



INTERNATIONAL COMMISSION OF JURISTS

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IMMEDIATE RELEASE

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10th session of the UN Human Rights Council: ICJ urges unconditional protection of civilians in emergencies and renewed commitment to human rights in counter-terrorism

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The International Commission of Jurists (ICJ) urged the UN Human Rights Council as it opened its 10th session in Geneva to adopt new mechanisms for enhanced protection of civilians in times of *de facto* and *de iure* emergencies, including in armed conflicts. It is essential that the Council start using its multiple instruments to address gross violations in individual countries. Participants at the High-level segment are expected to articulate measures to remedy damage done in counter-terrorism, which requires a renewed commitment to human rights and rule of law principles.

“Capacity to prevent major violations of human rights should serve as a measure of the Council’s effectiveness. The Council has to reconsider its action on Somalia, Gaza, the Democratic Republic of the Congo and a lack thereof on Zimbabwe and Sri Lanka,” stated Lukas Machon, ICJ Representative to the UN. A failure to deal with the sources of serious violations of human rights, including impunity and a lack of security, legal and other reforms has often fuelled a political and economic instability or armed conflicts in those countries. The ICJ demands that the Council create a dedicated mandate to help indicate emergence of violence against civilians in conflict situations and bolster accountability of its perpetrators.

The Council Special Procedures’ regular access to the UN Security Council would be instrumental for ensuring an effective early warning, prevention and investigation of gross violations of human rights of civilians. Such an interaction should help the Security Council to deal with forgotten crises, including the war waged in Sri Lanka. “But the flow of information from the peace-keeping missions’ human rights components to the Human Rights Council is equally important,” added L. Machon.

Several serious country situations require the Council’s immediate attention. As progress in the peace-talks in the Democratic Republic of the Congo has not spared the country from a recent escalation of violence, including rape and other sexual assaults, the Council has to address the deliberate attacks against civilians, increasingly used as a means of war. Only a few victims of human rights violations have benefited from remedies, including reparation, as most of such violations have been committed by a military and security personnel falling under the jurisdiction of military tribunals, instead of the ordinary courts, which has resulted in impunity. “The Council must re-establish a comprehensive mandate – a group of experts on the DRC, to prevent vicious violence, boost a full implementation of human rights standards and their integration in the peace-process, as requested by the latest experts’ report on the situation in the DRC,” continued L. Machon.

In Sri Lanka, about 200.000 civilians are held hostage due to an armed conflict in Vanni region. Many civilians have been exposed to unlawful killings, abductions and recruitment of child soldiers by the LTTE. The Government has restricted civilians’ entry to the safe zones and exit from the conflict area. The ICJ calls on the Council to urge an immediate cease-fire and provisions for safe humanitarian corridors as both parties must ensure protection of civilians and observe international humanitarian law. Moreover, the Council should request the UN Security Council to deploy an international monitoring presence to facilitate resettlement and unhindered humanitarian assistance to the internally displaced persons. Independent screening procedures at the camps for internally displaced persons and access of

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journalists thereto would help avert humanitarian catastrophe and bolster accountability, as impunity for human rights violations remains widespread.

The recent killing of a journalist, Lasantha Wickramatunga, highlights the persistent attacks on journalists, human rights defenders and media workers, and should prompt an impartial and independent investigation. The UN Secretary-General is requested to appoint a Special Representative to engage the Government in a meaningful dialogue in order to end the conflict and renew Sri Lanka's commitment to human rights.

Enforced disappearances ravage many countries, including Nepal. It is essential that the Government of Nepal as well as all other Governments cooperate with the Working Group on Enforced or Involuntary Disappearances in order to clarify the fate and whereabouts of the disappeared persons, including by unconditionally accepting requests for visits by the Working Group.

Given the large-scale impunity, the Government of Nepal must expeditiously amend the Disappearance Ordinance passed on 10 February 2009 by the executive decree - bypassing the Constituent Assembly, which failed in ensuring an adequate investigation of the crime of disappearance in accordance with the ruling by the Nepali Supreme Court of June 2007. To ensure accountability of the perpetrators of enforced disappearance, the ICJ calls on Nepal as well as other countries to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Zimbabwe's humanitarian and rule of law crises continue despite the power-sharing agreement and the formation of the Unity Government. It is incumbent upon the new Government to ensure accountability for the election fraud, all election-related violence and the suppression of rights and freedoms of opponents and human rights defenders. The role of the regular justice system is essential and cannot be replaced by a truth and reconciliation process. The Council must urge immediate steps to address a dire humanitarian situation impacting most of the population. The Government must also be requested to release immediately those human rights defenders and opponents that remain arbitrarily detained, guarantee the right to a remedy and reparation to the victims and refrain from plans for further seizures of farmers' property. It is essential that the new Government also agree to a strengthened country presence of the OHCHR and accept assistance of the relevant Special Procedures in order to address past injustices.

On Gaza, the Council is expected to expedite the work of the fact-finding commission tasked at the 9th special session with assessment of a volatile human rights and humanitarian situation in the Occupied Palestinian Territories and recommendations thereon. The ICJ recalls that a fact-finding investigation should address the violations of international human rights and international humanitarian law by all parties to the recent conflict.

Colombia deserves imminent action by the Council, as the volatile situation has further deteriorated, such as through threats to the members of the judiciary, including judges of the Supreme Court of Justice, for their involvement in criminal proceedings to investigate gross human rights violations and paramilitary activities. The Inter-American Commission on Human Rights already ordered the Government to adopt interim measures of protection. Moreover, the Council should address the recent discoveries of extensive unlawful tape-recording and other intelligence activities by the State security agency against human rights defenders, opponents, journalists and members of the parliament and the judiciary.

A capacity to protect civilians in armed and other conflicts is closely linked to the issue of administration of justice by military tribunals. It needs to be recalled that the Draft Principles on the Administration of Justice by Military Tribunals drafted by E. Decaux, an expert of the former Sub-commission on Human Rights, are yet to be adopted by the Council. In a related development, the ICJ adopted at its December 2008 Congress the Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crises, in which it pointed to the

fundamental role of the civilian judges, lawyers and prosecutors in the protection of human rights in times of crises as well as to the importance of the principles of judicial independence and access to justice for the protection of human rights and preservation of the rule of law.

Following the launch of the Report of the Eminent Jurists' Panel on Terrorism, Counter-Terrorism and Human Rights: *Assessing Damage, Urging Action*, the ICJ calls for a thorough stocktaking process to be undertaken at the UN and regional and national levels, to bring counter-terrorism policies and practices into line with human rights law and rule of law principles. The ICJ calls for an immediate end to repugnant practices in violation of human rights, such as torture and secret detention and for the rejection of the "war on terror" paradigm. Criminal justice systems should be at the heart of efforts to prevent and counter terrorism. The Council, and the Special Rapporteur on human rights and counter-terrorism, must cooperate in addressing the growth of intelligence agency powers without an adequate legal framework, which has resulted in a harmful gap in accountability. The due process guarantees also require stringent limits on secretive proceedings and use of secret evidence in criminal procedures.

The ICJ calls on the Council to elaborate a comprehensive action plan to help integrate rule of law principles and human rights standards into the national response to terrorism. "The time has come for the Council to assist in bridging the security and human rights perspectives and provide for a coherent and effective response by the UN," concluded L. Machon.

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