

ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights
Questions for national and sub-regional hearings

A. Framework for submissions

In its Berlin Declaration on Upholding Human Rights and the Rule of law the International Commission of Jurists¹ said:

The ICJ condemns terrorism and affirms that all states have an obligation to take effective measures against acts of terrorism. Under international law, states have the right and the duty to protect the security of all people.

Since September 2001 many states have adopted new counter-terrorism measures that are in breach of their international obligations. In some countries, the post-September 2001 climate of insecurity has been exploited to justify long-standing human rights violations carried out in the name of national security.

In adopting measures aimed at suppressing acts of terrorism, states must adhere strictly to the rule of law, including the core principles of criminal and international law and the specific standards and obligations of international human rights law, refugee law and, where applicable, humanitarian law. These principles, standards and obligations define the boundaries of permissible and legitimate state action against terrorism. The odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights.

Arising out of these concerns the ICJ has appointed an independent panel of eminent jurists with a mandate:

“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.”

In order to effectively achieve this mandate the Eminent Jurists Panel will follow a framework of inquiry based on the general questions set out below. Where the laws, policies and practices of a State touch on areas of particular concern to the Panel, those issues will be explored in greater detail at the relevant hearing.

The Panel will examine the compatibility of national laws, policies and practices with a State’s international obligations (whether contained in treaties or customary international law). It will also inquire into the impact of counter-terrorism laws, policies and practices on the rule of law. In countries or regions which have faced cycles of terrorism and counter-terrorism in the past, participants are also encouraged to reflect on experiences with past counter-terrorism laws and policies in order to identify any lessons learned from such experiences which may be instructive in approaching today’s threat.

The Panel is interested in the justifications given for counter-terrorism laws, policies and practices, particularly where they depart from the ordinary legal framework. In this regard the

¹ See www.icj.org; for information on the Eminent Jurists Panel see also <http://ejp.icj.org/>

Panel wishes to assess whether measures pursue legitimate aims and are necessary and proportionate taking into account the threat of terrorism in your country.

Questions identifying the core issues to be considered are set out below. Where answers to questions are in the affirmative, issues that will be of particular interest to the Panel have been highlighted. The Panel's enquiries will be based within this framework and participants at national and sub-regional hearings are encouraged to take these core issues into account in preparation of their submissions.

The panel will have regard to written submissions as well as information obtained at the hearings. As the time for oral submissions will be limited participants are encouraged to make written submissions which will help the members of the Panel to direct their enquiries to salient issues which may need elaboration or clarification.

The Panel encourages submissions that adopt the following analytical approach:

- 1) What special laws, policies or practices has your 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 person 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 against terrorism" in your country?**
- 5) What lessons should today's policy-makers learn from any experiences your country has had in the past with terrorism and counter-terrorism?**

B. Core issues for submissions at national hearings

I. General concerns

Since 2001, governments have increasingly argued that the threat of international terrorism is so exceptional, that special laws, rules and practices are required to prevent and punish acts of terrorism. Some countries have explicitly or implicitly argued that international human rights law does not apply to counter-terrorism measures or that its framework needs to be examined and redefined in light of the nature of the threat of terrorism.

Many new counter-terrorism laws have been adopted subsequent to Security Council Resolution 1373 and recent regional counter-terrorism conventions. Existing national security laws have also been modified or extended to cover the threat of terrorist acts.

The Panel wishes to examine whether these new laws and regulations are justified by the security threat posed by terrorism. It will also examine whether such laws have affected the role of parliament and the civilian judiciary.

Question 1:

Has your government questioned the relevance of international human rights with regard to counter-terrorism laws, policies and practices?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances in which governmental officials have openly contested the applicability and/or legitimacy of human rights law or argued for a redefinition of existing human rights norms in light of an exceptional security threat posed by terrorism;
- Instances in which your government has considered its actions to form part of a global ‘war on terror’;
- Instances in which the authorities have implied or stated that human rights norms are superseded by obligations to fight terrorism.

Question 2:

Have counter-terrorism laws, policies and practices had an impact on the full observance of international humanitarian law? If so, what has been the impact?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances in which the fight against terrorism has led to government positions denying the applicability of international humanitarian law to armed conflicts;
- Instances where interpretations of concepts in international humanitarian law have led to a denial of its protection;
- Positions and measures affecting the principle of immunity of civilian population;
- Positions and measures affecting the distinction between combatants and non-combatants.

Question 3:

Have any counter-terrorism laws, policies and practices been adopted through the use of exceptional procedures which reduce the role of parliament?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances of executive as opposed to parliamentary law-making or instances in which the legislature delegated special law-making or regulatory powers to the executive;
- Use of extraordinary or expedited procedures that limit public debate prior to the adoption of new laws and policies;
- The extent of publicly accessible information concerning any threat which forms the basis of new counter-terrorism laws and measures;
- Instances in which new laws and measures justified as necessary to fight terrorism have served other purposes or have been extended to apply to situations unrelated to counter-terrorism;
- The form and effectiveness of regular reviews of counter-terrorism laws, such as sunset clauses;
- The influence of Security Council resolutions or decisions of regional organizations on specific domestic counter-terrorism laws and policies.

Question 4:

Have counter-terrorism laws, policies and practices had an impact on the role of the judiciary?

If so, what have the authorities claimed to be the justifications for such laws, policies and practices and any changes made?

The Panel is particularly interested in submissions highlighting the following issues:

- Any limitation of the powers of the civilian judiciary to oversee the legality of counter-terrorism laws and practice, to adjudicate terrorism cases and to ensure accountability for counter-terrorism measures or acts;
- The removal or modification of access to judicial remedies in terrorist related proceedings, including limitations of the right to a remedy before an independent civilian court from interferences into fundamental rights;
- Instances of interference with or attempts to intimidate or influence the judiciary in terrorism cases. Including public statements by the authorities or other groups, threats, killings, disappearances and other forms of persecution of judges.
- Creation of parallel systems, including special jurisdictions outside the ordinary justice system.

II. Terrorism and states of emergency

The Panel will examine the relationship between terrorism and states of emergency. It will consider the circumstances under which the threat of terrorism may justify the declaration of a state of emergency and derogation from existing human rights standards. The Panel is interested in learning whether your country has factually or legally suspended rights. The Panel will consider the circumstances, scope and impact on human rights and the rule of law of any derogation. The Panel is also interested in learning about the possible long-term ramifications of states of emergency.

Question 5:

Have there been legislative changes to the criteria for states of emergency in case of terrorism, terrorist threats or terrorist acts?

Has a state of emergency been declared in your country as a result of the threat of terrorism or has an existing emergency been prolonged because of a terrorist threat?

If a state of emergency has been declared or prolonged because of the treat of terrorism, what is the scope of derogations from fundamental freedoms and human rights and what are the safeguards to prevent abuse?

The Panel is particularly interested in submissions highlighting the following issues:

- Circumstances under which a terrorist threat can justify derogation from human rights norms in your country;
- Instances in which states of emergency have been justified by fighting terrorism and the adequacy of information about the threat justifying the emergency;

- The role of Parliament and the Judiciary in the declaration of an emergency and in the implementation of emergency measures; Impact of states of emergency on the rule of law, the principle of separation of powers and the integrity and independence of the judiciary.
- The formal declaration of the state of emergency, its time limit and notification to international supervisory bodies;
- The scope of derogations from fundamental freedoms and human rights and the safeguards to prevent abuse;
- Instances of militarization of the justice system or the creation of special jurisdictions and its long-term impact on the rule of law;

III. Terrorism and fundamental principles of criminal law

States have adopted new laws containing various definitions of ‘terrorism’, ‘terrorist threat’, ‘terrorist acts’ and ‘terrorist organizations’. Some of these definitions have formed the basis of criminal offences or aggravating circumstances in criminal law. States have also, partly as a result of regional counter-terrorism treaties, adopted a range of additional and complementary offences to address terrorist crimes.

The Panel will examine the scope of such definitions, in particular whether new offences created comply with the principle of *nullum crime sine lege* and other fundamental principles of criminal law.

Question 6:

How is ‘terrorism’ (and associated terms such as ‘terrorist’, ‘terrorist act’, ‘terrorist organization’, etc.) defined in the laws of your country?

Question 7:

Have criminal offenses based on definitions of terrorism, terrorist acts or terrorist organizations been introduced in your country?

Have other offences related to terrorism been introduced (such as forms of direct or indirect incitement of terrorism, public provocation or glorification of terrorism)?

If so, how have these offences operated in practice? Have they led to undue prosecution of persons as terrorists?

The Panel is particularly interested in submissions highlighting the following issues:

- Legislation which criminalizes terrorism or similar concepts, the definitions of key elements of such crimes and their application in practice; the scope of criminal jurisdiction over such offences (e.g. personal, territorial, universal);
- Other offences used to try suspected terrorists, such as extremism, sedition, subversion offences, etc.
- Proscription of membership of terrorist groups, including the question of how and by whom such organizations are proscribed, and the level of participation required to constitute a criminal offence;
- The scope of other offences, such as aiding and abetting terrorist acts, conspiracy to commit terrorist acts and training or support of terrorism, concealment, etc.;
- Criminalization of direct or indirect incitement of terrorist acts or glorification of terrorism;
- Instances in which terrorism offences were established that criminalize the legitimate and peaceful exercise of fundamental freedoms or where terrorist offences are abused against members of civil society or other groups to suppress political or social dissent;
- Instances of retroactive application of criminal offences.

IV. Arrest and detention in counter-terrorism cases

The Panel will examine alterations to rules and practices on arrest and detention in counter-terrorism cases. It will examine reduction of legal safeguards, such as access to courts, lawyers and to the outside world, preventive or administrative detention without charge or prolonged periods of detention before formal charges are brought. Detention conditions may also be critical in counter-terrorism cases. The Panel inquiry will examine any such alterations, their impact on human rights and humanitarian law.

Question 8:

Are there any specific laws, policies and practices regarding the arrest and detention of terror suspects? If so, what do these laws provide and have there been any changes introduced since 2001? If so, what have the authorities claimed to be the justification for any such changes?

Has your country introduced forms of administrative detention without trial or charge to fight terrorist acts? If so, what has been the impact of these laws?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances of arbitrary arrest and detention in counter-terrorism related cases, including secret or incommunicado detention;

- Practices of arbitrary arrests, including indiscriminate and mass arrests, of persons from villages, families, friends or other groups associated with suspected terrorists;
- Changes regarding the grounds and procedures for arrest and detention and authorities empowered to arrest and detain;
- Judicial authorizations and remedies (including habeas corpus), limits on their frequency, effectiveness or scope, exclusion of bail applications pending trial in terrorism cases;
- Restrictions of the right of access to legal counsel of one's choice and rules or practices affecting the right to effective representation;
- Limitations on the right to be informed of the reasons for arrest and access or contact to family or friends or to an (independent) medical doctor;
- Changes of laws, rules and regulations affecting the conditions of arrest and detention of terror suspects, including in high-security prisons;
- Forms of (administrative) detention without charge of terror suspects, any legal and judicial safeguards, their implementation and long-term impact on human rights and the rule of law;
- Use of other legislation, like immigration and aliens legislation, to detain terrorist suspects;
- Use of laws on material witnesses to detain terror suspects;
- Detention of persons suspected of terrorist acts in an armed conflict.

V. Administration of justice and right to a fair trial

An area of particular focus for the Panel will be the impact of counter-terrorism laws and policies on the right to a fair trial. The Panel wishes to hear the experience of countries who have attempted to bring terrorists to justice through independent and impartial courts. Where no significant trials have been held in your state the Panel would be interested to learn whether procedures other than criminal trials have been used.

The Panel is particularly interested in examining instances where countries have responded by establishing courts outside the ordinary justice system (military or civilian), have used military courts for trying terrorist suspects or established specialized chambers and procedures to try terrorist suspects.

It will examine the justification for such changes and analyse the impact of such courts or procedures on the right to a fair trial and in particular on the right to a legal defence. The Panel also invites submissions which relate to the increasing reliance on intelligence information or foreign evidence in counter-terrorism cases.

Question 9:

Have there been significant counter-terrorism prosecutions in your country? What have been the experiences and challenges in bringing terror suspects to justice before an independent tribunal?

Has your country used proceedings other than criminal trials against terror suspects? What have the authorities claimed to be the justification for such proceedings or practices?

The Panel is particularly interested in submissions highlighting the following issues:

- Difficulties in the criminal prosecution of terrorist suspects and the response of the authorities to such difficulties;
- Practices which may function as alternatives to criminal prosecution, such as: detention without trial, control order schemes or administrative restriction measures. The scope of judicial oversight and scrutiny in such proceedings, alterations regarding evidence, including secret evidence and access to legal counsel;

Question 10:

Has your country established extraordinary or special courts outside the ordinary justice system to try terrorist offences?

Has your country used military courts or tribunals to try terrorist offences?

If so, what have the authorities claimed to be the justifications for the use of such courts or tribunals?

The Panel is particularly interested in submissions highlighting the following issues:

- The scope of jurisdiction of extraordinary, special tribunals outside the ordinary justice system;
- The scope of jurisdiction of the military justice system to try terrorist offences;
- The independence and impartiality of such courts and the implications for the right to a fair trial;
- Alterations of ordinary criminal procedures, such as special rules relating to the presumption of innocence, access to lawyers, evidence or the right to silence (such as adverse inferences) or the right to appeal; measures which cause the burden of proof to shift to the defendant; restriction of the right to a public hearing;

- Lessons learned from past experiences of such tribunals and their impact on the administration of justice and the legal culture in your country;

Question 11:

Has your country established specialized jurisdictions within the civilian justice system (such as special chambers) to try terrorist offences?

Have there been any laws and practices introduced in specialized or ordinary jurisdiction which provide for special procedural rules or that amend criminal procedure to try terrorist suspects? If so, how have such measures affected the right to a fair trial?

Are there any laws, policies or practices which affect the right to defence, including the ability of Counsel to defend a person suspected of terrorism related offences?

Have there been any changes to such laws, policies and practices since 2001? If so, what have the authorities claimed to be the justifications for such laws, policies and practices and any changes made?

The Panel is particularly interested in submissions highlighting the following issues:

- The scope of specialized jurisdictions within the civilian justice system, their independence and procedural particularities;
- Alterations of ordinary criminal procedures, such as special rules relating to the presumption of innocence, mandatory arrest pending trial, right to defence, such as access to evidence, the right to silence (such as adverse inferences) or the right to appeal; measures which cause the burden of proof to shift to the defendant; restriction of the right to a public hearing;
- Instances in which public officials have made statements concerning the presumed guilt of terror suspects;
- Restrictions on the access of terrorist suspects to legal counsel and limitation of choice of legal counsel for cases involving terrorist suspects;
- Use of and experiences with specially vetted or security cleared advocates and its impact in practice on the right to a fair trial or due process;
- Instances of intrusions into the confidentiality of the lawyer-client relationship;
- Lack of adequate time and/or facilities to prepare an effective defence, lack of access to evidence used against the defendant;
- Instances of identification by the authorities of lawyers with their clients (“terrorist lawyers”); Persecution of lawyers due to their defence or prosecution of terror suspects, including prosecution, threats, intimidation, killings or disappearances and other forms of harassment.

Question 12:

Are there any laws, policies and practices in relation to evidence in criminal or other proceedings which adversely affect the right to fair procedures of persons suspected of terrorist offences? Have there been any changes to such laws, policies and practices since the events of 9/11?

If so, what have the authorities claimed to be the justifications for such laws, policies and practices and any changes made?

The Panel is particularly interested in submissions highlighting the following issues:

- Reliance on intelligence information or secret or classified evidence (including foreign intelligence) in court. Justifications for classifying evidence or sources.
- How courts test the reliability of such evidence and whether the defence can effectively challenge such evidence;
- Exclusion of evidence obtained by torture or cruel, inhuman or degrading treatment or punishment (including by third states) or by other gross human rights violations;
- Use of special investigative techniques in criminal or other investigations which might adversely affect a suspect's right to a fair trial, such as use of anonymous witnesses, informants, undercover agents, enticements and entrapment, tapping, opening of mail or other monitoring of communications.

VI. Freedom from torture or cruel, inhuman or degrading treatment or punishment

The Panel welcomes submissions considering the possible impact of counter-terrorism measures and policies on the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.

It will examine the challenges that have been raised to the absolute nature of the prohibition of torture or cruel, inhuman or degrading treatment or punishment by laws, policies and practices applied in the fight against terrorism.

Question 13:

Are there any laws, policies and practices which have contributed to or increased the risk of torture or cruel, inhuman or degrading treatment or punishment of terrorist suspects?

Have instances of torture been investigated and have those responsible been brought to justice? If not, what have been the legal or practical impediments?

If so, what are the justifications for such laws, policies and practices?

The Panel is particularly interested in submissions highlighting the following issues:

- Attempts to redefine torture or cruel and inhuman or degrading treatment or punishment under relevant legislation or regulations;
- Instances of torture or cruel, inhuman or degrading treatment or punishment of terrorist suspects;
- Instances in which authorities justified or condoned the use of torture or cruel, inhuman or degrading treatment or argued that agencies are not bound by the prohibition of such treatment;
- Laws, policies and practices that have led to or increased the risk of torture or cruel, inhuman or degrading treatment, such as restrictions of access to the outside world, access to lawyers and to courts;
- Rules or practices allowing for the use of coercive interrogation techniques or sensory deprivation, for the purpose of intelligence gathering, military or criminal investigations or instances in which government officials have argued for forms of coercive interrogation techniques;
- Use of evidence obtained by torture or by cruel, inhuman or degrading treatment or punishment, including by agents of a third state, in judicial (criminal, civil or administrative) or other proceedings;
- Use of intelligence information for ‘operational purposes’ that may have been obtained by torture or cruel, inhuman or degrading treatment;
- Investigations into allegations of torture and accountability of those responsible for acts of torture or cruel, inhuman or degrading treatment or punishment; Remedies available for those who have been subjected to torture, or cruel, inhuman or degrading treatment;
- Allegations of state involvement or complicity in torture (collusion in rendition to torture, secret detentions, over-flights, participation in interrogations of a third country, provision of information through intelligence sharing or mutual legal assistance leading to torture).

VII. Disappearances and arbitrary killings

The Panel wishes to examine laws, policies and practices relating to instances of disappearances, extra-judicial and other arbitrary killings of persons who are suspected of involvement in or being supporters of terrorism or terrorism related offences. The Panel’s examination will focus on the extent of such occurrences and the compliance of States with their duty to investigate any occurrences of extra-judicial killings or disappearances.

Question 14:

Have any laws, policies and practices contributed to or increased the occurrence of enforced disappearances or arbitrary killings and extrajudicial executions?

What are the justifications for such laws, policies and practices?

Have instances of disappearances and arbitrary killings and extrajudicial executions been investigated and have those responsible been brought to justice? If not, what have been the legal or practical impediments?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances of enforced or involuntary disappearances of persons allegedly connected to terrorist activities;
- Instances of alleged arbitrary killings or extra-judicial executions by the authorities of persons allegedly connected to terrorism activities (including killing of family members, members of minorities and populations of areas perceived to be connected to terrorist activities);
- Any practices or instances of assassination or targeted killing of persons suspected of connection to terrorist offences, the circumstances in which such practises are carried out and any precautions or safeguards used;
- Laws, policies and practices that may have contributed to disappearances or arbitrary killings or extrajudicial executions, such as village guard systems or civil defence groups; Special rules or practices on the use of firearms and their justifications. The extent, if any, to which such rules have contributed to the occurrence of arbitrary killings;
- Information about independent and effective investigations into killings or disappearances of persons allegedly connected with terrorist activities.

VIII. Non-refoulement/transfer of terror suspects

In recent years there have been tensions between states counter-terrorism policies and the right not to be returned to a country where the person will face a risk of torture or cruel, inhuman or degrading treatment, enforced disappearances, extrajudicial execution or a manifestly unfair trial. Some countries have relied on 'diplomatic assurances' when returning persons to countries where they face a real risk of torture or cruel, inhuman or degrading treatment or punishment, while others argued for a balancing between the security risk and the prohibition on return. Procedural protection against the return or transfer to another jurisdiction has also been subjected to scrutiny.

Question 15:

Are there any laws, policies and practices regarding the return and transfer of persons in terrorism cases which negatively affect human rights and have there been any changes introduced since September 11, 2001?

If so, what have the authorities claimed to be the justification for any such changes?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances in which a person has been returned, extradited or deported to a country where he or she is at risk of torture or cruel, inhuman or degrading treatment or punishment, enforced disappearance or extrajudicial execution;
- Return, expulsion or extradition to countries where there are concerns about the fairness of the trial, for example where a person will be tried by extraordinary tribunals, military courts or commissions;
- Instances in which countries have relied on diplomatic assurances in the return of persons;
- Transfer by countries that have abolished the death penalty of a persons to a jurisdiction which permits the death penalty for terrorist offences;
- Restriction of legal and judicial remedies to challenge return, including alterations of such remedies in counter-terrorist cases;
- Implications of counter-terrorism laws and practices for refugee determination proceedings;
- Instances in which states refuse to provide mutual legal assistance due to the use of extraordinary tribunals, military courts or commissions or other concerns as to the fairness of the trial;
- Instances of seizure, arrest and transfer of a person from one jurisdiction to another outside the normal legal processes of extradition, deportation, removal or exclusion (“renditions”);
- Instances in which the government has assisted in or tolerated the rendition of a person to a third country.

XI. Terrorism, counter-terrorism and fundamental freedoms

Fundamental freedoms, such as freedom of expression, association, assembly, the right to privacy and freedom of movement are protected under human rights law. They do, however, allow for necessary, proportionate and non-discriminatory restrictions. The Panel will examine key restrictions of fundamental rights that are justified by a threat of terrorism.

Counter-terrorism measures sometimes distinguish between citizens and foreign nationals or are directed at members of particular ethnic, religious, linguistic or national minorities. The Panel will examine to what extent counter-terrorism measures have led to direct or indirect practices of discrimination or have increased alienation of minority communities.

Question 16:

Are there any counter-terrorism laws, policies and practices which limit the right to freedom of expression and access to information? Have there been any changes to such laws, policies and practices since 2001?

If so, what have the authorities claimed to be the justification for any such changes?

The Panel is particularly interested in submissions highlighting the following issues:

- Laws and practices controlling or banning speech, such as censorship laws which are justified implicitly or explicitly as counter-terrorism measures;
- Criminal offences such as incitement, inducement, public advocacy for terrorism or glorification of terrorism;
- Implications of counter-terrorism laws and policies for freedom of the media;
- Scope of limitations on access to information, including information related to the investigation and detention of suspected terrorists, the gathering of intelligence and the execution of police or military actions on national security grounds.

Question 17:

Are there any counter-terrorism laws, policies and practices which limit the right to freedom of association, assembly and religious belief? Have there been any changes in such laws, policies and practices since 2001?

If so, what have the authorities claimed to be the justification for any such changes?

The Panel is particularly interested in submissions highlighting the following issues:

- Abuse of counter-terrorism laws to place restrictions on organizations or associations of human rights defenders, civil society groups, indigenous peoples or trade unionists;
- Registration requirements justified by the fight against terrorism, limitations or control of funding for non-governmental organizations;

- Instances of proscription of organizations or associations for reasons of national security, grounds for proscription and legal remedies;
- Limitations to freedom of assembly justified as necessary to counter terrorism;
- Restrictions on freedom to practice religion justified by as necessary to fight terrorism or extremism, such as the monitoring and closure of places of religious worship;

Question 18:

Are there any counter-terrorism laws, policies and practices affecting the right to private life? If so, what has been the impact of such changes and what have the authorities claimed to be the justification for any such changes?

What are the control mechanisms against abuse and how effective are they in practice?

The Panel is particularly interested in submissions highlighting the following issues:

- Changes to the grounds for and operation of surveillance powers in order to fight terrorism (such as house searches, wire-tapping and monitoring of communications and movement);
- Judicial and other control of privacy intrusions, effectiveness of such control, and any remedies available for such interferences;
- Gathering and storage of data, including from private sources;
- Exchange of data and information sharing between government institutions within and across borders, including between law-enforcement and intelligence agencies;
- Use and retention by the state of personal data such as biometric data.

Question 19:

Are there any counter-terrorism laws, policies and practices used by the authorities to fight terrorism that distinguish between nationals and non-nationals or that discriminate on the basis of race, ethnicity or religion or other reasons?

Have there been any changes to laws, policies and practices since 2001?

If so, what have the authorities claimed to be the justifications for such laws, policies and practices and any changes made?

Are there any counter-terrorism laws, policies and practices which have limited freedom of movement? If so, what were the justifications for such laws, policies and practices?

The Panel is particularly interested in submissions highlighting the following issues:

- Instances of laws, policies and practices that apply *de jure* or *de facto* only to non-nationals or to ethnic, religious, linguistic or other minorities;
- Scope of use of special techniques of racial or ethnic profiling and their impact on the right to non-discrimination;
- Special legislation and regulations on citizenship;
- Statistical data on increasing of xenophobia, racism or discrimination as a result of public stigmatization of a particular group as associated with terrorism;
- The impact of counter-terrorism laws and measures on immigration policies;
- Instances of forced displacement as a result of counter-terrorism operations.

X. Human rights implications of the financing of terrorism

In recent years renewed attention has been given to the need to control financial support for terrorism. The Panel will examine some of these measures, including on the international level and their implications for fundamental freedoms.

Question 20:

What procedures are used to control finances of persons listed on universal, regional or national terrorist lists and are there any remedies against such decisions?

Are there any other measures taken to fight financing of terrorism which have had a negative impact on human rights?

If so, what are the justifications for any such measures?

The Panel is particularly interested in submissions highlighting the following issues:

- Laws and regulations which criminalize the financing of terrorism;
- Measures (legislation or other rules) implementing Security Council resolution 1267 requiring the freezing of assets of Al-Qaida and Taliban associates; legislation or other rules enacted or amended for the purposes of implementing Security Council resolution 1333 (2002) requiring freezing of assets of persons associated with terrorism;
- Legislation and other rules enacted or amended in implementing decisions of regional organizations requiring freezing of assets of persons associated with terrorism;

- Procedures through which such individuals and entities may challenge the listing or request de-listing. Difficulties in accessing evidence used in making decisions regarding listing;
- Impact of measures against terrorism financing on activities of non-governmental and charitable organizations.;

XI. Accountability, Reparation and Remedies

The Panel wishes to examine the extent to which counter-terrorism laws and measures have led to impunity for human rights violations committed in counter-terrorism operations. It will examine measures, which affect the ability of persons whose rights are violated by counter-terrorism or terrorism related acts to hold actors accountable, receive reparation or otherwise obtain effective remedies for the violations of their rights.

Question 21:

Are there any laws, policies and practices which reduce the accountability of the authorities for human rights violations in counter-terrorism measures?

Have difficulties arisen in bringing those responsible for such human rights violations to justice?

Have there been the impediments to reparation for victims of terrorist acts and counter-terrorism measures?

How is an effective access to justice guaranteed to victims of terrorist acts and to victims of gross human rights violation involved in counter-terrorism measures?

The Panel is particularly interested in submissions highlighting the following issues:

- The degree of impunity or amnesty for violations of rights, which occur as part of terrorist or counter-terrorist actions (through ineffective investigation, statutory immunity clauses or others laws, policies or practices);
- The extent to which independent investigations and proceedings have been initiated where human rights violation are alleged;
- The extent to which victims may obtain access to information about criminal investigations and trials;
- The extent to which defences, such as superior orders are available for human rights violations;
- Any rules or practices which provide for different standards or mechanisms of accountability for members of the intelligence services, the military, police and other security forces and civilians;

- The extent to which victims of counter-terrorist or terrorist acts in your country have access to remedies for injuries suffered (such as reparation schemes);
- The use of universal jurisdiction to bring those responsible for terrorist acts or gross violations of human rights involved in counter-terrorism measures to justice.