

# ***E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS***

**No. 79, December 2013 – January 2014**

## **AFRICA & MIDDLE EAST**

**Ethiopia:** Anti-terrorism law stifles freedom of the press, finds new report  
**Morocco:** UN experts group calls for major reform of anti-terrorism legislation  
**Iraq:** 38 persons executed in three days after grossly unfair trials  
**Egypt:** Government designates Muslim Brotherhood a "terrorist organization"  
**Saudi Arabia:** Human Rights Watch urges King not to pass draconian anti-terrorism law  
**Yemen/USA:** UN experts concerned at civilians death in US drone strike

## **AMERICAS**

**USA/UK:** Documents reveal even further reach of NSA mass surveillance programmes  
**USA:** Independent panel finds NSA mass surveillance programme illegal and useless  
**USA:** President announced modifications to the NSA surveillance system  
**USA:** UN and Inter-American experts concerned at forced repatriation of Algerian Guantánamo detainee; other detainees released  
**USA:** New defense law gives more flexibility for transfer of Guantánamo detainees abroad  
**USA:** Two Federal courts issue conflicting judgments on lawfulness of the NSA mass surveillance programme  
**USA:** Federal appeals court dismisses Guantánamo torture damage lawsuits  
**Canada:** Canadian secret services act at the behest of US National Security Agency, Snowden documents reveal  
**Canada:** Federal Court criticizes abuse of foreign surveillance authorizations by secret services

## **ASIA - PACIFIC**

**Pakistan:** Supreme Court battles with Government to reveal fate of allegedly "disappeared" persons  
**Pakistan:** Presidential ordinance institutes special courts and incommunicado detention  
**Afghanistan:** 37 Bagram prisoners freed by Afghan Government for lack of evidence  
**Thailand:** Government declares 60-day state of emergency amid opposition protests

## **EUROPE & COMMONWEALTH OF INDEPENDENT STATES**

**UK:** NGOS challenge GCHQ mass surveillance programme  
**UK:** Court of Appeal dismisses case on alleged UK complicity in US drone strikes in Pakistan  
**UK:** Guardian editor and staff under threat of "terrorism" prosecution  
**UK:** International Criminal Court asked to investigate UK war crimes in Iraq  
**UK:** Gibson inquiry report says UK Government may have been involved in renditions  
**UK:** High Court rules that "act of state" doctrine bars rendition complicity claim  
**UK:** Parliamentary Committee doubts utility of certain counter-terrorism measures  
**UK/Saudi Arabia:** European Court holds State immunity bars torture lawsuit  
**France:** New legislation increases Government's mass surveillance powers  
**Spain:** UN experts urge Government not to extradite opposition member to Kazakhstan  
**Poland:** Polish secret services alleged to have paid 15 million dollars for CIA secret detention centre  
**Lithuania:** Court orders prosecutor to open investigations into rendition and secret detention complicity  
**Russian Federation:** European Court finds Human Rights Convention breached in several counter-terrorism operations  
**Russian Federation:** Refusal to return "terrorist" suspects bodies to family members breached European Convention on Human Rights, rules Strasbourg Court

**Russian Federation:** Counterterrorism amendments introduced to Parliament

**Uzbekistan:** Non-reporting of terrorism acts criminalized

## **UNITED NATIONS & REGIONAL ORGANIZATIONS**

**UN:** Security Council renews Counter-Terrorism Executive Directorate's mandate

**EU:** Parliament's NSA inquiry draft report condemns mass surveillance of EU citizens

**EU:** European Commission opposes creation of European terrorist finance tracking system

**EU:** European Commission proposes measures to rebuild EU-US data trust

**EU:** Advocate General says that Data Retention Directive violates EU rights charter

## AFRICA & MIDDLE EAST

### **Ethiopia: Anti-terrorism law stifles freedom of the press, finds new report**

On 14 January, the International Press Institute and the World Association of Newspapers and News Publishers published a report, entitled *Press Freedom in Ethiopia*, resulting from a mission they undertook in the country from 3 to 6 November 2013. The report criticizes the 2009 *Anti-Terrorism Proclamation* that “gave new powers to the government to arrest those deemed seditious, including journalists who step beyond the bounds of politically acceptable reporting or commentary.” The report also documents the arrest and detention of dozens of journalists under the provisions of this anti-terrorism legislation and urges the government to order their release. The two organizations also urge “the courts to ensure that rulings restrict press freedom only in cases of intentional incitement or clear participation in acts of terrorism, and that judges act independently to protect the public’s right to be informed about political dissent and acts of terrorism.”

[Report](#)

[NGO Statement](#)

### **Morocco: UN experts group calls for major reform of anti-terrorism legislation**

On 18 December, the UN Working Group on Arbitrary Detention, in its preliminary findings after a visit conducted to the country from 9 to 18 December 2013, called on the Moroccan Government to modify its anti-terrorism legislation. The Working Group expressed the view that the anti-terrorism legislation forms the legal framework for various human rights violations and called for it to be amended. Specifically, the UN experts called on the Algerian Government to clarify the scope of the criminal offences contained in the legislation, to reduce the length of police custody (*garde-à-vue*) and to introduce a procedure that would guarantee a fair trial. The Working Group was also concerned at allegations that courts admit as evidence information that is the “product” of torture practices, at the systematic use of police custody and at limits to the right to access a lawyer.

[Preliminary Findings \(F\)](#)

### **Iraq: 38 persons executed in three days after grossly unfair trials**

Between 19 and 22 January, according to information made available by the Ministry of Justice as well as by Amnesty International, 38 persons, most of whom had been convicted of terrorism offences, were executed after having been sentenced to the death penalty. Amnesty International denounced the use of the death penalty and noted that in Iraq persons executed for terrorism offences “are often convicted after grossly unfair trials”. The human rights organization added that “[t]he only way to deal effectively with the security threats faced by the country is for the Iraqi authorities to address their deeply flawed justice system, in which ‘confessions’ extracted under torture are used as evidence in court and the execution of prisoners is routine.” On 21 January, the office of the President of Iraq reportedly ratified some 200 cases of people sentenced to the death penalty.

[NGOs Statement](#)

[Press Article 1](#)

[Press Article 2](#)

### **Egypt: Government designates Muslim Brotherhood a “terrorist organization”**

On 25 December, Deputy Prime Minister Hossam Eisa officially declared the Muslim Brotherhood to be a “terrorist organization”. As stated by an Interior Ministry spokesman, this designation means that those who have alleged links with the organization may be prosecuted for terrorism offences under the Penal Code. Sentences following conviction range from five years of imprisonment, for example for those participating in demonstrations, to death for the leaders of the organization. The participation, promotion and funding of the Muslim Brotherhood will also constitute terrorism offences under the criminal code as such activity will be equated to promotion, participation and funding of a terrorist organization. News reports stated that, starting 26 December, security forces began to arrest students and opposition members on charges of “membership of a terrorist organization”. The publication of news outlets linked to the Brotherhood has been suspended and the assets of at least 1,055 charities affiliated with the group have been frozen. Human Rights Watch and Amnesty International have called on the Government not to sacrifice human rights in the name of “countering terrorism.”

[Decision \(A\)](#)

[NGO Statement 1 \(E\)](#)

[NGO Statement 2 \(E\)](#)

### **Saudi Arabia: Human Rights Watch urges King not to pass draconian anti-terrorism law**

On 31 December, Human Rights Watch called on King Abdullah not to sign or promulgate the *Penal Law for Crimes of Terrorism and its Financing*, which was approved by the Council of Ministers on 16 December 2013. The text of the draft legislation is not public. However, according to the *Saudi Press Agency*, the new law would consider as terrorism act “[a]ny act carried out by an offender in furtherance of an individual or collective project, directly or indirectly, intended to disturb the public order of the state, or to shake the security of society, or the stability of the state, or to expose its national unity to danger, or to suspend the basic law of governance or some of its articles, or to insult the reputation of the state or its position, or to inflict damage upon one of its public utilities or its natural resources, or to attempt to force a governmental authority to carry out or prevent it from carrying out an action, or to threaten to carry out acts that lead to the named purposes or incite [these acts]”. Human Rights Watch characterized this definition as overbroad and stressed that “vague and overbroad legal provisions cannot be the basis for overriding a broad array of fundamental rights”.

**NGO Statement**

### **Yemen/USA: UN experts concerned at civilians death in US drone strike**

On 26 December, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, Christof Heyns, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, expressed serious concern at the killing of sixteen civilians, and the injury of at least ten other persons, in a drone attack carried out on 12 December, allegedly by US forces. The drone attack reportedly hit two separate wedding processions in Al-Baida Governorate mistaking the victims for “members of Al-Qaida”. While calling for effective investigations on the event, Christof Heyns stated that, “if armed drones are to be used, States must adhere to international humanitarian law, and should disclose the legal basis for their operational responsibility and criteria for targeting.” Juan E. Méndez added that “a deadly attack on illegitimate targets amounts to cruel, inhuman or degrading treatment if, as in this case, it results in serious physical or mental pain and suffering for the innocent victims.”

**UN SRs Statement**

## **AMERICAS**

### **USA/UK: Documents reveal even further reach of NSA mass surveillance programmes**

During December 2013 and January 2014, several revelations about the reach of the National Security Agency’s (NSA) series of mass surveillance programmes were published in a variety of media outlets, mostly based on documents leaked by whistleblower and former NSA consultant Edward Snowden, but also through the investigative work of certain journalists. On 4 December, the *Washington Post* disclosed that the NSA is currently “gathering nearly 5 billion records a day on the whereabouts of cellphones around the world, ... and map[ping] their relationships [to feed] a vast database that stores information about the locations of at least hundreds of millions of devices.” On 9 December, the *New York Times*, *The Guardian* and *ProPublica* reported that the NSA and the UK secret service General Communications Headquarters (GCHQ) have been infiltrating online games to conduct surveillance and in some instances to recruit informers. On 10 December, the *Washington Post* revealed that the NSA and GCHQ are using “cookies” of private companies to identify Internet users. On 14 January, the *New York Times* broke the news that, since 2008, the NSA has managed to infiltrate offline computers by implanting in nearly 100,000 computers around the world, via USB cables or other systems, software that allows them to control the computer via radio waves. This programme, named “Quantum”, is said to be used not only for surveillance but potentially also to launch cyber-attacks. Finally, on 16 January, *The Guardian* and UK’s *Channel Four* revealed that the NSA “has collected almost 200 million text messages a day from across the globe, using them to extract data including location, contact networks and credit card details, according to top-secret documents.”

**Press Article 1**

**Press Article 2**

**Press Article 3**

**Press Article 4**

**Press Article 5**

**Press Article 6**

### **USA: Independent panel finds NSA mass surveillance programme illegal and useless**

On 22 January, the Privacy and Civil Liberties Oversight Board (PCLOB), an independent body established by the United States Congress, published a report on its review of the NSA mass surveillance programme, in which it decided, by a 3 to 2 vote, that the programme does not have a legal basis as the US Patriot Act “does not provide an adequate basis to support this program.” The Panel established that this surveillance programme has made no concrete difference “in the outcome of a counterterrorism investigation, ... [m]oreover, we are aware of no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack.” The Panel also concluded that the “[c]essation of the program would eliminate the privacy and civil liberties concerns associated with bulk collection without unduly hampering the government’s efforts, while ensuring that any governmental requests for telephone calling records are tailored to the needs of specific investigations.” The report comes more than a month after another report by the President’s Review Group on Intelligence and Communications Technologies, published on 12 December, concluded that the NSA mass surveillance programme had not been essential to preventing terrorist attacks. The Review Group, however, did not recommend the end of the programme. Instead, it suggested a series of reforms, such as the possibility of asking private providers to retain information, the reform of National Security Letters (NSLs) to subject it to judicial authorization, and the creation of an advocate before the Foreign Intelligence Surveillance Court to represent the interest of the public in the respect of privacy.

[Report 1](#)

[Report 2](#)

[NGO Statement](#)

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

### **USA: President announced modifications to the NSA surveillance system**

On 17 January, President Barack Obama announced a series of changes to the US surveillance programmes. He indicated that he had approved a presidential directive for activities of intelligence and surveillance nationally and abroad that “will strengthen executive branch oversight of our intelligence activities” and “will ensure that we take into account our security requirements, but also our alliances, our trade and investment relationships, including the concerns of American companies, and our commitment to privacy and basic liberties”. President Obama called on Congress to establish “a panel of advocates from outside government to provide an independent voice in significant cases before the Foreign Intelligence Surveillance Court”. With regard to the main NSA mass surveillance programme, the President ordered, effective immediately, that the NSA “pursue phone calls that are two steps removed from a number associated with a terrorist organization, instead of the current three”, and directed “the attorney general to work with the Foreign Intelligence Surveillance Court so that during this transition period, the database can be queried only after a judicial finding or in the case of a true emergency”. In the meantime, President Obama instructed the intelligence community and the Justice Department to propose solutions for reform of this programme by the end of March. Further changes announced concern the system of national security letter, through which government officials can force communication providers to provide information without judicial warrant, whose secrecy should become temporary; restrictions to the use in criminal proceedings of communications between US citizens and “foreign targets overseas” intercepted for reasons of national security; and the establishment of annual reviews for declassification of opinions of the Foreign Intelligence Surveillance Court, which is mandated to decide on authorization of the NSA surveillance programmes.

[Speech](#)

[Directive](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[NGO Statement 3](#)

[Press Article](#)

### **USA: UN and Inter-American experts concerned at forced repatriation of Algerian Guantánamo detainee; other detainees released**

On 10 and 19 December, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, as well as the Inter-American Commission on Human Rights condemned the forced transfer of Guantánamo detainee Djamel Ameziane to Algeria where it is alleged that he is at risk of being subject to torture or cruel, inhuman or degrading treatment or punishment in breach of the principle of *non-refoulement*. On 31 December, the Department of Defense announced the transfer to Slovakia of three Guantánamo detainees of Uighur origin, Yusef Abbas, Saidullah Khalik and Hajiakbar Abdul Ghuper, who have

been detained in the Guantánamo military facility since 2001 and were cleared for release, but could not be repatriated to China where they had a well-founded fear that they would be persecuted. On 16 December, the US had released two detainees, Saad Muhammad Husayn Qahtani and Hamood Abdulla Hamood, who had been held in Guantánamo since 2002, to Saudi Arabia.

[UN SRs Statement](#)

[IACHR Statement](#)

[DoD Statement 1](#)

[DoD Statement 2](#)

[Press Article 1](#)

[Press Article 2](#)

### **USA: New defense law gives more flexibility for transfer of Guantánamo detainees abroad**

On 26 December, President Barack Obama signed into law the *2014 National Defense Authorization Act* (NDAA) which, although it still maintains the power of the executive to detain indefinitely “enemy combatants”, relaxes the requirements to transfer Guantánamo detainees cleared for release to foreign countries. However, it still maintains an absolute prohibition on the transfer of Guantánamo detainees to US territory. January marked the five-year anniversary of President Obama's unfulfilled pledge to shutter the Guantánamo detention facility within a year, and human rights advocates continued to press for its closure.

[NGO Statement 1](#)

[NGO Statement 2](#)

### **USA: Two Federal courts issue conflicting judgments on lawfulness of the NSA mass surveillance programme**

On 16 December, Judge Richard J. Leon of the US District Court for the District of Columbia granted an injunction for Larry Klayman and Charles Strange to be removed from the NSA's Bulk Telephony Metadata Program and have their data deleted from it, pending the assessment of their constitutional claim that this programme violated the Fourth Amendment against unreasonable searches and seizures. Judge Leon ruled that, in the present day, “the ubiquity of phones has dramatically altered the *quantity* of information that is now available and, *more importantly*, what the information can tell the Government about people's lives [and that this has] resulted in a *greater* expectation of privacy and recognition that society views that expectation as reasonable”. Judge Leon suggested that, were the case to reach the merits stage, he would be likely to find a breach of the Fourth Amendment. The injunction has been suspended pending an appeal by the Department of Justice. The applicant requested that the case go immediately to the Supreme Court, given the divergence of opinion with the District Court for the Southern District of New York. Indeed, on 27 December, Judge William H. Pauley III of the US District Court for the Southern District of New York dismissed a similar action brought by the ACLU and others and ruled that the NSA programme does not violate the Fourth Amendment.

[Ruling 1](#)

[Ruling 2](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[Press Article 1](#)

[Press Article 2](#)

### **USA: Federal appeals court dismisses Guantánamo torture damage lawsuits**

On 17 January, the Court of Appeals for the Circuit of the District of Columbia upheld a lower court decision dismissing the civil damage complaint brought by Abdul Rahim Abdul Razak al Janko, a former Guantánamo detainee, against the United States and several present and former US officials, claiming damages for arbitrary detention and torture while he was imprisoned at the US detention facility in Guantánamo and in Afghanistan. The Court affirmed the lower court's opinion that all cases related to Guantánamo detention, apart from *habeas corpus* cases, are barred by section 7 of the Military Commission Act 2006 and that this limitation of jurisdiction was constitutional. Al-Janko was released in October 2009 after he won a *habeas* case before the District Court of the District of Columbia who found that he had not been an “enemy combatant”.

[Ruling](#)

### **Canada: Canadian secret services act at the behest of US National Security Agency, Snowden documents reveal**

On 9 December, CBC News published a top secret document, provided by whistleblower and former NSA contractor Edward Snowden, revealing that the Canadian foreign secret service – Communications Security Establishment Canada (CSEC) – “set up covert spying posts around the world and conducted espionage against trading partners at the request of the U.S. National Security

Agency". The document reportedly demonstrates that Canada collaborated with the NSA "in clandestine surveillance activities in 'approximately 20 high-priority countries'." The cooperation does not appear to be limited to exchange of information but involves "exchange of liaison officers and integrees", supplying of computer hardware and computer analysis.

[Press Article](#)

### **Canada: Federal Court criticizes abuse of foreign surveillance authorizations by secret services**

On 20 December, the Federal Court published a previously classified, but still partially redacted, ruling of Justice Richard G. Mosley, that concluded that the Canadian internal intelligence service (CSIS) had breached its "duty of candour owed ... to the Court" by failing to inform it that they cooperated with members of the "Five Eyes" community (USA, Canada, Australia, UK and New Zealand) to place under surveillance Canadian citizens or residents on the basis of warrants authorized by him. These warrants were first issued in 2009 authorizing surveillance abroad of two Canadian citizens suspected of terrorism activities and to allow exceptionally the collaboration of the CSIS with the Canadian external intelligence service (CSEC). The Court held that the law does not authorize the CSIS to collaborate in this sense with foreign intelligence services either directly nor through primary collaboration with the CSEC. The Court ruled that "the failure to disclose that information was the result of a deliberate decision to keep the Court in the dark about the scope and the extent of the foreign collection efforts that would flow from the Court's issuance of a warrant."

[Ruling \(E\)](#)

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

## **ASIA - PACIFIC**

### **Pakistan: Supreme Court battles with Government to reveal fate of allegedly "disappeared" persons**

On 7 December, Pakistani military officials produced fourteen people before the Supreme Court after the Court had ordered, on 26 November, that they produce or declare the whereabouts of 35 persons, presently missing, who were believed to be in the custody of the military and, therefore, suspected victims of enforced disappearance. Of the fourteen persons presented, the Supreme Court could identify only seven as members of the group of the 35 missing persons. The Supreme Court, at the end of January, expressed frustration that the Government had not yet produced the 35 missing persons, nor compensated their family members. The Supreme Court will resume its hearings on 10 February when the Government will have to submit a further report on the situation.

[Order 1](#)

[Order 2](#)

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

[Press Article 4](#)

### **Pakistan: Presidential ordinance institutes special courts and *incommunicado* detention**

On 24 January, President Mamnoon Hussain promulgated the *Protection of Pakistan (Amendment) Ordinance 2014*. According to press report, the emergency order will introduce special courts which will be allowed to hold in camera trials. The Ordinance, reportedly, will allow the Government to "withhold the information regarding the location of the detainee or accused or intern or internment centre established or information with respect to any detainee or accused or intern or his whereabouts." Furthermore, it would impede the Government from disclosing the grounds for detention or divulging "any information relating to a detainee, accused or intern who is an enemy alien or combatant enemy." Two lawyers, Tariq Asad and Colonel (r) Inam-ur Rahim, have challenged the constitutionality of the ordinance before the Supreme Court, on the grounds that it is inconsistent with the rights to liberty, to safeguards in arrest and detention and to the right to a fair trial protected under the Constitution of Pakistan.

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

[Press Article 4](#)

### **Afghanistan: 37 Bagram prisoners freed by Afghan Government for lack of evidence**

On 27 January, the Afghan Government ordered the release of 37 alleged Taliban members who had been detained in the formerly US administered Bagram detention centre. The prisoners released were part of a group of 88 remaining detainees. The Government ordered the release after having assessed that there was evidence for only 16 of the 88 sufficient to start criminal proceedings, while for 27 of them the evidence was insufficient and for the other 45 there was no evidence at all. The

US Department of State had already protested at the planned release of 72 of the prisoners, declaring that there was "strong evidence" linking them to "terror-related crimes". In reaction to the release of the 37 Bagram prisoners, the US government declared that this was "a major step backward in further developing the rule of law in Afghanistan." Meanwhile, President Hamid Karzai has so far declined to sign a security cooperation agreement with the US, which, according to media accounts, "would keep American troops and money in Afghanistan after the NATO combat mission ends this year, and would allow the United States to keep bases in Afghanistan for drone aircraft that can attack militants in remote areas and monitor Pakistan's nuclear arsenal." President Karzai has indicated that it should be left to his successor, scheduled to be elected in April 2014, to decide on the treaty.

[Press Article 1](#)

[Press Article 2](#)

[Press Article 3](#)

[Press Article 4](#)

### **Thailand: Government declares 60-day state of emergency amid opposition protests**

On 21 January, the Government declared a state of emergency of sixty days for the area of Bangkok under the *2005 Emergency Decree on Government Administration in a State of Emergency*, following a two-month protest by the opposition and a recent explosion which left at least nine dead and several injured. Once activated, the emergency legislation prohibits the assembly of more than five people and allows for the censorship of news and media reports "inciting violence". It allows for detention of persons suspected to be involved in violent acts, for up to thirty days without charge, and grants immunity from prosecution for all officials while they are implementing the emergency decree which entrusts the police and the army with the maintenance of public order. The Prime Minister, Yingluck Shinawatra, has called general elections on 2 February and declared that the police and the army will not use force under the emergency decree. Several human rights organizations contested the use of emergency legislation as a response to public protests of the opposition.

[NGO Statement 1](#)

[NGO Statement 2](#)

[Press Article 1](#)

[Press Article 2](#)

## **EUROPE & COMMONWEALTH OF INDEPENDENT STATES**

### **UK: NGOs challenge GCHQ mass surveillance programme**

On 9 December, Amnesty International announced that it had initiated a claim against the General Communications Headquarters (GCHQ) before the Investigatory Powers Tribunal (IPT) contesting that the secret agency surveillance mass programme "Tempora" may have breached their right to privacy and to freedom of expression under the *Human Rights Act*. The organization said that it has reasonable grounds to suspect it has been subjected to surveillance under that programme. On 9 January, a Pakistani NGO, Bytes for All, filed an almost identical claim before the same tribunal, contesting that non-UK NGOs have been subject to surveillance under the programme. These two lawsuits join that of Privacy International filed last July 2013. The IPT is an adjudicative body that usually holds hearings *in camera*, but Amnesty International has requested that hearings in this case be public. On 16 January, the European Court of Human Rights communicated to the UK Government a case on the GCHQ mass surveillance programme, asking whether the surveillance programme is "in accordance with the law" and "necessary in a democratic society" as required for a legitimate restriction of right to privacy protected by Article 8 of the European Convention on Human Rights.

[Complaint \(B4A\)](#)

[ECtHR Communication](#)

[NGO Statement](#)

[Press Article 1](#)

[Press Article 2](#)

### **UK: Court of Appeal dismisses case on alleged UK complicity in US drone strikes in Pakistan**

On 20 January, the Court of Appeal dismissed a judicial review action brought by Noor Khan seeking a declaration that the passing of intelligence information by the UK intelligence services to the US authorities helping to identify targets for drone strikes in North Waziristan (Pakistan) constituted complicity in murder or war crimes or crimes against humanity. The Court held that such an exercise would effectively imply an assessment of the US responsibility for these crimes as the perpetrator of drone strikes, as this would be necessary to establish any ancillary responsibility of



UK officers. The Court found that the declaration sought would necessitate a declaration against actions of a foreign State, the USA, which it said exceeds the ordinary jurisdiction of the British courts. Noor Khan had brought the action after a CIA drone strike had allegedly killed his father together with other persons participating in a local Jirga in Pakistan.

**Ruling**

### **UK: Guardian editor and staff under threat of "terrorism" prosecution**

On 3 December, the editor of the Guardian, Alan Rusbridger, was warned by an MP, Mark Reckless of the Conservative Party, during a hearing of the House of Commons' Home Affairs Select Committee that he could be investigated under Article 58A of the Terrorism Law, for having "communicated information on the identities of staff of intelligence agencies out of [UK] jurisdiction". Later, before the same Committee, the Assistant Commissioner of the Metropolitan Police (MET), Cressida Dick, confirmed that the police were looking into the possibility of prosecutions under the anti-terrorism law based on the material taken from David Miranda, the partner of Glenn Greenwald, when he was arrested at Heathrow airport last August 2013. The day before these hearings, the UN Special Rapporteur for the promotion and protection of human rights while countering terrorism had described the possibility that Guardian journalists could face criminal prosecution for revelations based on the documents provided by Edward Snowden as "outrageous".

**Press Article 1**

**Press Article 2**

**Press Article 3**

**Press Article 4**

### **UK: International Criminal Court asked to investigate UK war crimes in Iraq**

On 10 January, the European Center for Constitutional and Human Rights and the Public Interest Lawyers Birmingham UK sent a communication to the Office of the Prosecutor of the International Criminal Court calling for her to open formal investigations into the alleged criminal responsibility of members of the UK forces for war crimes during the US-UK occupation of Iraq. By examining 85 representative cases out of over 400 received from Iraqi former detainees, the two organizations concluded that "the systemic abuse against detainees during the UK's presence in Iraq meets the threshold of war crimes". They also held that the "UK has failed to sufficiently investigate and prosecute its high ranking civilian and military officials" and, therefore, that the International Criminal Court was not blocked by the principle of complementarity.

**Communication**

**Press Article**

### **UK: Gibson inquiry report says UK Government may have been involved in renditions**

On 19 December, the Gibson Inquiry, which was tasked in 2010 to look into alleged UK complicity in the US led rendition and secret detention programmes overseas, and ended its activities in 2012, issued its final report. The report stated that it "does not find facts or reach conclusions. It is based on the scrutiny of documents, no witness has yet had the opportunity to explain or add to this information." The inquiry report said that the documents "indicate that in some instances UK intelligence officers were aware of inappropriate interrogation techniques and mistreatment or allegations of mistreatment of some detainees by liaison partners from other countries" and that "Government or its Agencies may have become inappropriately involved in some cases of rendition". The publication of the report was followed by an announcement by Minister Ken Clarke that the inquiry would be continued by Parliament's Intelligence and Security Committee (ISC). The UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson, and the Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, expressed concern that the inquiry had been entrusted to a parliamentary committee "which is known to have previously failed to fully investigate prior allegations of torture, ill-treatment, rendition and surveillance in the context of counter-terrorism and national-security." The Rapporteurs called for "the establishment of a judge-led inquiry".

**Report**

**Inquiry Statement**

**UN SRs Statement**

**NGO Statement**

**Press Article**

### **UK: High Court rules that "act of state" doctrine bars rendition complicity claim**

On 20 December, the High Court of Justice dismissed the claim for civil damages of Abdul-Hakim Belhaj, a Libyan opposition member during the rule of the Gaddafi regime, and of his wife Fatima Boudchar. They sought civil compensation from the UK government for complicity of the UK secret services in their US-led rendition to Libya in 2004, including their unlawful detention and torture in China, Malaysia, Thailand and Libya. Fatima Boudchar was pregnant at the time of the rendition. Abdul-Hakim Belhaj was released from detention in Libya only in 2010. The Court, although it

rejected Government claims of immunity, held that the action was barred on the basis of the doctrine of "act of state" according to which "domestic court exercises judicial restraint in order to avoid adjudicating upon the actions of foreign sovereign states, 'in the area of transactions between states'". The Court held that it could not assess the lawfulness of actions committed by officials of China, Malaysia, Thailand and Libya in those countries according to their laws. It also declined "to decide that the conduct of US officials acting outside the United States was unlawful, in circumstances where there are no clear and incontrovertible standards for doing so and where there is incontestable evidence that such an enquiry would be damaging to the national interest".

[Ruling](#)

[NGO Statement](#)

[Press Article 1](#)

[Press Article 2](#)

#### **UK: Parliamentary Committee doubts utility of certain counter-terrorism measures**

On 23 January, the Parliamentary Joint Human Rights Committee published a report on the *Terrorism Prevention and Investigative Measures Act 2011*. In the report, the Committee held that these preventive measures "may be withering on the vine as a counter-terrorism tool of practical utility" and that the new Government in 2015 would have to consider urgently whether to maintain them. The Committee found that there is "no evidence that they serve any investigative function and even as preventive measures they seem to be going out of favour with the agencies" and noted that most of the existing measures are now set to expire. It cautioned against a reintroduction of the previous control orders system as "a power to relocate an individual away from their community and their family by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable". Finally, the Committee recommended that "the Government further considers specific ways in which the impact on TPIM subjects and their families can be mitigated, and that a judicially led process be initiated to address concerns about unfairness and delays in TPIM proceedings, similar to that which has already taken place in the Special Immigration Appeals Commission".

[Report](#)

[Committee Statement](#)

[Press Article 1](#)

[Press Article 2](#)

#### **UK/Saudi Arabia: European Court holds State immunity bars torture lawsuit**

On 14 January, the European Court of Human Rights ruled that the United Kingdom had not violated the right of access to justice under Article 6 of the European Convention on Human Rights of three UK nationals who wanted to sue Saudi Arabia and Saudi officials for civil damages for alleged torture. A fourth applicant died before the end of the judicial proceedings in Strasbourg. Ronald Jones, Alexander Mitchell, Leslie Walker and William Sampson had been arrested in Saudi Arabia between 2000 and 2001, on charges of being involved in a "bombing campaign". They allege that they were subject to torture while in detention, including anal rape, sleep deprivation, beatings and the administration of drugs. The Court held that its doctrine of State immunity outlined in the case *Al-Adsani*, which bars any civil damage lawsuit for the responsibility of a foreign State in human rights violations in another State's courts, also extended to the officials of that State, even if they may have been implicated in tortious acts.

[Judgment](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

#### **France: New legislation increases Government's mass surveillance powers**

On 19 December, the *Law of Military Planning 2014-2019* was published in the Official Gazette. The legislation is contested by a number of human rights organizations and Internet companies because it allows for the Government to obtain any personal data on the Internet, based on the mere authorization of the Prime Minister, without any judicial control. The only control foreseen is that provided *ex post facto* by a National Commission for the Supervision of Security Interception that does not have injunctive powers. The mass surveillance measure can be authorized for "intelligence that concerns national security, the protection of the essential elements of France's economic potential, or the prevention of terrorism, criminality and organized crime and the reconstitution or maintenance of disbanded groups." According to Reporters Without Borders, the new law allows the Government not only to obtain metadata but also an "individual's 'content and files' from Internet Service providers, telephone service operators and companies that provide online services including email and e-commerce". Several organizations have asked members of the National Assembly and of the Senate to move a challenge of constitutionality of the law before the Constitutional Council, but so far they have failed to gather the requested number of MPs to support the initiative.

[Law \(F\)](#)

[NGOs Letter \(F\)](#)

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

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

### **Spain: UN experts urge Government not to extradite opposition member to Kazakhstan**

On 10 January, the UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, and on the human rights of migrants, François Crépeau, called on the Spanish Government not to extradite to Kazakhstan Aleksandr Pavlov, former head of security for the Kazakhstani opposition member Mukhtar Ablyazov, where he is wanted to answer charges of expropriation or embezzlement of trusted property” and “plotting a terrorist attack”, charges which his lawyer claimed are fabricated. The call of the UN experts comes after the Central Criminal Court (*Audiencia Nacional*) approved the extradition, and alleges that Aleksandr Pavlov would be at risk of torture or cruel, inhuman or degrading treatment if sent to Kazakhstan.

**UN SRs Statement**

### **Poland: Polish secret services alleged to have paid 15 million dollars for CIA secret detention centre**

On 23 January, the *Washington Post* revealed that the CIA had paid in 2003 fifteen million dollars to “Col. Andrzej Derlatka, deputy chief of the [Polish] intelligence service, and two of his associates, [and] sealed an agreement that over the previous weeks had allowed the CIA the use of a secret prison — a remote villa in the Polish lake district — to interrogate al-Qaeda suspects.” This detention centre was allegedly used by the CIA to detain secretly, interrogate and torture supposed “high value detainees” who had been subject to renditions from different countries. It is allegedly there that Khalid Sheik Mohammed was subject to waterboarding 183 times. Zayn al-Abidin Muhammed Hussein and Abd al-Rahim al-Nashiri, currently detained in Guantánamo, have brought Poland before the European Court of Human Rights for its alleged complicity in their rendition, interrogation and torture. On 24 January, a spokesman for the office of the prosecutor of Krakow, currently in charge of a five-year long investigation criticized for its excessive length by human rights organizations, announced that the *Washington Post* article may be included in the investigation.

**Press Article 1**

**Press Article 2**

**Press Article 3**

### **Lithuania: Court orders prosecutor to open investigations into rendition and secret detention complicity**

On 29 January, the Vilnius Regional Court ordered the office of the Public Prosecutor to investigate a claim, filed by the human rights organizations REDRESS and the Human Rights Monitoring Institute on behalf of Guantánamo detainee Mustafa al-Hawsawi, that Mustafa al-Hawsawi was held in a CIA secret detention centre in Lithuania in the context of his rendition, interrogation and torture there. The judgment is the result of a challenge of the two organizations against the decision of the public prosecution office not to investigate the case. Reportedly, the Court held that “the prosecutor’s reliance on a past investigation into similar claims by other alleged detainees was not sufficient to satisfy their obligation to investigate these new claims. The Court held that, given the grave nature of the allegations, prosecutors should have interviewed Mr al-Hawsawi and filed information requests with United States government agencies.”

**NGO Statement**

### **Russian Federation: European Court finds Human Rights Convention breached in several counter-terrorism operations**

On 9 and 16 January, the European Court of Human Rights found, in two separate cases, that the State had violated the right to life of several persons apprehended in the framework of security operations in Chechnya between 2000 and 2006. All of the persons concerned were to be presumed dead in light of the prolonged enforced disappearance to which they had allegedly been subject. The Court also held that the enforced disappearances amounted to a grave violation of the right to liberty and security under Article 5 ECHR of the persons concerned, and caused inhuman and degrading treatment to their family members in breach of Article 3 ECHR. The Court also ruled that the investigations into the enforced disappearance had been ineffective, in breach of the procedural requirements of Article 2 ECHR and of the right to an effective remedy under Article 13 ECHR.

**Judgment 1**

**Judgment 2**

### **Russian Federation: Refusal to return “terrorist” suspects bodies to family members breached European Convention on Human Rights, rules Strasbourg Court**

On 16 January, the European Court of Human Rights ruled, in four separate cases, that Russian authorities had breached the right to respect for family and private life of several family members of “terrorism” suspects who had been killed in counter-terrorism operations in the North Caucasus in

2005. The Court held that, since the legislation provided an automatic duty not to transfer the bodies to the family members without seeking alternative ways to ensure their participation in the burials, this measure was disproportionate and in breach of Article 8 of the European Convention on Human Rights (ECHR). It also ruled that the family members did not have access to an effective remedy to redress these violations, contrary to Article 13 ECHR. However, the Court found, in two of the cases, that the suffering of the family members caused by the sight of the bodies, which had been "chaotically piled on top of one another" for lack of space in the morgue was not sufficient to reach the threshold of inhuman or degrading treatment, as the circumstances did not add a "dimension and character distinct from the emotional distress which may be regarded as inevitably caused to any family member of a deceased person in a comparable situation".

**Judgment 1**

**Judgment 2**

**Judgment 3**

**Judgment 4**

### **Russian Federation: Counterterrorism amendments introduced to Parliament**

On 15 January, a draft law introducing amendments to several laws related to combating terrorism was tabled before the State Duma (Parliament). The amendments aim at introducing a number of measures which increase penalties for terrorism offences and broaden the powers of law enforcement agencies. Among other changes, the draft law stipulates that Federal Security Service (FSB) officers may check documents and carry out personal checks of persons as well as their transport, where there is suspicion of unlawful activity or unlawful use of their belongings. The law criminalizes financing of terrorism as well as criminal responsibility for disobeying orders of "a counterterrorism collective body" established by the President of Russia.

**Draft Law 1 (R)**

**Draft Law 2 (R)**

**Parliament Documents (R)**

### **Uzbekistan: Non-reporting of terrorism acts criminalized**

On 20 January, the President of Uzbekistan, Islam Karimov, signed into law amendments to the Criminal Code introducing criminal responsibility for non-reporting of acts of terrorism, including non-reporting of knowledge with certainty of a planned crime of terrorism, which has been proven through an investigation and a court hearing. Another amendment makes it a crime to undergo training "with the knowledge of the trainee that the training is done in order to carry out terrorist activity" or one of the criminal offences listed in the article, which include encroachment upon the President of the Republic of Uzbekistan, encroachment upon the constitutional order and establishment of a criminal group. Earlier, on 16 December, President Karimov signed into law ratification of the counterterrorism convention of the Shanghai Cooperation Organization.

**Press Article 1 (R)**

**Press Article 2 (R)**

## **UNITED NATIONS & REGIONAL ORGANIZATIONS**

### **UN: Security Council renews Counter-Terrorism Executive Directorate's mandate**

On 17 December, the UN Security Council adopted resolution 2129/2013, which renewed the mandate of the Counter-Terrorism Executive Directorate (CTED) for another four years. Among several tasks, the Security Council encouraged the CTED "to ensure that all human rights and rule of law issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly including, as appropriate, on country visits that are organized with the consent of the visited Member State and in the delivery of technical assistance." CTED Executive Director Jean-Paul Labord welcomed the extension of the mandate and recalled that "the international community is fighting for the principles of the United Nations, for the rule of law, and not a war on terror."

**Resolution**

**UN Statement**

### **EU: Parliament's NSA inquiry draft report condemns mass surveillance of EU citizens**

On 18 December, the Rapporteur of the NSA inquiry of the Civil Liberties, Justice and Home Affairs Committee (LIBE) of the European Parliament, Claude Moraes, presented his preliminary findings and recommendations to the Committee. The Rapporteur proposes that the Parliament condemn "in the strongest possible terms the vast, systemic, blanket collection of the personal data of innocent people, often comprising intimate personal information; emphasises that the systems of mass, indiscriminate surveillance by intelligence services constitute a serious interference with the fundamental rights of citizens; stresses that privacy is not a luxury right, but that it is the foundation stone of a free and democratic society; points out, furthermore, that mass surveillance has potentially severe effects on the freedom of the press, thought and speech, as well as a

significant potential for abuse of the information gathered against political adversaries; emphasises that these mass surveillance activities appear also to entail illegal actions by intelligence services and raise questions regarding the extra-territoriality of national laws". The draft conclusions call for "the swift creation of an EU data storage "cloud" and judicial redress for EU citizens to protect their data in the US". They also urge the EU to "suspend the "Safe Harbour" principles (data protection standards that US companies should meet when transferring EU citizens' data to the US) and re-negotiate new, appropriate data protection standards" and to suspend the Terrorist Finance Tracking Programme (TFTP). The report also calls for better legal protection for whistleblowers.

[Draft Report](#)

[LIBE Statement 1](#)

[LIBE Statement 2](#)

[Press Article](#)

### **EU: European Commission opposes creation of European terrorist finance tracking system**

On 27 November, the European Commission issued a communication to the Council of the European Union and the European Parliament on the opportunity to create a European terrorist finance tracking system (EU TFTS). This system would be an "independent European system for tracking terrorist finance through access to, searches on and analysis of the data of Designated Provider(s)." The Commission stressed that to assess the feasibility of this measure the "principles of safeguarding fundamental rights, necessity, proportionality and cost-effectiveness" were paramount. In its conclusions, the Commission held that, although a EU TFTS "could represent an additional intelligence and investigation tool in the fight against terrorism and in enhancing security in the EU, in particular if such a system were to cover multiple financial data providers and types of transactions", a case for its adoption was not demonstrated.

[Communication](#)

### **EU: European Commission proposes measures to rebuild EU-US data trust**

On 27 November, the European Commission published a communication to the Council of the European Union and the European Parliament on "Rebuilding Trust in EU-US Data Flows". The Commission recognized that "[l]arge-scale US intelligence collection programmes, such as PRISM affect the fundamental rights of Europeans and, specifically, their right to privacy and to the protection of personal data. These programmes also point to a connection between Government surveillance and the processing of data by private companies, notably by US Internet companies. As a result, they may therefore have an economic impact." To rebuild the trust in the transatlantic data relationship, the Commission first held that the discussion with the US should be maintained within the transnational data exchange filed and should not affect other agreements, for example in the commercial field. Specifically, the Commission proposed, among other measures, the expedition of the EU data protection reform proposed last year; the strengthening of the guarantees within the "safe harbour agreement", under which there is a continuous flow of data from the EU to US companies and vice-versa; and the continuation of the negotiations with the US for an "umbrella" data protection agreement.

[Communication 1](#)

[Communication 2](#)

### **EU: Advocate General says that Data Retention Directive violates EU rights charter**

On 12 December, the Advocate General of the Court of Justice of the European Union, Cruz Villalón, published his opinion in the case *Digital Rights Ireland v. Minister for Communications, Marine and Natural Resources and others*, in which the compatibility of the EU data retention directive with the EU Treaties and the EU Charter of Fundamental Rights is challenged. This directive obliges Member States to create a legal framework to store electronic data from a period varying from six months to two years for the purpose of investigating "serious crimes". The Advocate General held that the whole directive is incompatible with the general rights limitation clause of article 52(1) of the Charter, "since the limitations on the exercise of fundamental rights which that directive contains because of the obligation to retain data which it imposes are not accompanied by the necessary principles for governing the guarantees needed to regulate access to the data and their use". He further asserted that the any maximum time for retention of data in databases beyond one year was not necessary for the legitimate aim of fighting "serious crime" and as such constituted an undue interference in the right to privacy protected by article 7 of the EU Charter. The Advocate General therefore recommended the Court of Justice to declare the directive invalid.

[Opinion](#)

[Press Article](#)

---

To subscribe free of charge to this E-Bulletin, please send an email to [icjcounter-terrorism@icj.org](mailto:icjcounter-terrorism@icj.org) with your details (name, organization) and "subscribe ICJ E-Bulletin" in the subject line. To unsubscribe from this list send an email to [icjcounter-terrorism@icj.org](mailto:icjcounter-terrorism@icj.org) "unsubscribe ICJ E-Bulletin" in the subject line.

Find this E-Bulletin and more information about the ICJ, the rule of law and human rights on our website: [www.icj.org](http://www.icj.org). Please send feedback about the E-Bulletin to [icjcounter-terrorism@icj.org](mailto:icjcounter-terrorism@icj.org).