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

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IMMEDIATE RELEASE

International panel concludes mission on counter-terrorism measures in the Middle East

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Two members of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, an independent group of eight experts appointed by the International Commission of Jurists (ICJ), concluded today the hearings and consultations for the Middle East region held in Cairo. Professor Georges Abi-Saab (Egypt), former 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, and Vitit Muntarbhorn (Thailand), Professor of Law at Chulalongkorn University in Bangkok and UN expert on the situation of human rights in North Korea, held this hearing in Egypt as part of the Panel's mandate to examine worldwide the compatibility of counter-terrorism measures with international human rights law and, where applicable, international humanitarian law.

During two days of public hearings, Georges Abi-Saab and Vitit Muntarbhorn heard from government representatives, senior judges, lawyers, academics, national and international human rights organisations, and national human rights institutions from Egypt, Yemen, Syria and Jordan.

The members of the Panel also met with senior representatives of the Egyptian authorities, including the Minister of Legal Affairs and Parliamentary Councils, the Public Prosecutor and officials from the Ministry of Interior and from the Ministry of Foreign Affairs.

The Panel members wish to thank all the persons who testified before them and the representatives from the Egyptian and Yemeni governments who participated in the hearing. The Panel would also like to express its gratitude to the Arab Centre for the Independence of the Judiciary & Legal Profession (ACIJLP) for its invaluable support in the organization of the hearing. However, they regret that, despite their efforts, they were not able to hear from representatives of the Jordanian and Syrian governments.

General context: nature of the threat and new anti-terrorism laws after 9/11

Egypt, Jordan, Syria and Yemen have a long history of political violence and have been facing domestic security threats for decades. The attacks of 11 September 2001 heightened the awareness of these countries of the external dimension of the threats, particularly since they have suffered a series of terrorist attacks in recent years. In reaction to those threats, governments in the region have declared states of emergency which have been renewed over the years and, in the cases of Egypt and Syria, have been in force respectively since 1981 and 1963 without interruption.

During meetings with the Panel, the Egyptian authorities contended that Egypt was and continues to be vulnerable to terrorist attacks. They indicated that the state of emergency, renewed for the last time in April 2006 for an additional two years, is to be replaced by new anti-terrorism legislation currently under consideration. This new legislation is intended to respond to the need to adapt to the changing nature of the threat posed by international terrorism, which calls particularly for strong preventive

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action. The Panel was informed that a public hearing on the draft law will be held to receive input from civil society.

In his intervention before the Panel, the representative of the Yemeni Government said that the country is also under serious threat of internal terrorism and that Yemen is trying to find the right balance between rights and security.

Those who gave evidence at the hearing recognized the seriousness of security threats but said that the fight against terrorist threats is used in all countries of the region as a pretext to stifle political opposition.

With regard to Egypt's new constitutional amendments of March 2007, several participants expressed concern that they enshrine in the Constitution some of the most worrying provisions of the Emergency Law. In particular, article 179 confers on the President the power to refer cases to special courts. Moreover, it provides for the possibility for the anti-terrorism law still under consideration to waive some of the basic constitutional guarantees of human rights.

The Panel was informed that Jordan has amended its penal code after 9/11 by, among others, expanding the definition of terrorism, introducing broad terrorism related offences which severely restrict freedom of expression and the media. In addition, Jordan adopted a new anti-terrorism law in 2006 following the Amman bombings.

In Syria and Yemen, no new anti-terrorist laws were adopted since 9/11. However, long-standing extra-legal and judicial practices persist.

Violations in the name of countering terrorism

The Panel's attention was drawn to the fact that the illegal practices used before 9/11 against terrorism suspects in Egypt, Syria, Jordan and Yemen have not fundamentally changed after these attacks. However, participants said that the new international context has legitimized the actions of governments in their internal repression. Extrajudicial executions, forced disappearances, systematic torture and ill-treatment, mass arbitrary arrests and detention without charge or trial, including indefinite incommunicado detention and unfair trials are common patterns of violations in all the countries examined at the hearing. The rights of freedom of expression, association and assembly are also severely restricted. Several participants said that a free civil society is an essential check against abuses of power. Yet, in the countries mentioned, the space for civil society is constrained by excessive executive powers on grounds of national security.

Moreover, several participants emphasized at the hearing that cooperation with foreign governments in the "war on terror" has resulted in new violations such as secret detentions and renditions of terrorism suspects, even to countries where the person is at great risk of torture in clear breach of the principle of *non-refoulement*. Countries in the Middle East are at the heart of an international network of renditions as transit countries, source countries and destination countries.

Participants expressed concern that, despite poor human rights records of Middle East countries, detainees are transferred to these countries on the basis of diplomatic assurances that the person will not be tortured upon return, a promise that, in many cases, has not been fulfilled. It was stressed that these assurances are unreliable, difficult to monitor and therefore not an adequate protection against torture or ill-treatment.

Participants at the hearing also provided information about transfers of suspects from and to the Guantánamo Bay detention centre. The situation of Yemeni detainees who, upon return from Guantánamo or from secret detention centres abroad, continued to be detained in Yemen at the behest of foreign governments, was of particular concern.

Participants expressed concern at the broad powers granted to law enforcement officials, especially security and intelligence services in the fight against terrorism. Those services enjoyed extensive powers long before 9/11 but the increased cooperation and exchange of information with foreign intelligence services since 9/11 have led to more abuses. The

participants deplored the prevailing climate of impunity and stressed the need for accountability of security and intelligence services.

The administration of justice by special security courts and military tribunals

In all countries of the region, special courts, such as emergency or state security courts and military courts, share jurisdiction over national security offences, including but not limited to terrorism related offences. Participants repeatedly said that those courts do not provide guarantees of independence and impartiality and that they fall far short of international fair trial standards. Concern was expressed by participants particularly on the following:

- the great discretion left to the Executive to refer cases to those courts without any objective criteria for such referral;
- the appointment of judges by the Executive and, in some cases, their lack of qualification;
- the abuse of these tribunals in the prosecution of cases of peaceful opposition;
- their jurisdiction to try civilians;
- the lack or inadequate access to counsel;
- in some cases, the accused is not informed of the charges against him or her before the start of the trial and the defence has no access to the case files;
- the limitations to the right of appeal before a higher court of the decisions by those tribunals.

Conclusions

The Panel notes that responses to terrorism need to be both effective and in compliance with the states' human rights obligations. Egypt, Syria, Yemen and Jordan are parties to key international human rights instruments which provide a clear framework on the circumstances in which states can declare states of emergency and of the rights which can, under no exceptional circumstances, be derogated from.

While states have the duty to protect their populations from acts of terrorism, most participants considered that today's security threats do not justify the prolongations of states of emergency, that these have exacerbated a sense of insecurity rather than making the countries safer and have become a source of violations, especially against political dissent. These measures, intended to be exceptional and temporary, have become permanent, and have undermined the protection of human rights and the rule of law.

Many participants observed that new anti-terrorism laws were not needed and that existing criminal codes and criminal procedure codes were adequate to fight terrorism.

The parallel judicial system of special courts and military courts used for decades in the region has been detrimental to the fair administration of justice. It is the Panel members' firm opinion that an independent civilian judiciary is an essential guarantee against abuses of executive power.

Background

The Panel is composed of eight judges, lawyers and academics from all regions of the world. In addition to Vitit Muntarbhorn and Georges Abi-Saab, the members are: former Chief Justice of South Africa Arthur Chaskalson, Chair of the Panel and first President of South Africa's Constitutional Court; Professor Robert K. Goldman (United States), former President of the Inter-American Commission on Human Rights; 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 (Ireland), 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; and E. Raúl Zaffaroni (Argentina), a judge at the Supreme Court of Argentina. The Panel exercises its mandate independently, with the logistical support of the ICJ Secretariat and its network of organizations.

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), the Russian Federation and South Asia (India, Sri Lanka, Nepal, Pakistan, Bangladesh and the Maldives). The Panel will conclude its inquiry with a hearing in Brussels on the EU counter-terrorism laws and policies and a mission to Israel and the Occupied Palestinian Territory. At the end of the hearings' process, the Panel will publish a global report in early 2008.

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