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***International Commission of Jurists***  
***E-BULLETIN ON***  
***COUNTER-TERRORISM & HUMAN RIGHTS***

**No. 1, August 2004**

This is the first edition of the International Commission of Jurists (ICJ) "*E-Bulletin on Counter-Terrorism and Human Rights*". The Bulletin makes information and analysis on proposed and actual changes in counter-terrorism laws, policies and practices widely available to the human rights and legal communities, governments, intergovernmental bodies and academic institutions. It covers news from individual countries around the world, the UN and regional intergovernmental systems and includes links to further information, such as court decisions, ICJ legal papers and press releases.

While governments must protect people from terrorist attacks, many new and long-standing counter-terrorism measures, and the rhetoric surrounding them, also represent critical threats to the rule of law and human rights. The ICJ has significantly stepped up its global programme on counter-terrorism and human rights. We welcome information from readers about developments relating to counter-terrorism and human rights and suggestions about how to further develop this E-Bulletin.

Nicholas Howen  
Secretary General

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**NEWS FROM COUNTRIES*****UK Parliamentary Committee Criticises Emergency Powers***

In a report released on 4 August, the UK Joint Parliamentary Committee on Human Rights called on the Government to end the indefinite detention of foreign terror suspects without trial. The committee, made up of six members of the House of Commons and six members of the House of Lords, also criticised the Government for giving itself such emergency powers and derogating - or opting out - from its usual obligations under the European Convention on Human Rights. This had a "corrosive" effect, said the Committee, and these powers are being used "disproportionately" against Britain's Muslim community. It warned that courts could end up admitting evidence obtained by torturing suspected terrorists, in breach of Britain's international human rights obligations.

***US Supreme Court: First Step in Taking Guantánamo Bay Detainees Out of Legal Blackhole***

The US Supreme Court ruled on 28 June that non-US citizens held off-shore at Guantánamo Bay have the right to *habeas corpus*.

In the *Rasul* case, the Supreme Court rejected the Government's argument that foreigners who are not held on US soil could be denied access to US courts. Five of the nine judges decided that because the US exercises "complete jurisdiction and control" over Guantánamo Bay naval base under a long term lease with Cuba, everyone held there, whether a US-citizen or not, has a right to *habeas corpus*. Detainees at Guantánamo Bay are now expected to begin challenging the legality of their detention in US courts and the first writs have already been filed.

In the *Hamdi* case, the Court held that whatever the nature of the detention, the writ of *habeas corpus*

remains available to every individual detained in the US as long as it is not suspended by an act of Congress. Mr. Hamdi, a US citizen captured in Afghanistan and classified as an "enemy combatant", could not be held indefinitely without charge and with no right to challenge his detention. The majority of the Supreme Court, however, accepted in principle the possibility under US law to seize and detain "enemy combatants".

ICJ Press

### ***Colombia: NGOs mount constitutional challenge***

The Colombian Commission of Jurists, an affiliate of the ICJ, has challenged with other non-governmental organisations the constitutionality of a Colombian law that grants judicial police powers to the military in cases of suspected terrorism. Legislative Act N° 2 2003, adopted in December 2003, grants the military the power to detain individuals, carry out searches and intercept private communications without previous judicial order. The ICJ has supported the challenge by submitting an *amicus curiae* to the Colombian Constitutional Court. The case is still pending.

ICJ Brief

### ***Indonesia: Anti-Terror Law Cannot Be Applied Retroactively***

The Indonesian Constitutional Court ruled on 23 July that an anti-terror law cannot be applied retroactively to convict a suspected accomplice of the 2002 Bali bombing. The judges relied on the Indonesian Constitution that guarantees "the right not to be tried under a law with retrospective effect". The law also authorised the death penalty and the detention of suspects for six months without trial. It is unclear whether courts will quash other convictions based on the retroactive law.

### ***Kenya: Controversial Anti-Terror Law to Be Republished***

The Kenyan Government has announced that it will revise and republish a controversial anti-terror law. The draft *Suppression of Terrorism Bill*, originally introduced before the National Assembly in 2003 and said to be based on a model law disseminated by the Commonwealth Secretariat, was formally withdrawn in February 2004 following widespread criticism within Kenya. Human rights groups said the original law restricted freedom of assembly, expression and association, provided for indefinite detention and would have led to impunity for security forces engaged in anti-terrorist activities and the confiscation of property without redress. The Bill was also criticized for criminalising the offer of any services, including legal services, to suspected terrorists.

### ***United Arab Emirates: New Anti-Terror Law***

A new anti-terror law which imposes the death penalty or life imprisonment for establishing or heading a terrorist organisation was decreed by the President of the UAE on 27 July. The decree defines terrorism as "any act that spreads terror or harms the public or Heads of State or Government officials or seeks to destabilise the general order of society". The decree further defines that anyone who establishes, funds, organises or administers a society, authority, organisation, centre, group or gang or held a leading position in them with the purpose to commit a terror act shall

be sentenced to death or life imprisonment. People convicted of undergoing military training with a terrorist organisation are liable to a life sentence or jail terms of at least 10 years.

### ***Russian Federation: Tougher Penalties for Terrorism Offences***

The Russian Criminal Code has been amended to toughen penalties for terrorism. Terrorist offences will now carry sentences of 8 to 15 years imprisonment, while particularly grave acts, such as an attempt on human life and grave crimes against public security, will be punishable with 15 to 20 years or life imprisonment. The existing Criminal Code stipulates that terrorism-related crimes are subject to 8 to 12 years in prison and those having particularly grave circumstances from 10 to 20 years.

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## **FROM THE UNITED NATIONS**

### ***World Court Declares Israeli "Anti-Terror" Wall Illegal***

The International Court of Justice has found Israel's separation barrier and its associated regime - justified by Israel as a counter-terrorism measure - to be in violation of international human rights and humanitarian law. The **advisory opinion** confirmed that Israel must abide by international human rights treaties in any territory it effectively controls, even outside its borders. Even though facing suicide attacks, Israel could not rely on a right of self-defence or on a state of necessity as a legal justification for the construction of the wall, said the Court. The Court said Israel should cease constructing the barrier, dismantle the barrier situated in the Occupied Territories, repeal all relevant regulations, restitute property and make reparation available to those affected.

ICJ Press    ICJ Paper 1    ICJ Paper 2

### ***US Expert on Terrorism Appointed by Human Rights Commission***

Robert Goldman, well-known member of the Inter-American Commission on Human Rights and US academic, has been appointed **Independent Expert on Human Rights and terrorism** by the UN Commission on Human Rights. He will assist the UN Office of the High Commissioner to prepare reports for the UN General Assembly in September this year and the 2005 Commission on Human Rights on whether the UN is adequately monitoring national counter-terrorism measures. The ICJ and other NGOs have long called for the Commission on Human Rights to create a new special rapporteur to monitor whether states' counter-terrorism measures are compatible with human rights obligations.

ICJ Paper    ICJ Paper    NGO Declaration

### ***UN Experts Reaffirm Human Rights in Fight Against Terror and Foreshadow Prison Visits***

31 thematic experts of the Commission on Human Rights have adopted a **statement** reaffirming their determination to monitor the consistency of counter-terrorism measures with human rights standards.

Gathering at their annual meeting in Geneva in June, they also expressed concern at recent alarming developments with regard to the status, condition of detention and treatment of prisoners in specific places of detention. A number of special rapporteurs expressed their intention to visit prisons in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere.

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## **FROM REGIONAL SYSTEMS**

### ***African Commission to Consider Drafting Guidelines on Terrorism and Human Rights***

The African Commission on Human and Peoples' Rights has decided to study whether to draw up guidelines on terrorism and human rights at its session in November/December. Interights and the ICJ had submitted a joint document calling on the Commission to draft such guidelines and monitor national counter-terrorism measures in the region.

ICJ Paper

### ***Civil Society Invited to Comment on Victims of Terrorism Guidelines***

Civil society will be invited by the Council of Europe to help shape guidelines on protecting victims of terrorism as part of the Council's Guidelines on Human Rights and the Fight against Terrorism. An Expert Committee aims to adopt the guidelines by November and then open them up for comment by civil society.

### ***Inter-American Commission to Draft Recommendations on Human Rights and Terrorism***

Following an initiative of the Mexican Government, the OAS General Assembly in June requested the Inter-American Commission on Human Rights (IACHR) to produce Recommendations on Human Rights and Terrorism (see PDF document below), building on the 2002 IACHR Report "Human Rights and Terrorism"

### ***OIC Calls for Conference to Distinguish between Terrorism and National Liberation Struggles***

Ministers of Foreign Affairs of the Organisation of the Islamic Conference meeting in Istanbul 14-16 June called for a UN conference aimed at defining "terrorism" and distinguishing it from struggles for national liberation. They also adopted resolution 6/31 LEG on the OIC Convention to Fight International Terrorism that has entered into force.

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## **IN BRIEF**

- The African Union has adopted the **Additional Protocol to the OAU Convention on the Prevention and Combating Of Terrorism** and invited States to adopt it.
  
- In March the European Union appointed Mr. Gijs de Vries as its first Counter-Terrorism Coordinator, who will help to better organise and streamline the counter-terrorism work of the EU and coordinate it with national action.
  
- **Government experts** in the Council of Europe have begun working on a comprehensive European Convention against Terrorism. This follows decisions by the European Ministers of Justice and the Committee of Ministers.
  
- On 23 June the OSCE Chairman-in-Office, Bulgarian Foreign Minister Solomon Passy, called on the Organisation's 55 participating States to focus on new areas such as chemical, biological, radiological and nuclear materials in the fight against global terrorism.

### ***ICJ to Convene Global Conference on Counter-terrorism and Human Rights***

The International Commission of Jurists (ICJ) is convening a global conference on counter-terrorism, rule of law and human rights in Berlin 27-29 August. More than 150 leading human rights lawyers and judges from over 50 countries, including ICJ Commissioners, national sections and affiliated organisations will gather to identify the key legal challenges in ensuring counter-terrorism measures respect human rights and the rule of law. The meeting will identify responses and legal advocacy strategies for the ICJ Network and the global legal community to address these challenges more effectively. Speakers will include Louise Arbour, the new UN High Commissioner for Human Rights. The ICJ is returning after 52 years to Berlin, the birthplace of the organisation.

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