. Activities included training seminars for members of the judiciary in April and June 2011 on relevant human rights standards. Similarly work on economic, social and cultural rights continued in the region. Activities included a strategic litigation workshop in June involving participants from Colombia, Ecuador, México and El Salvador. Meanwhile, in Honduras work was undertaken to support the Non Governmental Truth Commission, with an ICJ consultant working with the Commission for a period of three months.

(iv) Europe

In the last period the Europe Programme has continued to build up a focus on migration and human rights in Europe. In this context the ICJ Practitioners Guide on Migration and International Human Rights Law was produced in April 2011. Subsequently the ICJ has held a number of events on migration and human rights in Europe, for example a seminar in April 2011 on non-refoulement in Europe and a series of training seminars in September 2011 for NGOs in Malta, combined with a mission on human rights and migration. Also during the last period the Europe Programme continued its work on Rule of Law and fair trials in Central Asia and Russia. Activities included: trial observation of a controversial murder trial in Russia (April 2011) and of a prominent human rights defender in Dagestan (September 2011); a training seminar on trial observation in April 2011 in Nizny Novgorod; a training seminar in Geneva in October 2011 for lawyers from Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Armenia, on international human rights law and criminal justice.

ICJ work also continued during the last period on reform of the European Court of Human Rights, including through participation in intergovernmental meetings and meetings of relevant Council of Europe Committees.

(v) Middle East & North Africa (MENA)

In the last period the ICJ responded to events in North Africa by sending high-level missions to Tunisia and Egypt in April 2011. In Tunisia, meetings were held with, among others, the Prime Minister, the Minister of Justice, officials at the Minister of Foreign affairs, members of the Tunisian Association of Magistrates, and the head of the Tunisian Bar Association. In Egypt, meetings were held with, among others, the Minister of Justice, Senior Officials of the Ministry of Foreign Affairs, members of the judiciary, the legal profession and civil society. Both missions were led by ICJ President, Pedro Nikken. Meanwhile in June 2011, jointly with

the Hisham Mubarak Law Center, the ICJ organized a regional seminar on constitutional reforms in times of transition to democracy, with a focus on the cases of Egypt and Tunisia. ICJ Commissioner Michelle Rivet took part in this seminar.

Happily, in the last period, ICJ Commissioner Muhannad Al-Hassani was released from prison. However following recent events in Syria, he has left the country due to security risks. Recently he visited Geneva in connection with his receipt in 2010 of the Martin Ennals prize for human rights defenders and to meet with UN officials, including members of the Commission of Inquiry on the events in Syria established by the Human Rights Council. The ICJ assisted with his schedule. In recent months the ICJ has issued public statements and made submissions to the UN Human Rights Council concerning the situation in Syria.

Thematic Initiatives

(vi) CIJL

Throughout the last period the CIJL continued to engage in advocacy concerning cases of judges and lawyers at risk. This included the submission of urgent appeals to the Special Rapporteurs on Independence of Judges and Lawyers and Human Rights Defenders in cases including: Adilur Rahman Khan, a lawyer and advocate before the Supreme Court of Bangladesh and Secretary of human rights organization Odhikar; Venezuelan criminal judge Maria Lourdes Afiuni; Nasrin Sotoudeh, an Iranian defence lawyer; Brazilian lawyer José Batista Gonçalves Afonso, and Justice Thomas Masuku, a judge of the High Court of Swaziland.

Also in the last period two missions on the subject of judicial independence were carried out. The first of these was to El Salvador in July 2011 led by Pedro Nikken, while the second was to Pakistan in September 2011. Meanwhile, in May 2011 the ICJ finalized and published the Legal Commentary to the ICJ Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis.

(vii) Economic, Social and Cultural Rights

Over the last number of months the Economic Social and Cultural Rights (ESCR) Project continued its work to advance justiciability and enforcement of economic, social and cultural rights. The ICJ is working with partners to support litigation, both through formal legal submissions and informal legal advice, in cases in Argentina, Canada, Guatemala and South

Africa. The ESCR Project is also working with other ICJ programmes and projects on a range of activities including: a workshop on strategic litigation in Guatemala, a judges symposium in Malawi on ESCR, and a project in Botswana on women's access to justice.

Also during the last period, the ESCR Project continued its engagement with the Committee on Economic, Social and Cultural Rights. Work included engagement with the Committee on draft General Comments, including on just and favourable conditions of work and sexual and reproductive health. Work also continued to support ratification of the Optional Protocol to the ICESCR. Throughout the last number of months the ICJ also continued its engagement with the drafting process of the Maastricht Principles on Extraterritorial Obligations of States, finalised and adopted in September 2011 at an expert conference in Maastricht.

(viii) Global Security & Rule of Law

In the last period, ICJ engagement on counter-terrorism and human rights continued, in the main through ICJ participation in conferences and seminars. The ICJ's UN representative has devoted a great deal of energy to this programme so as to maintain an ICJ presence on these issues. Activities included: an OSI expert consultation on national security and access to information; a special meeting of the Security Council Counter-Terrorism Committee; an ICJ Denmark seminar on the extraterritorial application of human rights law; an OSCE Human Dimension Implementation Meeting.

Meanwhile the ICJ continued to publish its monthly E-Bulletin on Counter-Terrorism and Human Rights, also establishing a Facebook page for the bulletin – the ICJ's first engagement with social media.

(ix) International Economic Relations

During the last period the ICJ project on access to justice and effective remedy in the context of human rights abuses involving corporations progressed. Country studies for DR Congo and Nigeria were finalised. In total ten country studies have now been produced and work is underway to prepare the global report.

Meanwhile ICJ engagement with a range of treaty bodies on business and human rights continued. For example the ICJ convened, jointly with the OHCHR, an expert meeting on Child Rights and the Business Sector in September 2011, bringing together members of the Committee on the Rights of the Child with relevant experts and intended to assist in the

elaboration of a General Comment of the Committee on the subject. In addition the ICJ has made a number of submissions to the Committee on country situations (e.g. Italy, South Korea) and business and human rights issues.

ICJ work regarding the Human Rights Council's role on business and human rights issues also continued during the last period. Among other things actions included a small expert meeting to discuss the feasibility of the development of an international binding instrument on business and human rights and advocacy regarding the Council's creation of a new working group on business and human rights.

(x) Sexual Orientation & Gender Identity (SOGI)

During the last period the ICJ SOGI project undertook significant work to finalise and publish a new ICJ publication: *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook*. The Casebook was published in August 2011 and is currently being disseminated widely.

The ICJ also engaged in advocacy at the UN Human Rights Council, working to support the adoption of the first Council resolution on sexual orientation, gender identity and human rights. The resolution calls for the OHCHR to prepare a study documenting discriminatory laws and practices against individuals on the basis of their sexual orientation and gender identity and the ICJ is now working to support the OHCHR in that regard.

Also in the last period the project made a number of legal interventions in important judicial and quasi-judicial proceedings. These included written submissions to the Supreme Court of Belize and to the European Court of Human Rights. In addition the ICJ gave expert testimony at a hearing of the Inter-American Court in a case against Chile regarding the parental rights of a lesbian woman.

(xi) United Nations Representation

During the last phase extensive ICJ engagement with the UN Human Rights Council and other UN human rights mechanisms continued.

Activities included monitoring sessions of the Council and organising side-events during Council sessions on a wide range of topics including: migration, accountability for violations of human rights, Zimbabwe and Thailand. The ICJ also carried out dedicated advocacy in

relation to particular issues. For example this included work to support the creation of a new Special Procedure mandate on truth, justice, reparations and non-recurrence; the renewal of Special Procedure mandates on business and human rights and counter-terrorism and human rights; the adoption of a resolution calling for the elaboration of technical guidance on a human rights approach to maternal mortality and morbidity; the holding of special sessions on the human rights situations in Libya and Syria respectively.

A number of ICJ interventions and statements were made during the last period including, for example, in the context of the Council's Universal Periodic Review of Thailand, Nepal and Syria. The ICJ also made a submission to the Committee against Torture regarding its draft General Comment on Remedy and Reparation for acts of torture and other cruel, inhuman or degrading treatment or punishment.

(xii) Women's Human Rights Project

During the last period the women's human rights project began implementing the ICJ project on obstacles to women's access to justice in three countries: Botswana, Kazakhstan and Thailand.

The first phase of the process has now been concluded in each country as work with local partners was completed to identify research-consultants and key-stakeholders. Meanwhile a series of workshops were held in Kazakhstan (June 2011), Botswana (August 2011) and Thailand (September 2011) bringing together key stakeholders to explore the obstacles women in each country face and secure their engagement in the process. The second phase of the process is now underway in each country with extensive field research and legal review being carried out.

Meanwhile the ICJ also continued to provide international legal advice on women's human rights issues to a range of stakeholders. Examples include the submission of an expert legal opinion to CEDAW in case against Peru concerning the right to effective remedy in the context of access to therapeutic abortions and extensive ICJ engagement with the CESCR on its draft General Comment on Sexual and Reproductive Health including through the joint-organisation and facilitation of an expert meeting in April 2011 in New York with members of the Committee.

(xiii) World Court of Human Rights

In September the ICJ and the Geneva Academy for Human Rights convened a colloquium of ICJ Commissioners and Honorary Members to initiate a discussion on a World Court of human rights. The conversation was intended to initiate the exploration of conceptual and strategic matters. ICJ Executive Committee member Leila Zerrougi participated in the meeting.

GERMANY

Since 1955, the German Section has sought to promote fundamental rights and the rule of law in Germany and abroad. The registered office is in Karlsruhe, where the Federal Constitutional Court is located. The Section cooperates with the ICJ in Geneva and other Sections, especially the Austrian and the Swiss Section. Since its foundation the German Section has held many meetings and conferences. It further carried out missions, observations of trials as well as elections, in order to enforce human rights and fair trial.

The Section is co-organiser of the “Karlsruher Verfassungsgespräche”, i.e. Karlsruher dialogues on constitutional matters which take place annually on the 22nd of May, the day before Constitution Day. In 2011 it dealt with the subject “Europe after Lisbon – quo vadis?” Finally the Section arranges study trips – e.g. in April 2011 to Bulgaria to gather information on the control of organised crime and corruption after the countries entry into the EU – and holds meetings with eminent foreign lawyers.

The German Section has about 250 members covering all fields of legal activity: eminent judges, lawyers, administrative officers, legal scholars, public prosecutors, notaries, corporate lawyers, editors on legal issues, etc.

The executive committee of the German Section consists of twelve elected members. President of the Federal Fiscal Court and former Judge of the Federal Constitutional Court Prof. Dr. h.c. Rudolf Mellinghoff will by the 1st of January 2012 be followed as chair by Judge of the Federal Constitutional Court Prof. Dr. Michael Eichberger.

In November 2011 the German Section held its 56th annual conference in Bremen on the topic “Direct Democracy”. This meeting which attracted quite some media attention focused on recent developments in constitutional law and politics, putting the question whether the concept of representative democracy is still up to date. It also questioned the limits of civic participation. Scholars of political and constitutional sciences, amongst them a professor based in Lucerne reporting on the Swiss experience, deputies, judges of the Federal Constitutional Court, lawyers, and company representatives discussed this topic vividly with a large audience during the three day conference. On the 1st of July 2011 the Section organized a one day conference in the German Bundestag on “European Law in the German Bundestag” which gave an insight in the efforts and achievements of the German Parliament in European Matters. Legal scholars, members of the German Bundestag and of the Austrian Nationalrat, officers of the administration of the Bundestag and a state secretary of a German Land contributed to this Berlin meeting. In October 2010 the section held its 55th annual conference in Würzburg on “Political freedom and protection of the Constitution”.

Further information on the German Section is published on its homepage:
www.juristenkommission.de

ITALY

The Italian section will change its website to www.jurahominis.it.

JUSTICE

UK Section

We are working with a group in Scotland to form a Scottish branch that will be known as JUSTICE Scotland. We have agreed a constitution and are proceeding to registration. We hope to hold a launch event in the spring or early summer.

1) Policy update

a) Human Rights

We responded to the Ministry of Justice consultation on the draft Defamation Bill and briefed parliamentarians on the control order replacement legislation, including oral evidence to the Public Bill committee; took judgment in the Supreme Court case of Cart/Eba on judicial review of Upper Tribunal decisions; responded to Nominet consultation on Domain Name suspension; Ongoing work concerning the NGO response to the Detainee Inquiry protocol; met with US State Department official concerning UK implementation of judgments of the European Court of Human Rights; Published the Rowntree-funded report on reform of the Regulation of Investigatory Powers Act and coordinated successful press work on the Report); briefed parliamentarians on the Public Bodies Bill, the Protection of Freedoms Bill and the replacement to control orders legislation (TPIMS Bill; including evidence to the public bill committee); submitted shadow report to the UN Human Rights Committee, as part of the Universal Periodic Review of the UK's compliance with international human rights treaties; met with the Secretary of State for Justice to discuss the Justice and Security Green Paper (participated in a number of round-table discussions on the implications of the Green Paper proposals); responded to the Commission on a Bill of Rights call for evidence on their discussion paper, on a Bill of Rights for the UK; attended FCO stakeholder group meetings to discuss UPR and reform of the European Court of Human Rights with relevant officials; worked on a joint NGO response to the UK proposals for reform of the European Court on Human Rights; spoke at a conservative party event on protection of privacy and coordinated JUSTICE's input into

a joint UK NGO letter to the leaders of the three main political parties to mark Human Rights Day.

b) Criminal Justice

Organised expert seminar for Conservative MPs/Peers as part of series of meetings for politicians of all 3 major parties; submitted an application to the Bromley Trust application for core funding (they have responded with an initial expression of interest); further work on potential new project on miscarriages of justice and progressing prisoners maintaining innocence (including meeting with Simon Creighton of Bhatt Murphy); meeting of Standing Committee for Youth Justice and discussion of constituting SCYJ as a charity/company; attended evidence session of Lord Carlile's inquiry into restraint of children in custody; joint briefing with Aegis Trust, Human Rights Watch and Redress on changes to arrest warrant procedure for crimes of universal jurisdiction for House of Lords Committee stage of Police Reform and Social Responsibility Bill; meeting with advisor to Sadiq Khan MP re criminal justice and human rights policy. Further work on policing project application including a meeting at Esmee Fairbairn Foundation attended by Roger on 30 June. This has since been rejected (see above).

We submitted written and oral evidence to Public Bill Committee re Legal Aid, Sentencing and Punishment of Offenders Bill (LASPOB). Met with SCYJ representatives regarding the youth justice provisions of LASPOB and submitted written evidence to the public bill committee. Submitted article for *Criminal Justice Matters* on anti-social behaviour. Supplementary work undertaken on Policing Commission project terms of reference and candidates for Chair of Commission ahead of final decision by Esmee Fairbairn 16 September. Work begun on Public Bodies Bill consultation (MoJ) and UK Border Agency family migration consultation. Work on briefings for Public Bill Committee on Public Bodies Bill and further amendments for LASPOB. Programme devised for Policing and Prosecution conference on 29 November and speaker invitations sent. Letter to DPP re anonymity for child defendants.

The sentencing and offences section of the LASPO bill was briefed for HL second reading, the Policing and Prosecution conference was organised and held. Work continued on the Police Station Project in getting the methodology up to speed and desk reviews. Briefings were written on LASPO and the Scotland Bill sections on the Supreme Court's role in criminal appeals

c) EU

We completed the Carloway Review on criminal law in Scotland (50 page response covering the whole system) and the defence handbook on EU criminal law. The EU presented proposals on the right of suspects to a lawyer and on rights for victims. We attended meetings with the government and NGOs on these and drafted briefings (the latter jointly with the Bar Council). We continued work on the role of the Supreme Court in Scotland and met with the Lord Carloway and his team in Edinburgh to follow up on our response to his review. With the help of the Scottish Advisory Group intern the response to the review was completed. Meetings were held in Dublin with the Irish EAW project team and concerning the police station advice review post *Salduz v Turkey* on whether lawyers should have a more active role. Work continued on reviewing the EAW project, measure C procedural safeguards roadmap and victims rights. Jodie Blackstock attended the ECBA conference in Cyprus and spoke on Measure C and an expert's seminar in Vienna on victims services. Preparation progressed on EAW case intervention in the UKSC. We gave evidence to the EU Justice sub-committee of the HL on EU criminal justice.

d) Access to Justice

Roger attended, and helped to organise, the biannual conference of the International Legal Aid Group in Helsinki. He contributed to the discussions on recent developments and the use of technology. We responded in the media to counter the 'economic cleansing' of the poor from the courts that will follow implementation of the government's proposed reforms of legal aid. We lobbied on the legal aid provisions of the LASPO Bill which will cut legal aid in England and Wales by a quarter.

2) JUSTICE publications

- a) *How to Appeal: a guide to the criminal appeals system* (3rd edition), published 1 June 2011. Publication supported by the Law Society Charity;
- b) *EU Criminal Procedure, A General Defence Practitioner's Guide*, ISBN 978 0 907247 52 4, Jodie;
- c) *JUSTICE Annual Review* 2011;
- d) *JUSTICE Members' Bulletin* – Autumn 2011;
- e) *JSHRN e-bulletin* – Autumn 2011;
- f) *Freedom from Suspicion: Surveillance Reform for the Digital Age*, 4 November 2011 Eric;
- g) *JUSTICE Journal* – Vol 8 no 2;
- h) *JUSTICE Bulletin* – Winter 2011.

3) Major briefings and papers

- a) Response to the Carloway Review, June, Jodie;
- b) Response to Ministry of Justice consultation on the Draft Defamation Bill, June, Eric;
- c) Briefing on the Terrorism Prevention and Investigative Measures Bill for 2nd reading in the House of Commons, June, Eric;

- d) Response to the Government Equalities Office consultation on the Equality and Human Rights Commission, June, Jemma;
- e) Police Reform and Social Responsibility Bill, joint briefing on clause 154 for House of Lords Committee stage, with Aegis Trust, Human Rights Watch and Redress, June, Sally;
- f) Legal Aid, Sentencing and Punishment of Offenders Bill, briefing for House of Commons Second Reading (sentencing provisions), June, Sally;
- g) Legal Aid, Sentencing and Punishment of Offenders Bill, briefing for House of Commons Second Reading (legal aid), June, Roger;
- h) Police Reform and Social Responsibility Bill, briefing and suggested amendments for House of Lords Report stage, June, Sally;
- i) Response to Ministry of Justice civil justice consultation, June, Roger/Jemma;
- j) Briefing on the European Commission proposal for a directive on the right of access to a lawyer, July, Jodie;
- k) Police (Detention and Bail) Bill, briefing for all stages, House of Commons, July, Sally;
- l) Briefing on the proposal for an EU regulation on mutual recognition of protection measures in civil matters, July, Jodie;
- m) Submission to Nominet on domain suspensions, July, Eric;
- n) Legal Aid, Sentencing and Punishment of Offenders Bill, Briefing for House of Commons Public Bill Committee (Legal Aid provisions), July, Roger/Jemma;
- o) Legal Aid, Sentencing and Punishment of Offenders Bill, Briefing for House of Commons Public Bill Committee (Sentencing provisions), July, Sally;
- p) Briefing on the European Investigation Order, Partial general approach, July, Jodie;
- q) Joint JUSTICE and CBA response to the European Directive on Victims Rights consultation, July, Jodie;
- r) Response to Parliamentary Ombudsman consultation, August, Roger;
- s) Public Bodies Bill, briefing for House of Commons Public Bill Committee, August, Sally;
- t) Response to the McCluskey review on the Supreme Court, August, Jodie and Scottish Advisory Group;
- u) Response to Ministry of Justice consultation on the Public Bodies Bill, September, Sally;
- v) Briefing on the Public Bodies Bill for Public Bill Committee, September, Sally;
- w) Briefing for the Holyrood Committee on the Scotland Bill, September, Jodie;
- x) Response to UK Border Agency consultation on Family Migration, October, Sally;
- y) Briefing on Terrorism Prevention and Investigative Measures Bill for House of Lords Committee Stage, October, Sally;
- z) Briefing on Legal Aid, Sentencing and Punishment of Offenders Bill for House of Commons Report Stage, October, Roger and Sally;
- aa) Protection of Freedoms Bill, Second Reading Briefing, House of Lords, November, Angela;
- bb) UPR, JUSTICE Submission to UN Human Rights Council, November, Angela;
- cc) TPIMS Bill, Briefing, Report Stage House of Lords, November, Angela;
- dd) Bill of Rights Commission Response, November, Angela;
- ee) Legal Aid and Punishment of Offenders Bill, Second Reading debate, November, Roger;
- ff) Joint response with ICJ, Response to EU Commission green paper on detention, November, Jodie;
- gg) Initial Response to the Carloway Report, November, Jodie;
- hh) Protection of Freedoms Bill, Grand Committee, December, Angela;
- ii) Legal Aid and Punishment of Offenders Bill, Lords Committee Stage, proposed amendments, December, Roger;
- jj) As above, amendments for first day of committee;
- kk) Joint NGO Briefing on the Reform of the European Court of Human Rights (contributed section on domestic implementation); 9 December (publication postponed to 10 January), Angela;

- ll) Scotland Bill, briefing and amendments on the role of the Supreme Court, December, Jodie;
- mm) Written and oral evidence on EU criminal procedure to HL EU Justice sub-committee, December, Jodie;
- nn) Written and oral evidence on the Carloway Review to the Justice Committee, Maggie Scott QC, December, Jodie.

4) Published articles

- a) Where's the Justice?', Roger, *New Law Journal*, 3 June;
- b) 'The State of Justice', Roger, *New Law Journal*, 10 June;
- c) 'More fees, less justice', Roger, *Law Gazette*, 16 June;
- d) 'Stunned into Silence', Roger, *Law Gazette*, 21 July;
- e) 'The State of Human Rights', Roger, *NLJ*, 22 July;
- f) 'As a lawyer and a citizen, I don't care where the right decisions come from', Niall McCluskey for JUSTICE Advisory Group Scotland, input from Jodie, *Scotsman*, 4 July;
- g) *The State of Human Rights*, article 3 in series, Roger, *New Law Journal*, 5 August;
- h) *The State of Human Rights*, article 4, Roger, *New Law Journal*, 12 August;
- i) 'No trade off on torture', Eric, *The Guardian*, 5 August;
- j) 'Will the Detainee Inquiry be Human Rights compliant?', Eric, *UK Human Rights Blog*, 15 August
- k) "Out of Order", Roger, *Law Gazette*, 15 September;
- l) 'Double Talk', Roger, *New Law Journal*, 30 September;
- m) 'The Cat and the Constitution', Roger, *Law Gazette*, 20 October;
- n) Article on legal aid in a Brazilian publication on 'Revision of Public Defence': 'Assistencia juridical gratuita aos hipossuficientes', Roger, October;
- o) 'Songs of Praise', Roger, *New Law Journal*, 28 October ;
- p) 'Regulation of Surveillance remains unsatisfactory', Roger, *Law Gazette*, 17 November ;
- q) *Lexis Nexis*, Legal advice waiver, Jodie ;
- r) 'No Room at the Inn', Roger, *Law Gazette*, 15 December, 1p ;
- s) 'Judges out on the stump', Roger, *New Law Journal*, 2 December, 1p.

5) Third Party Interventions

- a) *Cart v Upper Tribunal* [2011] UKSC 28 and *Eba v Lord Advocate* [2011] UKSC 29 re amenability of Upper Tribunal decisions to judicial review by the High Court in England and Wales and the Court of Session in Scotland; JUSTICE granted leave to intervene by way of written submissions, and represented pro bono by Alex Bailin QC, Aidan O'Neill QC, Iain Steele and Freshfields Bruckhaus Deringer LLP.
- b) *Al Jedda v United Kingdom*, 7 July, Grand Chamber of the ECtHR, concerning indefinite detention of UK/Iraqi national in Basra under UN Security Council Resolution 1546. JUSTICE represented pro bono by Shaheed Fatima and Iain Steele (joint intervention with Liberty);
- c) *Al Skeini v United Kingdom*, 7 July, Grand Chamber of the ECtHR – JUSTICE intervened before the House of Lords in 2007 but didn't intervene before Strasbourg due to a conflict in 2009 between the International Secretariat of the ICJ and Interights, in which we sided with the ICJ Secretariat
- d) *Al Rawi and others v Security Service and others* [2011] UKSC 34 and *Tariq v Home Office* [2011] UKSC 35; 13 July, joint appeals concerning the use of closed proceedings and special advocates in civil claims for damages and employment tribunals in national security cases respectively. JUSTICE represented pro bono by John Howell QC, Naina Patel and Herbert Smith LLP (joint intervention with Liberty).
- e) *PH, HH, BH and KAS v Director Prosecutions, Genoa and Lord Advocate* relates to rights of children under article 8 ECHR in extradition cases, permission granted. Hearing in March 2012,

- f) *Rabone v Pennine Care NHS Trust*, hearing 7-9 November, Eric and Jodie, whether there is a positive investigative duty under article 3 ECHR in cases of suicide of voluntary mental health patients being treated in a hospital setting.
- g) *XX v Secretary of State for Home Department (CA, Deportations with Assurances)* (Letters sent to the parties, with a view to application to intervene), Appeal concerns validity of deportation with assurances to Somalia. This is likely to be the one of the first cases on the scope and legality of deportation to states where a real risk of torture exists, subject to memoranda of understanding to be considered by domestic courts after the Strasbourg court delivers its judgment in *Othman v UK* (a case in which JUSTICE intervened) in early 2012.
- h) *Al-Khawaja & Tahery v UK* (Grand Chamber, ECtHR) Judgment, 15 December, Eric application on the legality of convictions based on hearsay evidence, where this evidence is the sole or decisive evidence on which conviction is based. Judgment that while safeguards could render a trial fair, the threshold for compliance with Article 6 ECHR was a high one. On the facts, there was a violation in the case of *Tahery*.
- i) *SS v SSHD (CA)*, judgment 19 December, Jodie, whether the hearing of closed evidence is subject to the fair trial rights set out in article 47 EU Charter of Fundamental Rights, and whether the CJEU should clarify the application of the Charter in these circumstances by way of a reference. The CA found that the closed evidence was inconsistent with the open evidence and ordered SIAC to reconsider its findings. It saw no need to refer to the CJEU since the point was being taken sufficiently in another case.

NETHERLANDS

The Dutch section of the ICJ, the NJCM, has been active in various fields in the past months; a selection of these activities is highlighted here.

In 2011 the NJCM has written and coordinated a joint NGO report for the UN Human Rights Council's second Universal Periodic Review in 2012; the report will become public once the government submits its report in March 2012. NJCM also intends to be involved in the UPR session in May-June 2012.

Moreover the NJCM has organised several events. Recently there has been a conference about the EU Charter of Fundamental Rights, which included speakers such as Judge Prechal from the European Court of Justice. 130 people attended this event, which dealt with several questions about the way national courts and the European Court of Justice are going to deal with the Charter, the relationship between the Charter and the ECHR and other pressing issues. Another recent NJCM event dealt with the issue of shadow reporting. This enabled various NGO stakeholders to share best practices and identify points of improvement for the process of writing, coordinating and lobbying around shadow reports for various UN treaties.

The NJCM is also engaged in the Dutch discussion about reform of the European Court of Human Rights: there are several concerns about the Dutch government's plans in this regard. The lobbying process will continue in spring 2012 when these plans are going to be debated in Parliament. The NJCM has also lobbied in several other fields; among other things, it has commented on the government's budget plans in relation to their potential effects on human rights.

Finally, the NJCM is pleased that the Dutch Parliament has agreed to establish a national institute for human rights (College voor de Rechten van de Mens). The NJCM took the initiative for establishing such an institute some 22 years ago; after years of lobbying, the institute is now a reality – it should become operational in 2012.

NORWAY

A brief up-date on ICJ-Norway's main activities lately

Here follows an update on only some of the issues which ICJ-Norway has focused on lately:

Possible extension of existing counter-terror legislation

In the wake of the events in Oslo July 22nd 2011, there have – expectedly – arisen many debates in Norwegian society.

One of these debates regards Norwegian counter-terror legislation. The chief of Norway's secret police's immediate reaction to questions as to why they hadn't managed to discover and stop the perpetrator before he managed to set off his bomb and later massacre 77 people, was that "not even STASI could have detected and stopped such a person" . However, the secret police has later requested that both criminal law and surveillance powers should be widened, in order to prevent such so-called "solo terrorists" from succeeding in the future. The Ministry of Justice has said that proposals for such legislation are being prepared.

Today's legislation criminalizes certain acts of violence as terror, if they are committed (or attempted) with the intent of terror. Also "preparation" of such acts is criminalized, but only if the preparation takes form of an agreement between at least two persons to commit a future act of terror.

The secret police already has authority to initiate preventive secret surveillance etc., if there is “reason to” survey whether a person is “preparing” to commit an act of terror – i. e. before there is even reasonable suspicion that someone has started such an act. And since “preparation” itself is criminalized, providing it takes form of an agreement (re: above), this means that surveillance can legally be initiated to disclose whether someone is *preparing to prepare* an act of terror.

What the Government is now contemplating, is to criminalize also so-called “solo preparation” of terror – i. e. preparations done by a single person, a “lone wolf”. This would also entail that the surveillance powers would extend to surveillance on persons to check if they might be “preparing” to “prepare” a future act of violence with intent of terror.

ICJ-Norway is aware of the fact that several other European states already have similar legislation. However, we believe that this type of legislation is beyond what should be accepted in a liberal democracy. Firstly; one would be criminalizing extremely vague actions, in a pre-crime fashion, where otherwise normal and completely legal behavior is deemed as criminal, depending on what intent the person in question might have *in mind* of doing in the future. This challenges both the rule of law in general and the presumption of innocence in particular. Secondly; the complementary widening of the surveillance powers of the secret police, would have few limitations and make it quite unforeseeable for citizens which behavior could make them a liable target for such secret surveillance.

ICJ-Norway has therefore participated actively in public and academic debate, against any such extensions of Norway’s already extensive counter-terror legislation.

Reform of the European Court of Human Rights

ICJ-Norway has engaged actively in – or, indeed, contributed to initiate – the national debate regarding Norway’s role in the Council of Europe’s ongoing discussions pertaining to reforming the ECtHR.

In this context, ICJ-Norway has emphasized the importance of not supporting the initiative from the UK, which Justice also addressed in a Joint Statement dated 4/11-2011, on the UK’s priorities and objectives for its chairmanship of the Committee of Ministers of the Council of Europe.

ICJ-Norway has delivered an official statement to the Ministry of Justice in this respect, and will be participating in formal meetings with Government officials in January. ICJ-Norway

asks the Government to state clearly that it will not support the UK initiative with regard to a “new” interpretation of the subsidiarity and margin of appreciation principle, which would in effect undermine the ECtHR’s role as having an effective “last word” when it comes to interpreting the ECHR and ruling on compliance in individual cases.

Corporation’s human rights obligations

ICJ-Norway has also focused particularly on Norwegian corporation’s human rights obligations, particularly when dealing in operations abroad, and in January ICJ-Norway is hosting a big seminar on the topic in Oslo, with the UN Guiding Principles on Business and Human Rights as a platform for the discussions. Participants include representatives from some of the major Norwegian multi-national corporations, such as Statoil and Aker – both of which have been involved in controversial activities abroad.

POLAND

Since 2002 we have been conducting a competition on Honorary Title ***The European Judge***. We select the best judgments (all types of courts) based on European Human Rights Convention, European law and Polish Constitution. In 2012 the will be 10 anniversary.

We run a program of activities called ***Lawyers pro bono***. Within this initiative we offer free legal aid mostly for prisoners and occasionally for those who cannot afford that. Additionally we take actions to promote pro bono activities among lawyers.

The Polish Section of the ICJ initiated in Poland a ***monitoring of candidates for Justices of the Constitutional Tribunal*** here. We have been doing that for over 5 years. During that time all elections to the Tribunal were monitored by the consortium of the NGOs we had established. On the model we proposed monitoring of the candidates for Prosecutor General and Ombudsman had been run as well.

Polish Section of the ICJ used to publish all important statements of the ICJ Geneva in Polish but due to absolute lack of interest from Geneva for this initiative (we applied twice for some support) it had been stopped.

Judiciary in Poland and in the world – a series of lectures and seminars on current issues of the judiciary. Among issues and guests can mention Robert Amsterdam speaking about human rights in Russia and interesting session on counter terrorism measures with special emphasis on judgment of the Constitutional Tribunal declaring unconstitutional provisions allowing destruction of the aircraft being supposedly under control of terrorists.

There are also smaller actions like for example: we support NGO running yacht club for handicapped people in legal matters or we monitor court hearing here and there.

Polish Section of the ICJ is participating in several international projects and actions. Let me mention two. One is the project run by JUSTICE on ENA. The second will be developed (it just started) jointly by International Senior Lawyers Project - Europe and Polish Section of the ICJ and is to include widely mediation into the cases brought before European Court of Human Rights.

Next year there will be 20th anniversary of the Polish Section. We plan a special session on this occasion. President of the ECHR Sir Nicolas Bratza accepted our invitation and very kindly promised to come.

SWITZERLAND

At the end of November we presented a position paper (advisory opinion) to the Swiss government concerning the implementation Lanzarote Convention of the COE (**Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of the Council of Europe**, CETS No.: 201), which you find on our homepage under: <http://www.icj-ch.org/deutsch/stellungnahmen.html> (in German only). On March 29 2012 we plan a conference about *long term safe custody for criminals*. Venue: Hotel Kreuz, Berne, Switzerland.