



E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

No. 30, February 2009

Eminent Jurists Calls for Urgent Steps to Restore Human Rights in Counter-terrorism

In one of most extensive surveys of counter-terrorism undertaken, the Eminent Jurist Panel, an independent panel established by the ICJ to conduct a global study on the impact of terrorism on human rights, presented alarming findings on the extent of the erosion of human rights worldwide. At the global launch of the report in Geneva and a parallel Asia-Pacific launch in Bangkok, members of the panel called for a stocktaking process at the universal, regional and national level to reverse the trend and to prevent permanent damage to the foundation of the human rights framework. The Panel will present its findings in London (17 February), and Washington (27 February).

Press Release

Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights

The ICJ released the Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights: *Assessing Damage, Urging Action*. The Report affirms that since the events of 11 September 2001 many governments, ignoring the lessons of history, have allowed themselves to be rushed into hasty responses to terrorism that have undermined cherished values and posed serious challenges to the integrity of the international human rights legal framework. In the Report the Panel underscores the compelling need for a stocktaking process to be undertaken at the universal, regional and national levels with the aim of bringing counter-terrorism policies and practices into line with human rights law. The report calls for the rejection of the “war on terror” paradigm, notes that it has not found international support over seven years, but has done serious damage to human rights and humanitarian law. It calls for the repudiation of laws and policies grounded in it. It emphasises that criminal justice systems should be at the heart of efforts to counter and prevent terrorism. It asserts that in the context of countering terrorism a harmful accountability gap has arisen due to the growth of intelligence agency powers without the necessary corresponding oversight. It highlights the need to ensure accountability in intelligence cooperation. The report also provides policy makers and lawyers with valuable guidance on the limits of preventative counter-terrorism measures, such as deportation, control orders, administrative detention and the “listing” of individuals and organizations, which are often based on unsubstantiated secret information that cannot be contested.

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AFRICA & MIDDLE EAST

Zimbabwe: Opposition leaders arrested under terrorism-related charges denied basic rights

On 15 January, Meke Makuyana, a Member of Parliament of the opposition party MDP, was charged under the Anti-Terrorism Act. This arrest follows those of more than 30 other MDP party members who have been detained under terrorism-related charges. On 7 February, the NGO Zimbabwean Lawyers for Human Rights protested at the defiance of court rulings mandating release of prisoners and health visits by police forces.

[NGO Statement](#)

[Press Article 1](#)

[Press Article 2](#)

Swaziland: Government authorities target political dissidents under the Suppression of Terrorism Act

On 4 February, the Secretary General of the Swaziland Youth Congress (SWAYOCO) was held and interrogated by the Police on suspicion of possessing documents supporting terrorism. In Swaziland opposition parties such as SWAYOCO and Pudemo are listed as terrorist groups under the Suppression of Terrorism Act. In January, Amnesty International and the Human Rights Institute of the International Bar Association published a report on the Suppression of Terrorism Act of Swaziland, containing an analysis as to how certain provisions of the act undermine international human rights law.

[Report](#)

[Press Article](#)

AMERICAS

USA: House of Representative report denounces abuses in US counter-terrorism policies

On 13 January, the Majority Staff of the House of Representatives Committee on the Judiciary released the report "Reining in the Imperial Presidency", documenting numerous purported abuses of power by the Bush administration, including in relation to detention policies, "enhanced interrogation", extraordinary rendition and warrantless domestic surveillance. The report calls for the Committee to pursue access to documents and subpoenas, the creation of an investigative commission, and for the new administration to conduct an independent criminal inquiry into whether any laws were broken in the course of these activities.

[Report](#)

USA: President issues order to end secret CIA detention and interrogation practices

On 22 January, President Barack Obama issued an Executive Order closing all CIA detention facilities and prohibiting the CIA from operating such facilities in the future, ensuring access by the International Committee of the Red Cross to all US-held detainees, reforming the standards for interrogating detainees, and establishing an inter-agency task force to review interrogation and transfer policies.

[Executive Order](#)

[ICJ Statement](#)

USA: President issues Executive Orders to close the Guantánamo detention facilities, to suspend Military Commission activities and to review detainee policy

On 22 January, President Barack Obama issued an Executive Order to close the Guantánamo detention facilities within one year, to take steps to suspend the Military Commissions to try detainees, and to establish an immediate review of all individual Guantánamo detentions. He also issued an Executive Order establishing a Special

Interagency Task Force to study and identify law policy options for the disposition of individuals captured or apprehended in connection with armed conflicts and counter-terrorism operations.

[Executive Order \(Guantánamo\)](#)

[Executive Order \(Detention Policy\)](#)

[ICJ Statement](#)

USA: President requests review of Al-Marri detention on US soil

On 22 January, President Barack Obama issued a memorandum on review of the detention of Ali Saleh Kahlah al-Marri, a national of Qatar and lawful US resident detained in the USA as an “enemy combatant” in virtual solitary confinement and allegedly subjected to torture and other ill-treatment. A number of *amicus curiae* briefs have been submitted to the Supreme Court in the case, by legal scholars, former US officials, former diplomats, and human rights and religious organizations.

[Memorandum](#)

[Amicus Curiae Briefs](#)

USA: President requests 120-days stay in Guantánamo proceedings: seven granted, one rejected

On 20 January, the US Government filed motions before Military Commissions requesting a 120-day stay in the proceedings of the Guantánamo detainees Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak bin ‘Attash, Ramzi bin Al Shibh, Ali Abdul Aziz Ali, Mustafa Ahmed Adam al Hawsawi, and Omar Ahmed Khadr, in order to evaluate their cases and review their detention as well as to evaluate overall policy regarding the prosecution of Guantánamo detainees. On 22 and 23 January, the same motions were filed in the proceeding of, respectively, Mohammed Jawad and Abd al-Rahim al-Nashiri. While the motions regarding the first six detainees and Mr Jawad were granted respectively on 21 January and 4 February, on 29 January the motion concerning Abd al-Rahim al-Nashiri was rejected by the Military Commission. The Convening Authority, Susan Crawford, subsequently withdrew the charges against him without prejudice to future charges.

[Ruling \(21 January\)](#)

[Ruling \(Al-Nashiri\)](#)

[Ruling \(Jawad\)](#)

[Ruling \(Khadr\)](#)

[Charges Withdrawal Decision](#)

[Press Article 1](#)

[Press Article 2](#)

USA: Donald Rumsfeld sued over Guantánamo deaths in custody

On 7 January, the parents of two Guantánamo detainees found dead in their cells in 2006 filed a tort law complaint against former Secretary of Defence Donald Rumsfeld and other high ranking officers. The parents seek compensation on behalf of their sons for, *inter alia*, arbitrary detention, torture and cruel, inhuman or degrading treatment and denial of due process as well as for negligent medical care of their sons by guards and medical officers.

[Complaint](#)

[Press Article](#)

USA: Federal judge suspends process pending new definition of “enemy combatants”

On 22 January, District Court Judge Bates suspended until 20 February *habeas corpus* proceedings involving several persons detained in Bagram Air Base in Afghanistan under US forces’ control, asking the Government to state its position on the definition of “enemy combatant” for them. On 9 February, the Government replied that review of detention policies is ongoing following the Executive Order of the President and asked the Court not to consider the issue until the cases reach merit stage.

[Order of the Judge](#)

[Government Reply](#)

[Complaint 1](#)

[Complaint 2](#)

USA: Circuit Court rules enemy combatant review severed following *Boumediene* judgment

On 9 January, the Circuit Court of the District of Columbia ruled that they could not consider the question as to whether a number of Guantánamo detainees had been

properly designated unlawful combatants, in light of the fact the detainees could avail themselves of a writ of habeas corpus. The court held that the provision of the Detainee Treatment Act 2005 allowing it to review enemy combatants status challenges was to be severed, following the declaration of unconstitutionality of the provision abolishing *habeas corpus* jurisdiction for Guantánamo detainees in *Boumediene*.

[Judgment](#)

USA: NSA whistleblower alleges wiretap targeting of journalists

On 21 and 22 January, Russell Tice, former National Security Agency (NSA) analyst and one of the “whistleblowers” exposing in 2005 the NSA’s warrantless wiretapping programme, said that that the programme had been far more sweeping than previously revealed and included the monitoring the communications and financial transactions of US journalists and news agencies under its counter-terrorism surveillance operations.

[Interview 1 \(Video\)](#)

[Interview 2 \(Video\)](#)

USA: Justice Department continues state secret doctrine in *Jeppesen* rendition case

On 9 February, the Obama administration declared that the Government will continue to claim the privilege of state secret in the case *Binyam Mohammed and others vs. Jeppesen Dataplan, Inc.* The lawsuit was filed against Jeppesen, a subsidiary of Boeing, for its alleged role in their renditions to Egypt, Morocco and Afghanistan between 2001 and 2004 (see, E-Bulletin no. 17, May 2007). The American Civil Liberties Union and the Center for Constitutional Rights denounced the decision.

[Complaint](#)

[ACLU Statement](#)

[CCR Statement](#)

[Press Article](#)

Canada: Review Committee finds human rights flaws in intelligence service

On 27 January, the Security Intelligence Review Committee released to the public its Annual Report 2007-2008 on the operations of the Canadian Security Intelligence Service. The SIRC found *inter alia* that targeting of groups in operations aimed at understanding “home-grown” terrorism was not subject to required authorisations. On 5 February, the Working Group of the Universal Periodic Review of the Human Rights Council recommended a review of Canada’s anti-terrorism laws and practices in light of anti-discrimination principles.

[SIRC Report](#)

[UPR Report](#)

[SIRC Statement](#)

Colombia: UN and OAS independent experts denounce President’s declaration against journalist on terrorism links

On 10 February, the UN and the Organisation of American States’ Special Rapporteurs on Freedom of Expression expressed their concern at the statements made by President Alvaro Uribe linking journalist Hollman Morris to terrorism activities. The declarations followed the journalist’s reporting of the liberation of Colombian hostages on 2 February, when he was held for seven hours by the Colombian armed forces and police, who tried to confiscate his recordings. The Rapporteurs rejected the accusations and called the Government to respect the work of journalists and not to put in danger their safety through such statements.

[Special Rapporteurs Statement](#)

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

Argentina: UN independent experts release report on past State terrorism and right to truth

On 29 December, the UN Working Group on Enforced and Involuntary Disappearances released the report on its visit to Argentina of July 2008. The report analyses the policies enacted as a response to the widespread incidence of disappearances that occurred principally in the late 1970s. The Working Group invited the Government to continue its efforts to determine the fate of the disappeared and to establish responsibility for the

disappearances, and it made recommendations regarding means to ensure the right to truth and accountability.

[Report \(Spanish\)](#)

Peru: Court frees alleged members of clandestine operations group connected with past counter-terrorism abuses

On 26 January, the First Criminal Chamber ordered the release of Douglas Arteaga Pascual and Ángel Pino Díaz, as they had spent the maximum length of detention on remand, 72 months, without final conviction. The two former detainees are accused of responsibility for extrajudicial executions committed by the group “*Destacamento Colina*” as part of the Peruvian clandestine anti-terrorism operations against *Sendero Luminoso*. The *Asociación Pro Derechos Humanos* lamented the inaction of the Prosecutor in the case and called for the protection of witnesses, defence lawyers and families of the victims.

[NGO Statement \(Spanish\)](#)

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

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

ASIA - PACIFIC

India: Mumbai terrorist attack investigation dossier shared with Pakistan

On 5 January, the Government of India handed over to Pakistan a dossier of evidence on the Mumbai terrorist attacks of 26-29 November 2008. Despite cooperation assurances by Government of Pakistan, on 9 February Pakistani officials were reported to have asserted that more evidence would be needed from India in order to take action towards prosecuting those allegedly responsible for the attacks. On 10 February, Pakistan acknowledged that some of the attackers were nationals of Pakistan and that the attacks were partly originated in Pakistan.

[Dossier of Evidence](#)

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

Nepal: UN High Commissioner for Human Rights releases report on Nepali disappearances

On 19 December, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a report on its investigations into a number of enforced disappearances occurring during the conflict between government and Maoist forces in the Bardiya district of Nepal. The report documents the cases of 156 people allegedly disappeared by State authorities as well as 14 people allegedly disappeared by the Communist Party of Nepal-Maoist. According to the report, the disappearances occurred under a counter-terrorism legislative framework that allowed for arbitrary arrest.

[Report](#)

Sri Lanka: LTTE banned as “terrorist group” while military operations against it ongoing

On 7 January, the Government of Sri Lanka proscribed the Liberation Tigers of Tamil Eelam (LTTE) as a “terrorist organisation”. The proscription coincides with a major military offence against the LTTE, in which civilian victims and a shelling of UN facilities have been reported. On 29 January and 9 February, the UN High Commissioner for Human Rights and ten UN independent experts expressed concern for the situation of civilians and for lack of investigation regarding victims of the conflict.

[HCHR Statement](#)

[UN Experts Statement](#)

[Press Article 1](#)

[Press Article 2](#)

Australia: Government announces reforms of counter-terrorism legislation in response to review reports

On 23 December, the Australian Attorney General announced that the Government would

reform the anti-terrorism legislation in accordance with the recommendations contained in the Haneef Inquiry report and in previous reviews of counter-terrorism legislation. Reforms to be addressed include the areas of the offence of sedition, aspects of terrorism-related offences, the establishment of oversight on counter-terrorism legislation and the Australian Federal Police.

[Government Report](#)

[Government Statement](#)

[Haneef Inquiry Report](#)

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: Northern Ireland's Consultative Group on the Past releases report on dealing with legacy of the past

On 28 January, the Consultative Group on the Past, an independent group mandated to investigate how to deal with the legacy of past conflict and terrorism in Northern Ireland, issued its final report. The Group called for the establishment of a Legacy Commission, which would combine processes of reconciliation, justice and information recovery. Other recommendations include the payment of £12,000 to the relatives of every person killed in the conflict.

[Report](#)

[Press Article 1](#)

[Press Article 2](#)

UK: Court reluctantly denies disclosure of information on torture allegations

On 4 February, the High Court declined to make public information on the alleged torture and ill-treatment by US officials of Binyam Mohammed while detained in Pakistan, prior to his transfer to Guantánamo Bay. Although the Court found that there was a strong public interest in disclosure, based on principles of open justice, democratic accountability and the rule of law, this interest was overridden by UK government representations that the US had threatened to withdraw intelligence cooperation if the Court disclosed the information. On 5 February the Foreign Secretary, in a statement to the House of Commons, denied that there had been any threat by the US to withdraw co-operation. In light of this statement, lawyers for Mr Mohammed applied to the High Court to reopen the case. On 10 February, Mr Mohammed's lawyers wrote to President Obama in order to ask for declassification of the information.

[Judgment](#)

[Lawyers' Letter](#)

[NGO Statement](#)

[ICJ Statement](#)

[Press Article](#)

Italy: Extradition to Tunisia in violation of European Court of Human Rights' interim measures

On 13 December, the Italian authorities expelled Mourad Trabelsi, a Tunisian national, in contravention of an interim measure issued by the European Court of Human Rights asking the deportation to be stayed pending determination as to his alleged risk of torture or other ill-treatment in Tunisia. Mr Trabelsi was released from prison in Italy in November 2008, after serving six and a half years on terrorism-related charges. In 2005, a military court in Tunisia tried him *in absentia* on similar charges and sentenced him to 20 years in prison, in a trial considered unfair by Amnesty International.

[AI Statement](#)

[NGO Statement \(with link to Interim Measure\)](#)

Spain: Examining Magistrate orders pre-trial detention of eight members of Basque political party

On 26 January, the Examining Magistrate of the *Audiencia Nacional*, Baltasar Garzón, ordered the pre-trial detention of eight people charged with the offence of participation in a terrorist organisation. The Examining Magistrate alleged that the accused persons were attempting to reconstitute the banned political party Batasuna under the new Basque parties D3M (*Democracia Tres Milliones*) and *Askatasuna* for participation in the March 2009 Basque elections. On 8 February, the Special Chamber of the Supreme Court annulled the inscription of these two parties to participate in the Basque elections on the grounds that

they were an instrument of Batasuna. On 12 February, the Constitutional Court confirmed the decisions of the Supreme Court in both cases.

Magistrate Order (S)

SC Judgment (Askatasuna) (S)

SC Judgment (D3M) (S)

CC Judgment (Askatasuna) (S)

CC Judgment (D3M) (S)

Press Article (English)

Spain: Constitutional Court rejects action against banning of Basque political parties

On 29 January, the Constitutional Court rejected the action of *amparo* of the Basque political party *Accion Nacionalista Vasca* (ANV) against the constitutionality of the Supreme Court's decision declaring the party illegal. The Court, which had previously rejected a request for suspension of the Supreme Court judgment on 22 December, found that the evaluation of the evidence by the Supreme Court was not arbitrary, unreasonable or erroneous. Meanwhile, the Supreme Court approved the execution of the judgments on the banning of ANV and of the *Partido Comunista de las Tierras Vascas* (PCTV).

CC Judgment (S)

CC Judgment (Suspension) (S)

SC Judgment (PCTV) (S)

SC Judgment (ANV) (S)

Spain: Independent expert on counter-terrorism and human rights issues report on visit to Spain

On 16 December, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, issued the report on its visit to Spain from 7 to 14 May 2008. In the report, the Special Rapporteur called for an end to incommunicado detention and the narrowing of the definition of terrorism-related offences and made recommendations on question of extraordinary renditions, on the system of banning of political parties, and on allegations of torture and other ill-treatment.

Report

Turkey: Court sentences Kurdish lawmaker to prison for terrorist propaganda

On 5 February, the Diyarbakir 4th Higher Criminal Court sentenced Democratic Society Party (DTP) deputy Aysel Tugluk to 18 months in prison on charges of "spreading propaganda of an outlawed terrorist group" in a speech she gave in May 2006 at a party congress. The DTP is political party advocating for Kurdish interests. The case was briefly suspended on claims of parliamentary immunity, but a High Court later ruled that the case must resume on grounds that legal immunity does not apply to terrorism-related charges. Tugluk, who rejected the charges, said she would file appeal.

Press Article 1

Press Article 2

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Secretary General, High Commissioner for Human Rights and independent experts welcome Guantánamo closure order

On 22 and 23 of January, the UN Secretary General and the UN High Commissioner for Human Rights respectively welcomed the initiative of US President Barack Obama to plan the closure of the detention facilities at Guantánamo Bay. The UN Special Rapporteurs on the independence of judges and lawyers and on torture and cruel, inhuman or degrading treatment or punishment also welcomed the US President's Executive Orders and offered their support to advance their implementation.

SG Statement

HCHR Statement

Special Rapporteurs Statement

UN: Secretary General to establish Inquiry Commission on Bhutto's assassination

On 3 February, the UN Secretary General announced to the Security Council his intent to establish a Commission of Inquiry pursuant to a request by the Pakistani Government, which would be mandated to investigate the assassination of former Pakistani Prime Minister Mohtarma Benazir Bhutto, termed by the Secretary General "a terrorist act". The Commission would be composed of three eminent persons appointed by the Secretary General and would conduct its work with the full cooperation of the Pakistani Government.

[SG Letter to Security Council](#)

UN: Al-Qaida and Taliban Sanctions Committee releases report on 2008 activities

On 31 December, the Al-Qaida and Taliban Sanctions Committee released a report on its activities in 2008. The report mainly focused on the reforms to the procedural guidelines of the Committee enacted on 9 December 2008 in compliance with Security Council resolution 1822(2008). The Committee declared its intention to continue to ensure what it characterized as "fair and clear procedures" for insertion and removal of individuals and entities on the sanctions list.

[Report](#)

[Guidelines](#)

[SC Resolution 1822\(2008\)](#)

UN: Independent expert says Bush and Rumsfeld should be held accountable for Guantánamo abuses

On 20 January, the UN Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak, declared in an interview at the German TV channel ZDF that the United States had a legal obligation to hold accountable former President, George W. Bush, and Secretary of Defence, Donald Rumsfeld, for authorising torture and inhuman and degrading treatment against detainees held at the detention facility in Guantánamo Bay and that enough evidence is publicly available.

[Interview \(Video\) \(German\)](#)

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

EU: European Council leaves choice on Guantánamo detainees resettlement to States

On 26 January, the European Council discussed the possibility of resettling Guantánamo detainees in EU countries. While declaring that decisions to accept detainees are to be taken by national authorities, the Council affirmed its availability to work for a common solution. Certain EU states have declared their willingness to receive detainees for resettlement. On 4 February, the European Parliament renewed calls to the EU Member States to accept Guantánamo detainees in order to help reinforce international law, if so requested by the US authorities, which they considered to bear primary responsibility for situation of the detainees.

[Council Statement](#)

[Parliament Resolution](#)

[Parliament Statement](#)

[Press Article](#)

EU: European Council removes People's Mojahedin Organisation of Iran from terrorism list

On 26 January, the European Council removed the People's Mojahedin Organisation of Iran (PMOI) from the EU terrorist list. The PMOI had been blacklisted by the EU since 2002. The European Court of First Instance ruled in December that the Council had violated the PMOI's right to defend itself against the Council's legal arguments to place it on the list of terrorist organisations by failing to provide the specific grounds for its placement on the list (See E-Bulletin no. 29, December 2008).

[Council Decision](#)

[European Court Judgment](#)

[Press Article 1](#)

[Press Article 2](#)

EU: European Council includes banned Basque political parties in terrorism list

On 16 December, the European Council included in its terrorism list the Basque political parties *Acción Nacionalista Vasca* (ANV) and *Partido Comunista de las Tierras Vascas* (PCTV), which were declared illegal by the Spanish Supreme Court on 22 September (see E-bulletin no. 27, October 2008) for having allegedly given support to the illegal political party Batasuna. The parties were included as part of the terrorist group ETA.

[Council Common Position 2008](#)

[Council Common Position 2001](#)

Council of Europe: Calls for European countries to resettle Guantánamo detainees

On 19 January, the European Commissioner for Human Rights, Thomas Hammarberg, called on European governments to accept resettlement in their countries of Guantánamo detainees who might otherwise be sent back to countries where they risk torture or cruel, inhuman or degrading treatment or other serious human rights violations. On 26 January, the President of the Parliamentary Assembly of the Council of Europe joined this call.

[Commissioner Statement](#)

[PACE President Statement](#)

Organisation of American States: Inter-American Commission on Human Rights welcomes closure of Guantánamo

On January 27, the Inter-American Commission on Human Rights issued a press release welcoming the approval by US President Obama of the Executive Orders on the closure of Guantánamo and on ensuring interrogation procedures.

[IACHR Statement](#)

IN BRIEF

Lawyers for 17 Uighur Guantánamo detainees petition the Government for immediate release

On 23 January, the lawyers for the 17 Uighurs detained in Guantánamo Bay wrote to the Attorney General and the Secretary of Defence asking for the immediate release in the United States of their clients following the Executive Order of President Obama on the closure of Guantánamo.

[Letter](#)

[Case Story](#)

Human Rights Watch demands release of journalists held under terrorism-related charges

On 22 January, Human Rights Watch wrote to Sri Lankan President, Mahinda Rajapakse, asking to drop charges and release journalist J.S. Tissainayagam, publisher V. Jasiharan and his wife V. Valamathy, who have been in detention since March 2008 under terrorism-related charges. Human Rights Watch claimed violation of due process and the right to fair trial and suggested that these prosecutions constituted a violation of freedom of expression.

[Letter](#)

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