

Human Dimension Implementation Meeting
Working Session 11
Rule of Law II: torture, death penalty, human rights and fighting terrorism
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Introduction

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Many thanks to ODIHR and the organizers of this 2019 Human Dimension Implementation Meeting for inviting Amnesty International to contribute the introductory remarks for today's Rule of Law session on terrorism, torture and the death penalty. My comments will primarily focus on protecting human rights while fighting terrorism, an area of research that stretches far back in Amnesty's nearly 60-year history. While it is important to acknowledge the specific challenges posed by international terrorism, it is crucial to recognize that the phenomenon of political violence directed at the state and often targeting innocent civilians has long historical roots.

In that regard, States are obligated to support the victims of such violent attacks and their families with comprehensive assistance programs that address victims' rights to commemoration; humane treatment; ongoing medical, psychological, social and material assistance; access to information, truth and justice; and effective remedies, including reparations.

It is axiomatic that States must protect people present on their territories from such wanton violence. Upholding the right to life and enabling people to move freely and think freely are essential tasks for any government. But they are not tasks that should be achieved by any means. Crucially, they are not tasks that should or can be achieved by riding roughshod over the very human rights that governments are legally obligated to uphold.

A key question for today's session asks if and how OSCE participating States comply with their obligations to counter terrorism and "violent extremism and radicalization leading to terrorism (VERLT)", while at the same time complying with their international human rights commitments. It is unfortunate to report that the vast majority of States in the OSCE region routinely and increasingly violate people's human rights in the name of national security. While the most draconian deviations from rights protections often happen in the context of a formally declared **state of emergency** -- typically invoked after a violent attack -- we see across the region emergency-type measures being embedded in ordinary criminal law. This and other legislative and policy initiatives in the name of national security have seriously eroded human rights protection across the OSCE.

Instead of embracing the principle that human rights and security are mutually reinforcing, States far too often invoke national security to target human rights defenders, journalists, social media influencers, artists, environmental and other activists, and religious and ethnic minorities. Violent attacks thus produce different sets of victims: those killed or injured in such attacks and their families -- and those targeted by counter-terrorism measures that violate their human rights, including the right to life; the prohibition against torture and other ill-treatment; and the rights to liberty and security of person, freedom of expression, association, movement, privacy, and non-discrimination.

A core problem in the counter-terrorism context is the issue of definitions. These words -- "terrorism", "violent extremism", and "radicalization" -- have no universally agreed definitions. That leaves these concepts open to broad interpretation and application, and indeed to misapplication and abuse. Since late 2001, there has been a proliferation of new laws and policies -- many mandated by the UN under security council resolutions or by EU directives, for example -- that have chipped away at the edifice of international rights protections so carefully constructed over the last half century.

Such overly broad and vague counter-terrorism laws are increasingly -- and deliberately -- used by States to target civil society. In her March 2019 report, *Impact of measures to address terrorism and violent*

extremism on civic space and the rights of civil society actors and human rights defenders, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism presents a rigorous analysis of how the continual expansion and proliferation of security measures – and their deliberate misuse and misapplication -- are “indisputably linked” to the **shrinking of space for civil society**. A particularly sobering example of this link is the fact that since the inception of the Special Rapporteur’s mandate in 2005, a full 66% of all relevant communications to UN member states by the respective mandate holders have related to States targeting civil society actors with broadly defined security-related measures, and/or laws and policies allegedly intended to prevent and counter violent extremism. According to the Special Rapporteur, “This robust empirical finding measured from 2005 to 2018 affirms that the targeting of civil society is not a random or incidental aspect of counter- terrorism law and practice. It suggests the hard-wiring of misuse into counter-terrorism measures taken by States around the globe.”

Being identified or labeled as a terrorist or violent extremist or a person who has been radicalized on the basis of such broad and vague laws can also have knock-on effects that affect families and entire communities due to a “**guilt by association**” approach. While this is true to various degrees across the OSCE region, it is especially acute in the east, where families of suspected members of “terrorist” and alleged “extremist” groups are publicly shamed, attacked by mobs, and beaten (including children and elderly relatives). In some cases, homes and properties have been attacked and confiscated by the authorities, people have been summarily dismissed from their jobs, and some have been **detained and tortured or otherwise ill-treated** to attempt to compel them to incriminate their relatives. In other cases, family members in a country are targeted and abused to compel a person outside the country to return home.

In terms of deportation and extraditions, Amnesty International has documented numerous cases where European States have forcibly returned alleged national security suspects to other OSCE participating States where those individuals have faced a real risk of torture and other ill-treatment upon return. The **principle of nonrefoulement** has been systematically undermined across the region in the name of

national security, despite the fact that the prohibition against torture is absolute and allows for no exceptions, including on grounds of national security or public order. Indeed, States to the east of the OSCE region continue to employ **torture** to extract confessions from persons alleged to be threats to national security. Such evidence is often admitted into evidence in trials, in clear violation of the prohibition against torture and the imperative to exclude from consideration in criminal proceedings evidence extracted under torture.

People across the OSCE region are also increasingly identified by law enforcement as potential threats or as “extremists” for exercising their **freedom of expression**, often on social media platforms, which are increasingly monitored by the State and private tech companies. In many cases, speech and other forms of expression that governments have determined are not in conformity with a country’s “values” or that are considered “affronts to national dignity” have been targeted. Laws that criminalize such speech -- or so-called glorification or apology of terrorism -- often encompass expression that is lawful. Such speech may be offensive or disrespectful or controversial, but unless it amounts to incitement to violence or constitutes unlawful hate speech, it is protected under States’ international human rights obligations. Government and private tech companies must adhere to such international standards to protect freedom of expression and the right to privacy.

People subjected to counter-terrorism measures in OSCE participating States are often targeted in violation of the **principle of nondiscrimination**. Our research indicates that counter-terrorism measures in place in many OSCE member states have proven to be discriminatory on paper and in practice, and specifically have had a disproportionate and profoundly negative impact on Muslims, certain ethnic groups, foreign nationals, and refugees and migrants fleeing violence or economic deprivation. For example, many States in the OSCE region have adopted laws that allow authorities to apply **administrative measures that restrict people’s freedom of movement and association** (that is, by requiring people to reside only in a certain neighborhood, abide by a daily curfew and/or report to the police on a regular basis) but without ever charging them with a

recognizable criminal offense. Our research reveals that the vast majority of persons subjected to such controls are Muslims or persons perceived as Muslim and that the outward manifestation of religious practice – not reasonably suspected criminal activity -- often serves as the basis for the restrictive administrative measure.

In addition to the key rights concerns noted thus far, the **return of foreign fighters** from the conflicts in Iraq and Syria also raises a set of complex human rights problems. In this regard, ODIHR is to be commended for publishing its useful “Guidelines for Addressing the Threats and Challenges of ‘Foreign Terrorist Fighters’ within a Human Rights Framework” in 2018.

It is fundamental for Amnesty International that any person – *whether foreigner or national* -- reasonably suspected of having committed war crimes or crimes under international law in those conflicts be investigated, and if credible admissible evidence is produced, **prosecuted in proceedings that conform with international fair trial standards, and excluding the death penalty**. Amnesty International has serious concerns that fair trials with no application of the death penalty cannot be executed in either Iraq or Syria at the moment, and has therefore called on the international community to work collectively to ensure that perpetrators of crimes in those conflicts **do not enjoy impunity** but also receive fair process.

Persons under the age of 18 who have engaged in hostilities, whether nationals of Syria or Iraq or foreigners, should be treated as children in conformity with the “**best interest of the child**” standard and afforded treatment and process that conform with international juvenile justice standards and other relevant international standards and guidelines, for example those regarding the treatment and rehabilitation of child soldiers.

As for foreign nationals who remain in camps or facilities in Iraq and Syria, they should be notified of their **right to seek consular assistance** from their home governments, and the authorities should facilitate meaningful and effective access to such assistance.

We call on OSCE participating States to **provide consular assistance** to their nationals who are detained in Syria and Iraq, including by providing legal representation where necessary (for example, to have access to an adequate defence and obtain evidence in the country of origin); visiting their nationals in detention, including for protection against torture and other ill-treatment; and monitoring their trials. Where detainees face the **death penalty**, states should take all reasonable steps to ensure that the death penalty is not imposed or executed, including by providing adequate consular assistance to the detainee and through the use of diplomatic channels.

The status of foreign children must be carefully considered. It may be presumed that it is likely to be in their best interests to return or be transferred (in case of children born abroad) to their country of origin or habitual residence of one of their parents. In such cases, and especially when a request for repatriation/transfer has been made, “home” **states should facilitate the return of the child**, taking into consideration their obligations to respect the right to family life and the right of the child not to be separated from his or her parents against their will except in the most exceptional cases.

Women who are foreign nationals and allegedly associated Islamic State are currently formally detained in Iraq and are also in *de facto* detention in camps in Syria. The situation of many of these women is dire and the following principles should apply to them. None of them should be deprived of their liberty or otherwise punished solely on the basis of either their relationship with individuals suspected of involvement with Islamic State, or their irregular entry into a territory (e.g. Iraq or Syria). Where the authorities nevertheless do prosecute individuals because of their alleged association with IS (e.g. for crimes of membership of IS, or illegal entry), and those individuals raise **allegations of coercion** -- such as having been forced to travel to or stay in IS-held territory, or subjected to psychological and physical abuse, including rape and other sexual violence – then those allegations must be fully and effectively investigated. This obligation is particularly relevant in cases against women, given the disproportionate incidence of abuse and coercion affecting women in IS-held territory.

In addition to the substantive issues noted here, a final brief comment regarding the OSCE's terrorism/counter-terrorism architecture and engagement with civil society. It is of utmost importance that the units in Vienna, in particular the Action against Terrorism Unit, incorporate a human rights perspective in their work by regularly partnering with human rights NGOs and experts. We understand that there is cooperation between Vienna and ODIHR, but ODIHR's resources for work on counter-terrorism and human rights are small and stretched. OSCE participating States should ensure that resources in ODIHR for dedicated work on counter-terrorism and its impact on human rights protection is secured, and that civil society actors and organizations expert in the promotion and protection of human rights are regularly engaged both in Vienna and in Warsaw.

Thank you for this opportunity to share Amnesty International's research and analysis on counter-terrorism and its impact on human rights. I look forward to the impending interventions and discussion.