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OF JURISTS

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

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EMINENT JURISTS CONCLUDE HEARING ON SOUTHERN CONE

The “Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights” concluded its hearing in Buenos Aires on lessons learned from the Southern Cone during the 70’s and 80’s, when gross human rights violations were committed in the name of “national security”.

The Panel received detailed accounts from human rights organizations, lawyers, prosecutors and other government representatives on the laws, practices and policies adopted during that period. Participants from Argentina, Uruguay, Chile, Paraguay and Brazil gave testimonies at the hearing. The Panel members also had the opportunity to meet with the following high-level authorities in Argentina: the Foreign Minister, the Justice Minister and the Secretary and Sub-Secretary of Human Rights. The Panel wishes to thank the Argentinean government for its openness, as well as the *Centro de Estudios Legales y Sociales* (CELS, Centre for Legal and Social Studies) and the Law School of the University of Buenos Aires for their invaluable assistance in the organization of this event.

Several participants talked in detail about the disproportionate response to the “subversive” threat in the Southern Cone. They demonstrated that wherever “subversive” groups existed, they had been dismantled or neutralized shortly before or immediately after the beginning of the repression. The measures adopted under the states of emergency in the region were unduly prolonged and resulted in systematic and massive violations of fundamental and non-derogable human rights.

The grave human rights violations committed in the name of the national security doctrine included extrajudicial executions, forced disappearances and torture. In addition, severe restrictions of the freedoms of expression and association were imposed. During this period, two parallel levels of repression can be observed. The first level consists in formally adopted legislation by which all powers were concentrated in the Executive and wide powers were vested in the military, including the power to arrest and detain alleged subversive elements and the realm of military jurisdiction was considerably extended and empowered to try civilians. The second level was clandestine and extralegal whereby the armed forces were authorized to commit atrocious crimes with total impunity.

In this context, the participants said that, in the majority of cases, the judiciary in the region was subordinated to the will of those in power and did not comply with its fundamental role of protecting human rights of the population.

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With the return to democracy, the legislation enacted under the different states of emergency was derogated or repealed in the majority of the countries of the region and extra-legal practices ended. However, amnesty laws adopted during or immediately after the end of the *de facto* regimes, are still in force in several countries and continue to be an impediment to the investigation of the crimes committed and prosecution of those responsible for such crimes. On this particular issue, the Panel considers the recent ruling of the Argentinean Supreme Court declaring the unconstitutionality of the due obedience and full stop laws as a very significant step for the whole region.

In the case of Chile, the Panel took note that a number of laws from the period of military dictatorship continue in force. These include the antiterrorist legislation of 1984, the enshrinement of national security concerns in several provisions of the 1980 Constitution and the jurisdiction of military courts to try civilians. With regard to the 1984 legislation, the Panel received testimonies concerning its application to members of the Mapuche indigenous community for attacks against property. On this issue, the Panel welcomed the government's recently proposed amendment to this legislation which, if adopted, would exclude from the list of terrorist offences attacks against property, as they do not constitute attacks against life and physical integrity.

A number of participants expressed concerns about the similarity between current measures adopted in the name of the fight against terrorism since 11 September 2001 and those implemented in the Southern Cone in the 70's and 80's. Among those measures, the participants highlighted the establishment of clandestine detention centers, the use of torture to extract information and the extension of military jurisdictions to try suspected "terrorists" or "subversives". The participants also drew a parallel between the "Operation Condor", a coordinated plan established in 1975 by the intelligence services of the region, with the objective to exchange information on alleged subversives and transfer them between the different countries, and the current policy of "extraordinary renditions" which allows the transfer for interrogation of alleged terrorists to countries where they run substantial risk of being subjected to torture.

In light of those experiences during the 70's and 80's, both government and civil society representatives with whom the Panel met in Argentina coincided that terrorism should be combated within the ordinary legal framework and with strict respect for human rights and the rule of law. The absence of significant legislative changes to fight terrorism in the Southern Cone countries since the attacks on 11 September 2001 bears witness to that position.

Background

The Panel is composed of eight judges and lawyers of 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 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 Panel already held hearings in Australia, Colombia, East Africa (covering Kenya, Tanzania and Uganda), the United Kingdom (in London on current policies and Belfast on lessons from the past), North Africa (covering Algeria, Morocco and Tunisia) and the United States. Other countries or regions where the Panel will also hold hearings include Canada, the Russian Federation, South East Asia, South Asia, the Middle East and Europe.

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