



INTERNATIONAL  
COMMISSION  
OF JURISTS

# **International Commission of Jurists E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS**

**No. 2, September 2004**

## **ICJ Conference: Jurists Adopt Declaration on Counter-Terrorism and Human Rights**

In August the ICJ brought 160 jurists from all regions of the world to Berlin - the city where we were founded 52 years ago - to consider the challenges of counter-terrorism and human rights. The jurists adopted the [Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism](#). The Declaration sets out 11 principles that governments should respect while countering terrorism. The Declaration signalled the commitment of judges and lawyers around the world to take a leading role in ensuring that the rule of law be respected in addressing terrorism. The keynote speaker at the conference, UN High Commissioner for Human Rights Louise Arbour, [highlighted](#) the essential role of the judiciary in protecting human rights in the framework of the fight against terrorism.

ICJ Press

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## NEWS FROM COUNTRIES

### ***UK Court of Appeal Admits Evidence Obtained Through Torture***

The UK Court of Appeal, the second highest court in the country, allowed the use in UK courts of evidence obtained through torture in other countries against suspects detained under anti-terrorism legislation. In a 2-1 [decision](#) delivered on 11 August, the Court ruled that British courts could use such evidence as long as British officials were not complicit in the abuse. The Court rejected the appeal of 10 men suspected of having links to international terrorism and currently held without charge. The ICJ criticised the ruling and reminded the UK that the Convention against Torture expressly forbids the use of evidence obtained by torture in any proceedings.

ICJ Press

### ***Colombian Constitutional Court Rules Anti-terror Law Unconstitutional***

On 30 August, following a challenge by the Colombian Commission of Jurists, an ICJ affiliate, and other NGOs, the Colombian Constitutional Court declared unconstitutional [Legislative Act N°2 2003](#), which granted judicial police powers to the military in cases of suspected terrorism. The Legislative Act granted the military the power to detain individuals, carry out searches and intercept private communications without previous judicial order. The ICJ supported the challenge by submitting an [amicus curiae](#) to the Court.

Court Press and CCJ Briefing

### ***Hearings Begin at Guantánamo Bay***

Military court proceedings for four detainees, two Yemenis, a Sudanese and an Australian currently held at the US army base began on 25 August and lasted four days. The detainees are being tried under the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, signed by President George W. Bush on 13 November 2001. The Order allows non-US citizens to be held indefinitely without charge or trial, or to be tried by military commissions. The four men have been charged with conspiracy to commit terrorism and other crimes. The first Military Commission is made up of five US officers and chaired by a retired army Colonel. A number of international observers and journalists were allowed to [attend](#) the proceedings, but they were excluded when classified information was discussed. The hearings will continue in the following months.

### ***Russian Chief of Staff Announces Pre-emptive Strikes; Government Announces Sweeping Reforms to Combat Terrorism***

Following the school siege in Beslan which resulted in at least 326 dead and more than 700 injured, the Russian army's Chief of Staff announced his Government's plans to launch pre-emptive strikes on terrorist bases anywhere in the world. After the siege, the State Duma, the lower house of parliament, began debating sweeping reforms to combat terrorism. If the laws are enacted, the Government would have the right to declare a "state of war" in the event of "a terrorist action representing a threat to national security". At present, a state of war, under which a number of human rights can be suspended, can be declared only in response to an armed invasion by another country. The Duma rejected calls to reintroduce the death penalty, on which Russia has maintained a moratorium since it joined the Council of Europe in 1996, for those convicted of terrorist offences.

The Government also announced that it will launch a parliamentary inquiry into the sequence of events that led to the end of the siege.

### ***National Human Rights Institutions Commit Meet to Protect Human Rights in Counter-Terrorism***

The Seventh [International Conference for National Institutions for the Protection and Promotion of Human Rights](#) (ICNI), meeting 14-17 September in Seoul, Republic of Korea, addressed the theme of upholding human rights during conflict and while countering terrorism. The Conference adopted the *Seoul Declaration*, which commits the national institutions to take action to uphold human rights at the national level and to press for a United Nations mechanism to monitor the compliance of counter-terrorism measures with human rights standards. The Conference was attended by National human rights institutions and NGOs from all regions of the world.

### ***India To Repeal Prevention of Terrorism Law***

On 22 September, just a month before it was to lapse, India's President announced the Government will repeal the 2002 [Prevention of Terrorism Act](#), which gave authorities powers to detain suspects for three months without charge and to try anyone suspected of giving money, shelter or other support to terrorists. The law also broadened the offences for which the death penalty could be imposed. Parliament must formally agree to the repeal before it comes into effect.

### ***Australian Parliament Passes New Anti-Terror Legislation***

Australia's Parliament has enacted new [legislation](#) restricting contact with banned organisations and granting wider powers to the security services. Under the new laws, anyone found contacting such organisations or their supporters can be imprisoned. Family members who wish to communicate with detained relatives allegedly involved with a prohibited organisation will only be able to discuss family matters during visits. In further changes, the Australian Security Intelligence Organisation will have the power to seize passports to prevent anyone suspected of having knowledge of a planned terrorist attack from fleeing the country. The laws also allow the Government to transfer persons detained on national security matters to special jails.

### ***Indonesian Justice Minister Announces Amendments to Anti-Terror Law***

Indonesia's Minister for Justice and Human Rights announced that the Government has drafted amendments to controversial [Law Number 16 \(2003\)](#) on the elimination of terrorism. The law will be amended to make membership in a terrorist organisation a punishable offence, regardless of whether the person was involved in a terrorist attack. Furthermore, under the new law if a person has knowledge of an impending terrorist attack and does not report it to the authorities, he or she may face up to 15 years in prison.

### ***South Korean President and UN Human Rights Commissioner Urge Abolition of Security Law***

Roh Moo-Hyun, President of the Republic of Korea, has signalled his intention to abolish the country's [National Security Law](#). The UN High Commissioner for Human Rights, Ms. Louise Arbour, welcomed moves to repeal the law. On 23 August, the National Human Rights Commission of South Korea [recommended](#) that the Government and National Assembly consider the abolition of the National Security Law. The 1948 law gave wide-ranging powers to security-related offices to investigate and detain anyone suspected of having any link to blacklisted organisations, the majority of which are perceived to be pro-North Korea.

### ***Canadian Minister of Justice Calls for Review of Anti-Terror Law; Chief Justice Criticises Act***

On 17 August, the Canadian Minister of Justice, Irwin Cotler called for a comprehensive review of [anti-terrorism legislation](#) to determine the impact that this and related measures have had on civil liberties. Passed in December 2001, the Canadian Anti-Terrorism Act contains extensive new powers for police to investigate acts believed to be related to terrorism and has seriously affected individual human rights and freedoms. Further, the Chief Justice of the Federal Court, which deals with cases involving anti-terrorism laws, has said that security obligations imposed by the Act created "absurd" situations in the Court by forcing it to keep too much information secret.

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## **FROM THE UNITED NATIONS**

### ***Sub-Commission to Draft Guidelines on Counter-Terrorism and Human Rights***

After considering the [report](#) presented by one of its experts, the UN Sub-Commission on Human Rights has decided to draft principles and guidelines concerning the promotion and protection of human rights when combating terrorism. Draft principles were already contained in the expert's report. The ICJ presented an [oral statement](#) calling on the Sub-Commission to elaborate such guidelines.

## ***Security Council Establishes Executive Body to Assist the Counter-Terrorism Committee; CTC Adopts Guidelines on Visits***

The Security Council has established the Counter-Terrorism Committee Executive Directorate (CTED). The CTED will assist the Counter-Terrorism Committee in evaluating the implementation of Security Council resolutions on terrorism, facilitating technical assistance to Member States and promoting closer cooperation and coordination with international, regional and sub-regional organisations. On another development, on 4 August the CTC adopted Guidelines for Visits to Member States.

[Guidelines](#)

[Documents CTED](#)

## ***Human Rights Committee Urges Belgium to Refine its Definition of Terrorism***

In its [concluding observations on Belgium](#), the Human Rights Committee expressed its concern at that country's anti-terrorist legislation. The Committee said that Belgian laws give a definition of terrorism which, in referring to the degree of severity of offences and the perpetrators' intended purpose, does not entirely satisfy the principle that offences and penalties must be clearly set out in law. The Committee urged Belgium to produce a more precise definition of terrorist offences.

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## **FROM REGIONAL SYSTEMS**

### ***Mercosur: Defence Ministers Discuss Fight Against Terror***

The Ministers of Defence of Argentina, Brazil, Paraguay and Uruguay, Chile and Bolivia met to discuss the security agenda in the region. Seeing the threats they faced as different to those in countries from the north, the ministers concluded that their countries' armed forces have the "classical" function of defending territory. The Brazilian Minister said that although no country is immune from terrorist threats, terrorism must be prevented with better intelligence and policing and not with the armed forces.

### ***Council of Europe: Experts Start Drafting Guidelines for Terrorism Victims***

Experts from the Council of Europe have started drafting "Guidelines on aid for victims of terrorist acts and protection of their fundamental rights". These will follow the Guidelines on Human Rights and the Fight Against Terrorism adopted by the Committee of Ministers in 2002. The expert group will meet again in October and will submit a text to the Steering Committee for Human Rights for examination and adoption at its November meeting.

[Report](#)

### ***OSCE Report Criticises Interference with the Media During Russia's Hostage Crisis***

The OSCE Representative on the Freedom of the Media, Miklos Haraszti, released a critical [report](#) on the media coverage of the recent terrorist attacks in Beslan, North Ossetia. The report documents insufficient, contradicting and incorrect information from the Government to the media on the handling of the crisis, as well as interference, violence, detention and pressure on journalists.

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## **IN BRIEF**

- In a [memorandum](#) to the Kenyan Government, Amnesty International said on 11 September that the 2003 Suppression of Terrorism Bill, in its present form, may undermine the Kenyan constitution and human rights treaties to which Kenya is a party.
- In its [concluding observations on New Zealand](#), the Committee against Torture called on the Government to ensure at all times that the fight against terrorism does not lead to a breach of the Convention and impose undue hardship on asylum-seekers.

## ICJ NEWS

- *The Anti-Terrorism Act, 2002 (Uganda): Human Rights Concerns and Implications- a [paper](#) presented by ICJ Commissioner Judge S. B. Bossa (Uganda)*
  - *“Countering Terror”, [article](#) by ICJ Commissioner Rajeev Dhavan (India)*
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