

E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

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AFRICA & MIDDLE EAST

Kenya: New anti-terrorism law becomes final after President's assent

On 13 October, President Kibaki assented to the *Prevention of Terrorism Act 2012*, the first anti-terrorism legislation adopted in Kenya under the new Constitution. The approval occurred after a meeting with civil society and other groups pressing for the inclusion of certain amendments to provisions of concern. The original draft caused concern about the definition of "terrorism act", which extended terrorism to include "serious damage to property" as well as an act which "interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services", or "prejudices national security or public safety". It also introduced the possibility of listing procedures for entities with the possibility of appeal to the High Court which would be able to "consider any evidence or information adduced [...] before the Court in the absence of the applicant or the counsel representing the applicant where the disclosure of that information would be prejudicial to national security or endanger the safety of any person".

[Draft Law](#)

[Press Article 1](#)

[Press Article 2](#)

Rwanda: Report documents torture and arbitrary detention in countering terrorism

On 8 October, Amnesty International published a report entitled *Rwanda: Shrouded in secrecy - Illegal detention and torture by military intelligence*, documenting more than 45 cases of unlawful detention and 18 allegations of torture or other ill-treatment by Rwandan military intelligence in 2010 and 2011. The report finds that, in several cases, these people had been detained by security services with terrorism and threatening national security and transferred to prisons pending trial. The report also analyzes provisions in the anti-terrorism law allowing for pre-trial arrest without prompt access to a judge, unofficial and/or secret detention and ill-treatment. Many detainees have reported being severely beaten during interrogations while in military detention, including with the purpose of obtaining "confessions".

[Report](#)

[NGO Statement](#)

Mali: UN Security Council to prepare military intervention to fight "terrorist" groups

On 12 October, the UN Security Council, pursuant to resolution 2071/2012, began planning for an international military force to assist Malian transitional authorities, at their request, against the rebel forces that have occupied parts of the country in the North. The Security Council condemned strongly "the abuses of human rights committed in the north of Mali by armed rebels, terrorist and other extremist groups, including violence against its civilians, notably women and children, killings, hostage-taking, pillaging, theft, destruction of cultural and religious sites and recruitment of child soldiers, stressing that some of such acts may amount to crimes under the Rome Statute and that their perpetrators must be held accountable." Mali referred the situation to the International Criminal Court in July. The Security Council further entrusted the Terrorism Sanctions Committee to add to the Al-Qaeda Sanctions List "names of individuals, groups, undertakings, and entities in Mali that are associated with Al-Qaida, in accordance with resolutions 1267 (1999) and 1989 (2011)".

[UNSC Resolution](#)

[ICC Statement](#)

[Press Article](#)

Morocco: Terrorism conviction amid claims of torture "confession" confirmed on appeal

On 1 October, an appeal court in Sale confirmed the conviction of Ali Aarrass for "affiliation to a terrorist organization and plotting to train Moroccan militants in Algeria", but reduced his sentence from fifteen to twelve years of imprisonment. The defence lawyers allege that the conviction is based on Aarrass' "confession" which they say was obtained under torture. Ali Aarrass had been arrested in Spain in 2008 after extradition requests from Morocco and was handed over to that country despite interim measures to suspend the extradition issued by the UN Committee against Torture while it was considering his case.

[Press Article](#)

Iraq: Another eleven persons executed for "terrorism"

On 7 October, ten Iraqis and one Algerian were executed following their final conviction for terrorism offences for having taken part in jihadist movements carrying out terrorist attacks against Iraqi citizens. This execution follows that of another six persons on 4 October, bringing the total number of people executed in Iraq in 2012 to 113. Reportedly, the family of the Algerian national executed, Abdallah Ahmed Belhadi, learned of his execution only through media reports.

[Press Article 1](#)

[Press Article 2](#)

Iran: Three convicted “terrorists” executed by hanging

On 21 October, the Iranian judiciary disclosed the execution by hanging of Yahya Charizehi, Abdoljalil Kahrzezi, and Abdolbasset Rigi in the prison of the provincial capital of Zahedan, labelling them as “terrorists”. The three were convicted for bomb attacks occurred in 2010, one in Chabahar which killed 39 people and another in Zahedan that claimed the lives of 28 people.

[Press Article 1](#)

[Press Article 2](#)

AMERICAS

USA: “Material support for terrorism” cannot be applied retroactively, says Court of Appeals

On 16 October, the federal Court of Appeals for the District of Columbia overturned the conviction by a military commission of Salim Hamdan, a former Guantánamo detainee, for “material support for terrorism”, an offence under the *Military Commission Act 2006*. The Court of Appeals found that the offence could not apply to conduct occurring before 2006 without violating the prohibition of retroactive criminal responsibility under the US Constitution, since this offence was not part of US criminal law at that time. Furthermore, the Court held that the international law of war did not, and still does not, include the offence of “material support for terrorism” as a war crime. Salim Hamdan, who was a driver and performed other menial functions around the compound of Osama Bin Laden, was arrested in Afghanistan in November 2001 and detained in Guantánamo until November 2008, when his 66-month sentence handed down in August 2008 was completed. He was thereafter transferred to Yemen, where he was released on 8 January 2009. The initial charges against him were challenged at the US Supreme Court, leading to a landmark judgment that struck down the first Military Commissions system.

[Ruling](#)

[Press Article](#)

USA: Wikileaks publishes secret detention policies

On 25 October, Wikileaks began to publish the “Detainee Policies”, a collection of more than one hundred classified or restricted documents of the US Department of Defense on regulations, practices and procedures related to people detained in US military custody. The documents include operating procedures for the Guantánamo Bay detention centre, centres in Iraq, including Abu Grahیب, European US military bases and interrogations manuals.

[Detainee Policies](#)

[Wikileaks Statement](#)

[Press Article](#)

USA: Invalidity of indefinite detention for terrorism suspects blocked by Appeals Court

On 2 October, the US Court of Appeals for the Second Circuit of New York granted a stay, until final decision of the same court, thereby suspending the ruling of 12 September delivered by judge Katherine B. Forrest of the US District Court for the Southern District of New York. Judge Forrest had issued a permanent injunction on section 1021(b) of the *National Defense Authorization Act* (NDAA), which authorizes the indefinite detention of any “person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” The judge described the statute’s words as vague and ambiguous and “unconstitutionally overbroad” in that it “purports to encompass protected First Amendment activities.”

[CA Order](#)

[DC Ruling](#)

USA: National intelligence centres breached civil liberties, says Senate Committee

On 3 October, the US Senate Permanent Sub-Committee on Investigations revealed that the internal inter-State counter-terrorism centres system, called “fusion centres”, created in 2003 and intended to spot terrorism trends in every part of the country, “has not produced useful intelligence to support federal counterterrorism efforts”. The Sub-Committee also stressed that the intelligence gathered was “oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections”. The “fusion centres” are supported by federal funds and depend from the Department of Homeland Security.

[Report](#)

[NGO Statement](#)

[Press Article](#)

Canada/USA: Omar Khadr, detained at Guantánamo since age 15, returns home after ten-year ordeal

On 29 September, Guantánamo detainee Omar Khadr was transferred to his home country, Canada, after a plea agreement with the US authorities, which took more than a year to be accomplished due to Canada's resistance to his repatriation. Omar Khadr is a Canadian national who was apprehended by US forces in Afghanistan in 2002 when he was 15 years old and had been held in Guantánamo since then. On 31 October 2010, following a plea deal, Omar Khadr was sentenced by a US Military Commission to 40 years of imprisonment, but he will have to serve eight years under the agreement. Omar Khadr will remain in custody under the authority of the Canadian Correctional Services.

[Canadian Government Statement](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

Peru: Government presents draft law criminalizing "negation of terrorism"

On 28 August, the Government presented to the Congress a draft law that, if approved, will introduce the criminal offence of "negation of terrorism". According to the proposed legislation, this crime will be punished with imprisonment from four to eight years for whomever "publicly approves, justifies, negate, or minimises crimes committed by members of terrorist organisations" in such a way as to cause serious offence to the public, glorify the people responsible, provoke violence or indoctrinate for a terrorist purpose.

[Draft Law \(S\)](#)

[Press Article \(S\)](#)

ASIA - PACIFIC

India: Separatist movement member allegedly subject ed to torture in detention

On 26 September, the lawyer of Kulvir Singh Barapind, the alleged member of a separatist Punjabi group arrested last 20 September, applied for a court order for a medical examination, alleging that he had been subjected to torture with electroshocks while in police custody. Kulvir Singh Barapind has been charged with waging war on the state, possession of explosives and sedition. A number of States and civil society organizations have called on the Indian authorities to enact legislation to prevent torture. The NGO also recalled that Kulvir Singh Barapind had been extradited to India by the USA on 17 June 2006 on murder charges after obtaining diplomatic assurances that he would not be ill-treated. He had been acquitted in 2008 of all charges.

[NGO Statement](#)

India: Terrorism convictions quashed due to unlawful "confessions"

On 26 September, the Supreme Court of India quashed the conviction of 11 persons under the *Terrorist and Disruptive Activities (Prevention) Act* and various other provisions of the Indian Penal Code (IPC), because the "confessions" on which the Anti-Terrorism Court relied for its ruling were obtained without following the formal requirement of Section 20-A (1) of TADA to have prior permission of a District Superintendent of Police. In its judgment, the Court recalled that "the gravity of the evil to the community from terrorism can never furnish an adequate reason for invading the personal liberty except in accordance with the procedure established by the Constitution and the laws".

[Judgment](#)

[Press Article](#)

Nepal: UN High Commissioner on Human Rights releases report on Nepali conflict

On 8 October, the UN High Commissioner for Human Rights, Navanethem Pillay, released a *Nepal Conflict Report* documenting the human rights and international humanitarian law violations committed between 1996 and 2006 by both sides of the internal conflict, the Government of Nepal and the Communist Party of Nepal (Maoist) (CPN (Maoist)). The conflict claimed the lives of 13,000 people and led to 1,300 people missing. The OHCHR has found credible evidence of practices of unlawful killings, enforced disappearances, torture and ill-treatment, arbitrary arrests and sexual violence, and has called for "prompt, impartial, independent and effective investigation, followed by the consideration of a full judicial process".

[Report](#)

[Executive Summary](#)

[UN Statement](#)

Malaysia: Court awards damages for unlawful imprisonment under security law

On 2 October, news media reported that High Court judge Lau Bee Lan had found unlawful the detention in 2001 for two years of Tian Chua, Selangor PAS information chief Saari Sungib, activists Hishammudin Rais and Badaruddin Ismail and PKR supreme council member Badrulamin Bahron under Section 73 of the *Internal Security Act 1960*. The Court reportedly held that their confinement was more likely to have been motivated by political considerations than by threats to national security, the ground for detention required by the Act. The Court awarded them damages, including 15,000 ringgit (USD \$5,000) per person for each day spent in police custody.

Law

Press Article

Indonesia: Constitutional Court rejects challenge to intelligence law

On 10 October, the Constitutional Court rejected the challenge to the constitutionality of the recent *Law on Intelligence no. 17/2011* brought by several human rights NGOs and alleged targets of intelligence operations. The Court reportedly held that the law was in compliance with the 1945 Indonesian Constitution and the 2008 Law No. 14 on the transparency of public information. The NGO Article 19, in its *amicus curiae*, had contended that many provisions of this law violated the guarantee of freedom of expression, including through an overbroad definition of national security which includes "national interests" relating to "ideological, political, economic, social, cultural" issues.

Judgment (Indonesian)

Amicus Brief (E)

Press Article (E)

Australia/USA: Former Guantánamo detainee to challenge plea agreement in the US

On 17 October, the lawyer of David Hicks, former Guantánamo detainee and Australian citizen, Stephen Kenny, announced that his client would challenge in the US courts his plea agreement of 2007, after the federal Court of Appeals for the District of Columbia overturned the conviction by a military commission of Salim Hamdan for "material support for terrorism", as the application of this offence to acts prior to 2006 constituted retroactive application of criminal law (see, story [here](#)). David Hicks pled guilty to the same offence in 2007 as a condition of his return to Australia, and was given a seven-year sentence. The majority of the sentence was suspended, with Mr Hicks required to serve nine months in Adelaide's Yatala Labour Prison. Stephen Kenny, who was at the time dismissed from the defence team of David Hicks for not supporting the plea agreement, reassumed his defence for the purpose of this challenge. The Australian government has announced that it would support the challenge in US courts.

Press Article 1

Press Article 2

Press Article 3

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: Arbitrary arrest and detention in third country not "abuse of process" for control order validity

On 19 October, Lord Justice Lloyd Jones of the High Court of Justice upheld the validity of control orders and Terrorism Preventative and Investigative Measures (TPIMs) against "CC" and "CF", both Somali nationals, suspected of terrorism activities, who had been apprehended by local forces in the autonomous region of Somaliland and deported to the United Kingdom. The High Court held that, on the basis of information dealt with in its closed judgment, the alleged arbitrary arrest, detention and ill-treatment in Somaliland would not qualify for the high threshold of "abuse of process" and would not, as such, render the control orders invalid. CC and CF are subject to various restrictive measures, including overnight house arrests, limitations on access to communications and persons and an obligation to wear tracking devices.

Judgment

UK: NGO report criticises use of "closed material procedures" in counter-terrorism cases

On 15 October, Amnesty International published a report entitled *Left in the Dark: the Use of Secret Evidence in the United Kingdom*, documenting the increasing use of secret evidence and closed proceedings in the UK for counter-terrorism cases. The report strongly criticises the *Justice and Security Bill*, currently under discussion in the House of Lords, which purports to introduce closed

material procedures to prevent individuals and their lawyers from seeing documents on grounds of national security in civil damages cases. Amnesty International has defined the use of these procedures as “a ‘radical departure’ from the basic requirements of fairness in civil and criminal cases”.

[Report](#)

[NGO Statement](#)

UK: Judicial body begins examination of challenge to transfer Abu Qatada to Jordan

On 10 October, the Special Immigration Appeals Commission, presided over by Justice Mitting, began hearings to establish whether Omar Mahmoud Mohammed Othman, also known as Abu Qatada, could be deported to Jordan, following a ruling of the European Court of Human Rights prohibiting his transfer because of a conviction for terrorism in that country based on information obtained under torture. Justice Mitting, once faced with the evidence that would be available in Jordan for a re-trial, considered it to be “extremely thin”. Other news reports revealed that the UK Government had sought but not received a pardon for Abu Qatada by the King of Jordan, which would have facilitated his deportation.

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

UK/USA: Five suspected “terrorists” extradited to the USA after Strasbourg’s green light

On 5 October, the Queen’s Bench Division of the High Court of Justice allowed the extradition of Babar Ahmad, Haroon Rashid Aswat, Syed Tahla Ahsan, Mustafa Kamal Mustafa (also known as Abu Hamza), and Adel Abdul Bary to answer terrorism-related charges in the United States, after the European Court ruled on 10 April that they would not incur in the risk of torture or ill-treatment in the country of destination. The UN Special Rapporteur on torture, Juan E. Méndez, had called for a halt to the extradition, arguing that the treatment they would incur in the ADX Florence detention facility in the US would amount to inhuman or degrading treatment. Concerns had also been expressed by UK lawyers at the extradition of Babar Ahmad and Syed Tahla Ahsan who are charged with having run a website supporting terrorism in the UK, but had never been prosecuted there for lack of evidence. The newspaper *The Independent* revealed that evidence never presented to the Crown Prosecution Service was fed to the FBI through bilateral cooperation agreements. Abu Hamza, Haroon Rashid Aswat and Adel Abdul Bary appeared on 9 October in a New York court, while Babar Ahmed and Ahsan are to be tried in a court in Connecticut.

[Ruling](#)

[Babar Ahmad Letter](#)

[Press Article 1](#)

[Press Article 2](#)

UK: Court hears case challenging UK complicity in drones killings in Pakistan

On 23 and 24 October, hearings began before the Royal Court of Justice in a case challenging alleged UK complicity in CIA drone attacks in Pakistan. The case is brought by Noor Khan, son of the victim of a US drone attack, Malik Daud Khan, who was killed together with another 40 people while presiding at a Jirga – or council of elders – in North West Pakistan on 17 March 2011. The applicant challenged the lawfulness of the alleged provision of “locational intelligence” to the US authorities by the UK General Communications Headquarters (“GCHQ”), an agency under the Secretary of State.

[Press Article 1](#)

[Press Article 2](#)

France: Government presents in Parliament new anti-terrorism law

On 3 October, Minister of the Interior Manuel Valls presented before the Senate a *Draft law on security and fight against terrorism*. The new legislation would extend the application of the French criminal offences related to terrorism to all equivalent acts committed by French citizens abroad. It would also extend the validity of temporary anti-terrorism powers, due to elapse in 2012, until 2015. These powers are identity controls in trains crossing borders, access to administrative databases and collection of data obtained from telecommunication and the internet. The draft legislation is now under discussion in the plenary session of the Senate.

[Draft Law \(F\)](#)

[Press Article \(E\)](#)

Spain: Investigations into ETA detainee’s torture allegations insufficient, says European Court

On 16 October, the European Court of Human Rights held that Spain had violated its procedural obligations under Article 3 of the European Convention on Human Rights by not having undertaken effective investigations into the allegations of torture or ill-treatment, while in *incommunicado* detention, of Martxelo Otamendi Egiguren, the director of the Basque newspaper *Euskaldunon*

Egunkaria, arrested in 2003 for suspicion of being a member of or having links with *Euskadi Ta Askatasuna* (ETA). The Court, in particular, stressed that no order for interrogating the police officers in charge of his detention had been issued.

Judgment (F)

Press Article (S)

Spain: Examining Judge collects evidence on identity of CIA rendition agents

On 1 October, the newspaper *El Pais* revealed that Examining Judge Ismael Moreno of the Central Criminal Court (*Audiencia Nacional*) has requested UK and German authorities respectively to interrogate two journalists, Stephen Gray, in the UK, and John Goetz, journalist of *Der Spiegel*, in Germany, after they had unveiled the identity of several CIA agents responsible for the rendition flight of Khaled El-Masri which transited in Palma de Mallorca. Of the 13 CIA agents involved in the flight, Ismael Moreno seeks the real identity of Kirk James Bird, James Richard Fairin, Eric Matthew Fain and Lyle Edgard Lumsen III, for the purpose of issuing an international arrest warrant.

Press Article (S)

Spain: Government presents reform of criminal code

On 1 October, the Government approved draft legislation directed at reform of the Criminal Code. Among the several amendments to existing criminal law, the new law would introduce the punishment of "revisable perpetual imprisonment", a life imprisonment which would be subject to review after 25 or 35 years of actual detention. This penalty would be applicable to people convicted of offences of terrorism involving genocide, multiple murder and for "major killers", identified as those responsible for the death of minors, of murder following rape or serial killers. Furthermore, the legislation would introduce, including for convicted terrorists, "security custody", a preventive measure which may be imposed upon the completion of sentencing, where the convicted person is deemed to continue to pose a danger to society. This detention would have a maximum length of ten years. The legislation will have now to be approved by Parliament.

Government Statement (S)

Press Article (S)

Turkey: Member of "terrorist" group subjected to inhuman and degrading treatment, rules European Court

On 16 October, the European Court of Human Rights held that Turkey had subjected Eylem Baş to inhuman and degrading treatment, while she was in police custody at the Kırıkkale Security Directorate, following her arrest for being a member of the TKP/ML-TİKKO (Turkish Communist Party-Marxist Leninist, Turkish Workers and Peasants' Liberation Army). She was eventually convicted to life imprisonment. Eylem Baş had maintained that she was beaten and sexually harassed. The European Court furthermore held that Turkey had violated the procedural tenet of the prohibition of inhuman or degrading treatment in light of the ineffectiveness of the investigations held into the abuses.

Judgment

Turkey: Seven people summarily executed in "counter-terrorism" operation, holds European Court

On 23 October, the European Court of Human Rights ruled that Turkey was responsible for the killing of seven people, two Turkish citizens and five Iraklis, during a military "counter-terrorism" operation in Kurdistan against the Kurdistan Workers' Party (PKK). The seven, among whom Mehmet Arici and Muhsin Güngör were identified, were shepherds rounded up by the military and summarily executed on 29 September 1999. The European Court of Human Rights held that Turkey had violated their right to life. The Court also ruled that Turkish authorities breached their procedural obligations under Article 2 of the European Convention on Human Rights, as the investigations into the killings, still ongoing after 13 years, were ineffective.

Judgment (F)

Russian Federation: Right to liberty in extradition proceedings of "terrorism" suspect breached, says European Court

On 16 October, the European Court of Human Rights ruled that the Russian Federation had violated the right to liberty and *habeas corpus* of Akhmadzhon Toshaliyevich Niyazov, an Uzbek citizen resident in Russia, because of the lack of procedural rules in the context of detention pending extradition and the following administrative expulsion proceedings. The Court also stressed that, under Russian law, he could not be expelled once he had submitted a refugee application with the Russian authorities. He has been granted a temporary refugee status of one year. Akhmadzhon Toshaliyevich Niyazov was wanted in Uzbekistan to answer to charges of membership in a religious

extremist organisation, 'Wahhabism', and participation in the terrorist bombings in Tashkent in 1999. The same rights have been found breached for Abdusami Abdusamatovich Rakhmonov, an Uzbek national also wanted in his country for extremism, whose refugee application is still under consideration.

Judgment (Niyazov)

Judgment (Rakhmonov)

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Special Rapporteur finds UN listing regime still short of "due process" guarantees

On 26 September, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson, published his report to the UN General Assembly, analysing the UN terrorism sanctions regime under Security Council 1267(1999) and following resolutions. In his analysis of the regime, the UN Special Rapporteur, while welcoming the improvement brought about by the establishment of an Ombudsperson, concluded that "the Al-Qaida sanctions regime continues to fall short of international minimum standards of due process." He proposed recommendations aimed at increasing its independence, accessibility and effectiveness.

Report

UN: UN Crime Office publishes report on the use of internet for terrorism

On 22 October, the UN Office for Drugs and Crime (UNODC) unveiled a report entitled *The use of the Internet for terrorist purposes*, prepared in collaboration with the UN Counter-Terrorism Implementation Task Force (CTITF). This new tool, according to the UNODC, "aims to provide guidance regarding current legal frameworks and practice at the national and international levels, relating to the criminalization, investigation and prosecution of terrorist cases involving the use of Internet".

Report

UN: After four years, Security Council deletes Kadi from Al-Qaeda list

On 5 October, following an examination by the UN Ombudsperson, the Al-Qaeda Sanctions Committee of the UN Security Council deleted the name of Shaykh Yassin Abdullah Kadi from its Al-Qaeda List. This decision comes four years after the Court of Justice of the European Union, on 3 September 2008, annulled the Council Regulation, implementing the obligations under Security Council Resolution 1267(1999) and the UN Terrorism List, that froze the funds of Yassin Abdullah Kadi and the Al Barakaat International Foundation, because it infringed the claimants' rights to property, to a defence and to an effective remedy. The Court also held that it had competence to review acts implementing UN Security Council resolutions under Chapter VII for full compliance with fundamental rights.

UN Statement

CJEU Judgment

EU: Court of Justice's Advocate General upholds validity of UK special advocates system

On 12 September, Advocate General Yves Bot of the Court of Justice of the European Union issued his Opinion in the case of *ZZ v Home Office*, on the procedural guarantees due to a EU citizen when expelled for "imperative" security reasons. The Advocate General, citing the case-law of the European Court of Human Rights, upheld the validity of the special advocates system in the UK and of the "closed material procedures" to analyse classified documents even to the point of non-disclosure of the factual reasons for the expulsion or refusal of entry. The Advocate General held that this system complied with the EU Citizens Directive 2004/38 and with the right to an effective remedy under Article 47 of the EU Charter of Fundamental Rights.

Opinion

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