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EMINENT JURISTS PANEL

on

Terrorism, Counter-Terrorism and Human Rights

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Global inquiry assesses counter-terrorism laws and policies in Pakistan

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Members of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights concluded their visit to Pakistan today. 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.

Justice Arthur Chaskalson and Professor Vitit Muntarbhorn represented the Panel at two days of public hearings on Pakistan's experience of terrorism and counter-terrorism. The Panel heard testimonies from leading lawyers, academics, national and international human rights organisations and members of the public affected by terrorism and counter-terrorism. The Panel members wish to express their gratitude to all those who appeared before it for their cooperation.

The Panel members also held private meetings with senior governmental officials of Pakistan, including the Secretary of the Ministry of Interior, the Secretary of the Ministry of Law, Justice and Human Rights, the Director General of the National Crisis Management Cell, the Secretary of the Law and Justice Commission and the Additional Secretary of the Ministry of Foreign Affairs. They thank the authorities of Pakistan for their support and cooperation and the frank and open discussions.

The public hearing was the twelfth hearing by the Panel, which will issue a global report on terrorism, counter-terrorism and human rights towards the end of 2007. The hearing in Pakistan was organised by the Human Rights Commission of Pakistan, an affiliate organization of the ICJ. The members of the Panel wish to express their sincere gratitude for its support.

Government authorities met by the panel emphasized the domestic and international dimension of terrorism and stated that terrorism should not be confused with particular religious beliefs. They further underlined the multi-dimensional character of the problem and the need to address the root causes of terrorism.

Terrorism and counter-terrorism have a profound impact on society and the institutional and legal fabric of Pakistan. This is accentuated by the strategic geopolitical location of Pakistan which is bordered by numerous flashpoints, especially the ongoing conflict in Afghanistan. There are significant trans-frontier implications for human rights and regional security. The panel members recognize the serious and acute threat of terrorism in Pakistan, as evidenced by a sharp increase in bomb explosions and suicide attacks against hotels, court buildings, judges and female politicians. They are deeply worried by the climate created by terrorism in Pakistan and its impact on the enjoyment of human rights in the country. All participants at the hearing emphasized the obligation of the state to protect its citizens against acts of terrorism and recognized the difficulty in doing so.

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

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Extra-legal practices, arbitrary detention, torture and disappearances

Very serious allegations were made at the hearing about the conduct of the security forces and the police. Of particular concern were accounts of a practice, said to be widespread, of detaining suspects without warrants, holding the detainees incommunicado for long periods (sometimes for years) and withholding from families of detainees information about their detention, and when, by whom and for what reason they are being detained. Participants told the panel that these practices were initially employed against persons suspected of connection to terrorism, but are increasingly used in other circumstances.

According to the allegations, families do not know what has happened to their loved ones. Information is not given to them by the security forces and often their enquiries are rebuffed. They then have to conduct enquiries themselves to establish the circumstances of the disappearances. The panel was told that applications to courts for habeas corpus, when brought, were often frustrated by obstruction from the security forces, and have not secured the release of the detainees, or information about their whereabouts and reasons for their detention. The panel members were told that torture and mistreatment of detainees is common. A failure to bring detainees before courts in accordance with normal requirements of a civilized legal system, and instead holding them incommunicado without legal sanction for long periods of time, would give credence to such allegations.

In their meetings with the authorities the panel members brought these concerns to their attention, told them of evidence they had heard from families of certain detainees, who are said to have disappeared, and to have been traced ultimately to the security services, but were still being held incommunicado. The authorities told the panel that they were aware of these allegations, that such conduct is not sanctioned by the government, and that they had and would continue to investigate all cases of alleged disappearances brought to their attention. The panel has provided the authorities with lists of names of 'disappeared' persons, and requested them to ensure that the allegations are investigated expeditiously. An undertaking to do so was given to the panel members.

The panel members were also told about a practice of transferring persons to third countries often for bounties outside any legal processes (renditions), or in some instances of holding of prisoners in secret detention and safe houses and allowing unidentified interrogators from the United States access to such facilities. Participants noted the lack of accountability and complete impunity for such practices. The panel was informed by the authorities that they did not condone such practices.

Impact of the situation in tribal areas

The panel members heard evidence on the difficult and complex situation in the tribal areas, particularly the FATA and the fact that these areas have not yet been integrated into the nation-wide system of the administration of justice. They were told about the spill-over effect from the conflict in Afghanistan and its serious implications for terrorism and counter-terrorism in Pakistan.

In this regard, the panel members learned with concern about an increasing climate of fear and intimidation in those areas. The environment described by witnesses is inimical to a pluralist society, having a chilling effect on freedom of speech, the media and on civil society organizations. It severely impedes the enjoyment of basic rights of children and women, including economic, social and cultural rights, such as access to health and to education.

Panel members were also told that 'indiscriminate' military operations have been counter-productive as they have alienated the population. Concerns were raised about the ambivalence of the state's response, which attempted to stabilize the situation by military action, followed by agreements with the 'militants', leading in turn to an absence of state authority and an increasing 'talibanisation' of those areas.

Participants raised concern about the lack of action by the authorities. They told the panel that the prevention of terrorism requires that these areas be brought within the administration of justice of Pakistan and that political participation in those areas needs to be broadened. In this regard, they emphasized the need to repeal or amend anomalous laws such as the Frontiers Crime Regulation, considered wholly inconsistent with the rule of law. The authorities told the panel of the special

circumstances in these tribal areas and stated that they were conscious of the need to address the political and economic challenges there.

Impact on society, including media freedom

Participants noted that the events of 9/11 had a serious impact on society in Pakistan. They expressed the view that the changing international climate following these events has led to an erosion of democratic checks and balances.

While participants recognized that Pakistan has a strong and independent minded media, the panel was told that journalists, in particular those working in the border areas, are often under pressure from both militants and security forces to avoid reporting on controversial issues. They learned with concern about killings of and threats to journalists. They were also told that there was an element of self-censorship to avoid possible repercussions.

Participants told the panel members about the negative backlash on women's rights because of acts of terrorism, threats and other forms of intimidation. They were also concerned about the impact on the legal community, through the targeting of judges, and on the impact on civil society organizations, especially those operating in the border areas.

Criminal justice and counter-terrorism law

Most of the legislation dealing with terrorism predates the events of September 11, 2001. Those participating raised serious concerns regarding the 1997 Anti-Terrorism Act (ATA), providing for trial before special Anti-terrorism Courts. They raised in particular the following concerns:

- Doubts about the independence and impartiality of special Anti-terrorist Courts due to the lack of security of tenure of judges appointed under section 14 of the Act, and simplified provisions for dismissal of members of the courts;
- The jurisdiction of the special courts to adjudicate an increasingly broad category of terrorism offences and other scheduled offences, which can be amended by the executive rather than the legislature;
- The increased investigative powers, including the shift of influence towards the intelligence agencies by creating joint investigative teams with the police, and the powers of search, arrest and seizure without judicial warrant;
- The limitation of fair trial rights, through placing the burden of proof on certain material issues on the accused, the creation of special presumptions applicable in 'terrorist' cases, the extension of its jurisdiction to minors, and the admissibility of confessions for limited purposes made to a senior police officer;

Participants at the hearing underlined the need to bring those responsible for terrorist acts to justice. They raised concern over the paucity of high-level prosecution under this law, nurturing suspicions about the use of extra-legal means rather than trying terrorist suspects within the legal system. To the contrary, concerns were raised about the use of the law for criminal cases that are not truly terrorist in nature. The panel was apprised of other special laws which may have negative impact on human rights, particularly the Security of Pakistan Act and the Maintenance of Public Order Ordinance.

Participants asserted that special anti-terrorism courts create a dangerous parallel system of justice that is weakening and not strengthening the rule of law. They told the panel members about the failure of the law to fulfil its stated purpose of being effective. Strict timelines are not met in practice, nor could they possibly do justice to the complexity of counter-terrorism cases and the gravity of the accusation. Conviction rates are high in these courts, but have often been set aside on appeal. It was a common view expressed at the hearing, that rather than creating special laws and special courts, with shortened and abbreviated procedures, the answer would lie in redressing the weakness and lack of professionalism of law enforcement and in training and equipping the judiciary to overcome longstanding systemic problems of delayed justice.

Observations

The panel members affirm the fundamental importance of ensuring that responses to terrorism be conducted in accordance with the requirements of the rule of law, international human rights and humanitarian law.

Practices such as enforced disappearances, torture and impunity for such conduct, are clearly outside any legitimate legal framework. They create an environment of fear and intimidation within communities. They are calculated to provoke lawlessness rather than to contain it. The panel members consider it essential that the allegations concerning such practices are investigated thoroughly and that those responsible are held accountable. They welcome the investigation being undertaken by the Supreme Court.

Effective action against radicalisation and militancy depends upon the opening up of democratic space and the full enjoyment of fundamental rights and freedoms. The closing of legitimate political space may aggravate the risk of radicalisation and leave society more vulnerable to threats of terrorism.

Despite the concerns heard during the hearing, the panel members are confident that Pakistani society has the ability to overcome the challenges faced by terrorism and counter-terrorism. They recognize the commitment of civil society and the media in upholding principles of the rule of law and human rights. They also note that the judiciary has set certain limits to excessive counter-terrorism laws and policies in the past years.

The panel members welcome the affirmation received by the authorities of the importance of combating the threat of terrorism within the law and with due respect to international human rights and international humanitarian law, and their commitment to do so. They welcome the process whereby the country is now considering becoming a party to key human rights treaties, particularly the Covenant on Civil and Political Rights and the Convention Against Torture, urge expeditious accession to these treaties and underline the need for effective implementation. The panel members raised with the authorities the Convention on Enforced Disappearances, which was adopted on December 20, 2006. Given the wide perception that exists that enforced disappearances are a feature of practices adopted by the security forces, it would serve an important symbolic and practical purpose, for Pakistan to accede to this Convention.

Finally, the Panel wishes to express their sympathy and support to those members of the public, directly affected by acts of terrorism or by counter-terrorism operations. They are confident that they will not suffer any adverse implications as a result of their participation at the hearings.

Background

The Panel is composed of eight judges, lawyers and academics 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 Chief Justice and first President of the Constitutional Court of South Africa, chairs the Panel.

The other members are Vitit Muntarbhorn (Thailand), Professor of Law at Chulalongkorn University in Bangkok and UN expert on human rights in North Korea; Hina Jilani (Pakistan), a lawyer before the Supreme Court of Pakistan and the UN Secretary General's Special Representative on Human Rights Defenders; Mary Robinson, 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; Georges Abi-Saab (Egypt), former Judge at the International Criminal Tribunals for the former Yugoslavia and for Rwanda; Robert K. Goldman (United States), Professor of Law at American University's Washington College of Law, a

former President of the Inter-American Commission on Human Rights and former UN expert on counter-terrorism and human rights; and Justice E. Raúl Zaffaroni (Argentina), a judge at the Supreme Court of Argentina.

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) and the Russian Federation. Prior to coming to Pakistan the panel had held a hearing in New Delhi (Bangladesh, Nepal, Maldives, Sri Lanka and India). Other countries or regions where the Panel will also hold hearings include Canada, the Middle East and Europe. The final report of the Panel is expected to be published towards the end of 2007.

For further information on the public hearing and to arrange interviews with the Panel, please contact:

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