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EMINENT JURISTS PANEL on Terrorism, Counter-Terrorism and Human Rights

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Global inquiry concludes assessment of counter-terrorism laws, policies and practices in Israel and the Occupied Palestinian Territories

Members of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights concluded their visit to Israel and the occupied Palestinian Territories today. The Panel, an independent group of eight jurists appointed by the International Commission of Jurists (ICJ), is conducting a global inquiry on the impact of terrorism and counter-terrorism measures on the rule of law, human rights and humanitarian law. It was the sixteenth and final visit of the Panel, which will issue its global report in 2008. The visit was facilitated by the Association for the Civil Rights in Israel (ACRI), the Palestinian Centre for Human Rights (PCHR) and Al Haq. The panel members wish to express their sincere gratitude for their generous support.

Professors Vitit Muntarbhorn and Robert Goldman represented the Panel at the visit to Israel and the occupied Palestinian Territories. They met with leading lawyers, judges, prosecutors, academics, human rights organizations and civil society representatives in Jerusalem, Gaza and Ramallah.

They also held meetings with senior governmental officials. In Israel, they met with the Deputy Attorney General, senior representatives of the Israeli Defence Forces (IDF), of the Ministry of Justice and the Ministry of Foreign Affairs. They also met with the Chief Justice of the Supreme Court of Israel and the Chairman of the Knesset Committee on Constitutional Affairs. In the occupied Palestinian Territories, the panel met with President Mahmoud Abbas and other authorities. The members of the panel wish to express their gratitude to all those who appeared before it for their cooperation and wish to thank the authorities, Israeli and Palestinian, for their support and cooperation and frank and open discussions.

Issues raised during the visit:

The panel was told in its meeting with governmental officials that Israel faces very serious and long-standing security threats and that its measures taken in response thereto are justified and strictly necessary. These officials stressed Israel's strong democratic tradition with a system of domestic checks and balances. They also informed the panel that the construction of the wall serves security purposes and has resulted in a reduction of terrorist incidents in Israel. The panel was also told that the policy of targeted killings is necessary, as ordinary arrests may not always present a feasible alternative in an armed conflict.

In contrast, many of the participants at the hearings expressed concerns that many measures taken by Israel in response to security threats violate international human rights and humanitarian law. Among the most important concerns raised by those who testified were:

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- The consequences caused by the separation wall, its extensive system of checkpoints, permits and legal regulations and a system of separate roads for Palestinians and Israelis. Many interferences are the result of the inclusion of settlements creating a deeply winded route and deep fingers into the occupied Territories. Participants raised concern over the lack of implementation of the Advisory Opinion of the International Court of Justice, which had found the wall to be in violation of international law and that states must not recognize the situation created by the wall.
- The various restrictions of freedom of movement for Palestinians, which have been justified in the name of security, such as an increase in checkpoints, the wall and the requirement for internal permits to travel within the Occupied Territories, preventing access to work, schools, health facilities and family reunification.
- The use of interrogation techniques by the security services (ISA) in violation of the prohibition of cruel and inhuman or degrading treatment and possibly torture. The panel was told about the systematic use of forms of ill treatment of security detainees, entailing *inter alia* isolation, forms of sensory deprivations, humiliation, threats, and excessive measures of restraint.
- In addition, the panel was told of 'special interrogation methods' in a number of cases, similar to techniques of 'moderate physical force' outlawed by the Supreme Court in 1999. Those appearing before the panel noted that the techniques are based on an authorized policy and that there is routine justification of such practices on the basis of a 'necessity defence' under Israeli law.
- The denial of access to legal counsel for security detainees authorized by military courts for lengthy periods of time (up to a maximum 90 days) in the West Bank. Concerns were also raised regarding an effective right to habeas corpus for those detainees due to the secrecy of the evidence. Serious concerns were also raised as to the compliance of trials, including those of children, with fundamental due process standards by military courts in the occupied Palestinian Territories.
- The practice of administrative detention in the occupied Palestinian Territories at times for many years without charge or trial. Those appearing before the panel noted in particular the inability to test the information on which such detention is based as this information is neither disclosed to the detainee nor to his/ her lawyer.
- The increasing perception and stigmatisation in Israel of Arab citizens as a security threat. In this regard, participants referred, especially to the 'Citizenship and Entry into Israel Law', justified as a security measure, which excludes foreign spouses of Israeli Arabs from the process of obtaining naturalization. The panel was informed that exceptions have been introduced to provide in limited cases for residence permits for foreign spouses of Israeli Arab citizens. Further concerns relate to the denial of resident rights to foreign spouses in the occupied Palestinian Territories.
- The policy of 'targeted killings' by the armed forces. Opinions as to the legality under international law of targeted killings varied. Some participants voiced concerns over the Supreme Court's decision in 2006 and especially its interpretation of what constitutes 'direct participation in hostilities' which could result in the targeting of that person. Some also questioned whether the limits set by the court in its decision will result in any meaningful restraint in the use of the policy. Virtually all participants considered that in most cases arrest offered a viable and preferable alternative.
- Concerns were expressed to the panel over a lack of accountability for violations of human rights or humanitarian law through a lack of independent and effective investigations into deaths caused by the armed forces. Concerns were raised about the repeal of automatic investigations into each death and about proposed amendments to the compensation law which could limit compensation for wrongful death or serious bodily harm in counter-terrorism operations.

- Serious concerns were raised about the isolation of Gaza since 2005. The situation has been further aggravated by the closure of crossings to Gaza following the events of June 2007. This has created an increasingly serious humanitarian situation. The panellists were told that the closure of Gaza has resulted in serious difficulties for its residents to access health, education and work and for families to meet and live together. The panel was told that local residents viewed this as 'imprisonment' and 'collective punishment'.
- Participants expressed concerned about widespread and arbitrary deprivation of property rights of Palestinians in the occupied Territories.

The panel members heard also a number of concerns regarding the Palestinian authorities expressed by various interlocutors. For example:

- Most interlocutors accepted in principle that acts of violence against civilians not directly participating in hostilities are illegal. This would include suicide bombers and the indiscriminate use of rockets.
- They noted, however, that security claims by Israel precede the existence of the present situation and that distinctions have to be drawn between legitimate resistance to occupation and the targeting of civilians.
- There was a widespread perception that the global discourse on terrorism since September 11, 2001, has obfuscated the debate of the underlying problems posed by more than 40 years of occupation.
- The panel was also told about human rights concerns in the occupied Territories and in Gaza caused by a lack of control by the relevant authorities over militant groups. Participants told the panel about the declaration of a state of emergency by the Palestinian authorities for one month entailing the transfer of jurisdiction from civilian to military courts. In addition they were told about arbitrary arrests and detention in the wake of the event of June 2007.

Preliminary observation

The panel members are aware that issues pertaining to terrorism and counter-terrorism predate the events of September 11, 2001. They are also mindful of the complexity of the situation, including Israel's legitimate security concerns, and the effects of prolonged occupation over a period of more than forty years.

The members of the panel wish to emphasise that respect for the rule of law, international humanitarian law and human rights law are key elements for any successful strategy to address this long-standing situation and for the prevention of violence, including terrorist acts. In this regard the panel members note that in addition to international humanitarian law (laws of war), human rights law also applies to Israel and the occupied Territories, and is especially relevant in a situation of prolonged occupation.

The panel also notes that under international law states have the right and duty to protect those subject to its jurisdiction from terrorist acts. In this regard, the panel underlines the principle that the targeting of civilians not directly participating in hostilities is never permissible under any international law.

All actions taken to quell terrorist violence must be in accordance with the rule of law. In this regard the panel is concerned about possible proposals to curtail the jurisdiction of the Supreme Court of Israel in response to its decisions relating to terrorism. Experience has shown that oversight by an independent civilian judiciary is a key to any accountable counter-terrorism policy. The panel welcomes in this regard the non-extension of the emergency decrees by the Palestinian authorities, which had transferred jurisdiction from civil to military courts, and the report that no civilian was tried before military courts during the emergency.

The members of the panel were deeply concerned at the severe impact of the closure of Gaza on the exercise of the most basic rights of its residents. Moreover, the members of the panel, who also personally visited parts of the separation wall, were struck by its extraordinarily negative impact on the every day lives of the inhabitants in the occupied Palestinian Territories. This is further compounded by a disruptive system of check points, permits and other restrictions. The panel underlines the need to avoid measures which could lead to an exacerbation of tensions, alienation and violence.

Background

The Panel is composed of eight judges, lawyers and academics from all regions of the world. It exercises its mandate independently, with the logistical support of the ICJ Secretariat and its network of organizations. Arthur Chaskalson, former Chief Justice and first President of the Constitutional Court of South Africa, chairs the Panel.

The other members are Vitit Muntarbhorn (Thailand), Professor of Law at Chulalongkorn University in Bangkok and UN expert on human rights in North Korea; Hina Jilani (Pakistan), a lawyer before the Supreme Court of Pakistan and the UN Secretary General's Special Representative on Human Rights Defenders; Mary Robinson, now Head of the Ethical Globalization Initiative, and former UN High Commissioner for Human Rights and former President of Ireland; Stefan Trechsel (Switzerland), former President of the European Commission on Human Rights, and judge at the International Criminal Tribunal for the former Yugoslavia; Georges Abi-Saab (Egypt), former Judge at the International Criminal Tribunals for the former Yugoslavia and for Rwanda; Robert K. Goldman (United States), Professor of Law at American University's Washington College of Law, a former President of the Inter-American Commission on Human Rights and former UN expert on counter-terrorism and human rights; and Justice E. Raúl Zaffaroni (Argentina), a judge at the Supreme Court of Argentina.

The Panel has held hearings in Australia, Colombia, East Africa (Kenya, Tanzania and Uganda), the United Kingdom (in London on current counter-terrorism policies and in Belfast on lessons from the past), North Africa (Algeria, Morocco and Tunisia), the United States, the Southern Cone (Argentina, Brazil, Chile, Paraguay and Uruguay), South-East Asia (Indonesia, Malaysia, the Philippines and Thailand) and the Russian Federation, South Asia (Bangladesh, Nepal, Maldives, Sri Lanka and India), Pakistan, Canada, the Middle East (Egypt, Syria, Jordan and Yemen) and the European Union. The final report of the Panel is expected to be published towards spring 2008.

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