



European Center for
Not-for-Profit Law



*To: Permanent Representatives of Member and Observer States of the United Nations
Human Rights Council*

5 September 2022

Terrorism: Council's resolution must fully address human rights and rule of law violations caused by counter-terrorism measures

Excellencies,

During its upcoming 51st regular session, the UN Human Rights Council (the Council) will once again address the human rights impact of terrorist acts and counter-terrorism measures last addressed by the Council in resolution 45/11. This resolution is critical to ensuring human rights and the rule of law are respected and protected worldwide, as it is exactly at such times when States are confronted with threats to their national security that human rights become most vulnerable to abuse.

The signatory organizations have substantial experience in addressing this subject, including when it first came before the Council and its predecessor the Commission on Human rights some 20 years ago. We are pleased to provide your delegation with our comments and expectations to inform discussions around this resolution.

Terrorism, counter-terrorism and human rights

As has been emphasized in numerous resolutions in the Security Council, General Assembly and at this Council, all measures taken in the name of countering terrorism must comply with States obligations under international law, in particular international human rights law, international humanitarian law and refugee law. All States have a duty under international human rights law to protect the human rights and fundamental freedoms of all individuals within their jurisdiction. Attacks on the general population by armed groups and other entities impair the enjoyment of human rights and we respect that States have a duty to bring those responsible to justice. In order to avoid further degradation of human rights and the rule of law, States must address terrorism related crimes within the ordinary criminal justice system while upholding all human rights guarantees. Victims of terrorism, which include members of their

families, must be ensured access to effective remedies and reparations, including compensation, and support from the State.

Yet, as our organizations and independent experts like the UN Special Rapporteurs on the promotion and protection of human rights while countering terrorism, on the right to freedom of opinion and expression and on freedom of religion and belief, among others, have consistently demonstrated, counter-terrorism measures are often used, abused and misused with the effect of – unintentionally and intentionally – violating human rights and undermining the rule of law.

Civil society organizations and human rights defenders in a number of countries are subject to undue restrictions and arbitrary investigations and prosecutions under purported counter-terrorism objectives. The notion of terrorism and its ancillary offences are at times interpreted in expansive ways in order to curb legitimate exercise of rights to public participation, freedom of expression, freedoms of peaceful assembly and association and freedom of religion or belief. In addition, just as human rights violations occur in the name of countering terrorism, they may also occur for the state objectives of countering “violent extremism” or simply “extremism”, which is typically defined in overly broad and vague terms. Administrative measures are abused and misused to target human rights defenders, including journalists and lawyers, and political opponents, with a view to cracking down on dissent and other disfavoured expression. Expulsion or other forms of transfer are often resorted to without respect of due process guarantees. Information and communications technology companies hosting third-party content are pressured to remove “terrorism-related” content, without clear instructions or even valid legal basis in accordance with international law. Digital technologies are applied for the purpose of mass or targeted surveillance driven by national security motives, with lack of transparency, accountability or even adequate regulatory frameworks.

As its drafting history demonstrates, this resolution has been at the core of different approaches undertaken by this Council and the fruit of “balancing” exercises often at the expense of its capacity to fully address the human rights and rule of law concerns brought by civil society.

Recommendations for the text of the resolution

The undersigned organization believe that the text of resolution 45/11 needs further strengthening to be able to address these concerns.

The resolution should state unequivocally that States’ obligation to respect and ensure the **centrality of the rule of law and human rights** in all their actions extends to all laws and measures they take to counter terrorism.

While longstanding efforts at the UN General Assembly to achieve an internationally agreed definition of “terrorism” have remained elusive, the vague concept of “extremism” is not only undefined under international law, but undefinable, as it is prone to subjective interpretation based on different cultural, political or religious perceptions, and not least misuse of state powers. It must not constitute a basis for any restriction or limitations of human rights, including via criminal prosecution, as it would lead to clear violations of the principle of legality, a general principle of international law, reflected also in article 15. The undersigned NGOs recall the recommendation by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism to “[c]learly define terrorism in compliance

with international law and ensure compliance with the principles of legality, necessity and proportionality and repeal laws, policies and programmes that regulate “extremism”, which have no purchase in international law and domestic law” (A/76/261, para. 46). The resolution should therefore return to **addressing solely the phenomenon of “terrorism.”**

The resolution should recognize that counterterrorism measures must be developed and implemented with respect for human rights, not least for the rights to life, freedom from torture and cruel, inhuman or degrading treatment or punishment, the prohibitions of enforced disappearance and prolonged arbitrary detention. Violations of the prohibition on such acts constitute crimes. It is also critical that the resolution addresses the issues of transfers of individuals by States to other countries based on national security grounds as they have been addressed in the recent report by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism (A/HRC/49/45). The resolution should call for the **respect of the non derogable principle of non-refoulement** under both refugee law and human rights law in all situations of national security as well as recall the prohibition to thwart human rights guarantees via means such as diplomatic assurances.

The resolution must address deficits of **gender equality** and ensure respect of the principle of **non-discrimination** in countering terrorism (see report A/HRC/46/36). Too often, terrorism and counter-terrorism take place in a male-dominated environment and perception affecting the effectiveness both of counter-terrorism action and of human rights guarantees. As a result of this, women, girls, boys and LGBTIQ+ persons face unique gender stereotyping with adverse impact on their human rights, including resulting in arbitrary detention.

The resolution must provide key guidance for States to ensure that the human rights of terrorist suspects in **detention** are respected in line with existing international human rights law, and that forms of purported “preventative” detention and other forms of administrative detention without charge or trial are prohibited. It must furthermore clearly affirm that any terrorism-related offence must respect the principle of legality under article 15 ICCPR, as well as the right to liberty including pre-trial rights under ICCPR article 9 and the right to a fair trial under article 14 ICCPR.

As outlined above, the respect of human rights and the rule of law is the bedrock of national security. For these reasons, the resolution should reaffirm that, under existing international human rights law, certain human rights are absolute and non-derogable. With respect to rights that may be subject to derogation, they must be limited in duration and they may never be suspended entirely, but only limited to the extent strictly necessary to meet a specific threat to the life of the nation under a declared public emergency, as provided under **article 4 ICCPR**.

Children have seen their rights considerably curtailed by counter-terrorism measures and strategy both because of their situation and the situation of their parents. These are impermissible violations of the Convention on the Rights of the Child as well as of article 24 ICCPR and the resolution should state clearly that the best interests of the child should be the guiding principle in any decision affecting the child. Detention of children is generally prohibited, save as a last resort when strictly necessary, as provided for in article 37 of the CRC.

The resolution should clearly affirm that the **right to privacy** must be respected and ensured in countering terrorism. The right to privacy is commonly recognised as a core

right that underpins human dignity and it is seen as a prerequisite of freedoms of expression, association and assembly all the more so in the digital age, as without privacy, individuals lack the space to think, speak and develop their voice.

The use of counter-terrorism policies, including counter-terrorist financing (CTF), to restrict the work of **civil society and human rights defenders**—through violations of the rights to freedom of expression, freedom of information, and freedom of association and assembly—must be addressed. The resolution should urge States to ensure their counter-terrorism legislation is in line with international human rights law and standards and does not negatively impact civil society and human rights defenders. It should also call on States to ensure civil society and human rights defenders are meaningfully involved at all stages of the development of counter-terrorism policies.

Victims of terrorism need support and protection, as most States agree. However, often their right to an effective remedy against violations and abuses of human rights and reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, are overlooked. The resolution should explicitly refer to these rights in relation to victims of terrorism.

Finally, the undersigned organizations stress that acts of terrorism impact not only on civil and political rights but also on **economic, social and cultural rights (ESCR)** of victims of terrorism and individuals in general. The resolution should recognize the adverse effects of terrorism and counter-terrorism on ESCR.

We thank you for your attention to these pressing issues and stand ready to provide your delegation with further information as required.

Sincerely,

Amnesty International

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Human Rights Watch

International Bar Association's Human Rights Institute

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International Commission of Jurists

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