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UK: European Court Ruling Sends Mixed Message on Torture: Amnesty International, Human Rights Watch & Justice joint statement

The European Court of Human Rights ruling on 17 January 2012 against the deportation of a Jordanian national from the United Kingdom could have serious consequences for human rights protection in Europe, said three nongovernmental organizations that intervened in the case.

Amnesty International, Human Rights Watch and JUSTICE said that the court's conclusion that Omar Othman (also known as "Abu Qatada") cannot be deported from the UK was important. The court's conclusion was based on the fact that any trial in Jordan would probably involve the use of testimony from other people who had been tortured, amounting to a "flagrant denial" of his fair trial rights.

However, the Court also found that deporting Abu Qatada based on diplomatic assurances negotiated between the Jordanian and UK governments would not violate the ban on sending a person to a place where he was at real risk of torture, despite evidence presented by the three groups in the case that such promises do not reliably or appropriately reduce that risk.

"The European Court's firm stand against the use of torture evidence is a positive development," said Julia Hall, Amnesty International's expert on human rights and counter-terrorism. "But it has been eclipsed by the Court's conclusion that diplomatic assurances can be sufficient to reduce a risk of torture. This is an alarming setback for human rights protection across the region; it is a ruling that takes us one step forward and two steps back."

The European Court ruled that the assurances from Jordan contained in a "memorandum of understanding" with the UK, and post-return monitoring, would reduce the risk of torture Abu Qatada would face on return, concluding that they were superior to promises against torture the court had examined in other cases.

The intervention by Amnesty International, Human Rights Watch and JUSTICE in the case included evidence of the prevalence of torture in Jordan. It contended that assurances against torture are inherently ineffective and inappropriate, and concluded that the use of such assurances circumvents states' legally binding obligation not to send a person to a place where there is a real risk of torture. The joint intervention pointed out that post-return monitoring offers little or no protection, including because the fear of reprisals make it unlikely that a detainee will report abuse to monitors.

"Today's ruling sends a mixed message on torture," said Benjamin Ward, deputy Europe and Central Asia division director at Human Rights Watch. "It blocks deportation because the courts in Jordan use torture evidence, but wrongly accepts the British government's argument that these assurances offer protection from torture, opening the door to their wider use."

The European Court acknowledged that torture is a systemic and chronic problem in Jordan, and that those responsible are rarely held to account. The *Othman v UK* judgment also recognized that torture is conducted in secret and that state actors both collude to cover it up

and deny that it occurs. A promise not to torture should mean little when the government giving it refuses to acknowledge that torture is widespread, the groups said. Yet the Court concluded that the “memorandum of understanding” between the UK and Jordan was sufficient to reduce Othman’s risk of torture if deported to Jordan.

“The court has sent a groundbreaking message on the exclusion of evidence obtained after torture,” said Roger Smith, director of JUSTICE. “Deportation to trial on torture evidence is tacit approval of torture, illegal and immoral. But the Court’s conclusions on the widespread use of torture and torture evidence in the Jordanian courts undermine the finding that an unenforceable gentlemen’s agreement with the UK government will prevent Jordan committing further acts of torture if the applicant were returned.”

Human Rights Watch has documented torture by Jordan’s General Intelligence Department since 2006 as well as in regular prisons and holding centres. In November 2011, a young man died in custody of military intelligence under suspicious circumstances a few days after his arrest. Jordan’s laws criminalize only torture, but not other ill-treatment, and prison authorities do not consider small-group isolation or prolonged solitary confinement, where most Islamist detainees and prisoners are being held, to be ill-treatment.

In the last decade, especially in the counter-terrorism context, governments in Europe and the United States have chipped away at the ban on torture, the groups said. The ruling gives governments a green light to secure unreliable diplomatic assurances to justify sending people to places where they are at risk of such abuse and would further contribute to the erosion of the prohibition on torture.

Background:

Omar Othman, also known as Abu Qatada, is a Jordanian national who arrived in the UK in 1993. In 1994, he, his wife and three children were granted refugee status. In his absence, he was convicted in Jordan in two separate trials, in 1999 and 2000, of terrorism-related offenses, and sentenced to life in prison and 15 years respectively.

In October 2002, Abu Qatada was interned in the UK without charge or trial under the now-repealed Part 4 of the Anti-terrorism, Crime and Security Act 2001 (ATCSA 2001). The Act permitted the indefinite detention of people whom the UK wanted to deport on national security grounds, but who could not be sent to their countries of origin because they would be at risk of suffering human rights violations there, particularly torture.

In March 2005 he was released from detention and put under a “control order” the following day, limiting his freedom of movement. He was rearrested in August 2005 and detained under immigration powers pending deportation to Jordan on national security grounds, following the negotiation of a “memorandum of understanding” in which the Jordanian government promised the UK that any person returned to Jordan would be treated humanely and given a fair trial. In February 2007, the Special Immigration Appeals Commission (SIAC) dismissed his appeal against the deportation.

On 9 April 2008, the Court of Appeal of England and Wales ruled that the UK could not deport Abu Qatada to Jordan because any trial in Jordan was likely to involve the admission of evidence that had been obtained by the torture of others. The Court of Appeal ruled that the use of such “torture evidence” would amount to a flagrant violation of the right to a fair trial. The UK’s then highest court, the House of Lords, gave the go-ahead on 18 February 2009, for the government to deport Abu Qatada in reliance on “diplomatic assurances” given by the Jordanian authorities in the 2005 “memorandum of understanding” that he would be treated humanely and given a fair trial on return. The same month, Othman applied to the European Court of Human Rights, contending that if deported he would be at a real risk of torture and his right to a fair trial would be violated.

Amnesty International, Human Rights Watch and JUSTICE submitted a joint intervention to the European Court in October 2009. Othman's case was heard before the European Court (application no. 8139/09) in December 2010. Both parties now have three months to seek to appeal the ruling to the Grand Chamber of the European Court of Human Rights before it becomes final. The judgment does not prevent UK authorities from charging and trying Abu Qatada in the UK, or extraditing him to another state where he would receive a fair trial.

For research by Amnesty International, Human Rights Watch and JUSTICE relevant to this case, see:

Amnesty International:

- Jordan: Amnesty International Submission to the UN Universal Periodic Review: Fourth session of the UPR Working Group of the Human Rights Council, February 2009, AI Index: MDE 16/004/2008, <http://www.amnesty.org/en/library/info/MDE16/004/2008/en>
- Jordan: "Your confessions are ready for you to sign": Detention and torture of political suspects, July 2006, AI Index: MDE 16/005/2006, <http://www.amnesty.org/en/library/info/MDE16/005/2006/en>
- Dangerous Deals: Europe's reliance on 'diplomatic Assurances' against torture, April 2010, AI Index: EUR 01/012/2010, <http://www.amnesty.org/en/library/info/EUR01/012/2010/en>

Human Rights Watch:

- Suspicious Sweeps , The General Intelligence Department and Jordan's Rule of Law Problem, July 2006, <http://www.hrw.org/reports/2006/09/18/suspicious-sweeps-0>
- Torture and Impunity in Jordan's Prisons, Reforms Fail to Tackle Widespread Abuse, October 2008, <http://www.hrw.org/reports/2008/10/08/torture-and-impunity-jordan-s-prisons-0>
- Letter to Prime Minister Urging Inquiry into Death in Custody, 20 December 2011, <http://www.hrw.org/news/2011/12/20/letter-prime-minister-urging-inquiry-death-custody>

JUSTICE

- Secret Evidence, June 2009, <http://www.justice.org.uk/resources.php/33/secret-evidence>
- Joint intervention by Amnesty International, Human Rights Watch and Justice in *Othman v United Kingdom*, 2 October 2009, accessible via: <http://www.justice.org.uk/pages/othman-v-united-kingdom.html>

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