International Commission of Jurists
Commission internationale de juristes
Comisión Internacional de Juristas

P.O. BOX 216
81A, avenue de Châtelaine
1219 Châtelaine, Geneva,
Switzerland

TELEPHONE: +41 (0) 22 979 3800
FAX: +41 (0) 22 979 3801
EMAIL: info@icj.org
WEBSITE: http://www.icj.org

February 22, 2002

Dear Ambassador,

The International Commission of Jurists (ICJ), an international non-governmental organisation, consists of judges and lawyers who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights.

As you are aware, the United Nations Commission on Human Rights will hold its 58th session from 18 March to 26 April 2002. As in previous years, the ICJ will actively participate in the work of the Commission, drawing upon our legal expertise to assist constructively the Commission in its deliberations. In addition to raising our country-specific concerns, the ICJ will give priority attention to the thematic areas of economic, social and cultural rights, enforced disappearances, impunity, independence of judges and lawyers, terrorism, and torture. I would ask that, where possible, your Government give serious consideration to supporting the objectives discussed below.

Economic, Social and Cultural Rights

The ICJ will call upon the Commission to establish an inter-sessional open-ended working group to work on the creation of an optional protocol to the International Covenant on Economic Social and Cultural Rights (ICESCR). An optional protocol would provide for a mechanism to allow for the submission of individual complaints concerning the violation of economic, social and cultural rights, as enumerated in the ICESCR. Such a mechanism would also be an instrument for authoritative clarification of the scope and content of economic, social and cultural rights. Numerous questions remain regarding the existing draft Optional Protocol and a working group would be the appropriate forum for states and NGOs to hold discussions on fundamental concerns and constructive proposals with regard to this proposed international instrument. Many of these issues were addressed during a meeting of experts hosted by the ICJ on 30 November 2001. A report of the

meeting will be available during the Commission session. A great number of states already have voiced support for the creation of a working group.

Enforced disappearance

The ICJ believes that the inter-sessional, open-ended working group foreseen in Commission resolution 2001/46 (para. 12) should begin its work to draft a legally binding normative instrument for the protection of all persons from enforced disappearance. Existing international mechanisms are clearly inadequate for preventing and punishing the crime of enforced disappearance. The ICJ has drafted a table comparing the proposed provisions of the draft instrument with the existence or non-existence of similar provisions in other international instruments and/or case-law. This table will be made available during the Commission meeting. The ICJ believes that the working group should meet in two sessions during 2002. In addition, the ICJ considers that to achieve its objectives, the working group must be mandated to undertake its work with reference and due consideration to the Declaration on the Protection of All Persons from Enforced Disappearances; the Report to the Commission of the Independent Expert, M. Manfred Nowak (E/CN.4/2002/ 71), and the draft International Convention on the Protection of all Persons from Enforced Disappearance, transmitted by the Sub-Commission in its resolution 1998/25.

Impunity

The ICJ will call on the Commission to re-establish the procedure to examine the draft Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, resolutions 1998/53 and 1999/34). To achieve this end, the ICJ will request that the Commission appoint an independent expert charged with presenting to the Commission a revised version of the Set of principles, taking into account the views and comments of States, international organisations and non-governmental organisations.

Independence of Judges and Lawyers

The ICJ will present to the Commission the findings of the 11th edition of its publication, *Attacks on Justice*, which examines threats to the independence and practice of judges and lawyers worldwide. The report surveys the legal architecture in 47 countries relating to such questions as protection of judicial independence and freedom of association of jurists; means of selection, security of tenure and terms and conditions of employment of judges; the inappropriate use of special courts and military tribunals; and judicial corruption. In addition, the report catalogues the cases of at least 315 jurists who suffered reprisals for carrying out their professional duties from January 2000 until November 2001. Among these persons, 38 were killed, 5 disappeared, 44 were prosecuted, arrested, detained or even tortured, 23 physically attacked, 67 verbally threatened and 109 professionally obstructed and/or sanctioned. The ICJ will call on the Commission to

endorse the report and recommendations of the Special Rapporteur on the independence of judges and lawyers.

Terrorism

The ICJ is deeply concerned that a number of countries have adopted or are preparing to adopt measures to combat terrorism that may come into conflict or tension with principles of international human rights law. No doubt, all states, within the bounds of international law, have both the right and duty to combat and punish criminal acts, which, by their nature, objectives or methods, may qualify as acts of terrorism. Nevertheless, in carrying out such efforts, States should undertake to fully respect their obligations under international human rights and humanitarian law. As emphasised by the Commission in resolution 2001/37, "all measures to counter terrorism must be in strict conformity with international law, including international human rights standards". The ICJ therefore considers it important that the Commission request the Special Rapporteur on terrorism and human rights of the Sub-Commission on the Promotion and Protection of Human Rights, to carry out a study on the anti-terrorist measures adopted or considered in national jurisdictions in the light of state obligations under international law. The Special Rapporteur should take account the jurisprudence and observations of the UN human rights treaty bodies, particularly the Human Rights Committee's General Comment No. 29 (States of Emergency, article 4), with a view to identifying criteria that states must respect in the process of combating terrorism. In this regard, we would like to indicate that the ICJ has written a paper that will be published in English, French and Spanish, on international law applicable to terrorism issues.

Torture

The ICJ will call upon the Commission to adopt the text presented by the Chairperson of the Working Group drafting an Optional Protocol to the UN Convention against Torture, Ms. Elisabeth Odio Benito (Costa Rica), for adoption by the UN Economic and Social Council and the General Assembly. The Chairperson's proposal, a compromise reached after ten years of negotiations, would establish a two-pillar system of prevention through the creation of an international mechanism carrying out visits to places of detention and the establishment or nomination of effective independent visiting mechanisms at the domestic level. In January, the proposal received broad support in the Working Group, from varying regions of the world, as it was generally considered to be the best achievable compromise. The ICJ is convinced that establishing a system of preventive visits is imperative for safeguarding and advancing worldwide standards and practices concerning the treatment of persons deprived of their liberty and conditions of places of detention.

I would be grateful for your support in achieving the objectives outlined above. The members of the ICJ legal staff remain always available to discuss with your Government these issues or any additional matters concerning the work of the Commission.

Please accept the assurances of my highest consideration.

Yours sincerely,

Louise Doswald-Beck
Secretary-General