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NEWS FROM THE AMERICAS

Federal judge rules US Military Commission violates Geneva Convention

The Military Commission trial of Salim Ahmed Hamdan, allegedly the former driver of Osama bin Laden, was stayed when a Federal Court judge found that unless a competent tribunal, in line with Article 5 of the Third Geneva Convention, determines that Hamdan is not entitled to POW status, he may only be tried by court martial. The Court further found that the Military Commission is contrary to and inconsistent with US court martial procedures. This ruling may apply to other Guantánamo detainees.

Court decision

US court strikes down provisions of US Patriot Act

In a challenge to the US Patriot Act, which gives the Government new powers to investigate suspected terrorists, the US District Court for Southern New York ruled that government investigators cannot force telecommunications companies and internet services providers to turn over their records without allowing for court reviews of the subpoenas.

Court decision

Acquitted: Mapuche community leaders tried under Chilean anti-terror legislation

Leaders of the Mapuche indigenous community, charged with forming an illegal association focusing on land rights issues, and tried under the Chilean anti-terror legislation, have been acquitted by a local court. Human rights NGOs had repeatedly said that the application of this law to land conflicts was inappropriate and that the use of faceless witnesses in these trials did not respect fair trial principles.

HRW report

Colombian Anti-Terrorism Policy threatens rule of law and human rights

Legislative measures, associated with Colombia's democratic security policy are leading to the dismantling of the rule of law, deterioration of the human rights situation and new forms of human rights violations such as mass detentions, found the Colombian Commission of Jurists (CCJ) in a report released in September 2004.

CCJ report

Defence Ministers of the Americas declare fight against terrorism a priority

The Ministers of Defence of the Americas highlighted in a declaration, adopted in Quito on November 19, the necessity of military involvement to solve internal security issues. The declaration also expressed support to the Colombian Government's anti-terror policy. A joint Colombia-US proposal to draw up a list of terrorist and insurgent groups and individuals in the region to prevent them from obtaining visas and travelling between countries was rejected by the majority.

Declaration

Colombia's Constitutional Court rejects appeal by Interior and Justice Minister on anti-terrorism bill

ICJ urges Inter-American Commission on Human Rights to draft recommendations on counter-terrorism

More info...

NEWS FROM AFRICA AND THE MIDDLE EAST

South Africa set to adopt anti-terrorism bill

After a controversial drafting process, the South African parliament has approved the country's draft anti-terrorism law, The Protection of Constitutional Democracy Against Terrorist and Related Activities Bill. Once signed by the President the bill will be promulgated into law.

[More info...](#)

Human rights body criticizes anti-terror law in Morocco

After considering Morocco's report under the International Covenant on Civil and Political Rights, the UN Human Rights Committee criticized the Moroccan Government's May 2003 counter-terrorism legislation including: its broad definition of terrorist acts, according to which any "grave assault by means of violence" could constitute a terrorist act; the *de facto* retroactive application of the anti-terrorism law adopted in May 2003; the possibility of police detention of up to 96 hours (renewable twice) without access to a judge and limitations placed on access to legal counsel following arrest in counter-terrorism cases.

[Country report](#)

[Conc. obs.](#)

African Commission to elaborate guidelines on human rights and counter terrorism

The African Commission on Human and Peoples' Rights intends to adopt a resolution at its next session that will call for the elaboration of guidelines on protection of human rights and rule of law while countering terrorism for use by states to ensure their counter terrorism measures comply with the African Charter on Human and Peoples' Rights and international human rights law. The Commission will establish a committee to monitor national compliance with the guidelines. ICJ and INTERIGHTS have been jointly calling on the Commission to draft such guidelines.

[INTERIGHTS](#)

[ICJ intervention](#)

NEWS FROM ASIA AND THE PACIFIC

India releases new army doctrine to fight terrorism

The revised Indian Army Doctrine, of October 2004, includes a ten-point code of conduct to be strictly observed by all ranks involved in counter-terrorism and counter insurgency operations. While this code of conduct stipulates that the violation of human rights must be avoided under all circumstances, the code and the doctrine, of which it is a part, cannot be legally enforced.

[Army doctrine](#)

ICJ calls on Nepal to repeal TADO

Following an eight-day mission to Nepal the ICJ has, among other things, again called on the Government to repeal or amend the Terrorist and Disruptive Activities Ordinance (TADO) so that it conforms with the Constitution of Nepal and international standards.

[ICJ release](#)

[ICJ release](#)

ASEAN-India pact to jointly fight terrorism

Under the ASEAN-India 'Partnership for Peace, Progress and Shared Prosperity' pact signed at the third annual summit in Laos on 30 November India will train forces from ASEAN countries in counter-terrorism and will build institutional linkages for intelligence and information sharing and cooperation in legal and enforcement matters.

[ASEAN release](#)

Asian People's Security Network established to address and combat human rights violations under national security laws and anti-terrorism measures

[More info...](#)

ICJ Australia welcomes New Zealand Court of Appeal decision on Zaoui Case

[Court decision](#)

[ICJ Aust. release](#)

NEWS FROM EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES

Russia – further erosions of the rule of law through the fight against terrorism

The Duma is debating a counter-terrorism draft law, introducing the legal regime of a “terrorist threat”, “terrorist operation” and “general terrorism prevention”. The law extends the authority of the armed forces for internal security and allows restrictions of rights for up to 60 days in case of terrorist threats. The authority to introduce the regime of a terrorist threat would vest with the regional governor or the Prime Minister. The draft law further curtails independent media reporting during a “terrorist operation”. Other initiatives publicly announced by the General Prosecutor, and criticised by UN human rights experts, to allow the detention of relatives of hostage-takers have not been introduced to the Duma so far.

Expert release

UN CAT: No room for complicity to torture in the fight against terrorist acts

The UN Committee against Torture (CAT) criticised the United Kingdom for not ensuring that evidence which may have been obtained through torture by third states is never submitted in immigration proceedings under the Anti-Terrorism, Crime and Security Act 2001. Indefinite administrative detention, practices connected to diplomatic assurances in the context of non-refoulement and the application of minimum guarantees, such as post-return monitoring arrangements and due process guarantees were also raised as concerns by the Committee. Recalling the extraterritorial application of CAT the Committee called on the UK to make public the results of all investigations into alleged misconduct by its forces in Iraq and Afghanistan.

Country report

Conc. obs.

UK law lords rule against indefinite detention of foreign suspects

Indefinite detention of foreign suspects is disproportionate and discriminatory found the House of Lords on 16 December. The Lords were hearing a legal challenge against the detention, without trial, of 11 foreign nationals detained under the Anti-Terrorism Crime and Security Act 2001 that was passed shortly after 11 September 2001. The Lords also issued a declaration of incompliance with the European Convention on Human Rights.

Court decision

ICJ release

Guidelines adopted by Council of Europe experts

The Council of Europe Steering Committee on Human Rights adopted *Council of Europe Guidelines on Aid to and Protection of Victims of Terrorism* at its 59th meeting in Strasbourg from 22 to 27 November 2004. The Guidelines encourage states to provide support to victims of terrorism, particularly through emergency and continuing assistance, through effective access to justice and through compensation where victims cannot obtain compensation from other sources.

CoE Guidelines

ICJ/AI recs.

3rd Roundtable of European NHRIs addresses counter-terrorism and human rights

Ways for national institutions to protect human rights in the fight against terrorist acts was the focus of the 3rd European Round-table of National Human Rights Institutions, co-hosted by the German Institute for Human Rights and the Council of Europe Commissioner for Human Rights. The ICJ addressed the gathering.

Declaration

NEWS FROM THE UNITED NATIONS

UN Security Council passes anti-terror resolution to stem attacks against civilians

Condemning terrorism as one of the most serious threats to peace and security, the Security Council, on 8 October, unanimously called on countries to prosecute or extradite anyone supporting terrorist acts or participating in the planning of such schemes. Amnesty International has raised concerns that the resolution could undermine the right to freedom of religion and expression as a result of a broad definition of terrorism.

[Resolution](#)

[UN release](#)

[AI release](#)

General Assembly reaffirms counter-terrorism measures must comply with international law

The Third Committee of the General Assembly adopted a resolution on 11 November encouraging States to take into account relevant resolutions on human rights and comments and views of UN human rights treaty bodies while countering terrorism and to ensure any measure they take to counter terrorism complies with their obligations under international law.

[UN release](#)

UN High-level Panel on Threats, Challenges and Change releases findings on terrorism

The High Level Panel in its report concludes that terrorism attacks the values that lie at the heart of the UN Charter, including human rights and the rule of law, but also highlights concerns that the "war on terrorism" has sometimes served to corrode those same values. The Panel advocates an approach to countering terrorism that addresses root causes and strengthens the rule of law and fundamental human rights by developing better instruments for counter-terrorism cooperation that respect civil liberties and human rights. While accentuating positive aspects of the Security Council's present work on terrorism, the Panel expressed concern over the adverse human rights implications of placing of individuals and entities on terrorist lists and recommended that the Al-Qaida and Taliban Sanctions Committee institute a process for review of cases of those claiming to have been wrongly included on such lists.

[More info...](#)

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