



E-BULLETIN ON COUNTER-TERRORISM & HUMAN RIGHTS

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Beginning today, the *ICJ E-Bulletin on Counter-terrorism and Human Rights* has a dedicated page on Facebook. On this Facebook page can be found editions of the E-Bulletin, beginning with number 49 (January 2011) onwards. In addition, links will be posted of legal documents and judicial decisions to offer access to them before the publication of the E-Bulletin. Contributions are welcome in alerting the ICJ to new developments or providing documents, by writing to icjcounter-terrorism@icj.org.

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AFRICA & MIDDLE EAST

Ethiopia: Massive arrests and detention of political opponents under anti-terrorism law

On 6 April, Human Rights Watch called for the release, unless credible charges could be brought, of more than 200 ethnic Oromo Ethiopians, who had been arrested without charge in March 2011. Among the people detained are political opposition members and many candidates who participated in the 2010 regional and parliamentary elections. The Government has reportedly detained them on the grounds that they were members of the Oromo Liberation Front, a rebel armed group. The Executive has also indicated that several of them may be charged under the Anti-terrorism law enacted last year, which has given rise to several concerns that it is incompatible with international human rights law.

Law

NGO Statement

Kenya: Government Ministers dispute legitimacy of renditions

On 19 April, Justice Minister Mutula Kilonzo publicly accused Uganda of illegally holding 13 Kenyans, deported there from Kenya last year to answer terrorism charges for the 11 July terrorist attack in Kampala, in breach of international law and East Africa Community treaties. Among those on trial is al-Amin Kimathi, a Kenyan human rights defender arrested at Kampala airport while he was trying to arrange the legal defence of the other Kenyan detainees. Mutula Kilonzo also accused the Kenyan Minister for Internal Security, George Saitoti, of trying to justify at a government cabinet meeting the extra-judicial renditions of these Kenyan citizens.

Press Article 1

Press Article 2

Morocco: King grants royal pardon to 190 detainees

On 14 April, the National Human Rights Commission welcomed the royal pardon of 190 detainees, several among whom had been detained on terrorism charges, as an important step towards democracy and human rights in Morocco. The pardon followed the submission of a memorandum to the King by the Commission. The pardon led to the commutation of the death penalty to detention for five detainees, of life imprisonment to terms of detention for 37 detainees and to quashing the punishment of imprisonment for another 95 of them.

NHRC Statement

Press Article

Egypt: Report on detentions under emergency law published

On 20 April, Amnesty International published *Time for Justice: Egypt's Corrosive System of Detention*, a report documenting the use of administrative detention by the Security Service under the emergency legislation. The report called for the establishment of an independent inquiry into human rights abuses committed by the State Security Investigations Service (SSI) and for an immediate repeal of all provisions of the Emergency Law. This legislation had reportedly been used during the Mubarak regime to arrest and detain between 6,000 and 10,000 people, and was officially justified as a tool to prevent terrorism.

Report

Egypt: Former Vice-President and Mubarak's son sued for torture by Guantánamo detainee

On 15 April, Mamdouh Habib, a former Guantánamo detainee and Australian citizen, announced that he would bring a civil lawsuit in Egypt against ex-Vice President and former head of the General Intelligence Service Omar Suleiman and former President Hosni Mubarak's son Gamal, over torture and ill-treatment allegedly carried out pursuant to the United States CIA rendition programme. He was allegedly tortured after his rendition to Egypt following his arrest in Pakistan in late 2001 and alleged that Omar

Suleiman and Gamal Mubarak were present during the interrogations. Mamdouh Habib also announced that he was trying to reopen his civil case in Australia against the Commonwealth, previously settled, in light of new evidence reportedly implicating Australian officials in his secret detention and torture in Egypt.

[Press Article 1](#)

[Press Article 2](#)

Bahrain: Defence lawyer of political opponents in terrorism trial arbitrarily arrested

On 15 April, Human Rights Watch reported that a group of uniformed and plain-clothed officers had arrested defence lawyer Mohammed al-Tajer, without giving reasons for the arrest. Mohammed al-Tajer was a lead lawyer in the trial of 23 opposition members and human rights defenders on charges of terrorism, who were released on 23 February 2011, with some of them having been rearrested since that date. According to Human Rights Watch, 499 people, including Mohammed al-Tajer, remained detained in Bahrain in connection with their inclusion in a list compiled by the opposition group Wefaq National Islamic Society.

[NGO Statement](#)

Syria: President repeals declaration of emergency and abolishes state security court, but repression continues

On 21 April, amid massive protests and severe government response consisting in gross human rights violations, President Bashar al-Assad issued Decree no. 161 repealing the declaration of state of emergency, which had been into force in Syria since 1963. With other two decrees, he also abolished the Supreme State Security Court and enacted a regulation of the right to peaceful demonstration. This last decree provides that demonstrations may be organised under authorisation only by duly licensed citizens, civil and popular organisations and trade unions. However, wide-scale repression of the protests has continued, leading to a substantial number of killings and injuries. Syrian and international NGOs have denounced the continuance in force of the security and emergency legislation.

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

[Official Statement \(F\)](#)

[NGOs Statement 1 \(A\)](#)

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

[NGO Statement 3 \(E\)](#)

AMERICAS

USA: Wikileaks publishes hundreds of files on Guantánamo detainees

On 24 April, Wikileaks began publishing 779 secret files constituted by memoranda from the Joint Task Force Guantánamo (JTF-GTMO), the combined force in charge of the detention centre at Guantánamo, to the US Southern Command in Miami regarding the disposition of the detainees. The files include information from between February 2002 and January 2009 on most of the detainees who have passed through or still remain at the detention facility. They include information related to decisions as to whether to release, to try, or to detain indefinitely particular prisoners; as well as interrogation methods and other assessments of prisoners. The Inter-American Commission on Human Rights expressed its deep concern at the content of the revelations and urged the United States to close the detention facility without delay and to investigate, prosecute, and punish any instance of torture and other cruel, inhuman, or degrading treatment that may have occurred. The American Civil Liberties Union called for an independent judicial review.

[Wikileaks Files](#)

[IACHR Statement](#)

[NGO Statement](#)

[Press Article](#)

USA: Supreme Court dismisses Guantánamo detainees' petition to be admitted onto US soil

On 18 April, the US Supreme Court declined to hear the case of *Kiyemba et al. v. Obama*, thereby definitively dismissing the claim of the five remaining Guantánamo detainees of Uighur origin. The five had asserted that they should be released into US territory, after a federal court had ruled favourably in their *habeas corpus* petition and determined that there was no basis for their detention. The Court of Appeal held that the right to *habeas corpus* of the five Guantánamo detainees of Uighur origin, who had been cleared for release for a number of years, did not give jurisdiction to the courts to order resettlement on US territory. The ruling affirmed the sole authority of the political branches of government to exercise the power of release of non-citizens held by the federal government. Four Justices, Breyer, Kennedy, Ginsburg and Sotomayor, wrote an unusual brief note joining the dismissal on the grounds that the petitioners had refused two offers of resettlement to other countries and that the Government had not imposed obstacles to their resettlement. They specified that, if circumstances changed, the detainees would be entitled to petition federal courts again.

[SC Order](#)

[Petitioners Supplemental Brief](#)

[Government Letter](#)

USA: 9/11 suspects to be tried in military commissions, despite previous announcement of federal court trials

On 4 April, Attorney General Eric Holder announced that, in a reversal of the position of the Justice Department enunciated in November 2009, Khalid Sheikh Mohammed, Walid Muhammad Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz Ali, and Mustafa Ahmed Al Hawsawi, all "high level detainees", would be tried in military commissions for their alleged role in the terrorist attacks of 11/9. The Attorney General made a strong argument in favour of trial in federal courts and affirmed that in his opinion ordinary courts were the best and most efficient venue for handling terrorism cases. He said that the decision to try the accused in military commissions was forced by the decision of the Congress to impose restrictions and block the transfer of Guantánamo detainees to the United States for the purpose of trial. A number of NGOs criticised this decision as a setback for justice.

[AG Statement](#)

[NGO Statement 1](#)

[NGO Statement 2](#)

[NGO Statement 3](#)

[Press Article](#)

USA: Case concerning Guantánamo psychologist begins; complicity of medical personnel unveiled

On 6 April, the New York State Supreme Court heard a case against Dr. John Francis Leso, a psychologist accused of participating in torture and ill-treatment practices by overseeing and designing detention and interrogation techniques of detainees in Guantánamo. The petitioners asked a chamber of the New York State Supreme Court to order the Office of Professional Discipline, a division of the New York State Education Department, to open an investigation and revoke Dr Leso's licence, after that Office had dismissed the complaint on jurisdictional grounds. Meanwhile a study published in the PLOS medical journal revealed that doctors and mental health personnel assigned to the Department of Defence and on duty at Guantánamo Bay had neglected and/or concealed medical evidence of torture and other intentional harm.

[Press Interview](#)

[Press Article](#)

[PLOS Article](#)

USA: No *habeas* remedy for former Guantánamo detainees, says District Court Judge

On 1 April, US District Court Judge Thomas F. Hogan dismissed the 105 *habeas* petitions by Guantánamo detainees who had already been transferred or released to other countries. The District Court held that it no longer had jurisdiction over the petitioners as they were not on US territory, nor within the control of US authorities, and any consequences of the

detention in Guantánamo Bay and of their having being labelled as “enemy combatants” could not be remedied through a *habeas corpus* action. The Court reasoned that the plaintiffs who had been detained or placed under surveillance in the destination countries were in such situations in accordance with the national law of those countries and not because of US action, and so are outside the reach of the authority of US courts.

Ruling

USA: Alleged Wikileaks source Bradley Manning moved from solitary confinement after strong protests

On 29 April, the Pentagon announced that Bradley Manning, the US soldier accused of leaking classified cables to Wikileaks, is no longer being held in solitary confinement and is now allowed to mingle with other military prisoners at Fort Leavenworth in Kansas. Mr Manning had been transferred to the Fort Leavenworth facility some days earlier from Quantico, Virginia, following substantial protests and denunciation from domestic and international sources. The United Nations Special Rapporteur on Torture, Juan E. Méndez, had expressed his frustration that despite his repeated requests to visit Bradley Manning, the United States Government had not granted him unmonitored access to the detainee. More than 250 United States legal scholars signed a letter in protest at his alleged serious ill-treatment in military prison.

UN SR Statement

Press Article 1

Press Article 2

Press Article 3

Canada: Special Senate Committee outlines reforms in counter-terrorism

In March 2011, the Special Senate Committee on Anti-Terrorism produced an interim report entitled *Security, Freedom and the Complex Terrorist Threat: Positive Steps Ahead*, following one year of consultation and hearings with scholars and members of the law enforcement and intelligence communities, including those from Canada, United States, United Kingdom and Australia. The Committee recommends among its conclusions that the authorities ensure that racial profiling is not used as a shortcut; that the secret services (CSIS) establish an official procedure and formal guidelines on the terms and conditions of the use of lawful disruption to prevent terrorist attacks; and that a parliamentary committee be established to oversee the intelligence services, including the compatibility of their actions with the *Canadian Charter of Rights and Freedoms*.

Report

Chile: Senate approves bill to exclude children from Anti-Terrorism Law

On 20 April, the Senate approved a bill reforming the Anti-Terrorism Law no. 18.314 which, if approved by House of Representatives, will exclude absolutely the application of the anti-terrorism legislation to all persons below eighteen years of age. The vote was unanimous. According to the proponents, the legislative amendment was needed as the previous legislative reform approved with Law no. 20.467 led to inconsistent jurisprudence as to its applicability to children.

Draft Law (S)

Senate Statement (S)

ASIA - PACIFIC

Sri Lanka: UN report finds war crimes and crimes against humanity committed by both Government and LTTE

On 18 April, the report of the Panel established by the UN Secretary General to investigate gross human rights violations and crimes under international law committed in the Sri Lankan conflict was disclosed. The Panel, composed of Marzuki Darusman (Indonesia), Steven Ratner (United States); and Yasmin Sooka (South Africa), found credible allegations that both the Government and the Liberation Tigers of Tamil Eelam (LTTE) had committed

a wide range of serious violations of international humanitarian law and international human rights law, some of which would amount to war crimes and crimes against humanity. The Panel held that such allegations demand an effective investigation and prosecution of those responsible, and called on the Sri Lankan Government to immediately repeal *Emergency Regulations* and modify all those provisions of the *Prevention of Terrorism Act* not in line with international law.

Report

NGO Statement

Malaysia: Detention under disputed counter-terrorism law

On 1 April, Kadir bin Hashim, a disabled restaurant operator, was arrested under the *Internal Security Act 1960*, which provides for detention without trial. He was alleged to be involved in “subversive activities”. The *Internal Security Act* is a counter-terrorism law which gives the power to the police to arrest people without judicial warrant and to detain them in special police detention for up to 60 days, which may be extended for up to two years, or even indefinitely. The decisions taken pursuant to this legislation may not be reviewed by courts. The UN Working Group on Arbitrary Detention has reported that, since its promulgation in 1960, approximately 20,000 persons have been detained under the *Internal Security Act*.

NGO Statement 1

NGO Statement 2

UN Report

Pakistan: Peaceful protesters massively arrested under anti-terrorism law

On 30 March, the Human Rights Commission of Pakistan (HRCP) expressed concern at registration of cases in the Khanewal district against hundreds of tenants under the *Anti-Terrorism Act*. The concerned persons had participated in a march to Lahore to advocate for ownership rights of the land that they had been cultivating for decades. During the demonstration they were baton-charged by the police and faced tear gas shelling. Hundreds of participants were later detained under the *Anti-Terrorism Act*.

NGO Statement

EUROPE & COMMONWEALTH OF INDEPENDENT STATES

UK: Court of Appeals invalidates another control order for lack of justification

On 5 April, the Court of Appeal struck down a control order against BM, a British national who has also been subject to assets freezing orders under the *Terrorism (United Nations Measures) Order 2006*. The Court held that the first-instance judge, in upholding the control order, should have considered only the evidence available at the time the order was made, but wrongly also considered evidence that became available later. Lord Judge Thomas emphasized that the procedure to establish the legality of the control order had taken 22 months, an excessively long time for a measure which has a significant impact on civil liberties.

Ruling

Press Article

UK: Court of Appeal holds that fair trial rights do not cover UN terrorism listings cases

On 13 April, the Court of Appeal ruled that legal proceedings brought against asset freezing orders, following insertion in the UN Terrorism List, and their consequences are not covered by the right to a fair trial under Article 6 of the European Convention on Human Rights. The Court held that the making and procuring of a freezing order is “a discharge of public function” and not a determination of a civil right, even if it does have a dramatic impact on the civil rights of the individual. The Court held that a freezing order may be subject to a public law challenge.

Ruling

France: Police custody reform passed in Parliament, but no changes for terrorism suspects

On 12 April, the National Assembly approved in final reading the legislative reform of police custody (*garde-à-vue*), which requires the presence of a lawyer at any interrogation of the person detained. While the reform introduces ameliorations to the general regime of police custody, it maintains the possibility to extend such form of deprivation of liberty for persons suspected of terrorism for up to 120 hours without access to a lawyer.

Draft Law (F)

Press Article (F)

Italy: European Court finds expulsion to Tunisia on grounds of terrorism in violation of Convention

On 5 April, the European Court of Human Rights ruled that Italy had breached its obligations under Article 3 of the European Convention of Human Rights by expelling Ali Ben Sassi Toumi to Tunisia in contravention of the principle of *non-refoulement*, as there was a real risk that he would be subject to torture or inhuman or degrading treatment in that country. Ali Ben Sassi Toumi had been convicted in 2007 for international terrorism and released on 2009 and his expulsion was immediately ordered on security grounds. The expulsion was executed on 2 August 2009, in contravention of interim measures that had been ordered by the European Court. Disrespect of the interim measures was also to held to have breached Article 34 of the European Convention.

Judgment (F)

Press Article (E)

Spain: Investigative Judge ends investigations against US “torture” lawyers

On 13 April, Investigative Judge Eloy Velasco Nuñez dismissed the lawsuit for torture against David Addington, Jay Bybee, Douglas Feith, William Haynes, John Yoo and Alberto Gonzalez, lawyers and officials in the administration of former President George Bush, who were accused of complicity in torture and ill-treatment, referred to “enhanced interrogation techniques”, of detainees at Guantánamo Bay. The officials were said to have facilitated these practices, including by providing advice which gave effective legal cover to them. The judge held that universal jurisdiction under Spanish law, as modified by the reform of last year, did not apply because the United States itself was already carrying out effective investigations and prosecution, a conclusion hotly disputed by the alleged victims. The Judge also ruled that the plaintiffs had not established the necessarily relevant link with Spain.

Order (S)

NGO Letter (E)

Press Article (E)

Press Article (S)

Sweden: Prosecutor closes case on ill-treatment in erroneous anti-terrorism raid

On 7 April, prosecutor Björn Ericson closed the preliminary proceedings without charging police officers who were accused of ill-treating a Muslim couple during an anti-terrorist raid on 30 October last year, which subsequently was revealed to be a mistake. The police officers were accused of smashing in doors in night-time raids, mistreating nearly-naked suspects in front of their frightened families, aiming weapons against the heads of suspects and dragging them away. While recognising these violations of procedure, the prosecutor found that the police officers were acting under enormous pressure to prevent an imminent terrorist attack.

Press Article 1

Press Article 2

Czech Republic: Constitutional Court abrogates parts of data retention law

On 31 March, the Constitutional Court abrogated parts of the *Electronic Communications Act* which implements the *EU Data Retention Directive*, after having ruled that it breached the right to privacy and confidentiality of communications enshrined in Articles 10(3) and 13 of the *Charter of Fundamental Rights and Freedoms*. The abrogated provisions compelled telecommunications companies to keep records of their customers' calls, faxes, text

messages, internet activity, and emails for up to 12 months. The *EU Data Retention Directive* was adopted with the purpose of fighting and preventing terrorism.

Judgment (Czech)

Law (E)

EU Directive (E)

Charter (E)

Turkey: Reporters Without Borders documents abuse of anti-terrorism law against journalists

At the end of a mission to Turkey from 13 to 19 April, Reporters Without Borders issued a statement expressing concern regarding Turkey's respect for freedom of the press. The statement called on the Turkish justice system to limit recourse very narrowly to the 1991 *Law on the Prevention of Terrorism (Law No. 3713)* against journalists. It referred to journalists being arrested and convicted under provisions of the anti-terrorist law, which provide for prison sentences in cases involving "propaganda for a terrorist organisation".

NGO Statement 1

NGO Statement 2

Turkey: European Committee on Prevention of Torture finds serious flaws in anti-terrorism detention

On 31 March, the European Committee on Prevention of Torture published a report on its visit to Turkey from 4 to 17 June 2009. In the report, the Committee notes that it has received credible allegations that suspects detained in police custody at Diyarbakır Police Headquarters had been subject to sleep deprivation in connection with a systematic application of the denial of access to a lawyer for the first 24 hours of detention, as allowed by the anti-terrorism law. Furthermore, the Committee noted that the 2006 reform of the 1991 *Law on the Prevention of Terrorism (Law No. 3713)* allowed for non-presence of a lawyer for the first 24 hours of custody, and that in certain cases a police officer may be present during lawyer-client conversations. The Committee found this legal regime at odds with the need to prevent torture and ill-treatment in detention.

Report

Turkey: European Court finds another breach of freedom of expression by use of anti-terrorism law

On 5 April, the European Court of Human Rights ruled that the conviction of Fatih Tas under Article 6 of the *Law on the Prevention of Terrorism (Law No. 3713)* for having published a book accusing Turkish authorities of human rights violations and other abuses in counter-terrorism operations, violated Article 10 of the European Convention on Human Rights concerning the right to freedom of expression. The book had gathered the testimony of an ex- Kurdistan Workers' Party (PKK) member who claimed to have been recruited by State agents and who has accused these authorities of responsibility for certain murders by "unknown persons". The Court held that the punishment was not proportionate to the aim of protecting the identity of the State officers and did not constitute incitement to violence.

Judgment (F)

UNITED NATIONS & REGIONAL ORGANISATIONS

UN: Counter-Terrorism Committee meets at Council of Europe on prevention of terrorism

From 19 to 21 April, the UN Counter-Terrorism Committee, a subsidiary body of the UN Security Council, held a special session at the Council of Europe's headquarters in Strasbourg. The meeting focussed on methods for improving prevention policies, particularly those dealing with radicalization, incitement and terrorist recruitment, and discussed the role of law enforcement and the criminal justice system in preventing terrorism, including information-sharing between different law enforcement agencies and

the prosecution of offences related to terrorism. Members of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights, Dick Marty and Lord John Tomlinson stressed, in a written contribution, that counter-terrorism must respect human rights and the prominence of the rule of law, also by ensuring due process guarantees in UN listing procedures and ending the abuse of secret of state.

Meeting Material

CLAHHR Statement

ICJ Contribution

UN: Switzerland leads initiative for due process in UN terrorism listing

On 19 April, the Swiss Foreign Ministry made public a document to the UN Security Council signed by the Swiss Confederation, Germany, Austria, Belgium, Costa Rica, Denmark, Finland, Liechtenstein, Norway, the Netherlands and Sweden, in which these countries asked the UN body in charge of peace and security to improve the due process guarantees in the UN terrorism listing procedures. The letter calls for the establishment of an independent and effective sanctions review mechanism that would, as a minimum, satisfy the basic elements of rule of law and due process. In addition, the States ask for the establishment of time limits to listings; access to information by persons listed; a review of the system of humanitarian exceptions; implementation of a set of recommendations to avoid the need for unanimity in the Committee's decision-making process; and strengthening the mandate and powers of the Ombudsperson in charge of de-listing.

Switzerland Statement (F)

Document (E)

NATO: NATO-Russia Council approved updated anti-terrorism plan

On 15 April, the NATO-Russia Council (NRC) Foreign Ministers met in Berlin and approved an updated NRC Action Plan on Terrorism. Among the points of the plan, the Council agreed to continue to implement relevant elements of the NRC Cooperative Airspace Initiative (CAI), which aims at developing an information exchange system. It also seeks to foster cooperation on airspace security issues aimed, in particular, at strengthening the capabilities against terrorist air threats and to contribute to international efforts to promote stability in and around Afghanistan.

NATO Statement

EU: Majority in Council agrees to extend recording of air flights passengers' data to intra-EU flights

On 11-12 April, a majority of Member States in the Justice and Home Affairs Council welcomed the UK proposal to extend the new proposed legislation on Passenger Name Record (PNR) system to EU internal flights. The proposal, which aims at taking, recording, and storing data of passengers in flights for purposes of tackling serious crimes, including terrorism, was previously limited to flights to or from the EU, excluding intra-EU flights. The European Data Protection Supervisor and the Article 29 Working Party had criticized even the previous version as unnecessary and disproportionate as a means to its purpose, thereby breaching the right to privacy of passengers. The Directive, if approved, will bind 24 of the 27 EU Member States, excluding Denmark, and allowing the UK and Ireland the discretion to opt-in.

PNR Directive Proposal

Internal Flights Proposal

EDPS Opinion

WP29 Opinion

Press Article

EU: Commission announces revision of EU Data Retention Directive

On 18 April, the European Commission published an evaluation report on the EU Data Retention Directive, which compels telecommunications companies to keep records of their customers' calls, faxes, text messages, internet activity, and emails for up to 12 months. The Directive was adopted with the purpose of fighting and preventing terrorism. The report concludes that retained telecommunications data play an important role in the protection of the public against the harm caused by serious crime. However, national

implementation of the Directive has been uneven and the Directive does not in itself guarantee that data are stored, retrieved and used in full compliance with the right to privacy and protection of personal data, which has led courts to annul the legislation implementing the Directive in some Member States. The Commission announced a review of the directive with a view to improve the legal framework.

[Evaluation Report](#)

[EU Directive](#)

[EU Commissioner Statement](#)

[Press Article](#)

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