



AN INITIATIVE OF  
THE INTERNATIONAL  
COMMISSION OF JURISTS

# EMINENT JURISTS PANEL

on

## Terrorism, Counter-Terrorism and Human Rights

7 July 2006

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### EMINENT JURISTS CONCLUDE SUB-REGIONAL HEARING ON TERRORISM AND HUMAN RIGHTS IN THE MAGHREB

The Eminent Jurists Panel on Terrorism, Counter Terrorism and Human Rights concluded its sub-regional hearing in Morocco today. The Panel is 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 on the rule of law and human rights.

The sub-regional hearing in Rabat was organized by the *Organisation Marocaine des Droits Humains (OMDH)*, an affiliate of the ICJ. It was the sixth in a series of hearings taking place in all regions of the world this year. Similar hearings were held in Colombia, East Africa, Australia and the United Kingdom, including Northern Ireland. The next hearing will be held in the United States of America in September.

The Panel received information on counter-terrorism laws and policies in Algeria, Morocco and Tunisia from members of civil society, the legal community, academia, journalists and a representative of the Algerian national human rights institution. A representative of the office of the General Prosecutor of Morocco also provided information in the public hearing. The panel members also held a series of meetings with high-level representatives of the Government of Morocco, including the Minister of Justice, the Ministry of Foreign Affairs, members of Parliament and representatives of the *Conseil Consultatif des Droits de l'Homme* of Morocco.

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 authorities of Morocco for their support and cooperation and the frank and open discussions.

The Panel members note that Morocco has made significant progress in undertaking legal reforms over the last years. They also recognize the manifest impact of the terrorist acts in Casablanca on Moroccan society and the difficulties encountered in fighting terrorist threats. They are encouraged by the commitment expressed by all those with whom they met, to continue the process of legal and judicial reforms. The Panel members particularly welcome the openness of debate between civil society and government representatives in Morocco during their visit.

The threat of terrorism and the responses by the authorities of the three countries differ in many ways and need to be understood in their country specific context. Tunisia and Morocco have each seen a major terrorist act against civilians in the course of 2003, whereas Algeria has lived through a decade long internal conflict marked by acts of terror of particular cruelty, but also by grave human rights violations, including enforced disappearances, committed by security forces. At the same time, a number of measures taken by the three states in response to terrorist threats share common features.

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In the course of the public hearing the following concerns were brought to the attention of the Panel:

- Participants at the hearing recognized that terrorism poses a serious threat to the enjoyment of human rights and that the states have a duty to protect their citizens from terrorist acts. At the same time they insisted that any measure to counter terrorism must be proportionate to the actual threat in the particular country;
- As in previous hearings the panel members were confronted with very broadly defined crimes of terrorism under special counter-terrorism laws in all three countries. This can lead to abuse, including prosecution of legitimate political or social opposition. The inclusion of subversive acts within the definition of terrorist acts in Algeria's counter-terrorism law is a particularly problematic example in this regard;
- The Panel members also note that some offences contained in special counter-terrorism laws, such as praising or justifying terrorism, or the association with terrorist organisations, are so broadly worded that they may lead to excessive interferences with freedom of association, expression and the media. Some lawyers, especially in Morocco and Tunisia, questioned the justification of special legislation on counter-terrorism given existing laws;
- Serious allegations of arbitrary detentions as well as of torture and other forms of ill treatment of terror suspects in the three countries were brought to the attention of the Panel. The members of the Panel are particularly concerned that counter-terrorism laws in the region allow for extended periods of police detention (*détention en garde à vue*) without bringing the person before a judge. The lack of access to a lawyer during the *garde à vue* (in Algeria and Tunisia), or at best very restricted and delayed access after several days of police detention as in Morocco, heightens the risk of torture or ill-treatment in custody;
- The limits set by these legislation are already too wide and it was largely acknowledged that even these rules were often disregarded in practice. The Panel also heard about forms of "disguised" administrative detention without judicial control, such as the use of control orders (*résidence surveillée*) in Algeria, in which persons are effectively placed in detention facilities;
- A number of interveners drew the attention of the Panel members to the involvement of special security forces or intelligence services in arbitrary and sometimes undisclosed detentions in Algeria or in Morocco following the terrorist attack in 2003. While these allegations are regularly denied by the authorities, they echo concerns heard in previous hearings about the lack of effective control by the civilian judicial system;
- A recurring theme in the hearings of the Panel is the violation of the right to fair trial in cases involving terror suspects. Numerous interveners stressed the need to strengthen the independence of the judiciary in the region as a key requirement to ensure compliance with fair trial rights. Particular concerns were raised regarding the trial of terrorism suspects in Tunisia and the severe limitations on the right of defence, including the anonymity of witnesses and investigating judges, lacking access to evidence and limitations of the right to a public trial;
- The Panel heard evidence from groups representing victims of Islamist violence as well as state violence in Algeria, who continue to seek truth and accountability for crimes committed. While the panel members recognize the difficulty of achieving reconciliation, they learned with concern about recent decrees implementing the Charter for National Reconciliation and Peace in Algeria, which bars any legal proceedings against security forces for past human rights violations, including

enforced disappearances, and which criminalize public criticism of the conduct of state agents. The Panel members are also concerned over the provisions exempting terrorists from prosecution and allowing for clemency for crimes committed in the 12 year long conflict, that may lead to impunity for crimes against humanity. The compensation of victims cannot replace the obligation to bring those responsible to justice.

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

The Panel members wish to thank very warmly the *Organisation Marocaine des Droits Humains* for their generous assistance and support in hosting the sub-regional hearings in Rabat.

### **Background**

The Panel is a high-level body of eminent jurists that 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 and Chief Justice 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).

### **Members of the Panel in Morocco**

Professeurs Georges Abi-Saab and Stefan Trechsel attended the hearing on behalf of the Panel.

**Georges Abi-Saab (Egypt)** is one of the world's leading scholars in public international law. During his career, he has served as a judge at the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and *ad hoc* judge at the International Court of Justice. He is currently a member of the WTO Appellate Body.

**Stefan Trechsel (Switzerland)**, an expert in criminal law and criminal procedure, Stefan Trechsel served for more than 20 years as a member of the European Commission on Human Rights, including as its President. He also has expertise on legal and justice reforms in the former Soviet Union and Russian Federation countries.

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*For more information on the Eminent Jurists Panel, please consult the ICJ website:*  
[www.icj.org](http://www.icj.org)