



EMINENT JURISTS PANEL

on

Terrorism, Counter-Terrorism and Human Rights

AN INITIATIVE OF
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Eminent Jurists Panel concludes hearings on counter-terrorism and human rights in Europe

Members of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights concluded their European Union hearing in Brussels this week. 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. This was the fifteenth hearing of the Panel's inquiry, and was organized by the ICJ in co-operation with the European Policy Centre, and hosted by Freshfields Bruckhaus Deringer. The Panel will issue a global report on terrorism, counter-terrorism and human rights in 2008.

Arthur Chaskalson, the Chair of the Panel, Robert Goldman, Hina Jilani, Vitit Muntarbhorn, and Raúl Zaffaroni represented the Panel at three days of public hearings on European experiences with terrorism and the development of counter-terrorism laws and policies by the European Union, the Council of Europe and various European States. They heard evidence from leading lawyers, judges and academics from Belgium, France, Germany, Italy, the Netherlands and Spain, representatives of European governments, European Union and Council of Europe institutions and national and international non-governmental organizations. They also held private meetings with representatives of the European Commission, the European Council, Members of the European Parliament, and representatives of the outgoing German Presidency of the European Union. The Panel members express their thanks to all those who participated in the hearings and to the officials who met with the Panel in Brussels.

Concerns voiced at the hearings

The Panel heard testimony expressing concerns about serious departures from international human rights law. Among the most important concerns raised by those who testified were:

- The role of some European states in supporting or facilitating the United States-led system of "extraordinary renditions", including secret and incommunicado detention, and the use of internationally proscribed methods of interrogation;
- The use by some European States of information secured through such methods and the presence of or participation by members of the security services of some European states in the interrogation of persons prior to or following their rendition;

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- The apparent failure of some European states to establish meaningful oversight and effective accountability of intelligence services, in particular military intelligence services;
- The reliance on secret intelligence by various European countries as a basis for administrative measures of a punitive nature, including deportations of persons suspected of involvement in or support for terrorism;
- The failure by some European states to respect the basic principle of *non-refoulement*, recognised by the European Convention on Human Rights and the United Nations Convention Against Torture, and reliance on diplomatic assurances against torture to justify the deportation of suspects to states known to use torture;
- The wide definition of offences in anti-terrorism legislation, including offences of membership of a terrorist organization, and offences of incitement to and apology for terrorism, which could result in persons engaged in legitimate political or social dissent being branded as terrorist;
- A tendency to increase periods of detention *incommunicado* prior to charges being brought against suspects, without adequate safeguards, including access to counsel during detention;
- The increasing scope of the collection of personal data for law enforcement, immigration and related purposes, without adequate safeguards being established to guard against the misuse of such information;
- The alienating effect of counter-terrorism measures on minority communities, particularly Muslims, who bear the brunt of powers vested in security services, sometimes applied in a discriminatory way.

The Panel heard concerns regarding the absence of fair and credible procedures for the inclusion of individuals or organisations on national, European Union or United Nations so-called “blacklists” that may seriously prejudice the rights of those affected. Concern was also expressed about the lack of fair procedures to remove persons wrongly “blacklisted” from the lists and compensated for the harm done to them. It should be noted that the Panel’s attention has been drawn to a recent Common Position of the European Council designed to mitigate some of these due process concerns in relation to the European Union lists.

Conclusions

The Panel recognises that serious terrorist attacks in Madrid and London, as well as terrorism-related activity in some European countries, have reinforced public and political concern for security. European states and the European Union have responded with legislation against terrorism. They have also enhanced systems of co-operation on counter-terrorism. Whilst acknowledging the need for effective cooperation between states to counter terrorism, the Panel emphasises that such cooperation must take place within a human rights framework, and must be subject to appropriate limitations and safeguards.

Renditions and Secret Detentions

The Panel is particularly concerned about evidence, including reports of the Parliamentary Assembly of the Council of Europe and the European Union Parliament, of the part played by some European states in supporting and facilitating “extraordinary renditions”. The Panel considers it unacceptable that any country, in Europe or elsewhere, should co-operate in renditions, which involve multiple violations of human rights, including the prohibitions on torture, enforced disappearances, and arbitrary or *incommunicado* detention. In light of the reports mentioned above, the Panel strongly recommends follow-up by European States and institutions of the European Union and Council of Europe, to hold those responsible for such practices accountable, and to ensure that the victims of renditions are accorded effective

remedies for violations of their human rights. Such effective accountability is vital to deter continuation of this practice in other parts of the world.

Accountability of the Intelligence Services

From the testimony it has heard, including in Europe, the Panel is convinced of the importance of effective supervision and accountability of all branches of the intelligence services, including military intelligence. The Panel urges European states to review and where necessary strengthen their systems of supervision of intelligence services, to ensure respect for human rights and the rule of law in all aspects of intelligence operations.

Diplomatic Assurances

The Panel is concerned that deportations are being undertaken on the basis of diplomatic assurances, as a preventative counter-terrorism measure by some European states. The Panel considers it unacceptable to deport persons to states that use torture, on the basis of diplomatic assurances that torture will not be used in that particular case. Assurances of this kind are unenforceable. Reliance on them in these circumstances is contrary to the obligation of *non-refoulement* to face a danger of torture or cruel, inhuman or degrading treatment, and undermines the absolute prohibition of such treatment in international law.

Impact of Counter-terrorism on Minority Communities

The Panel is concerned that the disproportionate impact of counter-terrorism measures on members of Muslim communities has an alienating effect. The Panel considers it essential that the concerns of these communities are addressed by making anti-discrimination measures a central part of counter-terrorism policies, at both national and European inter-governmental levels.

Background

The Panel is composed of eight judges, lawyers and academics from all regions of the world. The Chair of the Panel is Justice Arthur Chaskalson former Chief Justice of South Africa and first President of South Africa's Constitutional Court. The other members of the Panel are: Professor Georges Abi-Saab (Egypt), former Judge at the International Criminal Tribunals for the former Yugoslavia and for Rwanda and member of the WTO Appellate Body; Professor Robert K. Goldman (United States), former President of the Inter-American Commission on Human Rights and former United Nations Commission on Human Rights' expert on counter-terrorism and human rights, Hina Jilani (Pakistan), a lawyer before the Supreme Court of Pakistan and the UN Secretary General's Special Representative on Human Rights Defenders; Professor Vitit Muntarbhorn (Thailand), Professor of Law at Chulalongkorn University in Bangkok and UN expert on human rights in North Korea; Mary Robinson (Ireland), 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; and Justice E. Raúl Zaffaroni (Argentina), a judge at the Supreme Court of Argentina and former Director of the United Nations Latin American Institute for Crime Prevention. The Panel exercises its mandate independently, with the logistical support of the ICJ Secretariat and its network of organizations.

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), the Russian Federation, South Asia (India, Sri Lanka, Nepal, Pakistan, Bangladesh and the Maldives), Canada, and the Middle East (Egypt, Yemen, Jordan and Syria). The Panel will publish a global report in 2008.

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