



E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

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AFRICA & MIDDLE EAST

Nigeria: House of Representatives approves Anti-Terrorism Bill

On 13 January, the House of Representatives approved *A Bill for An Act to Provide for Measures to Combat Terrorism and for Other Related Matters*. The legislation will now pass to the Senate. The Anti-terrorism draft legislation, which includes a definition of “terrorist” alleged to be overly broad, had been tabled in Parliament since 2006 but received a strong push for adoption in the last month, allegedly due to the insertion of Nigeria by the USA in the list of “countries of interest” for terrorism. This action followed the 25 December alleged attempt by a Nigerian, Umar Farouk Abdulmutallab, to set off explosive device on flight from Amsterdam to Detroit. The President has requested the US Government to take the country off the list.

Government Statement

Press Article 1

Press Article 2

Ethiopia: Ethiopian High Court upholds terrorism conviction of Canadian citizen arbitrarily detained

On 4 December, the Ethiopian Federal Supreme Court upheld a lower court's decision that found Bashir Makhtal, a Canadian citizen, guilty on terrorism related charges, and sentenced him to life in prison. Makhtal, who owned a commercial activity in Somalia, was caught at the border with Kenya while he was fleeing the conflict. He was allegedly secretly transferred to Ethiopia and held incommunicado for 18 months before seeing a lawyer or any Canadian officials. Makhtal’s lawyer left open the possibility of an appeal to the Court of Cassation. Some of his supporters allege that Makhtal was particularly targeted because of the role of his grandfather in co-founding the Ogaden Liberation Front.

Press Article

Mauritania: Government sends Anti-Terrorism Bill to Parliament

On 15 January, the Government of Mauritania introduced into Parliament a Bill amending *Law no. 2005-047 on the Fight against Terrorism*. According to news reports, the Draft Law will give security forces the power to wiretap phones and carry out searches of houses. The new law, if approved, will also abolish the statute of limitations for terrorism-related crimes.

Draft Law (F)

Government Statement (F)

Press Article (E)

Algeria: Guantánamo detainee cleared in the US convicted *in absentia* by Algerian court

On 29 November, an Algerian criminal court convicted *in absentia* Ahmed Belbacha to 20 years of imprisonment for membership in a terrorist group active abroad. Mr Belbacha was detained since February 2002 in Guantánamo. He has been determined “no longer an enemy combatant”, cleared for release by the Bush administration and free to return to Algeria, but he is staying in Guantánamo for fear of torture or other ill-treatment on return. The NGO Reprieve alleged that the trial was unfair and called on US authorities not to send Ahmed Belbacha to Algeria.

NGO Statement (E)

Press Article (F)

Press Article (E)

Israel: Supreme Court upholds prohibition of family visits for Gaza prisoners in Israel

On 9 December, the Supreme Court of Israel, sitting as the High Court of Justice, rejected a petition by prisoners coming from the Gaza Strip, their family members and 13 Israeli and Palestinian NGOs challenging the compliance with constitutional and international law of a 2007 ban for Gaza residents to visit their family members imprisoned in Israel. The ban was imposed by a Ministerial order grounded on the premise that Hamas was a “terrorist organisation” that had control of the Gaza Strip. The Court found that, after the retreat

from Gaza of the Israeli army and the official end of the land occupation, residents there qualified as “aliens” and the Government had discretion on granting entry to the Israeli territory, in particular as they are part of the population of a hostile entity.

Judgment (Hebrew)

Judgment (E – unofficial translation)

NGO Statement (E)

AMERICAS

USA: President Obama issues orders on secret documents

On 30 December, President Obama issued an Executive Order relating to classified national security information. The order aims at establishing clear procedures for the classification of information that it is considered could endanger national security, while at the same time avoiding that classified information might be kept secret indefinitely. The order also requires training programmes for the persons in charge of classifying information and measures designed to hold personnel accountable. The American Civil Liberties Union (ACLU) welcomed the move as an important first step, but indicated more was needed to reduce secrecy and increase transparency.

Executive Order

Memorandum of Implementation

NGO Statement

Press Article

USA: Court of Appeals holds President’s war powers are not limited by international law of armed conflict

On 5 January, the federal Court of Appeals of the District of Columbia confirmed the denial of a writ of *habeas corpus* for Guantánamo detainee Ghaleb Nassar Al-Bihani. Two judges of the three-judge panel rejected all arguments based on the international law of war, as they found that the US President’s war powers, granted to him by the Congress in the *Authorisation for Use of Military Force* of 2001, could in no way be limited by international law. A third judge, while confirming the denial of habeas, did not agree as to the international law conclusions of the majority.

Ruling

Press Article

USA: News inquiry suggests that three Guantánamo detainees did not commit suicide

On 18 January, a joint investigation for *Harper’s Magazine* and *NBC News* concluded that US officers may have concealed evidence that might demonstrate Guantánamo detainees Salah Ahmed al-Salami, Talal al-Zahrani, and Mani Shaman al-Utaybi, did not die as a result of collaborative suicide in 2006, but may in fact have been unlawfully killed during interrogations. The deaths had been announced by the camp’s commander, Rear Admiral Harry Harris, as “an act of asymmetrical warfare”. The investigation, aided by the information provided by military “whistleblowers” who had been stationed at Guantánamo, identifies implausible elements in the official version of events.

NGO Statement

Press Article (1)

Press Article (2)

USA: Inspector General reports widespread abuse of data collection by FBI

On 20 January, Inspector General Glenn A. Fine published a report finding that the FBI collected illegally up to 3500 telephone call records between 2002 and 2006. The findings were previewed on 19 January in an article in the *Washington Post* contending that the FBI claimed necessity for the records to the communications companies compelled by non-existent terrorism emergencies. The data collection bypassed the *USA Patriot Act* procedure, requiring the issuance of National Security Letters, by providing the letters long after the information had been obtained. The report alleges that among the persons intercepted there were journalists of the *Washington Post* and the *New York Times*.

Report

Press Article (1)

Press Article (2)

USA: President Obama announces flying security restrictions after attempted attack on Detroit flight

On 28 December, President Obama announced that, following the attempted terrorist attack on the flight Amsterdam-Detroit on 25 December, he had ordered an increase in screening at United States airports and a review of both the screening systems and “no-fly lists”. On 3 January, the Transport Security Administration issued directives implementing enhanced screening at airports, with a focus on persons from some 14 nations. The measures have been criticised as constituting racial profiling.

[President Statement 1](#)

[President Statement 2](#)

[TSA Statement](#)

[NGO Statement](#)

USA: Court of Appeals confirms denial of access to interception material for Guantánamo detainees

On 30 December, the Federal Court of Appeals for the Second Circuit affirmed a lower court judgment denying a group of Guantánamo detainees access to information related to them that might have been obtained by the National Security Agency (NSA) under the secret Terrorist Surveillance Programme. The existence of the Programme was revealed by President Bush in 2005. Nevertheless, the court held that this fact was insufficient to overcome an exception to the right to information under the *Freedom Of Information Act*, related to intelligence information.

[Ruling](#)

USA: Task Force on Guantánamo detainees recommends keeping nearly 50 people in Guantánamo, newspaper says

The Task Force directed by President Obama to screen the situation of all the Guantánamo detainees has reportedly concluded that nearly 50 of them should be kept indefinitely in detention in Guantánamo, while almost 40 will be prosecuted for terrorism or war crimes and some 110 cleared for release will be repatriated or transferred to third countries. On 15 December, President Obama directed Attorney General Eric Holder to seek the purchase of the Thomson Correctional Centre in Illinois for the detention of some Guantánamo inmates in the custody of the Department of Defense.

[President Statement](#)

[Government Letter](#)

[Press Article 1](#)

[Press Article 2](#)

USA: Former chief of prosecution in military commissions sues Congress Library for wrongful termination of employment

On 8 January, the Library of the Congress was sued by the American Civil Liberties Union on behalf of Colonel Morris D. Davis for having terminated his employment contract with the Library. The termination was said to have been the result of the publication of opinion pieces Colonel Davis wrote which were critical of the Obama administration’s decision to try some Guantánamo detainees in federal courts and some in military commissions. Colonel Davis had served as Chief Prosecutor for the military commissions from 2005 to 2007. The complaint alleges that the termination of employment was in violation of freedom of speech.

[Complaint](#)

[NGO Statement](#)

USA: Court of Appeals confirms legitimacy of immigration detentions as counter-terrorism measures

On 18 December, the Second Circuit Court of Appeals affirmed a 2006 District Court ruling that it is lawful to use immigration detention to hold non-citizens for the purpose of criminal investigation, so long as their deportation remains “reasonably foreseeable”. The Court sent back to the District Court for further proceedings the plaintiffs’ claims that they had been held in abusive conditions of confinement. The case challenged the alleged

arbitrary detention and ill-treatment of immigration detainees by prison guards and high-level Bush administration officials in the aftermath of 9/11.

Ruling

NGO Statement

USA/Afghanistan: News reports allege existence of newly identified places of secret detention

See article in ASIA - PACIFIC

Canada: Supreme Court overturns order of remedy for violation of rights of Guantánamo detainee Omar Khadr

On 29 January, the Supreme Court overturned a Federal Court of Appeal's decision requiring the Federal Government to seek the repatriation of Guantánamo detainee Omar Khadr to Canada. The Court confirmed that the Canadian secret services (CSIS) had violated Omar Khadr's right to life, liberty and security protected by Article 7 of the *Canadian Charter of Rights and Freedoms*, when they interrogated him in Guantánamo in 2004 knowing he had been subject to unlawful ill-treatment. The Court also affirmed that Omar Khadr was entitled to a remedy, but that it should be left to Government to respond to the judgment in light of current information, its responsibility for foreign affairs, and in conformity with the *Charter*. Omar Khadr has been detained in Guantánamo since 2002, when he was 15 and is presently facing charges before a Military Court that he threw a grenade at a military convoy in Afghanistan.

Ruling

Canada: Security certificate quashed for lack of evidence

On 14 December, the Federal Court quashed the security certificate of Hassan Almrei. Justice Mosley found that the evidence presented before him in both closed and open hearings did not constitute reasonable grounds to believe either that Mr Almrei was a danger to the security of Canada, that he was a member of a terrorist organisation or that he does or will engage in terrorism. The judge found that the Security Service's assessment did not properly assess the evolutions on the risks posed to national security by Islamist extremists. Finally, Justice Mosley found that the Security Services and the Ministers were in breach of their duty of good faith or candour as they did not immediately disclose all evidence on Mr Almrei, including that favourable to him.

Ruling

Honduras: Inter-American Commission reports several arbitrary detentions after *coup d'Etat*

On 20 January, the Inter-American Commission on Human Rights published a report on the human rights violations following the *coup d'Etat* of 28 June 2009. Among the findings, the Commission reported several cases of arbitrary arrests and detentions, including that of three men detained for alleged crimes of terrorism. The Commission condemned the fact that many protesters had been held incommunicado, were not informed of the reasons for their detention, were not read their rights and that, in some instances, the police denied access detainees access to *habeas corpus* judges.

Report

ASIA - PACIFIC

Afghanistan/USA: News reports allege existence of newly identified places of secret detention

On 28 November, the *New York Times* and the *Washington Post* provided testimony of Afghans who had been imprisoned by US officials in an unacknowledged secret place of

detention before being sent to the US Bagram prisons. The reports allege that such interrogations sites were not accessible to International Committee for the Red Cross (ICRC) personnel nor to any other person, and that their existence continued even after the Executive Order of President Obama prohibiting them.

[Afghanis Statements](#)

[Press Article 1](#)

[Press Article 2](#)

India: Defendant in Mumbai attack trial retracts “confession” claimed to be forced under duress

On 18 December, Mohammed Ajmal Kasab, the lone accused in connection with the attacks in Mumbai of 26 November 2008, retracted his previous “confession” and alleged to the court that they had been obtained from him under duress. He also claimed that he had been arrested prior to the attacks, on the night of November 25, and that therefore he was wrongly implicated in the attack.

[Press Article](#)

Pakistan: Lawyer challenges constitutionality of Anti-terrorism Ordinance

On 23 December, a Pakistani lawyer brought a constitutional challenge against the *Anti-Terrorism (Amendment) Ordinance 2009* in the Peshawar High Court. The challenge claims the Ordinance is in violation of basic human rights and *ultra vires* to the Constitution. The Anti-Terrorism Ordinance was issued on 2 October 2009 by President Asif Ali Zardari and includes an extension of the limitation on administrative detention from 30 to 90 days without the possibility to challenge the detention order in court.

[Ordinance](#)

[Press Article](#)

Sri Lanka: Journalist Jeyaprakash Tissainayagam freed on bail before appeal

On 13 January, the Court of Appeal ordered JS Tissainayagam, a Tamil journalist, to be released on bail pending resolution of his appeal. On 31 August, he was convicted at first instance on two counts of intending to “cause communal disharmony” and one count of receipt of money “in the furtherance of any act of terrorism”, under the *Prevention of Terrorism Act 1979*, and sentenced to a total of 20 years of imprisonment. The charges were related to his criticism of the Sri Lankan Army’s treatment of civilians in two articles published in *North Eastern Monthly* magazine in June 2006.

[ICJ Trial Observation Report](#)

[Press Article 1](#)

[Press Article 2](#)

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: UN sanctions’ freezing of assets orders quashed by Supreme Court

On 27 January, the UK Supreme Court decided on the validity of the *Terrorism (United Nations measures) Order 2006* and of the *Al-Qaeda and Taliban (United Nations measures) Order 2006*, through which the UK government implements UN listing sanctions in the domestic system. The Court quashed the Terrorism Order, on the grounds that, by introducing a test of reasonable suspicion, the Treasury had exceeded its powers under the *United Nations Act 1946*, the legal basis for the orders. The Court also quashed Article 3(1) (b) of the Al-Qaeda and Taliban Order because there are no means to challenge the decision to list someone as terrorist before an independent and impartial judge.

[Judgment](#)

[Supreme Court Statement](#)

[Press Article](#)

UK: Committee for Prevention of Torture criticises terrorism legislation

On 8 December, the European Committee for the Prevention of Torture published a report on its visit to the United Kingdom which took place between 18 November and 1 December 2009. In the report, the Committee recommended that the UK Government ensure that all persons detained under terrorism legislation who have not yet been

transferred to prison are always brought into the direct physical presence of the judge responsible for deciding the question of the possible extension of their detention.

Report

UK: High Court allows claim of access to interrogation documents of Guantánamo detainee against UK Government

On 15 December, the High Court granted to Shaker Aamer, a Guantánamo detainee who is a UK resident of Saudi Arabia origin, the right of action to seek disclosure by the Foreign and Commonwealth Affairs Department (FCO) of material which might support his case that statements, including “confessions”, he made during detention had been induced by torture or ill-treatment. Shaker Aamer sought the disclosure principally in order to use the material before the US Guantanamo Detainees Task Force in order to assure his release. Although the FCO had already provided such material to the Task Force, the Court held that access should be provided also to Shaker Aamer, in part because the Task Force’s proceedings are not transparent. A further hearing will establish whether this claim is covered by public immunity or not. According to news reports, the UK Government has agreed to release the requested documents.

Ruling

Press Article 1

Press Article 2

UK: European Court of Human Rights finds stop and searches powers violate right to privacy

On 12 January, the European Court of Human Rights found that the stop and search powers granted to the police under sections 44 and 45 of the *Terrorism Act 2000* are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse and therefore violate the right to privacy of the persons stopped and searched. The Court also found that such wide discretionary powers could also be misused against demonstrators and protestors in breach of their rights to freedom of expression and assembly. Such stops and searches are done under an authorisation which limits the operations to a certain area when they are considered to be expedient for the prevention of acts of terrorism.

Judgment

Terrorism Act 2000

UK: Terrorism Independent Reviewer’s report documents flaws in Operation Pathway

On 5 January, the Home Department released the report of the UK Independent Reviewer of Terrorism Legislation, Lord Carlile, on the implementation of “Operation Pathway”. The operation consisted in the arrest on 8 April 2009 of 12 Pakistani students, eventually all released, for their alleged involvement in a plan related to terrorist activities. Lord Carlile made recommendations, *inter alia*, for the law enforcement officers to seek legal advice before conducting arrests and suggested amending the *Terrorism Act 2000* to allow the granting of bail by a judge for the period up to the 28th day following the arrest. The later proposal was rejected by the Secretary of State for the Home Department.

Report

Government Response

UK: High Court rules people wrongly subject to control orders may claim compensation

On 18 January, Justice Silber of the High Court of Justice ruled that two men who had been subjected to control orders since 2006, AE and AF, could be entitled to claims for damages arising out of the imposition of the control orders against them. The judge also ruled that control orders that relied upon material examined in closed hearings, in violation of fair trial guarantees, should be quashed with effect from the moment of their issuance.

Ruling

France: European Court of Human Rights holds expulsion of convicted terrorist would violate prohibition of *non-refoulement*

On 3 December, the European Court of Human Rights held that France could not expel Kamel Daoudi to Algeria without infringing its obligation not to transfer someone where

the person faces a real risk of torture or inhuman or degrading treatment or punishment. Mr Daoudi had been convicted by French courts on charges of preparing a terrorist attack against French interests. The Court concluded that, particularly as his conviction was known to the Algerian authorities, Mr Daoudi would be at risk of torture or other ill-treatment by the Algerian secret services, if expelled to that country.

Judgment (F)

Sweden: Residency permits to victims of renditions from Sweden denied

On 8 December, the French newspaper *Le Monde* revealed that Swedish authorities had refused in late November to issue residency permits to Ahmed Agiza and Mohammed Alzery. In December 2001, the two Egyptians were removed from Sweden to Egypt by US officers with the help of Swedish officers in the context of the US renditions programme. The removals of Mr Agiza and Mr Alzery were found by the Committee against Torture and the Human Rights Committee respectively to be in violation of Sweden's obligation not to transfer someone to a country where the person would face a real risk of torture or cruel, inhuman or degrading treatment or punishment.

Press Article (F)

ICJ Report

Germany: News reports reveal CIA plans to carry out renditions on German soil

On 1 December, the news magazine *Der Spiegel* revealed that the CIA had plans to kidnap Mamoun Darkazanli, a naturalized Syrian-born German citizen, from Hamburg, under the US renditions programme. The plan was reportedly dropped on the advice of the German CIA unit. Members of the German Parliament announced that the Parliamentary Internal Affairs Committee would begin an inquiry into the allegations.

Press Article 1

Press Article 2

Lithuania: Parliament confirms existence of two CIA secret detention centres

On 20 January, the Lithuanian Parliament (*Seimas*) approved the findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the CIA in the territory of the Republic of Lithuania. The Committee found that two secret CIA detention centres existed in Lithuania, which were established with the collaboration of the State Security Department, but that no high level officer had been made aware of their existence. The Committee was also unable to prove that particularly detainees had passed through these facilities. The President called on prosecutors to launch an investigation.

Parliament Statement

NGO Statement

Press Article 1

Press Article 2

Turkey: European Court of Human Rights finds torture and other violations while in detention under Anti-terrorism law

On 15 December, the European Court of Human Rights held that Ahmet Turan and Müslüm Turfan had been tortured by Turkish law enforcement officers while in detention following arrest under the Anti-Terrorism Law, on charges of belonging to an illegal organisation. The Court also ruled that the investigation into the applicants' treatment was insufficient. Furthermore, the Court found that Mr Turan and Mr Turfan had been deprived of their right to legal assistance while in detention and had been convicted on the basis of information obtained through torture.

Judgment (F)

Russian Federation: European Commissioner for Human Rights issues reports on human rights violations in counter-terrorism operations in North Caucasus

On 24 November, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published the report on his visit in the Chechen Republic and the Republic of Ingushetia carried out on 2 – 11 September 2009. In the report, the Commissioner outlined, *inter alia*, that all counter-terrorism operations, including special ones, must be

subject to the respect of human rights and the rule of law, and that extrajudicial executions must be thoroughly and independently investigated.

[Report](#)

[Commissioner Statement](#)

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Security Council reforms UN Terrorism listing regime

On 17 December, the UN Security Council adopted *Resolution 1904(2009)*, which modifies the regime of the UN Al-Qaeda and Taliban Sanction List, instituted by *Security Council Resolution 1267(1999)*. The resolution creates an Office of an Ombudsperson, which should be competent to receive requests from individuals for de-listing. The Ombudsperson will act independently, and will be appointed by the UN Secretary General after consultation with the members of the Security Council. The final decision on listing or delisting of an individual will, however, remain within the competence of the Al-Qaeda and Taliban Sanctions Committee. This decision comes shortly after the International Commission of Jurists briefed the Security Council members on 30 November on ways to re-affirm and integrate human rights into the UN, and in particular the Security Council's response to terrorism.

[Resolution](#)

[ICJ Statement](#)

[Press Article 1](#)

[Press Article 2](#)

UN: Four UN Human Rights Council Experts publish joint study on secret detention in counter-terrorism

On 26 January, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances issued a joint study on global practices in relation to secret detention in the context of countering terrorism. The study documents the practice in respect of a number of individual countries and describes the international legal framework applicable to secret detention, provides an historical overview and addresses the use of secret detention after 9/11.

[Report](#)

[NGO Statement](#)

UN: Special Rapporteur issues report on counter-terrorism and right to privacy

On 28 December, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Schenin, released his report to the UN Human Rights Council. The report analyses the new challenges posed to the respect of the right to privacy and to data protection by the new counter-terrorism measures. Among other recommendations, the Special Rapporteur asked the Human Rights Committee to update its general comment on the right to privacy.

[Report](#)

[SR Statement](#)

EU: European Council adopts five-year programme on justice and home affairs

On 11 December, the European Council approved the Stockholm Programme, a five years programme on the European Union's activities on justice and home affairs. The Programme stresses the importance of upholding fundamental rights in the implementation of counter-terrorism measures and points out that prevention of radicalisation should be one of the priorities of the EU approach in the years to come.

[Stockholm Programme](#)

[Council Conclusions](#)

EU: Court of Justice's Advocate General finds freezing of social benefits for partners of people included in UN terrorism lists to be illegitimate

On 15 January, the Advocate General of the European Court of Justice, Paolo Mengozzi, issued an opinion on the case of three women resident in the UK who had their social security and assistance benefits frozen by the authorities because their husbands had been included on the UN Al-Qaeda and Taliban List. The Advocate recommended that the Court rule that, according to *Regulation 881/2002* and *Security Council Resolution 1390/2002*, the freezing of terrorists' assets regime does not apply to social security and assistance benefits of the partner of the enlisted person for the mere fact that such person lives with the listed person and could use these benefits also in favour of the listed person.

Opinion

IN BRIEF

Lists of Guantánamo and Bagram detainees published

On 1 January, an updated list of the people detained in Guantánamo was published, including those who have been released since March 2009. On 15 January, the American Civil Liberties Union obtained and published through a Freedom of Information Act action the list of the 645 prisoners who were detained at Bagram in September 2009.

Guantánamo List

Bagram List

NGO Statement

Report on Wilton Park Conference on terrorism and human rights published

On 1 October, the report of the Wilton Park Conference on "Terrorism, Security and Human Rights: Opportunities for Policy Change" was published. The Conference, organised in co-operation with the International Commission of Jurists, gathered high-level policy-makers, practitioners and human rights lawyers to discuss the relationship between terrorism, security and human rights.

Report

Report shows that ordinary courts can effectively deal with terrorism cases

In January 2010, the Center on Law and Security of the New York University School of Law published a report demonstrating the viability of ordinary courts, rather than military commissions or other military or special courts, in dealing with cases relating to terrorism. The reports revealed that nine out of ten criminal cases on terrorism charges brought in ordinary courts in the USA lead to conviction.

Report

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