

Forum: Economic and Social Council (ECOSOC)

Issue: The protection of human rights in the context of terrorism and counter-terrorism*

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Introduction

Security of individuals is a basic human right and also the protection of individuals is an elementary obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to safeguard them against the threat of terrorist acts and bringing the criminals of such acts to justice.

In recent years, however, the measures adopted by States to counter terrorist act have themselves often posed serious challenges to human rights and also the rule of law. Some States have engaged in torture and other such ill-treatments to counter terrorism, while the legal and practical safeguards prevent torture through regular and independent monitoring of detention centers, and have often been disregarded. Other States have returned persons suspected of practicing in terrorist activities to countries where they face a real risk of torture or other serious human rights abuses, thereby violating the legal obligation of non-refoulement. Restrictive measures have been used to shut the voices of human rights defenders, journalists, minorities, indigenous groups and civil society.

The United Nations Office on Drugs and Crime is a mandated to provide help to requesting countries within the legal and criminal justice aspects of countering acts of terrorism. A Terrorism Prevention Branch is assisting countries to formalise their international legal structures against terrorism as well as incorporate their provisions in the national legislation to build the capacity of the national criminal justice system to be implement effectively, in accordance with the rule of law and the National human rights.

In order to accelerate the promotion of Human Rights and maximize the human rights related impact of its work, UNODC is currently working on developing a Human Rights Planning Tool. This tool will guide UNODC programme members through a structured process to identifying human rights that are relevant to a particular country or programme in context, which in turn will help determine the possible human rights outcomes for planned programme activities. Whilst it is important to carry out a human rights analysis in the member states before the implementation of such human rights tools.

Respect for human rights must be the bedrock of this worldwide fight against terrorism. This requires the development of national counter-terrorism strategies that prevent acts of terrorism, prosecute those chargeable for such criminal acts, and promote and protecting shield human rights. It implies measures to address the conditions conducive to the spread of terrorism, including the lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, and socio-economic marginalization; to foster the active participation and leadership of civil society; to condemn human rights violations, promptly investigate and prosecute them, and prevent them; and to administer due attention to the rights of victims of human rights violations, through restitution and compensation.

Definition of Key Terms

Human Rights

The basic rights which all human beings are fundamentally entitled to regardless of nationality, gender, religion or social status. These rights are enforced universally.

Terrorism

It's an act involving violence which is threatening to human life or any attempts to influence government policies through destruction.

Counter-terrorism

The use of military and political strategies to fight against acts of terrorism. Counter-terrorism attempts to make citizens secure may include: tighter security at airports, placing cameras and metal detectors in public areas, and the introduction of bomb-sniffing dogs.

Incommunicado detention

Persons being held in a manner in which communication with outsiders is not possible.

Background Information

Counter-terrorist measures still violate human rights in several countries. While some of these concerns are not new, they have taken on an additional multinational and globalized dimension to counterterrorism since the terrorist attacks of September 11, 2001, posing new challenges for the U.N. human rights observation system. Abuses include prolonged, incommunicado detention without judicial review; the transfer, return, surrender and expulsion of persons in danger of being subjected to torture; and therefore the adoption of security measures that curtail the right to freedom of association and breach the principle of non-discrimination. During 2003, for instance:

- A study in 2009, conducted by the University of North Carolina stated that counter-terrorism tactics, such as extrajudicial killings, torture, forced disappearances, and Incommunicado detention are, in fact, themselves acts of terror. When counter-terrorists use the tactics of terrorists in order to counter terror, they descend to their moral level and just add more terror to the world. Hence such Inhumane treatments should not be practiced.
- In November, Malaysia passed new counter-terror laws (Under the legislation suspects can be held without trial for up to 2 years, with multiple extensions allowed after that. Decisions on their detention are going to be created by a terrorist act board, instead of the judiciary. This was widely criticized by local human rights teams for being vague and overbroad, thus putting in dangers the rights of free expression, association, and assembly.
- In November, a Canadian-Syrian national, Maher Arar, alleged public that he had been tortured in a Syrian prison after being handed over to the Syrian authorities by U.S. officials who had detained him while in transit through New York.

Pillar IV of the UN global counter-terrorism strategy

A Counter-Terrorism Implementation Task Force, established by the UN Secretary-General, has an important role in ensuring the coordination of efforts across the UN system. UNODC is an active member of this Task Force. The Office is leading the development of an online information exchange system to enhance cooperation of counterterrorism among the various UN-systems providing assistance to Member States for the implementation of the Strategy. The international community have negotiated and agreed upon 13 universal legal instruments for the prevention and suppression of terrorism between 1963 and 2005. Nonetheless, the efficacy of these legal instruments rests on the effective implementation and ratification globally.

Measures to ensure respect for human rights for all and the rule of law is the fundamental basis of the fight against terrorism. In Keeping with, Secretary-General Ban Ki-Moon, the Global Strategy “underlines that effective counter- terrorism measures and the protection of human rights are not conflicting goals, but mutually reinforcing.” A variety of states have failed to uphold human rights while implementing their counterterrorism obligations. Therefore, the Office of the High Commissioner for Human Rights (OHCHR) leads the working group, the group works towards this goal by facilitating the exchange of data on human rights issues within the context of counterterrorism, by promoting best practices, and by developing practical and sensible tools to assist states.

International human rights law

International human rights law is reflected in an exceedingly variety of core international human rights treaties and in customary international law. Moreover, some rights are recognized as having a special status as norms of jus cogens (peremptory norms of customary international law), which suggest that there aren't any circumstances whatsoever in which derogation from them is permissible. The prohibitions of torture, slavery, genocide, discrimination and crimes against humanity, and therefore the right to self-determination are widely recognized as peremptory norms. The International Law Commission also lists the essential rules of international humanitarian law applicable in armed conflicts, the Human Rights Committee has brought up absolute deprivation of life, torture and inhuman and degrading treatment, hostage-taking, collective punishment, arbitrary deprivation of liberty, and violations of certain due process rights as non-derogable.

Geneva Convention (III)

The requirement that protected persons must at all times be humanely treated is the basic theme of the Geneva Conventions. The expression "humanely treated" is taken from the Hague and the two 1929 Geneva Conventions. The word "treated" should be understood here in its most general sense as applying to any or all aspects of life. With reference to the conception of humanity, the aim of the Convention is to define the correct way to behave towards a human being; every individual is desirous of the treatment corresponding to his social status and can therefore judge how he should, in turn, treat his fellow mates. The requirement of humane treatment and therefore the prohibition of certain acts inconsistent with it are general and absolute in character. They're valid at all times, and apply, for instance, to cases where inhibitory measures are legitimately imposed on a protected person, since the dictates of humanity should be respected even if measures of security or repression are being applied. The obligation remains fully valid in relation to persons in prison or interned, whether in the territory of a Party to the conflict or in occupied territory. In such situations, when human values appear to be in greatest peril, that the provision assumes its full importance.

25th Session of the Commission on Crime Prevention and Criminal Justice (CCPCJ)

UNODC, together with the Governments of Canada, Norway, Qatar and Switzerland organized a conference on the challenges faced by a number of countries regarding the recruitment of terrorist groups, and their treatment by the justice system. The purpose of the event was to raise awareness on violent extremist groups, while emphasizing that children are often both victims of extremist violence as well as be used by such groups to perpetrate serious offences, including acts of terrorism, war crimes or crimes against humanity.

Major Countries and Organizations Involved

Syria

Violence in Syria has continued amid the ongoing international efforts to implement a ceasefire in talks brokered by Russia, Turkey, and Iran and parallel talks sponsored by the United Nations. Government forces and their allies carried out deliberate and indiscriminate attacks on civilians. Incommunicado detention and torture remain unchecked and are increasing within the state. Armed groups opposing the government have attacked civilians, used child troopers, kidnapped, and tortured them. The extremist group Islamic State (ISIS), and Al-Qaeda's affiliate in Syria were responsible for targeting, kidnappings, and executing civilians. According to local Syrian groups, as of February 2016, the conflict's death toll rises to 470,000 people. According to the UN, about 6.3 million people are internally displaced and 5 million refugees in neighboring countries.

Algeria

Despite the Algerian government's promises in 2011 to introduce reformed human rights, Algeria has made little progress since then on improving human rights. Authorities limit free speech and the rights to freedom of association, assembly, and peaceful protest. They also arbitrarily arrest and prosecute political and trade union activists. Perpetrators of torture, enforced disappearances, unlawful killings, and other serious human rights abuses are being committed. The Algerian government blocks the registration of Algerian nongovernmental human rights organizations and has maintained its non-cooperation with UN human rights experts.

Kenya

On September 1, Kenya's Supreme Court nullified 2017, elections in which the Independent Electoral and Boundaries Commission (IEBC) had declared President Uhuru Kenyatta the winner with over 54 percent of votes. In compliance with the court orders, the IEBC has now scheduled fresh elections for October 17. The elections were marred by serious human rights violations by Kenyan security forces, who used excessive force to break up protests and carry out house-to-house operations particularly in opposition strongholds in Nairobi and western Kenya. At least 12 people were unlawfully killed by police in western counties of Kisumu and Siaya alone during the violence. Over the past five years, Kenyan authorities have consistently failed to adequately investigate a range of abuses across the country and threaten the basic rights of the citizens.

United Nations Office on Drugs and Crimes

Since the launch of the Global Project on Strengthening the Legal system against Terrorism in January 2003, the UN Office on Drugs and Crime (UNODC), through its Terrorism Prevention Branch

(TPB), has delivered various forms of counterterrorism assistance which are aimed at helping countries join and implement the various UN treaties dealing with different types of terrorism. This assistance includes regional, subregional, and national workshops for criminal justice practitioners.

TPB is among the few multilateral work forces which provide counterterrorism-specific training and other forms of assistance. Largely through its different workshops, including 63 sub-regional and regional ones between 2003 and 2008, TPB indirectly or directly are supporting more than 160 nations in implementing and ratifying the universal instruments and is also strengthening the capacity of national criminal justice systems to implement their provisions.

Relevant UN Treaties and Events

- Protection of Civilians in Armed Conflict, 19 April 2000 (S/RES/1296)
- Geneva Convention III, August 1949
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, 14 December 1973
- International Convention against the Taking of Hostages 17 December 1979
- Convention on the Prevention and Combating of Terrorism, 1999
- International Convention against the Taking of Hostages, 1979
- The United Nations Global Counter-terrorism Strategy, 2006

Previous Attempts to solve the Issue

Previously in April 2013, the Working Group launched its global project called Capacity Building and Training of Law Enforcement Officials on Human Rights, the Rule of Law and the Prevention of Terrorism that seeks to train law enforcement officials in charge of counter-terrorism on human rights. As a result of two mapping and needs assessment workshops in Amman, Jordan in April 2013, and in Ouagadougou, Burkina Faso in October 2013 the CTITF Working Group has been working to develop a training curriculum that will consist of seven thematic modules, including on the international legal framework, detention practices, use of force, and special investigative techniques. Training has already been undertaken in Nigeria and it is anticipated that the next trainings will be held in Tunisia, Iraq, and Jordan.

Possible Solutions

The first steps towards protecting human rights in context to Counter Terrorism is by Establishing a special monitoring mechanism on human rights and counterterrorism to examine the effect of counter-terrorism measures, law and practices on human rights in countries worldwide and make specific and timely recommendations to states on safeguarding human rights while combating terrorism.

Secondly, to establish a new committee of Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, who operate to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms. The Special Rapporteur will also address allegations of human rights violations in the course of countering terrorism and conducts visits to selected individual countries and reports regularly.

Thirdly, we could design a counterterrorism assistance programs to include significant support for international human rights norms and standards in partner countries, and human rights training for police and military forces. This support must include: helping partner agencies create a complaint and review boards, and civilian oversight mechanisms; assisting independent national human rights institutions and independent civil society organizations to oversee their country's' counterterrorism policy

Fourthly, Design A counterterrorism assistance programs to include significant support for rule-of-law institutions in partner countries, as well as include human rights training for military and police forces. This support should include, helping partner agencies create a mechanisms analogous for the uniformed military corps, a complaint and review boards, and civilians who oversight this mechanisms; must help in assisting independent national human rights institutions and independent civil society organizations to oversee their country's counterterrorism policies; increasing the judicial capacity of partner nations to hold their counterterrorism operations accountable for human rights abuses they commit; and if an human right abuses are committed they must be referred to the International Court of Justice (ICJ).

Another solution is to expand the available resources to local civil society groups and other community-based organizations to counter violent extremism and develop a program designed to counter such acts of terrorism through nonviolent means, this plan must be implemented by those local groups involved in counterterrorism. Countering Violent Extremism aims to reduce the number of terrorism supporters by addressing the reasons people become attracted to terrorism: poor social, institutional and economic conditions, and the influence of terrorist leaders who promise to improve these conditions of new recruits lives. Through dialogue, education and the support and leadership of local communities, this can be critical in stopping the growth of terrorist organizations, tackling the originator of such violent extremism, which are terrorist groups.

States should adopt national preventive policies as part of their counter-terrorism efforts. Among these policies figure those that should promote tolerance by encouraging interreligious and cross-cultural dialogue, involving NGOs, with a view to preventing tensions capable of contributing to the commission of terrorist offences. Such policies should also provide for the effective elimination of discrimination, especially on ethnic or religious grounds, in law and practice, and ensure that their security service systems comply with human rights requirements.

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