



E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

No. 38, November 2009

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AFRICA & MIDDLE EAST

Gambia: Indictment of sixteen people in terrorism trial excessively delayed, judge says

On 29 October, Justice Moses Richards of the Special Criminal Division of the Banjul High Court warned the prosecution, in the case of the sixteen men charged with terrorism offences, that if the State fails to comply with the Court order to file the proper indictment and a formal charge sheet before the Court, he will consider hearing applications for bail for the sixteen men. Two of the defendants were said to have spent at least two years in detention without having been charged.

[Press Article 1](#)

[Press Article 2](#)

Egypt: UN Special Rapporteur concerned at future Anti-Terrorism Law

On 14 October, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism published the report on his visit to Egypt in April 2009. While welcoming the Egyptian Government's announcement that it will repeal the state of emergency which has lasted for more than 50 years, the Special Rapporteur expressed concern that many current measures that derogate from human rights will be included in the future permanent Anti-terrorism law.

[Report](#)

Yemen: Committee against Torture finds serious human rights violations in counter-terrorism

On 3 November, the UN Committee against Torture expressed its concerns at reports of grave violations of human rights committed in the context of countering terrorism. Such violations include cases of extrajudicial killings, enforced disappearances, arbitrary arrests, indefinite detention without charge or trial, torture and ill-treatment, and deportation of non-citizens to countries where they are in danger of being subjected to torture or ill-treatment. The Committee also noted that it is not clear whether the Department of Anti-Terrorism is a civilian or military department, and that allegations of torture committed while in detention are rarely investigated and prosecuted.

[Concluding Observations](#)

Gaza: UN General Assembly requests independent Gaza investigations by Israel and Palestinian Authority

On 5 November, the General Assembly adopted a resolution endorsing the report of the Goldstone Fact-Finding Mission on the Gaza War. The report documents international law violations committed by both sides of the conflict during the Operation "Cast-Lead" conducted in Gaza by the Israeli Armed Forces between 27 December 2008 and 18 January 2009. The Assembly called upon the Government of Israel and the Palestinian authorities to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations reported by the Fact-Finding Mission.

[Resolution](#)

[Meeting Summary](#)

Iran: Five people linked with electoral riots convicted to death for terrorism

On 17 November, press news reported the Teheran Justice Department's announcement of the final sentencing to death for terrorist offences of five people for membership of opposition groups. One of the opposition activists reported as having been sentenced to death over the protests has been named as Mohammad Reza Ali Zamani; the other persons to be executed have not been named.

[Press Article](#)

AMERICAS

USA: Justice Department announces five Guantánamo detainees to be tried in Federal Court; other five in military commissions

On 13 November, Attorney General Eric Holder announced that the Department of Justice will pursue prosecutions in the Federal Court of Khalid Sheikh Mohammed, Walid Muhammed Salih Mubarak Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz Ali, and Mustafa Ahmed Al Hawsawi, accused of conspiring to commit the 9/11 attacks. Another five Guantánamo detainees have been referred back to the Department of Defense to face military commission trials. The 9/11 cases will be brought in Manhattan in the Southern District of New York. Mr. Holder announced that the Department of Justice will seek maximum penalties, including the death penalty.

[Attorney General Speech](#)

[Justice Department Statement](#)

[Press Article](#)

USA: Court of Appeal dismisses civil damages lawsuit for CIA rendition

On 2 November, the US Court of Appeal of the Second Circuit dismissed without prejudice the case of Maher Arar against several high-level officers of the Bush administration. A Canadian citizen, Maher Arar was arrested in 2002 in New York and sent to Syria where he was tortured for several months. Mr Arar was seeking civil damages for breach of his constitutional rights and for torture and inhuman treatment both in the US and in Syria. The Court of Appeal ruled that no cause of action existed that could provide a remedy for the breach of Mr. Arar's constitutional rights.

[Ruling](#)

[Case Summary](#)

[Press Article](#)

USA: Ali Al-Marri sentenced to eight years imprisonment

On 29 October, Judge Michael M. Mihm of the US District Court of the Central District of Illinois sentenced Ali al-Marri to eight years in prison. Although he faced up to 15 years, the judge took into account the time he has already spent in military and civilian custody in departing from the sentencing guideline range. After Mr Al-Marri was declared an "enemy combatant" in June 2003, he had been imprisoned without charges several years at a Navy brig in South Carolina.

[Sentence](#)

[NGO Statement](#)

USA: Six Guantánamo detainees of Uighur origin transferred to Palau

On 30 October, Attorney General Eric Holder announced that six Guantánamo detainees of Uighur origin, Ahmad Tourson, Abdul Ghappar Abdul Rahman, Edham Mamet, Anwar Hassan, Dawut Abdurehim and Adel Noori, have been transferred from the detention facility at Guantánamo Bay to the Republic of Palau. The detainees had been detained without charge for seven years. The Chinese government protested at this decision which it alleged to be in violation of US obligations under international anti-terrorism conventions.

[Justice Department Statement](#)

[Press Article](#)

USA: Court of Appeal confirms conviction of lawyer for transmitting messages of terrorist detainee out of prison

On 17 November, the Court of Appeal of the Second Circuit upheld the conviction of lawyer Lynne Stewart, together with Mohammed Yousry and Ahmed Abdel Satter. The conviction established that the three defendants helped breach the Special Administrative Measures (SAMs) to which Stewart's client, Omar Abdel-Rahman, was subject and that limited his ability to communicate with individuals outside the prison. The court also

found that Stewart provided and concealed material support to the conspiracy to murder persons in a foreign country. The Court sent the case back to the District Court criticizing the 28 months sentence as too lenient.

[Judgment](#)

[Interview \(Video\)](#)

[Press Article](#)

USA: Government grants settlement in anti-terrorism racial profiling and illegal detention suit

On 3 November, five men formerly resident in New York, who had been ultimately deported in the aftermath of the 9/11 attacks, received a \$1.26 million settlement from the US government in a case challenging racial profiling, illegal detention and abuse of Muslim, Arab and South Asian men in counter-terrorism operations. The case *Turkmen v. Ashcroft* had been filed in September 2002 to challenge the arbitrary detention and mistreatment of immigration detainees by prison guards and high-level Bush administration officials in the wake of 9/11.

[NGO Statement](#)

Canada: Asylum-seekers of Tamil origin detained under suspicion of terrorism ties

On 6 November, the Immigration and Refugee Board ordered a Sri Lankan Tamil migrant to remain in custody based on suspicion of having ties with the armed group *Liberation Tigers of Tamil Eelam* (LTTE). Another 75 asylum-seekers blocked by the border authorities are still in custody pending screening of their situation and, reportedly, following the authorities' suspicions that some of them might also be linked with the LTTE. These suspicions are said to be grounded on reports by Sinhalese professor Rohan Gunaratna, whose impartiality has been contested by the asylum-seekers' lawyers before an immigration tribunal. The tribunal agreed to allow the cross-examination of the expert.

[Press Article 1](#)

[Press Article 2](#)

Colombia: NGO denounces illegal surveillance and threats by security service

On 5 November, the Inter-American Commission on Human Rights held a hearing on the case of *Alirio Uribe Muñoz and other members of the Colectivo de Abogados José Alvear Restrepo v. Colombia*. The representatives of the NGO *Colectivo de Abogados José Alvear Restrepo* (CAJAR) presented allegations of illegal surveillance, filing, wiretapping, and threats against them carried out by the group G3, constituted by the Colombian security service *Departamento Administrativo de Seguridad* (DAS). These activities are alleged to be part of a broader practice of abusive interception by the secret service, which has targeted judges of high courts, members of the political opposition, trade unions leaders, journalists and human rights defenders, including a mission of the Inter-American Commission on Human Rights in Colombia, in the framework of the Government's "counter-terrorism" policy.

[Hearing \(Audio in Spanish\)](#)

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

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

Colombia: Committee against Torture concerned at generalised use of torture and at stigmatisation of human rights defenders

On 19 November, the UN Committee against Torture issued its Concluding Observations on Colombia. Among serious concerns of a generalised use of torture and impunity, the Committee also stressed the threats by State authorities and paramilitary groups to members of the judiciary and human rights defenders, sometimes stigmatised as having links to guerrilla armed groups, such as FARC. Among other issues, the Committee also expressed its concern at several extrajudicial executions of civilians carried out in the framework of the fight against the guerrillas and the illegal surveillance of members of the judiciary and human rights defenders by the Colombian security service *Departamento Administrativo de Seguridad*.

[Concluding Observations \(S\)](#)

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

Colombia: High Court confirms dismissal of General responsible for enforced disappearance

In the beginning of November, a decision of the State Council (*Consejo de Estado*) has been published which confirms the 1995 destitution of General Álvaro Hernán Velandia Hurtado and other three army officers for the torture, enforced disappearance and extrajudicial execution of Nydia Erika Bautista de Arellano, a member of the armed group *Movimiento 19 de Abril (M-19)*. The torture, disappearance and execution were carried out in the framework of the national security campaign against the guerrilla and authors of terrorist acts. In October 1995, the UN Human Rights Committee declared the responsibility of the Colombian State for the torture, enforced disappearance and extrajudicial execution of Nydia Erika Bautista de Arellano.

Judgment (S)

NGO Statement (S)

HRC Decision (E)

Brasil: Supreme Court allows for extradition of Italian citizen convicted of terrorism

On 18 November, the Supreme Court of Brasil ruled that there were no legal impediments for the extradition to Italy of Cesare Battisti convicted *in absentia* in Italy in 1993 for terrorism-related offences. The Court ruled with a 5 to 4 vote that the offences for which Battisti had been convicted did not constitute political offences and were not subject to statute of limitations. The Court also ruled that the extradition was not obligatory but was at the discretion of the President of the Republic of Brasil.

Court Statement (Portuguese)

ASIA - PACIFIC

China: Security anti-terrorism campaign in Xinjiang announced by Government

On 3 November, the Chinese State English Press Agency *People's Daily* reported the Government's announcement of a police security campaign in the north-west region of Xinjiang, where there is a large Uighur minority. The police said the campaign will keep a close eye on cases involving terrorism. On 30 October, Amnesty International asked for the release or indictment of the Uighur journalist Hairat Niyaz detained since 1 October under investigation for "endangering state security". The journalist is alleged to have been arrested for his comments on the use of anti-terrorism measures by the Government to target the Uighur minority and he is believed to be at risk of torture or ill-treatment.

NGO Statement

Press Article 1

Press Article 2

China: Supreme Court widens interpretation of anti-terrorism offence

On 11 November, a ruling of the Chinese Supreme Court entered into force, which had been adopted on 21 September 2009. The ruling defines the terms "sponsor" and "individual who commits terrorist activities" under the offence of terrorism in Article 120-1 of the Chinese Criminal Code. According to the ruling, "sponsor" will cover acts of raising or providing funds or materials, or providing locations or other material conveniences, while "individual who commits terrorist activities" will apply to those who conspire, prepare, and commit terrorist activities.

Ruling (Chinese)

Legislation (Chinese)

Press Article (E)

Pakistan - USA: UN Special Rapporteur critic at US targeted killing operations

On 28 October, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, expressed in an interview his concern at the CIA official policy to use drones to identify, target and kill terrorist suspects. The Special Rapporteur asked for the details, regulations and legal grounds for such programme and for any accountability mechanism in place. In the absence of information on these points, he

envisaged that the programme could give rise to extrajudicial killings. According to press reports there have been 41 CIA missile strikes since the beginning of the Obama administration.

[Interview \(Video\)](#)

[Press Article 1](#)

[Press Article 2](#)

Pakistan: Parliament passes Law equating financing of terrorism to money laundering

On 4 November, the National Assembly of Pakistan approved the Anti-Money Laundering Bill, which has included financing for terrorism-related activities among the criminal offences punished under the anti-money laundering regime. The proponents of the Law declared it to be necessary in light of the remarks of the *Financial Action Task Force*, an inter-governmental body dedicated to combat money laundering and terrorist financing.

[Draft Law](#)

[Press Article](#)

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: Government replies to Parliamentary reports on UK torture complicity

In October, the Government presented its replies to the Joint Committee on Human Rights report on allegations of UK complicity in torture, and to a Foreign Affairs Committee report, which highlighted the problem of renditions. The Government refused to acknowledge the existence of a policy of accepting evidence obtained through torture abroad. Furthermore, while promising to publish the new guidelines on security and intelligence agencies it refused to release the old ones or any legal documents which would justify complicity in torture, and rejected the idea of an inquiry into such complicity. Finally it outlined that it does not consider transit or refuelling of aircrafts without detainees on board on UK territory to constitute complicity in torture or renditions or to be unlawful.

[Report to JCHR](#)

[Report to FAC](#)

UK: High Court judge allows for closed material procedure in civil damages claims

On 18 November, Justice Silber of the High Court ruled that it is lawful and proper for a court to order that a closed material procedure can be adopted in a civil claim for damages. The ruling was adopted in the case *Al Rawi and others v. the Security Service and others*, where seven former Guantánamo Bay detainees are suing the UK government for civil damages. Justice Silber ruled that the closed procedure for classified evidence with the presence of a Special Advocate sufficiently granted the plaintiffs' right to a fair trial, although he did not decide whether such a procedure was applicable to the case at issue.

[Ruling](#)

[Press Article](#)

UK: High Court discloses further information on Binyam Mohammed ruling

On 19 November, the High Court disclosed two redacted paragraphs, with the Government's agreement, and ordered the disclosure of another four from their fifth judgment in the case involving the alleged torture of Binyam Mohammed. The Court asserted that the content of the four paragraphs is already in the public domain. Binyam Mohammed, an Ethiopian citizen currently residing in the UK, was detained by the US from 2004 to February 2009 in Guantánamo, which followed his 2002 arrest and detention in other countries including Pakistan and Morocco. The paragraphs at issue were initially kept redacted following a direct threat from US officials not to share intelligence with the UK if the information was disclosed. The Government is appealing the decision.

[Ruling](#)

Italy: Tribunal convicts *in absentia* 22 US citizens for 2003 rendition of Muslim cleric

On 4 November, the Tribunal of Milan convicted 23 of 26 CIA agents charged with the kidnapping of Abu Omar on 17 February 2003. Five former agents of the then Italian Military Secret Service were acquitted because of the evidentiary shield of the secret of state claimed by the Italian Government. Another two Italians were convicted for aiding and abetting the kidnapping. Abu Omar had been abducted by CIA agents and the Italian intelligence service and flown to Egypt where he was imprisoned for four years. The US citizens were tried *in absentia*, as the Italian government has refused to seek their extradition.

[US State Dep. Statement \(Video\)](#)

[ICJ Statement](#)

[Press Article 1](#)

[Press Article 2](#)

Spain: Committee against Torture concerned at use of *incommunicado* detention in countering terrorism

On 19 November, the UN Committee against Torture issued its Concluding Observations on Spain. While expressing appreciation that Spain has not created a parallel system to the ordinary judicial one to counter terrorism, the Committee expressed concern at the system of *incommunicado* detention up to 13 days to which people suspected of terrorism offences may be subject to. This detention regime does not allow the detainee to contact his/her family, or to consult a lawyer or a physician of his/her own choice. The Committee asked for the reform and gradual abolition of *incommunicado* detention.

[Concluding Observations \(S\)](#)

[ICJ Report \(E\)](#)

Lithuania: Parliament orders investigation into alleged CIA secret detention centre

On 5 November, the Lithuanian Parliament decided to begin a parliamentary investigation into the allegation of the existence of a CIA secret detention facility near the capital Vilnius. Investigations will be carried out by the National Security and Defense Committee. *ABC News* station alleged that at least eight people were believed to have been held secretly at a facility on the outskirts of Vilnius (Lithuania), for up to a year until late 2005.

[Parliament Statement \(Lithuanian\)](#)

[Press Article 1](#)

[Press Article 2](#)

Turkey: European Court of Human Rights finds anti-terrorism law newspaper ban violates freedom of expression

On 20 October, the European Court of Human Rights found that Turkey has violated the freedom of expression of several owners, executive directors, editors-in-chief, news directors and journalists of the newspapers *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi*. The Court found that the Turkish courts decision to suspend the newspapers' publication for a period of fifteen days on the assumption that they constitute propaganda in favour of the Kurdish Workers' Party (PKK) was not necessary in a democratic society, as less "draconian" measures could be undertaken. The Court ordered the Turkish Government to modify accordingly section 6(5) of the *Prevention of Terrorism Act no. 3713*.

[Judgment](#)

Azerbaijan: Committee against Torture concerned at renditions to Russia and Turkey

On 18 November, the UN Committee against Torture, in its Concluding Observation on Azerbaijan, expressed its concern at cases of rendition of Chechens to the Russian Federation, and of Kurds to Turkey, where they may face a risk of torture or ill-treatment. The Committee recommended that Azerbaijan ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture and to avoid the systematic use of diplomatic assurances.

[Concluding Observations](#)

Russian Federation: Human Rights Committee concerned at anti-terrorism legislation

On 29 October, the UN Human Rights Committee issued its Concluding Observations on the Russian Federation. The Committee recommended that Russia review the Federal Law on Countering Terrorism to bring it in compliance with the international rules on state of emergency, including by narrowing the definition of the offences of terrorism, and establishing an independent mechanism to review and report on anti-terrorism laws. The Committee recommended that Russia systematically review terrorism related trials carried out in Chechnya to ensure full respect of rights guaranteed under the right to a fair trial, and that it ensure that persons suspected of terrorism are not transferred from Russia to face a danger of torture or other forms of ill-treatment.

[Concluding Observations](#)

[ICJ Report](#)

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Third Committee adopts resolution on torture critical of diplomatic assurances

On 10 November, the Third Committee of the General Assembly approved without a vote a resolution on torture and other cruel, inhuman or degrading treatment or punishment. The resolution, *inter alia*, recognises that diplomatic assurances for expelling, extraditing or returning foreigners do not release States from their obligations under international human rights law, humanitarian and refugee law, and in particular the principle of *non-refoulement*. The representative of South Africa, while approving the resolution, regretted the resolution did not address the closure of the detention facilities at Guantánamo and accountability for crimes of torture.

[Resolution](#)

[Meeting Summary](#)

UN: Security Committees report to Security Council; Member States stress need for transparency in listing procedure

On 13 November, the UN Counter-Terrorism Committee, the Al-Qaida and Taliban Sanctions Committee, and the Committee dealing with the proliferation of weapons of mass destruction briefed the Security Council on their activities. Several Member States of the Security Council outlined the importance of respecting human rights while countering terrorism. In particular, Switzerland and the Netherlands stated that lack of transparency, participation and independence in the UN listing procedure might undermine their capacity of implementing the list due to their courts' decisions. The UN High Commissioner for Human Rights, Navanethem Pillay, raised similar concerns in her brief to the UN Counter-Terrorism Committee on 29 October.

[Meeting Summary](#)

[HCHR Statement](#)

[Committees' Statement](#)

[CTC Statement](#)

UN: UN Special Rapporteur presents report on gender perspective in counter-terrorism

On 26 October, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, presented before the General Assembly a report on gender perspectives in counter-terrorism. The report provides a general overview of the frequency and nature of gender-based human rights abuses in counter-terrorism. The report also analyses gender issues in counter-terrorism by including a sexual orientation and gender identity perspective.

[Report](#)

[SR Press Conference](#)

[NGO Statement](#)

UN: Special Rapporteur on human rights defenders highlights counter-terrorism limitations on freedom of association

On 23 October, the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, presented to the General Assembly a report on the right of freedom of association. In her report, the Special Rapporteur addressed cases of abuse and misuse of

anti-terrorism legislation in order to limit the legitimate activities of human rights defenders and non-governmental organisations, including financially. Finally the report concluded that vague definitions of terrorism allow for arbitrary application against individuals and associations and should be amended.

[Report](#)

[Meeting Summary](#)

Council of Europe: European Committee for the Prevention of Torture outlines primacy of human rights law in countering terrorism

On 6 November, the President of the European Committee for the Prevention of Torture (CPT), Mauro Palma, defined as “misguided” the alleged tension between counter-terrorism and human rights and stressed that the defence of human rights values is the way to best guarantee security. The statement was made on the release of the CPT’s annual report where it recognised that this tension manifests itself in various ways, such as the extension of maximum periods of custody, limitations on the exercise of fundamental safeguards and the practice of seeking, in the context of deportation procedures, “diplomatic assurances” from States with a poor human rights record.

[Report](#)

[CPT President Statement](#)

Council of Europe: European Commissioner for Human Rights asks for accountability for counter-terrorism human rights violations

On 2 November, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, voiced his serious concern at the lack of accountability for gross human rights violation committed in the name of countering terrorism. He recommended that mechanisms of accountability must be effective and intelligence agencies must be subject to an independent oversight with full access to information. He finally stressed that need for secrecy cannot override the State’s obligations to investigate, prosecute and try those responsible for human rights violations.

[Commissioner Statement](#)

IN BRIEF

Human Rights First publishes reports on Bagram detention centre and security immigration laws in the USA

In November, Human Rights First published two reports providing recommendations to the US Government for improving detention conditions and respect of the detainee’s fair trial rights in Bagram (Afghanistan). A third report analyses the impact of counter-terrorism related immigration law restrictions on asylum seekers and refugees in the United States.

[Report \(Bagram\)](#)

[Report \(Bagram on due process\)](#)

[Report \(Immigration\)](#)

Center for American Progress releases report on closing Guantánamo

In November, the Center for American Progress published a report analysing the problems and obstacles the Obama administration has and will have to face in closing the detention facilities at Guantánamo Bay.

[Report](#)

Report on due process and targeted sanctions published by University of Notre Dame

In November, the University of Notre Dame issued a report with recommendations on how to strengthen due process guarantees in targeted sanctions procedures in order to meet international human rights obligations.

[Report](#)

Corrigendum October 2009 E-Bulletin:

Canada: Federal Court annuls security certificate

On the case of the Mr Mohamed Harkat, the last sentence has been substituted with the following: "In another security certificate case involving Mohamed Harkat, the Federal Court declined to give weight to polygraph declarations of an unknown human source. Information about the source matrix (e.g. information to judge the background and reliability of the source) had been only partially disclosed, omitting conflicting assessments on the sources' truthfulness. To restore the confidence into the integrity of the proceedings, the court ordered the production to the special advocate and the court of the files relating to another human intelligence source."

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