



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "*

## ICJ EMINENT JURISTS PANEL ON TERRORISM, COUNTER-TERRORISM AND HUMAN RIGHTS

### HEARING IN THE UNITED STATES OF AMERICA

WASHINGTON, DC

6-8 September, 2006

### CALL FOR SUBMISSIONS

The Eminent Jurists Panel is an independent panel of eight international judges, lawyers and legal academics established by the International Commission of Jurists (ICJ) to conduct a global inquiry into terrorism, counter-terrorism and human rights. The Panel is chaired by Justice Arthur Chaskalson, former Chief Justice of South Africa and the first President of South Africa's Constitutional Court, and includes Professor Robert K. Goldman (United States), Professor Stefan Trechsel (Switzerland), Hina Jilani (Pakistan), Professor Georges Abi-Saab (Egypt), Professor Vitit Muntarborn (Thailand), Mary Robinson (Ireland), and Justice E. Raúl Zaffaroni (Argentina).

The mandate of the Panel is:

To examine the compatibility of laws, policies and practices, which are justified expressly or implicitly as necessary to counter terrorism, with international human rights law and, where applicable, with international humanitarian law.

The Panel process is built on a broad consultation through national and sub-regional hearings in various countries around the world. It has 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) and North Africa (covering Algeria, Morocco and Tunisia). Other countries or regions where the Panel will also hold hearings include Canada, South America, the Russian Federation, South East Asia, South Asia, the Middle East and Europe

The Panel will be visiting Washington in September 2006 to examine and assess the United States' response to terrorism since the attacks on 11 September 2001. In particular **the Panel will be holding a public hearing in Washington, D.C. on 6-8 September at the American University Washington College of Law to hear oral evidence** on key issues related to its inquiry. The Eminent Jurists Panel will be represented in the United States by Justice Arthur Chaskalson (South Africa), Professor Georges Abi-Saab (Egypt), Professor Robert K Goldman (United States), Hina Jilani (Pakistan), Mary Robinson (Ireland) and Professor Vitit Muntarborn (Thailand).

**The Panel welcomes *written submissions* from any interested individuals or organisations on the impact of terrorism and counter-terrorism measures adopted by the United States on the rule of law and the protection of human rights. The Panel also wishes to hear the justifications for counter-terrorism laws and policies and to learn about any policy dilemmas that arise in combating terrorism.**

In the framework of its global inquiry, the Panel generally encourages submissions that adopt the following analytical approach:

- (1) What special laws, policies or practices has the government adopted, since 2001 or in the past, which it has justified expressly or implicitly as necessary to counter-terrorism?
- (2) Have these counter-terrorism measures had an impact on the rule of law and on the rights guaranteed to all persons by international human rights or international humanitarian law? If so, what has been the impact?
- (3) How has the government justified such counter-terrorism measures and do you consider that past or current terrorist threats have justified these measures?
- (4) What has been the impact of the 'War On Terror' in your country?
- (5) What lessons should today's policy-makers learn from any past experience with terrorism and counter-terrorism in your country?<sup>1</sup>

**For the United States hearing, the Panel would be particularly interested in submissions concerning, but not limited to, the following themes:**

- (i) The laws, policies and practices affecting the prohibition of torture, cruel, inhuman or degrading treatment or punishment, including interrogation guidelines, policies and practices, and the role of intelligence agencies and private contractors;
- (ii) The Government inquiries into cases of alleged torture or ill-treatment, accountability through criminal investigation and prosecution, and civil remedies for abuses;
- (iii) The transfer of terrorist suspects to third countries from the custody of the United States and its impact on the principle of *non-refoulement*, including standards and procedures to assess risks of torture and ill-treatment and the use of diplomatic assurances;
- (iv) The scope of and justifications for the policy of rendition of terrorist suspects; alleged secret or incommunicado detention of terrorist suspects;
- (v) The detention of "enemy combatants" (inside and outside the territory of the United States), their legal status, criteria and procedures used for the determination of their status, and what will happen to "enemy combatants" in detention in the long term, including the implication should the detention facility at Guantánamo Bay be closed;
- (vi) The detention of terrorist suspects under immigration and material witness laws;
- (vii) The access to the civilian judiciary, including the right to *habeas corpus*, and limitations on access imposed by the "Detainee Treatment Act";
- (viii) The invocation of "state secrets privilege" and its impact on the right to an effective remedy of individuals affected by counter-terrorism measures;
- (ix) The right to a fair trial and due process of terrorist suspects, including trial by military commissions or courts-martial, evidentiary issues in terrorism trials, such as secrecy of evidence, use of evidence obtained through torture or coercion, and use of hearsay evidence based on intelligence information;
- (x) The legal implications of the Supreme Court's decision in *Hamdan v. Rumsfeld* and the subsequent debate on the application of international humanitarian law;

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<sup>1</sup> A more comprehensive list of questions related to the Panel's global inquiry is available at [http://ejp.icj.org/article.php3?id\\_article=17](http://ejp.icj.org/article.php3?id_article=17).

- (xi) The definition of terrorism and the scope of terrorism offenses, including the use of terrorist lists for criminal and administrative measures;
- (xii) The impact of counter-terrorism measures on the right to non-discrimination, including the use of racial, religious and ethnic profiling;
- (xiii) The impact of counter-terrorism measures on the rights of immigrants and asylum seekers, including the “material support” bar to refugee admission;
- (xiv) The impact of counter-terrorism measures on the right to privacy, including surveillance under the “Patriot Act” and surveillance without judicial and/or congressional authorization;
- (xv) The impact of counter-terrorism measures on the right to freedom of expression, freedom of association and freedom of religion.

Organisations and individuals interested in making written submissions are invited to do so by **Friday 30 August 2006**. However, the Panel would also welcome, and will take into account, written submissions received after this date, especially if received before 31 December 2006. There is no word limit but submissions longer than 2500 words should be accompanied by a brief summary.

In addition to written submissions, the Panel welcomes oral evidence by interested individuals and organizations at its public hearing on 6-8 September at the American University Washington College of Law.

If you wish to send a written submission to the Panel or/and give oral evidence at the hearing, or if you need more information on the hearing, please contact Isabelle Heyer, Programme Officer, via email at [hey@icj.org](mailto:hey@icj.org) or phone at + 41 22 979 38 21.

Further details about the ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights are available at <http://ejp.icj.org>