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PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Written statement* submitted by the International Federation for Human Rights (FIDH),
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.

[10 February 2005]

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

PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM

The International Federation for Human Rights (FIDH) condemns in absolute terms any resort to terrorism. Whatever the circumstances, attacks targeting the civilian population may never be based on a legitimate concern and all perpetrators must be brought to justice and punished, in strict compliance with international standards for the protection of human rights.

But, in the name of the fight against terrorism, a number of countries have adopted or contemplated measures that are in blatant contravention with international obligations in respect of human rights law, international humanitarian law and refugee law and the principle of the Rule of Law.

Virtually all countries carry out counter-terrorism activities which by their very nature put at stake the exercise of a wide range of human rights and fundamental freedoms. They include in particular: practices of administrative detention without judicial review; prolonged incommunicado detention; failure to provide legal assistance or information as to the expected duration of detention in relation to detentions carried out on the basis of security-oriented laws; conditions of detention amounting to inhuman and degrading treatment; transfer, return, extradition, denial of entry, or expulsion of persons at risk of being subjected to torture in contravention of the principle of non-refoulement or asylum; the adoption of loose definitions of "terrorism" or "terrorist organisations", capable of resulting in breaches of the principle of legality and allowing for the criminalisation of legitimate acts in exercise of fundamental freedoms; the removal of basic safeguards to prevent torture or cruel, inhuman or degrading treatment or punishment and violations of the right to life; the adoption of measures which curtail the rights to fair trial, freedom of association, basic labour rights, the right to asylum and the principle of non-discrimination; increased use of detention of non-citizens; use of military and other special courts to try terrorism-related offences; use of counter-terrorism laws against indigenous organisations and their supporters to penalize protest activities and legitimate demands.

Within the framework of the « international campaign against terrorism », these last three years were marked by the adoption and implementation of stringent security-oriented laws, which, though they are intended to improve security and safety in society have, paradoxically, made the situation of those working for the cause of human rights worse. This year, once again, human rights defenders, who denounced new liberticide laws and other human rights violations, were themselves fallaciously accused of being anti-patriotic or of supporting terrorist groups.

FIDH recalls that there should be no conflict between state duty to protect the rights of persons within its jurisdiction against terrorism and state duty to respect and protect fundamental rights and freedoms. International and national efforts aimed at the realization of rights of all persons without discrimination are essential tools in preventing and eradicating terrorism.

As recalled by Sergio Vieira de Mello, former United Nations High Commissioner for Human Rights, « some rights can never be suspended, no matter what the circumstances, no matter how grave the provocation ». Therefore some rights are non-derogable, which means that they cannot be suspended even in time of a public emergency threatening the life of the nation. In addition, pursuant to Comment 29 of the Human Rights Committee, respect of the principle of proportionality entails that no provision of the International Covenant on Civil and Political

Rights, however validly derogated, from will be entirely inapplicable to the behaviour of a State party.

Within the United Nations human rights system no current mechanism is in a position to address and cover in an adequate comprehensive and integrated manner the violations of a wide range of rights occurring in the area of counter-terrorism. Indeed human rights treaty supervision does not have universal scope, as not all States are party to the respective human rights treaties and the work of treaty bodies is affected by a reporting cycle that precludes timely monitoring. And monitoring by thematic special procedures mandated by the Commission on Human Rights is highly limited due to the circumscribed and particularised nature of each mandate. Finally, some issues related to national counter-terrorism aspects could not be addressed sufficiently in-depth by existing human rights monitoring bodies either because they do not fall within their mandates or because they present unusual complexities to comprehensive consideration, such as the principle of legality, extraterritorial and “secret” detention, fair-trial rights, inter-State transfer of persons suspected of terrorism, including extradition and “rendition”, freedoms of association and assembly, rights to privacy, right to property, human rights provisions in emergency situations, issues in the context of armed conflict.

Therefore, FIDH recommends the Commission on Human Rights to adopt a **Resolution on the protection of human rights and fundamental freedoms while countering terrorism**, which will *inter alia*:

- Condemn violations of human rights, humanitarian law and refugee law committed while countering terrorism;
- Condemn in particular the violations of non-derogable Human rights recognized by International Customary Law, within article 4 of ICCPR as interpreted by General Recommendation 29 of the UN Human Rights Committee;
- Express concern over the repeated violations of the 1998 Declaration on Human Rights Defenders, while countering terrorism or abusing security measures;
- Ensure that regional Conventions and arrangements against terrorism are consistent with international Human Rights standards, and call upon concerned states to revise the Arab Convention, African Union’s Convention for the suppression of or against Terrorism, as well as other regional arrangements to combat terrorism, in order to conform them to international human rights, humanitarian law and refugee law;
- Request the Security Council to appoint as soon as possible an independent expert on human rights, humanitarian law and refugee law in the new Counter Terrorism Committee (CTC) Executive Directorate, with the mandate to advise CTC members on human rights matters and request the Security Council to make procedures of examination of state reports by the CTC more transparent;
- Call upon Governments to collaborate with the Special Procedures of the Commission on Human Rights and in particular to comply with the requests that 18 of them expressed in their joint statement of 25 June 2004 (*“Joint Statement by participants at the eleventh Annual Meeting of the Special Rapporteurs/representatives, independent experts and chairpersons of the working groups of the Special Procedures of the Commission on Human Rights and of the Advisory*

Service: Protection of human rights and fundamental freedoms in the context of anti-terrorism measures, 25 June 2004);

- Welcome the Report elaborated by the Independent Expert of the Commission on the question of the protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2005/103);
- Recognize that there are significant gaps in the consideration of national counter-terrorism measures by the United Nations human rights system;
- Recognize the need to address the compatibility of national counter-terrorism measures with international human rights obligations in a comprehensive and integrated way;
- Decide to broaden the mandate of the mechanism established by its Resolution 2004/87, mandating the Independent Expert, *inter alia*:
 - to monitor the compliance of States with human rights law, humanitarian law and refugee law, while countering terrorism. In this sense the Expert should be empowered to undertake *in situ* visits; '
 - to establish a dialogue and enhance cooperation with the Counter Terrorism Committee of the UN Security Council (CTC) with a view to better assess the conduct of States in implementing UN Security Council resolution 1373.

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