



AN INITIATIVE OF
THE INTERNATIONAL
COMMISSION OF JURISTS

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

26 April 2006

EMINENT JURISTS END VISIT TO LONDON

P
R
E
S
S

R
E
L
E
A
S
E

Members of the Eminent Jurists Panel on Terrorism, Counter Terrorism and Human Rights concluded their visit to London today. They are part of an independent group of eight jurists appointed by the International Commission of Jurists (ICJ) to examine the global impact of terrorism and counter-terrorism measures the fight against terrorism on the rule of law, human rights and, where applicable, humanitarian law.

During their visit to London, the members of the Panel held public hearings at which evidence was given on these issues by representatives of national and international human rights organizations, representatives of community organisations and leading legal practitioners, including representatives of the Bar Council and the Law Society. The Home Secretary, Charles Clarke MP, gave evidence on the Government's position in relation to these matters, and the Panel also heard evidence from Lord Carlile of Berriew QC (the Independent Reviewer of Terrorism Legislation), Chief Constable Ken Jones, the President of the Association of Chief Police Officers, and Ms Rebecca Hickman on behalf of the Mayor of London's Office.

Panel members also held a series of high-level meetings with representatives of the Government, including the Home Secretary and the Minister for Human Rights, members of the Parliament's Joint Committee on Human Rights, members of the judiciary, and the Director of Public Prosecutions.

The visit to London was organised by JUSTICE, the British Section of the ICJ, and was the site of the fifth hearing of the Panel in the course of its enquiries. The Panel members express their sincere appreciation to all who participated in the hearings and to all with whom they had discussions. They particularly thank the government, parliamentarians and the judiciary for their cooperation.

All who gave evidence and with whom the Panel met accepted that the United Kingdom faces a real risk of terrorism as evidenced by incidents, such as the July bombings 2005, and that the Government has a duty to take measures to address this threat. There is also a clear understanding by all concerned that consistent with the United Kingdom's international legal obligations and the Human Rights Act these measures must comply with well-established principles of international human rights law and international humanitarian law. The Home Secretary explained the Government's position that the measures adopted are essentially necessary and proportionate to the existing terrorist threat.

Serious concerns were, however, expressed by many who gave evidence to the Panel that certain measures taken by the Government did not meet those standards.

These concerns included:

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

33, rue des Bains, P.O. Box 91, 1211 Geneva 8, Switzerland
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.ici.org> – E-mail: info@ici.org

- The use of intelligence information to take administrative actions against persons where there is insufficient evidence to prosecute;
- The lowering of normal standards and procedures for the judicial review of such measures through legislation which enables decisions to be taken on the basis of secret intelligence withheld from the person who is subject to the decision;
- In particular these two concerns apply to control orders, which may impose a variety of conditions affecting liberty, freedom of movement, association, expression and the right to privacy. These measures constitute a very severe form of punishment, especially in the case of orders under which persons may be confined to their homes for all but six hours of a day and may not, save in emergencies or with the permission of the Home Office, permit any persons other than their legal representatives to enter their homes at any time.
- The definition of “terrorism” and related offences seen as a whole, are said to be overbroad, difficult to understand, and possibly to prohibit speech and conduct which pose no real threat to the United Kingdom;
- There is widespread disquiet over new speech offences related to terrorism, including indirect forms of encouragement and “glorification”. It is difficult for individuals to understand what conduct is made criminal by the offence, and this could discourage constructive political debate, particularly within the Muslim community. It was suggested that existing criminal offences, such as incitement, were adequate to deal with the Government’s concern;
- There is an attempt by the Government to depart from the absolute prohibition to deport persons to countries where they face a real risk of torture. This, by means of diplomatic assurances contained in the Memoranda of Understanding with such countries. These assurances contained in the Memoranda of Understanding are not legally binding or enforceable and thus do not guarantee that the person so deported be subject to torture.
- The use of police methods, such as stop and search, is perceived by the Muslim Community as being directed in particular against them, and as a result, there is an increasing sense of insecurity within that community. All with whom the issue was raised agreed that every effort should be made to address this;
- The failure to use certain categories of intercept evidence in criminal proceedings, which could then be subject to challenge or explanation, instead to use secret intelligence for the purpose of implementing administrative anti-terrorism measures was criticised by many of those who gave evidence to the Panel;
- The departure from the normal requirement that the deprivation of liberty is sanctioned by means of criminal proceedings conducted according to well established principles to ensure fairness, underlines important principles of English law and concern was expressed that this could have a corrosive effect on the legal system;
- The long period of pre-charge detention largely in isolation, presently 14 days but soon to be increased to 28 days, was seen by some witnesses to be unnecessary, and to impose undue psychological pressure on those detained in such circumstances.

The Panel’s attention was drawn to the fact that the provisions of the Human Rights Act, the existence of a strong and independent judiciary and legal profession, an active civil society, and other

institutional safeguards provide a framework within which the anti-terrorism laws and measures will be implemented; it was said that in these circumstances, there were adequate checks against possible abuse of the wide discretionary powers vested in the Government and the Police. Nevertheless, the panel members heard concerns about the long-term impact of powers introduced to fight terrorism and their potential impact on institutions and their gradual extension to other areas of law.

The Panel noted that there is a vigorous and ongoing debate in the United Kingdom on these and related issues concerning terrorism and counter-terrorism, and was assured by all whom it met, including the Home Secretary, that the panels' investigations are of considerable importance. They welcome this response to their work.

The Panel will consider and take into account the evidence received during its visit to London in the course of its global investigations and in the preparations of its final report.

The Panel members wish to thank the international law firm Freshfields Bruckhaus Deringer for their generous assistance and support in hosting the hearings.

Background

The Panel is composed of eight judges and lawyers from all regions of the world. The Panel 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 Georges Abi-Saab (Egypt), Robert K. Goldman (United States), Hina Jilani (Pakistan), Vitit Muntarbhorn (Thailand), Mary Robinson (Ireland), Stefan Trechsel (Switzerland) and Raúl Zaffaroni (Argentina).

The hearing was the fifth in a series of hearings taking place in all regions of the world this year. Similar hearings were held earlier this year in Colombia and East Africa and Australia. The next hearings will be held in North Africa, South East Asia and the United States of America.

The Panel will issue a global report on terrorism, counter-terrorism and human rights based on the hearings and other information received in 2007.

For further information on the Eminent Jurists Panel and the hearings in the United Kingdom, see www.icj.org and www.justice.org.uk.

For more information on the hearings in London, please contact Isabelle Heyer (ICJ) at 0041 786800118 or 0041 22 9793800 and Eric Metcalfe (JUSTICE) at 07939119369