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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Counter-terrorism and Human Rights

Human Rights Advocates submits this statement to address human rights issues arising out of counter-terrorist measures. The lack of a universally accepted definition of terrorism negatively impacts the ability of the international community to fight terrorism and increases the possibility of human rights violations. Human rights are also implicated due to inadequate judicial oversight of counter-terrorism measures. Transparency in counter-terrorism policies is required to protect human rights while also ensuring national security.

International Human Rights Law Obligations

All States have an obligation to protect individuals within their jurisdiction from terrorists under the International Covenant of Civil and Political Rights (ICCPR), stemming from the right to life. Counter-terrorist measures are essential for States to maintain national security.

The international community has engaged in resolute and swift action in taking measures to condemn terrorism, especially since the terrorist attack on the United States on September 11, 2001. The U.N. has adopted thirteen resolutions since the 1960s relating to terrorism; eleven emerged prior to the September 11, 2001 attacks.¹ With the passage of General Assembly resolution 60/288 in 2006, member States agreed to cooperate in the global effort to eradicate terrorism, while ensuring that measures taken comply with the rule of law and human rights.² The Security Council has also committed to this sentiment as demonstrated in resolutions 1373 (2001), 1456 (2003), 1566 (2004), and 1624 (2005). These actions acknowledge that “effective counter-terrorism measures and the protection of human rights [are] not conflicting goals, but rather complementary and mutually reinforcing ones.”³

Despite numerous resolutions, including the establishment of the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Executive Directorate (CTED), the international community has been unable to agree on a universal definition of terrorism. The lack of a universal definition of terrorism represents a serious limitation on States’ ability to combat and prevent terrorism. Failing to agree on a universal definition “prevents the United Nations from exerting its moral authority and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes.”⁴

Without a universal definition of terrorism, States may create broad, overreaching definitions and inadvertently criminalize activity outside the realm of terrorism and thus result in human rights violations. States may also intentionally use this broad power to suppress oppositional movements or unpopular groups under the guise of combating

¹ Javier Rupérez, *The U.N.’s Fight Against Terrorism: Five Years After 9/11*, ARI 83/2006 (6 September 2006), available at <http://www.un.org/terrorism/ruperez-article.html>.

² Office of the United Nations High Commissioner for Human Rights, “Human Rights, Terrorism and Counter-terrorism,” Fact Sheet No. 32, p. 20. Available at <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

³ *Id.* at p. 21.

⁴ Follow-up to the outcome of the Millennium Summit, Note by the Secretary-General, A/59/565, para. 157 (2 December 2004).

terrorism. People may be prosecuted for the legitimate exercise of protected human rights due to vague and unclear domestic definitions of terrorism.⁵

There are fundamental disagreements among States as to a universal definition of terrorism. Some members urge the inclusion of State use of force against civilians in the definition. However, State force against civilians is already addressed in a number of international instruments, including the Geneva Convention, the U.N. Charter, and the Rome Statute for the International Criminal Court.⁶ Inclusion of State force against civilians is not necessary in a definition of terrorism. Other States insist that the definition avoid criminalizing self-determination. These States want to protect “the right of a people to resist foreign occupation.”⁷ But this argument is irrelevant to defining terrorism since there is “*nothing* in the fact of occupation that justifies the targeting and killing of civilians.”⁸

The disagreement among States presents significant and unnecessary barriers creating a universal definition of terrorism.⁹ However, there has been movement toward a definition. The Secretary-General proposed guidelines for a possible definition in a report presented to the General Assembly in 2004. In this report, the definition includes language from Security Council resolution 1566 (2004) and includes acts committed against civilians with both 1) the intention of causing death or serious bodily injury, or the taking of hostages AND 2) for the purpose of provoking terror in the general public or in a group of persons or particular persons, intimidating a population or compelling a government or an international organization to do or abstain from doing any act.¹⁰ Through this definition, States can create more effective counter-terrorist policies within specific confines. This narrow definition will protect human rights because States will not be able to justify acts under a broad or vague definition.

Implicated Human Rights

Terrorists attack democracy, the rule of law, and respect for humanity.¹¹ Counter-terrorism measures are crucial, yet may also threaten core human rights. Counter-terrorist measures implicate the right to life through targeted killings, the prohibition against torture, liberty interests through arbitrary detention, racial and ethnic profiling, the right to due process, freedom of speech and association, the right to privacy, and many other social, economic, and cultural rights.¹² Counter-terrorist measures must comply with international law to be effective and avoid further promotion of terrorism. The use of “discriminatory and stigmatizing measures affect the rights of entire communities, and may lead to further marginalization and possibly radicalization within those communities.”¹³

Transparency and judicial oversight of State counter-terrorist measures must be promoted to ensure State compliance with international human rights. Monitoring of State measures is already occurring under the CTC, but States should be reminded that counter-terrorist

⁵ Address by Ms. Navanethem Pillay to the Counter-Terrorism Committee of the Security Council, New York, p. 7 (29 Oct. 2009).

⁶ *See supra* note 4, para. 158.

⁷ *See supra* note 1.

⁸ *See supra* note 4, para. 160 (*emphasis added*).

⁹ The U.N. Committee On Counter-Terrorism FES Briefing Paper 15 September 2007, p. 10.

¹⁰ *See supra* note 4, para. 164.

¹¹ *See supra* note 2, at 7.

¹² *See supra* note 2, at 30-46.

¹³ *See supra* note 5, at 7.

measures are not outside the realm of international law.¹⁴ One area of concern is the lack of transparency and judicial oversight for measures that significantly infringe on human rights, like privacy rights and the prohibition against cruel, inhumane, and degrading treatment. This issue is exacerbated due to the fact that many counter-terrorism measures are shrouded in secrecy, creating further difficulties for human rights protection. One example is the listing procedures used to create international terrorist watch lists. Due to the lack of transparency in the listing procedures, there is a risk of racial and ethnic discrimination. Transparency will ensure fairness in these procedures and protect other possible human rights violations.¹⁵

Many States employ intelligence and surveillance measures contrary to international law, justified solely on the fight against terrorism. Some have established intelligence agencies that have “legally acquired the power to arrest and detain people who are expected to have information about terrorist activities.”¹⁶ These agencies are not subject to judicial oversight and this may increase the risk of arbitrary detention and other human rights violations.¹⁷ In some countries, such as Morocco, Pakistan, and Jordan, there is no statutory basis for the intelligence agencies created to address terrorism. This has resulted in “arrest and detention of persons on grounds which are not clearly established in domestic law.”¹⁸ All States must employ counter-terrorism measures within established domestic and international law.

Another area requiring increased transparency and judicial oversight are procedures infringing on the right to privacy. Article 17 of the ICCPR specifically prohibits arbitrary or unlawful interference with privacy, subject to a few exceptions.¹⁹ Actions taken in the United States under the Patriot Act (2001) have raised concerns due to extensive surveillance techniques employed to combat terrorism. Many of the provisions of the Patriot Act are under scrutiny for failing to provide judicial oversight for intelligence and surveillance procedures that may violate the right to privacy. Although the Patriot Act was recently due to expire, many questionable measures have been renewed despite privacy and civil rights concerns.

Recently, counter-terrorism measures infringing on the right to privacy in the United Kingdom were successfully challenged in the European Court of Human Rights. *Case of Gillian and Quinton v. The United Kingdom* arose out of the U.K.’s Terrorism Act, section 44, which broadly permitted public searches and seizures of persons suspected of terrorism. The criteria for a search were so broad that police had authority to stop and search almost anyone, including members of the press and peaceful organizers, in violation of the right to privacy.²⁰ Privacy must be “protected under a rigorous analytical framework that secures that any restrictions are adequately provided for in clear and precise provisions of domestic law.”²¹ In order for States to address possible violations of privacy rights and other human

¹⁴ Martin Scheinin, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Statement to the Counter-Terrorism Committee of the Security Council, New York, p. 2 (20 October 2008).

¹⁵ General Assembly Resolution 60/288, para. 15, A/RES/60/288 (20 September 2006).

¹⁶ Martin Scheinin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/10/3, para. 38 (4 February 2009).

¹⁷ Id.

¹⁸ Id. at para. 40.

¹⁹ Martin Scheinin, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, A/HRC/13/37, para. 17 (28 December 2009).

²⁰ *Case of Gillian and Quinton v. The United Kingdom*, The European Court of Human Rights, Fourth Section (12 January 2010).

²¹ Martin Scheinin, Privacy and Security can be Reconciled, *The Guardian* (20 January 2010), available at <http://www.guardian.co.uk/commentisfree/libertycentral/2010/jan/20/privacy-airport-security>

rights, the international community must ensure that counter-terrorist measures comply with domestic and international law.

Recommendations

Human Rights Advocates recommends that:

- States be reminded that international human rights law applies at all times and terrorism does not provide an exception to core obligations. States must recognize the possibility for human rights abuses under counter-terrorist measures and acknowledge the risk of fostering marginalization and extremism through measures meant to counter terrorism.
 - The Human Rights Council promote the adoption of a universal, comprehensive and precise definition of “terrorism” to ensure that all international human rights obligations are upheld. This definition should include acts committed against civilians with both 1) the intention of causing death or serious bodily injury, or the taking of hostages AND 2) for the purpose of provoking terror in the general public or in a group of persons or particular persons, intimidating a population or compelling a government or an international organization to do or abstain from doing any act, as suggested by Security Council Resolution 1566.
 - The Human Rights Council promote transparency and judicial oversight over counter-terrorism procedures to ensure the right to privacy and protect other human rights.
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