

## Briefing from OHCHR to the Human Rights Council Advisory Committee

### Negative effects of terrorism on human rights

*8 August 2017, 3:00 p.m.*

*Room XX, Palais des Nations*

#### OHCHR's mandate

- **OHCHR's work** on the protection and promotion of human rights and the rule of law in the context of counter-terrorism falls under the general mandate of the Office, and has also been further developed by the General Assembly and the Human Rights Council.
- OHCHR's general mandate to promote and protect human rights encompasses all contexts in which human rights are affected, including the context of terrorism and counter-terrorism measures. This includes:
  - its work in support of standard setting (support to treaty bodies and human rights mechanisms in general)
  - advocacy for human rights which includes research, public information, education, public
  - monitoring of human rights situations aimed at supporting efforts to enhance the enjoyment of human rights of all
  - support to the implementation of human rights norms and standards, to make sure that they are translated from aspirations to tangible transformations in people's lives.
- OHCHR also supports the mandate of the **Special Rapporteur** on the protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur has prepared a number of reports for the Human Rights Council on emerging challenges to ensure human rights while counter-terrorism and has made recommendations that you might wish to review to prepare your report. All available in the website.
- There are also a number of **resolutions from the General Assembly and the Human Rights Council** that make general and specific requests to OHCHR to further its work on the protection of human rights in the context of terrorism and counter-terrorism.

The latest GA resolution on the protection of human rights and fundamental freedoms while countering terrorism, for example, requested OHCHR and the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism

“to continue to contribute to the work of the Counter-Terrorism Implementation Task Force (CTITF), including by raising awareness, inter alia, through regular dialogue, about the need to respect human rights and the rule of law while countering terrorism and support the exchange of best practices to promote and protect human rights, fundamental freedoms and the rule of law in all aspects of counter-terrorism.”

It also encouraged the Security Council and the Counter-Terrorism Committee

“to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the High Commissioner, the Special Rapporteur, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism”.

### ***International legal framework***

- There is **no general international convention on terrorism**, despite efforts for over 20 years. Negotiations on the Comprehensive International Convention on Terrorism started in 1996. The deadlock is around the definition of terrorism. [*notably, whether definition can apply to national security forces and national liberation movements*]
- However, there are **19 international treaties** on aspects of terrorism covering:
  - Civil aviation
  - Crimes against international staff
  - Taking of hostages
  - Nuclear material
  - Maritime navigation
  - Explosive materials
  - Terrorist bombings
  - Financing of terrorism
  - Nuclear terrorism

Some of these international treaties came out of the frustrated negotiations on the Comprehensive Convention on Terrorism.

- The **international covenants** on civil and political rights, and on economic, social and cultural rights, and all the other human rights international instruments, also apply in the context of terrorist acts.

### ***Global Counter Terrorism Strategy***

- In the context of terrorism, a particularly important international document is the ***UN Global Counter Terrorism Strategy***, adopted by consensus by all Member States in 2006. It sets the general framework of the global efforts to coordinate and prioritise counter terrorism efforts. The Strategy is organized along 4 pillars:
  - i) **Pillar I:** Measures to address the conditions conducive to the spread of terrorism
  - ii) **Pillar II:** Measures to prevent and combat terrorism
  - iii) **Pillar III:** Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard
  - iv) **Pillar IV:** Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism
- **Pillars I** (on conditions conducive to the spread of terrorism) **and IV** (on human rights and the rule of law) are particularly relevant for the report you are mandated to prepare:

**Pillar I** makes the link between the prevention of terrorism and the enjoyment of economic social and cultural rights. It highlights the importance of addressing conditions conducive to the spread of terrorism, which include,

prolonged unresolved conflicts, dehumanization of victims of terrorism, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance.

Among the measures that Member States commit to take to address these issues, are the full realization of development goals and the reinforcement of social inclusion agendas, in

order to reduce marginalization and exclusion, which have been shown to be related to the risk of violent radicalization.

**Pillar IV** is not understood as a separate aspect of the Strategy, but as an essential element that has to cut across all its components. The Strategy recognises that upholding HRs and the rule of law is essential for its effectiveness and that the rights of the victims of terrorism need to be protected.

- Under **Pillar IV** there is a specific mandate for OHCHR:
  - “to play a lead role in examining the question of protecting human rights while countering terrorism, by making general recommendations on the human rights obligations of States and providing them with assistance and advice, in particular in the area of raising awareness of international human rights law among national law enforcement agencies, at the request of States”.
  
- The **General Assembly adopts four periodic resolutions** on human rights and counter terrorism:
  - i. The resolution on the review of the GCTS adopted every two years. The last review took place last year, in June 2016.
  - ii. Biannual resolutions on the protection of human rights and fundamental freedoms while countering terrorism.
  - iii. Biannual resolutions on technical assistance for implementing the international conventions related to counter-terrorism (refers mainly to the mandate of the UN Office on Drugs and Crime to support implementation of 19 treaties).
  - iv. Annual resolutions on measures to eliminate international terrorism (refers to efforts by States to address terrorism).
  
- The **Human Rights Council** also considers HRs and CT and since 2015 is adopting **two annual resolutions**
  - i. Protection of human rights and fundamental freedoms while countering terrorism
  - ii. Effects of terrorism on the enjoyment of HR (the last one mandated the report you are going to prepare)

## Institutional arrangements

- In 2005, the Secretary-General decided to establish the **Counter-Terrorism Implementation Task Force (CTITF)** to bring together all UN entities undertaking counter-terrorism related activities in support of Member States' efforts to implement the Global CT Strategy. It was set up as a coordination office and housed in the Department for Political Affairs (DPA) in NY.
- There are **38 UN entities** that are part of CTITF, including entities from the Secretariat, agencies funds and programmes, and entities that are subsidiary bodies of the Security Council.
- Last June 2017, the General Assembly established a **new Office on Counter-Terrorism**, headed by an Under Secretary-General that will coordinate all UN entities and will have CTITF and the UNCCT under it.
- The proposal to create this new office came from the **Secretary-General** who submitted a report to the GA in April 2017, outlining the mandate and functions of the proposed office. This new office is supposed to place a renewed emphasis in the **balanced implementation of the four pillars** of the UN Global Counter-Terrorism Strategy. This means giving more weight to Pillars I and IV, prevention and to human rights and the rule of law, which are also understood as long-term preventive measures.
- In the context of the CTITF, OHCHR promotes the **mainstreaming of human rights** across the work of the **CTITF** and serves as co-chair of its Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, together with the Rule of Law Unit in the Executive Office of the Secretary-General.
- As part of the work developed in the framework of this Working Group, OHCHR has led the development of **Reference Guides** on different human rights aspects of counter-terrorism measures (*stopping and searching of persons; security infrastructure; detention; conformity of national legislation with international law; right to fair trial and due process*). It has also implemented a capacity-building project for law enforcement officials (*Nigeria, Iraq, Jordan, Tunisia, Mali, to be extended to the Sahel*).

## Effects of terrorism on HR

- The **negative effects of terrorism** are unfortunately very visible and quite devastating. They have been highlighted extensively across the UN, both by MS in the intergovernmental bodies and by UN officials across the whole system. To mention one example, when introducing a panel discussion on this topic that was held on June 2015 at the request of the Human Rights Council, the then Deputy High Commissioner for Human Rights stated that  

terrorism destabilized Governments, undermined societies, jeopardized peace and security and threatened economic and social development, all of which had serious implications for the enjoyment of human rights by all. Terrorist attacks had devastating consequences for victims, often directly impacting their rights to life, liberty and security. However, direct victims were not the only ones affected; relatives and entire communities lived in fear and suffered long-standing trauma following attacks.
- The **intensification of terrorism** that has come, not only with growing numbers of terrorist attacks, but also with evolving means and tactics of terrorism, has placed the issue at the centre of the international agenda. The impact of terrorism has been of course a matter of great concern which has been reflected in an increased number of decisions of the various intergovernmental bodies of the UN, as well as in an increased number of reports from the Secretary-General, both to the Security Council and the General Assembly, and from the UN High Commissioner for Human Rights submitted to the General Assembly and the Human Rights Council.
- The intensification of terrorism has naturally given rise to an **increase in measures to prevent and to counter terrorism**. At the international level, there have been more resolutions of the Security Council establishing new obligations for States to address terrorism, and at the national level, many countries have adopted new laws and policies for the same purpose.
- As the enjoyment of human rights is severely affected by a surge of terrorism, the need to respond to terrorism effectively, has highlighted the importance of ensuring that those **responses comply with international human rights norms and standards**. It has been

the case that some States feel compelled to take measures that go beyond the limits of international law.

- However:
  - Responding to terrorism in ways that infringe international norms and the rule of law betrays the same values that the United Nations was created to uphold in order to prevent wars and conflicts. It is a fundamental contradiction to address the negative effects on human rights of terrorism with violations of human rights.
  - It has been established that violations of human rights while countering terrorism end up further feeding the violence that those heavy-handed measures seek to stop. Studies such as the Global Terrorism Index, have established correlations between terrorist acts and violations of human rights, including violence and also discrimination and exclusion.
  - Responses that are not within the boundaries of legality, necessity and proportionality, do not have legitimacy and therefore are not effective in the long term, as lack of legitimacy weakens States' efforts.

Therefore, as a matter of **principle**, as a matter of **prevention** and as a matter of **effectiveness**, measures to prevent and counter-terrorism need to be in full compliance with international obligations.

- Another important element that needs increased attention is the need to focus on the **victims**. Your report will focus on the negative effects of terrorism on the enjoyment of human rights. In other words, it will focus on what happens to direct and indirect victims of terrorism. Victims of terrorist attacks that do not lose their lives often need long term medical and/or psychological assistance, and financial support to compensate for the destruction of property or loss of livelihood and jobs.
- Many resolutions from all intergovernmental bodies contain references to the **rights of the victims of terrorism**. To mention an example, the General Assembly's resolution on its most recent review of the Global Counter Terrorism Strategy encouraged Member States to provide them with proper support and assistance, while taking into account appropriate considerations regarding remembrance, dignity, respect, justice and truth, in accordance with international law.

## Reports of the SG and the HC

- All these aspects have been considered extensively in the reports that the Secretary-General and the High Commissioner have prepared on these issues.
- The bi-annual **General Assembly resolutions on the protection of human rights while countering terrorism** have requested the **Secretary-General** to submit reports on the implementation of the resolution. Those reports highlight developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the CTITF in support of the implementation of the Global Counter Terrorism Strategy, and developments from the human rights mechanisms, including the HRC, the Special Procedures, the Universal Periodic Review, the various treaty bodies, and the Office of the High Commissioner for Human Rights.

The **upcoming report** to be submitted at the 72<sup>nd</sup> session of the GA highlights human rights-related considerations and concerns addressed by the UN system during the period covered in the report. Among the topics covered, which might be useful for your report are the obligation to ensure accountability and combat impunity and the need to respect the HR of victims. The report should be issued in the coming weeks, in advance to the new session of the General Assembly.

- **OHCHR** has submitted **substantive reports** to the General Assembly and the Human Rights Council focussing on a wide range of issues related to HR and terrorism. For example,
  - on accountability and the right to effective remedy,
  - on due process guarantees,
  - the impact of counter-terrorism measures on economic, social and cultural rights;
  - on HR concerns derived from legislative measures to CT and address foreign terrorist fighters;
  - on best practices on protecting human rights to prevent violent extremism and counter terrorism
  - surveillance and the right to privacy;
  - preventing and countering violent extremism.



Report of the HC for HR on the negative effects of terrorism on the enjoyment of all human rights

- I would like to finish by focusing on the most recent **report of the High Commissioner** (submitted to the Human Rights Council's session in March 2017) **on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms**, which addresses the same topic you are mandated to consider in the report you are about to prepare.
- For the preparation of this report, the High Commissioner sought inputs from Member States, international and regional organizations and non-governmental organizations, which are available in OHCHR's web site, under the page dedicated to terrorism and human rights.
- The report sets the **international human rights framework** highlighting the main obligations of States under international HR law regarding acts of terrorism. The High Commissioner develops the **duty of States to protect** the rights of its citizens, and makes the point that I referred to before, that while terrorism has a major detrimental effect on the enjoyment of human rights, sometimes counter terrorism measures may also have a negative effect on the enjoyment of human rights and therefore it is essential to continue to work to ensure that all measures taken to prevent and combat terrorism, are fully compliant with international norms and standards.

This point was also highlighted in the **resolution from the Human Rights Council** that mandated your report.

- The report makes reference to the **Secretary-General's Plan of Action to Prevent Violent Extremism** that acknowledges that prevention requires a comprehensive approach, broader than law enforcement, security and military measures that includes good governance, human rights and the rule of law, humanitarian and development aspects.
- Another point highlighted on this report, is the importance of **ensuring accountability and combating impunity**. Effective criminal justice systems, that function in line with international human rights norms and standards, are necessary to ensure the rights of

victims to truth, justice and reparations. States must conduct prompt, independent, impartial and thorough investigations; if they establish that a violation has occurred, victims must be afforded effective redress.

- The High Commissioner's report looks into the negative impact on a number of **civil and political rights**: the rights to life, security, liberty and integrity of person; freedom of movement; the right to a nationality; due process, including the right to a fair trial; the right to privacy; freedom of opinion and expression; freedom of religion or belief; as well as freedom of peaceful assembly and association.

The report includes examples of how each of these rights is affected; I will highlight economic, social and cultural rights, which have to have a special focus on your report.

- The High Commissioner's report also addresses several **economic, social and cultural rights**, and provides examples of how these rights have been affected by terrorism.
- On the enjoyment of the **right to health** for direct and indirect victims, examples include:
  - attacks by Boko Haram in Cameroon, that led to the shutdown of 47 health centres.
  - attacks on girls' education that have had a negative impact on the right to health for girls, their families and communities because girls who are prevented from accessing education are less exposed to basic information and less empowered to make decisions about health issues, including nutrition, sexual and reproductive health, hygiene and preventive health care.
  - Long term impairments that result from acts of terrorism
  - Terrorism may affect financial allocations to basic social services, including the health sector.
- With regard to the **right to work**, the High Commissioner mentioned the example of the bombing of an aeroplane over the Sinai Peninsula in October 2015, with an impact on the tourism industry, and subsequent negative implications for employment, tourism facilities and the national economy. More broadly, terrorism may have both a direct impact on the tourism sector — through decreased tourist numbers, leading to decreased spending — and

an indirect impact, owing to decreased employment and reduced flow-on effects to other industries.

- An example of the negative effect of terrorism on the enjoyment of the **right to education** are the attacks by Boko Haram in Nigeria. These attacks have caused internal displacement resulting in children being unable to access education, while those who have remained in their communities often receive poor quality education owing to insecurity, the lack of teachers — as many have fled — and the destruction of schools.

There have been several serious cases of attacks against girls accessing education.

- The abduction of nearly 300 schoolgirls by Boko Haram in northeast Nigeria;
  - the killing of more than 100 children in an attack by the Taliban at an army school in Peshawar, Pakistan;
  - the reported forced removal of girls from schools in Somalia to become “wives” of Al-Shabaab fighters;
  - the abduction and rape of girls at a Christian school in India;
  - as well as several incidents of poisoning and acid attacks against schoolgirls in Afghanistan.
- Regarding the negative impact of terrorism on **cultural life**, the High Commissioner mentions attacks carried out by Al-Shabaab, Al-Qaida, Ansar Eddine, ISIL and the Taliban against artists and citizens attending cultural events, cinemas, concerts or theatres.

The High Commissioner’s report also mentions attacks in Belgium, Denmark, France, Germany and Sweden that have led to fear, self-censorship and financial loss for artists and cultural industries.

The Special Rapporteur in the field of cultural rights noted that, in some countries, artistic expressions criticizing the Government had been labelled as “terrorism” and many artists had been disproportionately sentenced under charges of criminal offences such as “terrorism”, “extremism” or “hooliganism”.

- The **HC's report concluded** by stating that acts of terrorism that have been committed in countries worldwide are stark reminders of their negative effects on the enjoyment of human rights and fundamental freedoms by all, with devastating consequences for victims. Each State has the duty to take measures to protect all individuals within its territory and those subject to its jurisdiction from terrorist acts, ensuring that any measures taken to counter terrorism are fully compliant with their obligations under international law, including international human rights law.
  
- The **three elements** that he highlights as a manner of conclusion are
  - That effective **counter terrorism measures and the protection of human rights** are complementary and mutually reinforcing and must be pursued together as part of the duty of States to protect individuals
  - **Accountability and combating impunity** are key elements for addressing the negative effects of terrorism on the enjoyment of human rights
  - The **rights of victims** to truth, justice and reparation need to be respected, considering their need for assistance and access to services.

I will leave this general outlook here. OHCHR remains available to answer any questions and to provide support at any point during the preparation of the report.

Many thanks.