



INTERNATIONAL
COMMISSION
OF JURISTS

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

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IMMEDIATE RELEASE

INTERNATIONAL PANEL ENDS HEARING IN SOUTH EAST ASIA

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The “Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights” ended today its sub-regional hearing for South East Asia. State officials, lawyers, representatives of civil society groups and members of parliament from Indonesia, Malaysia, Thailand and the Philippines intervened at the two-day public hearing in Jakarta, the ninth of a series of hearings held around the world by the Panel. During its visit, the Panel members also met privately with the Vice-President of Indonesia.

The Panel wishes to thank all participants for the information provided at the hearing. It also thanks Imparsial for the invaluable assistance in the organization of this event.

Justice Raúl Zaffaroni (Argentina), Judge of the Supreme Court of Argentina and former Director of the United Nations Latin American Institute on Crime Prevention (ILANUD) and Professor Vitit Muntarbhorn, Professor of Law at Chulalongkorn University, Bangkok and UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, attended the hearing on behalf of the Panel. The Panel is an independent group of eight highly respected judges, lawyers and academics, appointed by the ICJ in October 2005 to study the impact of terrorism and the fight against terrorism on human rights and the rule of law internationally.

The South East Asia region has experienced a number of tragic and indiscriminate terrorist attacks in recent years. Many States in the region also have a history of long-running internal conflicts with separatist and communist groups. During the hearing the Panel heard from participants that members of these groups are now characterised by Governments as terrorists.

A number of States in the region are in the process of instituting democratic reforms after authoritarian periods of government. Concerns were expressed that reforms may be undermined by the adoption of counter-terrorism legislation that grants increased powers to security forces (including the police and the military), and intelligence agencies, where those bodies may retain an abusive or corrupt institutional culture developed under previous authoritarian regimes.

Other participants were of the view that there was a need to effectively criminalise offences preparatory to terrorist acts, including financing, logistical preparation and the network of support. There were a variety of views as to whether this

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could be achieved by enactment of Anti-terrorism laws or revision of old Penal Codes.

Participants noted the challenge facing Indonesia, of responding effectively to terrorism whilst progressively reforming state institutions. Whilst the use of the criminal justice system to respond to terrorism was welcomed, a number of Indonesian participants expressed concerns on provisions of the Indonesian anti-terrorism law, adopted in the aftermath of the first Bali bombing in October 2002. These included the potential application of the law against a wide range of persons, including non-violent supporters of separatist movements in Aceh and in Papua; the possibility of pre-charge detention, without judicial oversight, for seven days and the use of classified intelligence information by law enforcement agents during preliminary investigations. Participants also expressed concern about the proposals for a law granting wider powers, including powers of arrest and detention, normally reserved to law enforcement bodies, to the State Intelligence Body.

Concerns were also expressed by a number of participants from the Philippines about the counter-terrorism bill adopted by the House of Representatives and the bill currently before the Senate, including the broad definition of terrorism, the granting of law enforcement powers to the military to arrest and detain and provisions permitting detention of suspects for up to 15 days without access to a judicial authority, an important safeguard against torture or ill treatment.

The Panel noted with concern the information received concerning recent increases in numbers of extra-judicial killings, enforced disappearances and torture in Southern Thailand as well as in the Philippines against persons suspected of links with left-wing groups. Participants also highlighted the increasing alienation of Southern Philippines Muslims, their fear that terrorism legislation, if enacted, may be used to target their community and the large number of internally displaced people in the region.

The Panel also heard concerns that the Internal Security Act of Malaysia, modelled on old colonial regulations, is now justified by the State as an important counter-terrorism tool. The Act allows for arrest and detention by the police for a period of up to 60 days and grants to the executive the power to detain any person posing a security threat for up to two years with no judicial review of the executive decision. Participants noted that civil society has, since the 1960s, been calling for the reform or repeal of the legislation due to its inconsistency with international human rights law and its use in the past to control political dissent. Participants noted that whilst there are proposed amendments to the Criminal Code related to prosecution of terrorism related offences, there is no incentive to carry out such prosecutions when administrative detention without judicial review is available under the Internal Security Act.

Participants from Thailand highlighted their concerns with the Emergency Decree enacted in 2005, justified by the former Government as necessary to counter terrorism. They emphasised that the enactment of emergency laws should comply with Article 4 of the International Covenant on Civil and Political Rights (ICCPR), including the requirement to report declarations of states of emergency to the United Nations.

Many participants were of the view that all counter-terrorism legislation should contain sunset clauses, so that they are frequently reviewed by parliament.

Participants at the hearing questioned whether there is a need for such new laws to counter terrorism and highlighted the necessity to strengthen law enforcement

structures by improving investigation practices of the police and by giving effective human rights education, rather than enacting new security laws. This may lead to a reduced reliance on illegal methods of obtaining evidence, such as use of torture, which participants said continues to be common practice by law enforcement officials.

The view was also expressed that an increased degree of public accountability or transparency of intelligence agencies would increase public trust and reduce concerns that abuse or corrupt practices may be occurring.

The Panel strongly believes that responses to terrorism need to be both effective and in compliance with the human rights obligations of states. Law enforcement responses should be transparent in order to avoid accusations of corruption and to reduce the likelihood of causing alienation and discontent. Judicial oversight by an independent judiciary is also a key safeguard against abuse of executive power.

The Panel is concerned by reports that a number of persons, initially detained by security forces in the South East Asia Region, have been rendered to the custody of other countries, including the United States, outside legal processes.

Participants advocated the ratification of international human rights treaties in the region, particularly of the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), stressing that ratification is a first step, which needs to be followed by effective implementation to bring about reform of state institutions and an end to abuses. Finally, participants urged States in the region to adopt an intergovernmental regional human rights system through the Association of South East Asian Nations (ASEAN).

Background

The Panel is composed of eight judges and lawyers 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 President of the Constitutional Court of South Africa, chairs the Panel. The other members are Georges Abi-Saab (Egypt), Robert K. Goldman (United States), Hina Jilani (Pakistan), Viti Muntarhorn (Thailand), Mary Robinson (Ireland), Stefan Trechsel (Switzerland) and Raúl Zaffaroni (Argentina).

The Panel has held hearings in Australia, Colombia, East Africa (covering Kenya, Tanzania and Uganda), the United Kingdom (in London on current counter-terrorism policies and in Belfast on lessons from the past), North Africa (covering Algeria, Morocco and Tunisia), the United States and the Southern Cone (covering Argentina, Brazil, Chile, Paraguay and Uruguay). Other countries or regions where the Panel will also hold hearings include the Russian Federation, South Asia, Canada, the Middle East and Europe.

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For more information on the Eminent Jurists Panel, please consult <http://ejp.icj.org>