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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Written statement* submitted by International Commission of Jurists, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[17 January 2003]

*This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Impunity for those responsible for grave violations of human rights

1. The phenomenon of impunity for persons responsible for grave violations of human rights contravenes international obligations of States and represents a major obstacle for the full enjoyment of human rights. The Inter-American Court of Human Rights has defined impunity as the "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights".¹ Furthermore, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (1993) provides that "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."²

2. Impunity constitutes a violation of a State's international obligations which emerges once grave human rights violations have occurred. It is, in other words, an unlawful phenomenon. Impunity for those responsible for grave violations of human rights amounts to a violation of the State's duty to guarantee. The duty to guarantee has been defined by the United Nations Mission for El Salvador (ONUSAL) as a set of "obligations to guarantee and protect human rights...[and] consists of the duty to prevent conduct contravening legal norms and, if these occur, to investigate them, judge and punish the perpetrators and indemnify the victims".³ The State's obligation to prevent and eradicate impunity for human rights violations is implicitly recognised by the norms that establish the duty to guarantee.⁴

3. The Human Rights Committee has reiterated that impunity, both in law or in fact, for grave violations of human rights is not compatible with the States' obligations as provided in the International Covenant on Civil and Political Rights.⁵ The Committee has stated that "It is imperative that stringent measures be adopted to address the issue of impunity by ensuring that allegations of human rights violations are promptly and thoroughly investigated, that the perpetrators are prosecuted, that appropriate punishments be imposed on those convicted, and that victims be adequately compensated"⁶. With regard to impunity in law for grave violations of human rights, the Committee has reiterated that amnesties and other similar measures, which prevent the investigation, prosecution, judgement and punishment for its perpetrators, and reparations for the victims, contravene the International Covenant on Civil and Political Rights.⁷ The Committee has stressed that

1 The "Panel Blanca" Case. (Paniagua Morales et al). Judgement of March 8, 1998. Paragraph 173.

2 The World Conference on Human Rights - Vienna Declaration and Programme of Action, June 1993, United Nations document, DPL/1394-48164-October 1993-7M, Section II, paragraph 60.

3 United Nations Observer Mission in El Salvador, ONUSAL, 19 February 1992, United Nations document A/46/876 S/23580, paragraph 28.

4 The Duty to Guarantee is an element confirmed expressly in various human rights agreements: the International Covenant on Civil and Political Rights (article 2); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others. The International Convention on the Elimination of all forms of discrimination against Women (Article 2 (c)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the American Convention on Human Rights (article 1,1); the Inter-American Convention on the Forced Disappearance of Persons (article 1); the Inter-American Convention for the Prevention and Punishment of Torture (article 1); the African Charter on Human and Peoples' Rights. the Declaration on the Protection of All Persons from Enforced Disappearance; and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions .

5 Concluding Observations of the Human Rights Committee: Lesotho, 8 April 1999, CCPR/C/79/Add.106, paragraph 17;- Brazil, 24 July 1996, CCPR/C/79/add.66, paragraph 8.

6 Concluding Observations of the Human Rights Committee - Brazil, Doc. Cit., paragraph 20.

7 General Comment No. 20 on article 7, (Forty-fourth session, 1992) in Official documents of the General Assembly, Forty-seventh session, Addendum 40 (A/47/40), annex VI.A. See the following Concluding Observations of the Human Rights Committee: Argentina, CCPR/C/79/Add.46 -A/50/40, paragraph 144 and CCPR/CO/70/ARG, paragraph 9; Chile, CCPR/C/79/Add.104, paragraph 7; France, CCPR/C/79/Add.80, paragraph 13; Guatemala, CCPR/C/79/Add.63, paragraph 25; Lebanon, CCPR/C/79/Add78, paragraph 12; El Salvador, CCPR/C/79/Add.34, paragraph 7; Haiti, A/50/40, paragraphs 224 - 24; Peru, CCPR/C/79/Add.67, paragraphs 9 and 10 and

these kinds of amnesties contribute to create an atmosphere of impunity for those responsible for grave human rights violations and undermine efforts towards the reestablishment respect for human rights and the rule of law. These conditions are inconsistent with the obligations described by the Covenant.

4. The Inter-American Court of Human Rights has concluded that the "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defencelessness of victims and their relatives."⁸ The Court has emphasised that " If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."⁹ The Inter-American Court of Human Rights has considered that, according to international law, it is indisputable that "the State has the duty to prevent and combat impunity"¹⁰. Furthermore, the Court has pointed out that "all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognised by international human rights law."¹¹

5. Impunity for those responsible of grave human rights violations entails also the breach of the right to an effective remedy. The European Court on Human Rights has determined that the notion of an "effective remedy" implies not only the payment of compensation, but also the carrying out of thorough and effective investigations aimed at the identification and punishment of those responsible, and the effective access of the complainant to the investigations proceedings.¹²

6. Since 1991, the International Commission of Jurists has assisted Mr. Louis Joinet, the independent expert of the Sub-Commission for the Promotion and Protection of Human Rights, mandated with studying the issue of impunity for responsible of violations of civil and political rights. The work of the Expert concluded with a valuable report and a the Draft "*set of principles for the protection and promotion of (civil and political) Human Rights through Action to Combat Impunity*" (From now on, Draft Principles)¹³. The Draft Principles reiterate and incorporate the developments and progress in international law until 1997. The Human Rights Committee and the Committee against Torture have endorsed dispositions of the set of the Draft Principles, including, for example, the limitation of the jurisdiction of military tribunals' to crimes of a strict military nature, thus excluding jurisdiction over human rights violations.¹⁴ It is important to note that international

CCPR/CO/70/PER, paragraph 9; Uruguay, CCPR/C/79/Add.19 paragraphs 7 and 11 and CCPR/C/79/Add.90, Part C; Yemen, A/50/40, paragraphs 242 - 265; Croatia, CCPR/CO/71/HRV, paragraph 11;

8 Inter-American Court of Human Rights: Judgement of 8 March 1998, Case Paniagua Morales et al., paragraph 173.

9 Inter-American Court of Human Rights., Velásquez Rodríguez Case. Judgement of July 29, 1988. Paragraph 176

10 Inter-American Court of human Rights., Blake Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgement of January 22, 1999. paragraph 64.

11 Inter-American Court of Human Rights., Barrios Altos Case. Judgement of March 14, 2001, paragraph 41.

12 Judgement (preliminary) 18 December 1996, Case Aksoy vs. Turkey, Quoted in: Conseil de l'Europe, Vade-mecum de la Convention Européenne des Droits de l'Homme, Editions du Conseil de l'Europe, Strasbourg., 1999, 2° edition, page. 134.

13 See document E/CN.4/Sub.2/1997/20/Rev.1.

14 See Concluding Observations of the Human Rights Committee: Cameroon, CCPR/C/79 Add.116, 4 November 1999, paragraph. 21; Chile, CCPR/C/79/Add.104, 30 march 1999, paragraph. 9; Guatemala, CCPR/CO/72/GTM, 27 August 2001, paragraph. 10; Kuwait, CCPR/CO/69/KWT, paragraph. 17; Peru, CCPR/CO/70/PER, 15 November 2000, paragraph. 12; Dominican Republic,

mechanisms, particularly, the Inter-American Court of Human Rights¹⁵ and the Inter-American Commission on Human Rights,¹⁶ have referred to these Draft Principles.

7. Since 1997, several legal developments have taken place, both at the international and national levels, in the fight against impunity for grave violations of human rights. Thus, with regard to crimes against humanity, grave violation of human rights and universal jurisdiction, important jurisprudence, both national¹⁷ and international¹⁸, has emerged. Furthermore, the adoption of the Rome Statute of the International Criminal Court also represents a new phenomenon. These legal developments should be taken into account in an instrument such as the set of principles for the protection and promotion of (civil and political) Human Rights through Action to Combat Impunity.

8. The ICJ strongly believes that the adoption of an international instrument, such as the set of principles for the protection and promotion of (civil and political) Human Rights through Action to Combat Impunity would be a valuable contribution towards the eradication of impunity. This instrument would also be an important tool for States in the implementation of their international obligations. Therefore, the ICJ welcomes the decision of the Commission on Human Rights to reinitiate the study of the Draft Principles.¹⁹ Taking into account the numerous developments since the drafting of the draft Principles, in 1997, the Commission on Human Rights should appoint an independent expert with the mandate to submit a revised version of the Draft “set of principles for the protection and promotion of (civil and political) Human Rights through Action to Combat Impunity”. The revision should consider the developments in international law and the observations made by States and Non-Governmental Organisations, with the view to adoption by the Commission on Human Rights.

9. Finally, the ICJ believes that the problem of impunity related to the various forms of human rights violations should continue to be examined by the Special Rapporteurs, Working Groups and other thematic and geographic mechanisms of the Commission on Human Rights, as stipulated by the Commission itself in several resolutions²⁰. It is of importance that these mechanisms, within their respective mandates, monitor States' compliance with international obligations of the States in the fight against and eradication of impunity.

CCPR/CO/71/DOM, 26 April 2001, paragraph. 10; Syria, CCPR/CO/71/SYR, paragraph. 10; and Uzbekistan, CCPR/CO/71/UZB, 26 April 2001. See also Conclusions and Recommendations of the Committee against Torture: Peru (A/55/44, 15 November 1999, paragraph. 62) and Venezuela (A/54/44, 5 May 1999).

¹⁵See, for example, Judgement (Reparations), 22 February 2002, Case *Bámaca Velásquez vs. Guatemala*, paragraph 75, and Judgement 27 November 1998, *Castillo Páez vs Peru*, paragraph 48.

¹⁶See Report N°136/99, Case 10.488 *Ignacio Ellacuría S.J. et al (El Salvador)*, 22 December 1999; Report N° 37/00, Case 11.481 (El Salvador), *Archbishop Oscar Arnulfo Romero y Galdámez*; Report 45/00, Case 10.826 *Manuel Mónago Carhuaricra and Eeleazar Mónago Laura (Peru)*, 13 April 2000; Report 44/00, Case 10.820, *Américo Zavala Martínez (Peru)* 13 April 2000; Report 43/00, Case 10.670, *Alcides Sandoval et al (Peru)* 13 April 2000; Report 130/99, Case 11.740, *Víctor Manuel Oropeza (Mexico)*, 19 November 1999; Report 133/99, Case 11.725, *Carmelo Soria Espinoza (Chile)*, 19 November 1999; and Report 46/00, Case 10.904, *Manuel Meneses Sotacuro and Félix Inga Cuya (Peru)*, 13 April 2000.

¹⁷For example, by tribunals in Belgium; Spain; The Netherlands, the United Kingdom and Switzerland.

¹⁸Particularly, the Ad Hoc International Criminal Tribunals for Former Yugoslavia and Rwanda.

¹⁹Resolution 2002/79.

²⁰Particularly, in its resolutions 1998/53 (paragraph 8) and 1999/34 (paragraph 10).