

The effects of terrorism and counter-terrorism measures on the enjoyment of children's rights

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With terrorist acts making the news almost every day, the threat of terrorism and the means to fight it are becoming a key concern for policy makers, law enforcement agencies and the population at large. Governments have a responsibility to protect those within their jurisdiction from terrorist attacks. However, any attempt to counter terrorism raises the question of its compatibility with international human rights law and standards. Often, government responses to fear of terrorism and radicalisation result in excessive measures that infringe human rights, be it through a vague or overbroad definition of terrorist acts or by granting excessive powers to law enforcement agencies. The Human Rights Council, in its resolution 31/30, recalls that “the objectives of countering terrorism and of the protection and promotion of human rights are not conflicting but complementary and mutually reinforcing”.

Terrorism has devastating consequences on civilians, often directly impacting the enjoyment of all human rights and fundamental freedoms. But the impact of terrorism and counter-terrorism measures on children are heightened on account of their age and the fact that they are simultaneously left out of the debates around preventing terrorism and radicalisation.

Children's right to privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his or her honour and reputation. Article 16 of the Convention on the Rights of the Child (CRC) establishes children's right to privacy. This applies to all settings of children's lives and to all circumstances, including their relationships and communications with others, medical advice and treatment, counselling and surveillance. This includes the right to control personal data collection, retention, processing, dispersal and disclosure. It requires States to ensure children have knowledge of any information stored about them and who has control of it, access and a say in who else can access that information.

While the surveillance of the communications of targeted individuals and organisations based on prior suspicion requires some form of prior authorisation, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

explains in his report on the use of mass digital surveillance for counter-terrorism purposes and the implications of bulk access technology for the right to privacy under article 17 of the ICCPR: “The dynamic pace of technological change has, however, enabled some States to secure bulk access to communications and content data without prior suspicion. [...] By placing taps on fibre-optic cables through which the majority of digital communications travel, relevant States have thus been able to conduct mass surveillance of communications content and metadata, providing intelligence and law enforcement agencies with the opportunity to monitor and record not only their own citizens’ communications, but also the communications of individuals located in other States.”¹

With the issue of children being lured to Syria or Iraq becoming so prominent, society’s fear of children being ‘radicalised’ is growing and often results in excessive measures. Government have begun surveilling children’s internet usage and monitoring their activities and behavior at school to identify any possible ‘radicalisation’.

These measure clearly may violate the rights recognised in article 16 of the Convention of the CRC that guarantees children’s right to privacy and article 17 of the ICCPR that provides that any interference with private communications must be prescribed by law, and must be a necessary and proportionate means of achieving a legitimate public policy objective. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism explains that “[m]erely to assert — without particularisation — that mass surveillance technology can contribute to the suppression and prosecution of acts of terrorism does not provide an adequate human rights law justification for its use.”

The UK for instance is using software developed by the Israeli Intelligence Services to monitor children’s online activities in schools for ‘counter-radicalisation’ purposes. As part of the UK’s Prevent strategy, teachers and childcare providers have a statutory duty to report children who seem to be at risk of ‘radicalisation’ based on their perceived association with extremism. A rights group recently published a report finding “that the Prevent strategy is serving to clamp down on open expression and debate in classrooms particularly among Muslim children who are disproportionately impacted by Prevent and fear being reported for expressing their political and religious views [...and] that children are being referred to Prevent on the basis of arbitrary decisions by teachers and other education professionals who receive inadequate training and guidance but are anxious to be seen to be complying with the statutory duty.”²

In France, schools are the object of increasingly heavy-handed security measures, including surveillance cameras, searches of students’ bags and forbidding students to gather at the

¹ Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, annual report to the General Assembly on the use of mass digital surveillance for counter-terrorism purposes, A/69/397, 23 September 2014, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/545/19/PDF/N1454519.pdf?OpenElement>.

² Rights Watch UK, Preventing Education: Human Rights and UK Counter-Terrorism Policy in Schools, June 2016, available at: <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf>.

school entrance.³ Teachers have been encouraged to spot possible situations of radicalisation of students and report them since mid-2014. This has in some instances led local authorities to be overzealous, by asking school staff to report an increasingly wide range of facts and behaviours, based on dubious criteria.⁴ A zero-tolerance policy towards statements making the apology of terrorism (a criminal offence in France) led to complaints being brought against young children. In one instance, a child aged 8 was heard at a police station after his school principal reported him for refusing to observe a minute of silence.⁵

In Australia, after 15-year-old Farhad Khalil Mohammad Jabar was shot dead for attacking and killing a police officer, the country has developed what is being referred to as a “fifth instalment of counter-terrorism laws”. This includes extending control orders – a mechanism for monitoring the lives of individuals who have not been charged with a criminal offence – to children as young as 14 (at present the age limit is 16).⁶

Children returning home

Terrorist organisations have long used the internet to recruit globally for their cause, but the popularity of social media platforms like Twitter, Facebook and Youtube among children has provided groups like the so-called Islamic State (IS), Al Nusra and Al Qaeda with a wider audience. As a result, children fall victims of recruitment in new ways as these groups have succeeded in recruiting children from around the world. Over the last few years there has been a large number of cases in the western media concerning the issue of children returning, or wanting to return home and the fear of being prosecuted as terrorists for their possible involvement with these armed groups.

Leila Zerrougui, the Special Representative of the Secretary-General for Children and Armed Conflict, in her 2015 annual report to the UN Human Rights Council, recommended that States

³ Bancaud, Delphine, Comment renforcer les mesures de sécurité dans les écoles?, 20 Minutes available at: <http://www.20minutes.fr/societe/1912243-20160823-comment-renforcer-mesures-securite-ecoles>.

⁴ See for instance : Battaglia, Mattea, L'académie de Poitiers fait polémique avec son précis anti-radicalisation, Le Monde, 24 November 2014, available at: http://www.lemonde.fr/education/article/2014/11/24/l-academie-de-poitiers-fait-polemique-avec-son-precis-anti-radicalisation_4528573_1473685.html#GqIbfPvUbZtmgi78.99 ; Guichard, Mourad, Dans le Loiret, l'Education nationale rêve d'un fichage des parents, Libération, 1 December 2015, available at: http://www.liberation.fr/france/2015/12/01/dans-le-loiret-l-education-nationale-reve-d-un-fichage-policier_1417561.

⁵ Pottier, Jean-Marie, Apologie du terrorisme: « Non seulement cette répression absurde est inutile, mais elle est dangereuse », Slate France, 29 January 2015, available at: <http://www.slate.fr/story/97365/apologie-terrorisme-repression-inutile-dangereuse>.

⁶ Syfret, Wendy, “Australia's Proposed New Counter-Terror Laws Will Target Teenagers”, Vice Australia, 13 October 2015, available at: <http://www.vice.com/read/proposed-new-counter-terror-laws-will-target-teenagers-vqtrn>

always treat children associated with armed groups primarily as victims and to use deprivation of liberty as a last resort and for the shortest time possible.⁷

The case of two Austrian girls, Sabina Selimovic, 15 and Samara Kesinovic, 16 is a prime example of the risks children face when they want to return home. Samara and Sabina ran away from their parents' homes in Vienna, Austria in April 2014. It is believed that the girls later married Chechen fighters and fell pregnant before contacting their parents, expressing the desire to return home to Austria. However, Austrian officials clearly said that "[o]nce they leave, it is almost impossible [to return home]."⁸ Since then, a UN expert has stated that one of the girls "was killed in the fighting in Syria, the other has disappeared."⁹

This issue is further heightened when considering the criminalisation of certain acts under domestic laws. For example under the French Criminal Code "participation in any group or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism" amount to crimes of terrorism, regardless of whether any action is taken or not.¹⁰ Recently two children aged 15 and 16 were prosecuted before a juvenile court for "participation in a terrorist group" after they came back from Syria and received a suspended six months sentence.¹¹ The prosecutor refused the defense's argument to treat the defendants under the protections due to child soldiers.

In a recent case in Tajikistan, a boy received a sentence of 10 years and six months of imprisonment for incitement to join the ranks of IS.¹²

The Human Rights Council, in its resolution 31/30, "urges States to adopt rehabilitation and reintegration strategies for returning foreign terrorist fighters, in line with the good practices set out in the Hague – Marrakech Memorandum of the Global Counterterrorism Forum, and to adopt a comprehensive approach that includes the development of national centres for counsel and de-radicalisation that can play an important role along with criminal justice responses [...]." Any juvenile justice system should be purely directed at rehabilitation and reintegration - and this should apply to all under-18s, not just to some. Countries like Denmark have successfully

⁷ Leila Zerrougui, Special Representative of the Secretary-General for Children and Armed Conflict, Annual report to the United Nations Human Rights Council, A/HRC/31/19, 29 December 2015, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/19&Lang=E&Area=UNDOC.

⁸ McElroy, Damien, "Austria teenage girl jihadist 'want to come home' from Isis", The Telegraph, 10 October 2014, available at: <http://www.telegraph.co.uk/news/worldnews/europe/austria/11154939/Austria-teenage-girl-jihadis-want-to-come-home-from-Isil.html>

⁹ Dassanayake, Dion, "One of two Austrian teens who fled to Syria to fight with IS 'killed' while other 'missing'", Express UK, 18 December 2018, available at: <http://www.express.co.uk/news/world/547633/Islamic-State-Samra-Kesinovic-Sabina-Selimovic-dead-missing>

¹⁰ Chatham House, Legislating Against Terrorism – The French Approach, December 2005.

¹¹ Le Monde.fr, "Six mois avec sursis pour deux adolescents toulousains partis en Syrie", Le Monde, 29 June 2016, available at: <https://www.crin.org/fr/biblioth%C3%A8que/archives-des-actualit%C3%A9s/france-six-mois-avec-sursis-pour-deux-adolescents-partis-en>

¹² Regnum, "В Таджикистане впервые осудили школьника за пропаганду экстремизма", 4 August 2016, available at: <https://regnum.ru/news/accidents/2163156.html>

implemented rehabilitation programmes for children attempting to return home from Syria and Iraq where they are assigned mentors who help them go back to their previous lives.¹³

Even in cases of severe offences committed by children, detention should be the exception and should be outweighed by the interest of safeguarding the well-being and development of the child, in line with article 3 of the CRC that states that the child's best interests must be a primary consideration in all actions affecting children and article 6 that recognises the child's right to maximum possible development. The World Report on Violence against Children, issued following the UN Secretary General's Study, urged governments "to ensure that detention is only used for child offenders who are assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time, and following judicial hearing, with greater resources invested in alternative family-and community-based rehabilitation and reintegration programmes".

Hate speech

The language used to describe or refer to a given community, in this case mostly the Muslim and migrant community, has an impact on how they are perceived and treated. Language is a powerful tool that can sway public opinion on social issues; and the language used in the coverage of and commentary on terrorist acts in parts of the world is no exception.

The number of attacks on the Muslim community in Europe has dramatically increased since the Paris attacks in November 2015. In the UK, a report to the government's working group on Islamophobia shows a 300 percent rise in hate crime incidents, particularly affecting women and girls aged between 14 to 45.¹⁴ Many of those attacked have said that no one came to their assistance and that they felt victimised, embarrassed, alone and angry following the incidents. Meanwhile in France, Muslims are also facing a groundswell of distrust and hostility, as many Muslim parents have expressed concern for their children's safety, even resorting to keeping them from going out unnecessarily and asking them to downplay their religious identity when in public.¹⁵

In the context of the current refugee crisis in Europe, some of the language used by the media and politicians to refer to migrants is deprecating and arguably borders on hate speech. In the UK, for example, politicians referred to the "need to protect our borders" from "swarms" of

¹³ Slavin, Barbara, "Can returned extremist fighters be rehabilitated?", Al Monitor, 22 February 2015, available at: <http://www.al-monitor.com/pulse/originals/2015/02/syria-foreign-fighters-white-house-conference-extremism.html>

¹⁴ Wright, Oliver, "Paris attacks: Women targeted as hate crime against British Muslims soars following terrorist atrocity", The Independent, 22 November 2015, available at: <http://www.independent.co.uk/news/uk/home-news/paris-attacks-british-muslims-face-300-spike-in-racial-attacks-in-week-following-terror-a6744376.html>

¹⁵ Mangla Ismat, Sarah and Ward Marguerite, "French Muslim Parents, Terrified Of Backlash, Urge Their Children To Stay Indoors, Downplay Religious Identity", International Business Times, 19 November 2015, available at: <http://www.ibtimes.com/french-muslim-parents-terrified-backlash-urge-their-children-stay-indoors-downplay-2192505>

“marauding migrants”.¹⁶ Also on the UK, the UN High Commissioner for Human Rights compared language used by tabloid newspaper The Sun, which advocated using gunboats to stop migrants, with anti-Semitic language used by the Nazi media in the 1930s¹⁷ - the trigger for article 20 of the ICCPR (prohibition of incitement to hatred), and elements relating to hate speech in the International Convention on the Elimination of All Forms of Racial Discrimination.

In the current context, it is crucial that States adopt comprehensive anti-discrimination legislation that includes preventive and punitive action to combat incitement to hatred. Any new policies should guarantee freedom of expression in line with article 19 of the ICCPR on freedom of expression, read in conjunction with article 20 prohibiting hate speech. States should also be reminded to put in place measures to implement the recommendations of the 2012 Rabat Plan of Action, adopted in the context of international discussions on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹⁸

¹⁶ Perraudin, Frances, “‘Marauding’ migrants threaten standard of living, says foreign secretary,” *The Guardian*, 10 August 2015. Available at: <http://www.theguardian.com/uk-news/2015/aug/09/african-migrants-threaten-eu-standard-living-philip-hammond>

¹⁷ Office of the UN High Commissioner for Human Rights, ‘UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called “cockroaches”’ - Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E>

¹⁸ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, ‘Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR,’ in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012. Available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf