

AMNESTY INTERNATIONAL

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UK: Abu Qatada still at risk of torture and unfair trial

On 17 April 2012, the UK Home Secretary, Theresa May, gave a statement before parliament outlining what she described as “assurances” and “information” that UK officials had secured from their Jordanian counterparts in the wake of the judgment of the Fourth Section of the European Court of Human Rights on 17 January 2012. In that judgment, the Court had held, in particular, that deporting Abu Qatada to Jordan would violate Article 6 of the European Convention on Human Rights because he would face a real risk of a “flagrant denial of justice” upon return.

In her statement the Home Secretary indicated that the UK government considered it was now able to resume its attempts to deport Abu Qatada to Jordan in a manner that complied with the UK’s obligations under the European Convention on Human Rights. The UK government did not present any written assurances from Jordan.

In any event -- and regardless of any such “assurances” and “information” -- for the reasons set out in detail below, Amnesty International continues to believe that Abu Qatada would face a real risk of torture or other ill-treatment on return to Jordan. This document addresses whether Abu Qatada will face a real risk of a “flagrant denial of justice” based on Amnesty International's research and in light of the Home Secretary's statement to Parliament. It also reiterates Amnesty International's profound concern about deporting him to Jordan in light of the real risk of torture or other ill-treatment to which the organization believes he would be exposed upon return there.

Torture or other ill-treatment

Amnesty International reiterates its deep concern that Abu Qatada faces a real risk of torture or other ill-treatment in Jordan. The absolute nature of the prohibition of torture or other ill-treatment means that no one can ever lawfully be transferred to another country or territory where they would face such a risk, no matter what acts they may be accused of. Unenforceable, bilateral diplomatic assurances from one government to another do not provide a reliable safeguard against the real risk of torture or other such ill-treatment, particularly when given by a country like Jordan where, as noted by the European Court in its judgment of 17 January 2012, torture remains “widespread and routine”.¹

A chamber of the European Court of Human Rights found that the diplomatic assurances given by Jordan to the UK purporting to address the real risk of torture or other ill-treatment (in the form of a Memorandum of Understanding, among other things) meant Abu Qatada's transfer to Jordan would not violate article 3 of the European Convention on Human Rights. On 9 May 2012, a referral request to the Grand Chamber of the European Court of Human Rights was rejected by a panel of judges of the Court. Amnesty International is disappointed that the Court has failed to take this opportunity to reverse the Chamber's deeply flawed decision on this issue and instead recognize that diplomatic assurances for torture or other such ill-treatment are never acceptable.

¹ For further information see Amnesty International's report *Dangerous Deals: Europe's reliance on 'Diplomatic Assurances' against torture*, AI Index: EUR 01/012/2010, April 2010.

Unfair trial

In its January 2012 ruling, the European Court of Human Rights found that Abu Qatada would be exposed to a real risk of a “flagrant denial of justice” if he were deported to Jordan on the grounds that the State Security Court would try him “in breach of one of the most fundamental norms of international criminal justice, the prohibition of evidence obtained by torture”. The European Court highlighted the reliance that would be placed in the trial of Abu Qatada before the State Security Court on the testimony of two individuals, Al-Hamasher and Abu Hawsher, in respect of whom the European Court had found “concrete and compelling evidence” that they had been “tortured into providing the case against” Abu Qatada.

According to the Home Secretary, the Jordanian authorities have assured her that these two individuals have been granted pardons. It is claimed that any fresh evidence given by them in any future trial of Abu Qatada will not have an effect on those pardons. In light of this, the Home Secretary stated that she has every confidence that such testimony would be truthful. In addition, the Home Secretary noted that Abu Qatada would be able to legally challenge past statements given by these two individuals through the Jordanian Court system.

However, this information from the Home Secretary has not allayed Amnesty International’s ongoing and genuine concern that Abu Qatada will face a real risk of an unfair trial if returned to Jordan. This is particularly so when the various risks in the case are considered cumulatively and against the background of past practice in Jordan. The risks, described in greater detail below, include risk of trial by a court that is not independent or impartial, that any 'new' testimony may be coerced (whether by a continuing threat of torture or other intimidation), that evidence obtained by torture may be admitted notwithstanding any legal provisions to the contrary, and the absence of a reliably effective means of appeal. This position is based on four grounds:

- 1) Amnesty International considers that the State Security Court (SSC), which will hear Abu Qatada’s case, is – contrary to the assertion by the Home Secretary - a quasi-military court lacking independence and impartiality and in which trial procedures/proceedings are unfair.

Amnesty International does not consider the SSC to be a Court endowed with the characteristics necessary for it to be and be seen to be an independent court. Its judges are appointed by the Prime Minister acting on the recommendation of the Chief of Staff of the armed forces in the case of military judges and of the Minister of Justice in relation to civilian judges. Further, it is characterized by a lack of independence and impartiality evident from its record of failures to properly investigate witnesses’ and defendants’ complaints of torture and other ill-treatment in pre-trial custody, and by its willingness to use “confessions” allegedly extracted from defendants and witnesses under duress and/or torture to obtain convictions from them.

In addition, legal reforms in Jordan have in the past often failed to materialise into significant changes in practice; for example, despite a 2007 amendment to Article 208 of the Penal Code prohibiting torture and adopting a definition of torture identical to that contained in the UN Convention against Torture, there has been no apparent change in practice. Amnesty International therefore has not seen any evidence to indicate that trials before the SSC are no longer conducted in an unfair manner, or that the military or quasi-military character of the SCC has been so fundamentally altered that the tribunal now meets the requirements of independence and impartiality necessary for a fair trial. It appears quite reasonable to presume that, amongst other unfair trial concerns, the SSC could give weight – even if not openly - to previous or forthcoming testimony which incriminates Abu Qatada despite its being obtained under duress or through torture.

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2) Amnesty International has serious concerns that there is a real risk the fresh testimony being given by Al-Hamasher and Abu Hawsher in any new criminal proceeding against Abu Qatada may not be given free from intimidation, potential reprisals and duress.

Jordan is a country where the practice of torture and courts' reliance on evidence obtained through torture continues to be widespread. Further, it is a country where there is near total impunity for crimes of torture and there is a widely recognized failure to implement safeguards and adequate protection mechanisms to guard against such abuse. In this context, the idea that these two individuals would be giving new evidence in a climate free from fear and potential reprisals is naive, misguided and dangerous from a human rights and, in particular, a fair trial rights perspective. In this case the European Court has already found that there was "concrete and compelling evidence" that these two individuals had been "tortured into providing the case against" Abu Qatada and their pardons have been sought by the UK government in the context that it would allow them to give fresh testimony in a new trial against Abu Qatada. It also remains a possibility that the witnesses could be subjected to some form of coercion by Jordan's military security agency – the General Intelligence Department (GID) – which could affect the evidence they give. The GID is primarily responsible for the interrogation of political and security detainees in Jordan. Its officers enjoy extensive powers and benefit from near total impunity. It would not be unreasonable to anticipate that these potential witnesses may face threats and harassment by GID officers as a way to influence what they say in a fresh hearing. In light of this, Amnesty International wishes to reiterate that it considers that the use of evidence obtained through threats or harassment brings the administration of justice into disrepute, and should be excluded per se, regardless of its reliability. Moreover, Amnesty International believes there is a real risk that any new testimony from the men will be unreliable because of the manner in which it may be elicited.

Jordan continues to fail to address the problem of torture and other ill-treatment. Allegations disclosing credible evidence of prohibited ill-treatment are simply not investigated, nor anyone responsible brought to justice. As recently as March 2012 there were reports of beatings of pro-reformist activists and demonstrators. Majdi Qableen of the Free Tafileh Movement was, according to his family, tortured under interrogation by the GID at a police station in Tafileh. He was allegedly blindfolded, a bag placed over his head and his feet and hands chained; his interrogators apparently knocked his head against the wall while calling him a "rioter" and a "dangerous criminal". Two other members arrested around the same time were also said to be beaten during interrogation. Amnesty International is not aware of any investigation being conducted into these allegations.²

3) Further to the analysis of the SSC at (1) above, there remains a real risk that testimony obtained through torture which should be excluded in line with international human rights and criminal law could be admitted in any new proceeding against Abu Qatada.

Although the Home Secretary stated that Abu Qatada would be able to legally challenge past statements given by these two individuals through the Jordanian Court system, the European Court of Human Rights has already confirmed Amnesty International's concern regarding the substantial difficulties Abu Qatada would face in challenging the admissibility of previous statements made by Abu Hawsher and Al Hamasher before the SSC, which routinely rejects such claims.

Despite changes to the Jordanian Constitution in September 2011, including a ban on reliance on evidence obtained by "torture, threat or coercion", Amnesty International has serious concerns about both the substance and implementation of the prohibition. The amendment does not meet the requirements of international human rights law in that it does not explicitly include a bar to reliance on evidence obtained through other ill-treatment. Furthermore,

² (See more at <http://www.amnesty.org/en/library/info/MDE16/002/2012/en> and <http://www.amnesty.org/en/news/jordan-pro-reformists-detained-insulting-king-must-be-released-2012-04-03>)

Amnesty International has seen no indication that these legal guarantees have been implemented in practice. For one, the amendments to the Constitution are subject to a delay of up to three years before they enter into force. Even then, such changes are often not implemented, as noted above in relation to the 2007 amendment to Article 208 of the Penal Code prohibiting torture. This amendment is also notable in that it failed to stipulate penalties for perpetrators of torture in line with the Convention. Amnesty International does not believe that the constitutional changes referred to in the Home Secretary's speech will in themselves result in *actual* protection against torture or end reliance by Jordanian courts on evidence obtained by torture or other ill-treatment.

Incidentally, not only should the alleged torture and other ill-treatment of Al-Hamasher and Abu Hawsher be independently investigated but the two men and their families also have a right to fair and adequate compensation, including the means for as full rehabilitation as possible; the offer of a pardon is no substitute for the right to effective redress for victims of torture.

Concern at potential deportation of Abu Qatada

While Amnesty International welcomes the commitment to the rule of law and the importance of complying with the judgments of the European Court of Human Rights made by the Home Secretary in her statement, the organization believes that, notwithstanding Jordanian assurances to the contrary, the UK government would be in breach of its international and domestic legal obligations of non-refoulement if it deported Abu Qatada to Jordan since it would expose him to a real risk of torture or other ill-treatment, as well as a real risk of an unfair trial.