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Presented by Mr. Roger Wareham

Item 11 on the Agenda: Civil and Political Rights:

Mr. Chairperson:

The International Association Against Torture views the effectiveness of the area of Civil and Political as being undermined by the same double standard in application which affects most other areas of human rights addressed by this body.

A disturbing global trend of infringement of civil and political rights can be seen most clearly in the United States.

Independence of the Judiciary in the US

The AICT commends the report of the Special Rapporteurs on the Independence of the Judiciary and Torture in regards to their actions taken vis a vis the United States (E/CN.4/2004/60/Add.1, para. 100).

The independence of the judiciary has been under attack since the US Congress passed the Omnibus Crime Control Act of 1984. That law set guidelines which eliminated nearly all discretion judges had in regards to sentencing convicted felons. In effect, it made the prosecutor, rather than the judge, the key figure in determining the length of sentence in the US criminal justice system. Just last year, the US Congress applied even tighter reins by passing a law that placed "federal judges under special scrutiny if their sentences fall *short* of Congressional guidelines. [Emphasis mine]"<sup>1</sup>

Another disturbing sign of the growing chauvinism and insularity of the US are two bills being considered in the U.S. House of Representatives that, if passed, **would condemn judicial reference to foreign and international law** (H Res 446 and H Res 568<sup>2</sup>). Both, even if passed, would be non-binding. But these bills represent the same mind set which is already seen in the US' total disregard for international law vis a vis its treatment of the detainees being held unidentified, lawyerless, incommunicado and indefinitely in the US prison camp in Guantanamo, Cuba. It is the logic that disregards international law when it interferes with a national policy of "regime change," – i.e., US coup d'etat against Haiti's President Jean Bertrand Aristide.

Infringement on Civil Liberties

The attack on the judiciary has been, since 9/11, accompanied by a steady infringement on civil liberties. While this can be seen most clearly in the USA PATRIOT ACT (passed by a frightened and panicked US Congress shortly after the attacks), it didn't end with that. Just three weeks ago, the Wall Street Journal reported, "In a little-noticed side effect of the war on terrorism, the **military** is edging toward a sensitive area that has been off-limits to it historically: **domestic intelligence gathering and law enforcement**. [emphasis mine]"<sup>3</sup>

Administration of Justice: Racism in the US Criminal Justice System

*"In 2002, the Justice Department reported that, if incarceration rates stay at current levels, nearly one in three black boys born in 2001 (today's 3-year-olds) would go to prison at some time in their life; the figure for Latino boys was one in six..."*

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<sup>1</sup> Weiser, Benjamin, "A Judge's Struggle to Avoid Imposing a Penalty He Hated," New York Times 13, Jan. 2004.

<sup>2</sup> "That it is the sense of the House of Representatives that judicial determinations regarding the meaning of the laws of the United States should not be based in whole or in part on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements are incorporated into the legislative history of laws passed by the elected legislative branches of the United States or otherwise inform an understanding of the original meaning of the laws of the United States."

<sup>3</sup> Block, Robert & Fields, Gary, "Is Military Creeping into Domestic Law Enforcement?" W.S.J., 9 March 2004.

*“Meanwhile, although our nation's two leading surveys show that white youths are substantially more likely to use and sell drugs than black youths, black teenagers are exponentially more likely to be incarcerated for drug offenses than white youths. A report released in 2000 by the Building Blocks for Youth initiative found that black youths represented 39 percent of drug cases petitioned for adult court, but 63 percent of cases tried as adults for drug offenses. Of youths locked up in juvenile facilities for the first time for a drug offense, the admission rate for black youths was an astonishing 48 times that of white youths; the rate for Latinos was 13 times the rate of whites. In Chicago, 99 percent of the youths automatically tried as adults for drug crimes from 1999 to 2000 were black.”<sup>1</sup>”*

### Political Prisoners in the US

The systemic racism in the US criminal justice system is compounded in regards to the status of the de facto but undeclared political prisoners incarcerated in the U.S. These are the generally unknown African-American, Puerto Rican, Indigenous, Chicano-Mexicano, Asian and white revolutionaries and militants of movements for radical political, economic and social change in the US. Sekou Odinga, Dr. Mutulu Shakur, Mumia Abu-Jamal, Sundiata Acoli are just some of the many whom the US labels as criminals for the political beliefs and acts which led to their surveillance, arrest, trial and incarceration. All are treated more severely and are serving much longer sentences than non-political prisoners convicted of the same offenses.

### Extra judicial and Summary Executions and Impunity: the US

Through its widespread use of the death penalty, the US continues to be the country that leads the world in state-sanctioned murder of convicted felons. These de jure murders have their complement in the summary execution of primarily Black and Latino males by various arms of law enforcement around the country. The perpetrators of these killings invariably receive impunity for their crimes. For example, just a few months ago, a white New York City police officer, patrolling the roofs with his gun drawn, killed Timothy Stansbury, an unarmed black teenager as he was crossing the roof of his building to go to a party in the next building. The Brooklyn District Attorney will not prosecute the police officer.

**Spain:** The Spanish government, like the US, has taken advantage of the antiterrorist rhetoric for its own narrow political interests by implementing exceptional measures against the Basque detainees. As the Special Rapporteur on Torture, Theo van Boven, has clearly stated in his report (E/CN.4/2004/56/Add.2) "the system as it is practiced [in Spain] allows torture to occur, particularly with regard to persons detained incommunicado". In the past two years he has received hundreds of complaints from Basque citizens arrested under the antiterrorist law. The removal of the five days incommunicado detention will be an important step towards ending this brutal practice.

### Chile

Other countries unfortunately follow the lead of the “world’s leading democracy” on the issue of freedom of expression. In his report on the situation of human rights and fundamental freedoms of indigenous people in Chile<sup>2</sup>, the Special Rapporteur, Mr. Rodolfo Stavenhagen, concludes that a discriminatory situation exists in regard to the freedom of speech of certain communities, particularly the indigenous, in Chile. The reality is that a powerful press duopoly set up during the Pinochet dictatorship restricts freedom of expression. It can be clearly seen in the continued ban on the newspaper *El Clarin* that was unjustly and illegally confiscated 30 years ago. Post-Pinochet era government has provided neither compensation nor restitution to the owner of *Clarín* nor allowed it to resume publication.

The AICT denounces this serious and lingering infraction of the right to the freedom of expression.

### **Conclusion:**

Mr. Chairman: In a world increasingly intolerant of diverse, dissident points of view, the independence of the judiciary, the freedom from torture and the right to freedom of expression are extremely important. The double standard which only sees human rights violations in the developing countries of the world but are blind to those in the developed world flies in the face of the Vienna Declaration and undermines the credibility of this body. We would ask that this body: condemn the curbing the independence of the judiciary in the US; condemn the denial of basic legal rights to the Guantanamo detainees; request that amnesty be awarded the long-term held political prisoners in the US; request that Spain repeal the 5-day incommunicado detention law; request that Chile lift the ban on *El Clarin*. Thank you.

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<sup>1</sup>Schiraldi, Vincent, “U.S. Juvenile Justice System in Black and White,” [www.chron.com/cs/CDA/ssistory.mpl/editorial/outlook/2359627](http://www.chron.com/cs/CDA/ssistory.mpl/editorial/outlook/2359627)

<sup>2</sup> (E/CN.4/2000/80/Add.3)