

Background paper

Thematic discussion of the Counter-Terrorism Committee on the human rights aspects of counter-terrorism in the context of resolution 1373 (2001)

A. Introduction

1. The Counter-Terrorism Committee's approach to human rights has developed gradually since its establishment in 2001. It is now based primarily on the policy guidance adopted by the Committee in May 2006. The Committee considers human rights issues of relevance to Security Council resolution 1373 (2001) in virtually all areas of its work programme, including the preparation of preliminary implementation assessments (PIAs), country visits, workshops and correspondence with States.

2. Consideration of human rights by the Committee and the Counter-Terrorism Committee Executive Directorate (CTED) is consistent with the provisions of Security Council resolutions, including resolutions 1456 (2003) and 1805 (2008), which say that States “must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular, international human rights, refugee, and humanitarian law”. Resolution 1805 (2008) goes further, stating that CTED “should continue, in accordance with its mandate, to advise the [Committee] on issues relating to such law in connection with the identification and implementation of effective measures to implement resolutions 1373 (2001) and 1624 (2005)”.

3. On 27 September 2010, the Security Council adopted a Presidential Statement (S/PRST/2010/19) in which it further stated, “The Security Council *recognizes* that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and *underlines* the need to address the conditions conducive to the spread of terrorism, including, but not limited to, the need to strengthen efforts for the successful prevention and peaceful resolution of prolonged conflicts, and the need to promote the rule of law, the protection of human rights and fundamental freedoms, good governance, tolerance and inclusiveness to offer a viable alternative to those who could be susceptible to terrorist recruitment and to radicalization leading to violence.” The Council further recognized, in this regard, “that development, peace and security, and human rights are interlinked and mutually reinforcing”.

4. The Executive Directorate’s work on human rights and resolution 1373 (2001) is coordinated by its internal working group on issues raised by resolution 1624 (2005) and human rights aspects of counter-terrorism in the context of resolution 1373 (2001), which was established as part of the internal reorganization approved by resolution 1805 (2008). The working group includes staff from all three CTED geographical clusters, as well as from its executive office. Its main responsibility is to clarify relevant issues and ensure consistency in the approach taken to these issues by CTED and the Committee.

5. The work of CTED in this area depends to a large extent on strategic relationships established with outside partners in accordance with its original mandate and with the

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revitalization endorsed by resolution 1535 (2004). CTED liaises regularly with the Office of the High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the promotion and protection of human rights while countering terrorism, and other human rights entities, including regional organizations and non-governmental organizations, as appropriate.

6. In June 2010, the Chairman of the Committee invited the Special Rapporteur on freedom of religion or belief to address the Committee. The invitation was based in part on General Assembly resolution 64/168, by which the Assembly encouraged the Security Council and its Counter-Terrorism Committee “to strengthen the links, cooperation and dialogue with relevant human rights bodies”, including not only OHCHR and the Special Rapporteur, but also “other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies”.

7. CTED is an active contributor to the work of the Counter-Terrorism Implementation Task Force (CTITF) working group on the protection of human rights while countering terrorism, which is chaired by OHCHR. It is also a member of the CTITF working groups on terrorist financing, countering misuse of the Internet, and border control, all of which have human rights aspects.

8. The development of the Committee's work in the area of human rights can be seen clearly in the Committee's Technical Guide to the implementation of resolution 1373 (2001) and in the 2008 and 2009 global implementation surveys of the resolution's implementation by Member States. Each of these documents contains significant discussion of relevant human rights issues, woven into their overall analysis in an appropriate and balanced manner.

B. Human rights issues of relevance to resolution 1373 (2001)

9. Human rights issues of relevance to resolution 1373 (2001) may be readily identified in the Committee's PIAs, the Technical Guide, and the two global implementation surveys. In recent years, CTED has regularly raised these issues in its dialogues with Member States; in correspondence; in meetings held in New York; and in field activities, including country visits. These issues include, inter alia:

- **The definition of terrorism-related offences, precision in legislation, and compliance with the principle of legality (PIA section 1.2.4)**

CTED has noted that some States' counter-terrorism laws are overbroad and could be applied against activities protected under international human rights law.

- **Due process in asset-freezing procedures (PIA 1.3.2)**

Some States lack mechanisms to allow affected persons to challenge freezing of assets before independent bodies or to seek humanitarian exemptions.

- **Human rights safeguards in criminal procedures, with particular reference to exceptional procedures used for bringing terrorists to justice (PIA 2.6.2)**

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Some States have introduced special procedures, in terrorism-related matters, that may infringe on human rights.

- **Procedures to ensure that *refoulement* does not take place (PIA 2.7.2)**

Some States lack legal provisions guaranteeing effective protection from refoulement.

- **Respect for refugee-law obligations in the context of asylum (PIA section 3.5.2)**

Some States have introduced special measures that may affect the opportunity for legitimate refugees to obtain protection.

10. The Committee addresses other human rights issues that are of relevance to the implementation of resolution 1373 (2001). This is true, for example, with respect to analysis of the regulation of charitable organizations (PIA 1.1.6). Regulation of such organizations should be conducted so as to suppress the abuse of charitable activity by persons involved in terrorism, while also ensuring respect for human rights, including the rights to freedom of conscience and association. The linkages in this area are discussed in the Committee's Technical Guide (p. 14).

11. Human rights are relevant to the activities of law enforcement bodies, intelligence agencies and other entities with responsibility for early warning and prevention (PIA 2.3.1). The activities of these agencies are subject to human rights obligations and should take place under the guidance or supervision of appropriate oversight mechanisms. The subject of oversight is referenced in the Technical Guide (p. 20) and was addressed recently in a report of the Special Rapporteur to the Human Rights Council.

12. Another area with human rights implications is border control. The Committee routinely inquires, for example, into measures put in place by States to ensure effective aviation security, and border security more generally. In some cases, such measures could involve racial or ethnic profiling, or risk violating the rights to dignity or privacy. These issues, too, are discussed in the Technical Guide (p. 39) and properly fall within the scope of the Committee's consideration.

13. This discussion outlines some of the human rights issues that are relevant to the Committee's assessment of implementation of resolution 1373 (2001). There are undoubtedly other relevant issues that could be considered by the Committee, including in the further development of the Technical Guide. As the Committee has stated on a number of occasions, any such consideration is subject to the Committee's guidance, and issues to be considered must fall within the scope of the Committee's human rights policy guidance.

C. The benefits of a human rights-based approach

14. As has been stated on various occasions by the Security Council, the General Assembly, and other bodies, States must ensure that their counter-terrorism measures comply with all of their obligations under international law, including human rights law. In addition, counter-terrorism measures based on respect for human rights and the rule of law can have a direct,

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beneficial impact on bringing terrorists to justice and strengthening international cooperation. Framing counter-terrorism laws and procedures within a human rights context helps to promote prosecution and conviction of terrorists according to legally-established procedures, and it encourages legal consistency between national jurisdictions, thereby facilitating cooperation.

15. Mutual cooperation in areas such as evidence-sharing and extradition may be obstructed if there are serious human rights concerns. For example, as explained in the Technical Guide, extradition in some circumstances may be denied where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment, persecution, or denial of minimum guarantees in criminal proceedings (*p.* 32). Ensuring due respect for international human rights obligations can help to remove such potential obstacles to effective cooperation.

16. A demonstrated commitment to human rights and the rule of law also helps to promote more effective cooperation at the political level. Although all Member States are under an obligation to implement resolution 1373 (2001) in accordance with their obligations under the Charter of the United Nations, some may, mistakenly, perceive a conflict between their Charter obligations and their other obligations under international law, including human rights, refugee, and humanitarian law. By insisting that counter-terrorism measures must comply with human rights, the Committee can dispel this misperception and promote better political engagement by all States. This would also be consistent with the Organization's commitment to "deliver as one".

D. Human rights, rule of law and technical assistance

17. There is a close link between human rights, rule of law, and international peace and security, as recognized in relevant Security Council and General Assembly documents. CTED considers rule-of-law issues on the basis of the Committee's policy guidance on technical assistance which states that, in its dialogue with States, CTED should take account, where appropriate, of "assistance with a view to enhancing institutions and strengthening the rule of law, in the process of identifying needs". CTED thus pays due attention to strengthening of the rule of law in the administration of justice, as an important part of strengthening States' counter-terrorism frameworks. This is an area that could be further developed in the overall work programme of CTED.

18. With respect to a number of States, the Committee has included human rights and rule of law-related issues among its recommendations for technical assistance. In the case of one State, for example, the Committee, aware of allegations of extrajudicial killings, urged the Government to strengthen the professionalism of its specialized counter-terrorism police units. In another State, the Committee suggested that strengthening the human rights framework could help alleviate certain conditions conducive to terrorism. In several States, the Committee has recommended that counter-terrorism legislation be reviewed in order to ensure its conformity with human rights standards.

19. In such cases, subject to consent of the Government concerned, the Committee approaches relevant providers to include appropriate projects in their assistance packages for the States concerned. Such providers include, for example, OHCHR, the United Nations Office on Drugs and Crime (UNODC) and relevant regional organizations. The Committee may wish to

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reinforce its efforts to strengthen rule of law frameworks, as part of its overall approach to technical assistance and promoting effective implementation of resolution 1373 (2001).

E. Human rights and the Committee's communications strategy

20. Under the Committee's human rights policy guidance, the Committee and CTED are called upon to "incorporate human rights into their communications strategy, as appropriate, noting the importance of States ensuring that in taking counter-terrorism measures they do so consistent with their obligations under international law, in particular human rights law, refugee law, and humanitarian law". Some observers have noted a persistent misperception, both inside and outside the United Nations, that the Committee does not take human rights into account in its work programme. To dispel this misperception, the Committee and CTED may wish to reinforce their commitment to including human rights in all of their communications initiatives. This would include, for example, briefings for member States as well as for outside entities and media outlets.

F. Recommendations

For the Committee and CTED

- The work of CTED on human rights should continue to be guided by the Committee's 2006 policy guidance
- Human rights issues considered by CTED should be relevant to effective implementation of resolution 1373 (2001) (and resolution 1624 (2005))
- The CTED working group on issues raised by resolution 1624 (2005) and human rights aspects of counter-terrorism in the context of resolution 1373 (2001) should continue to develop practical advice and guidelines in connection with the identification and implementation of effective measures to implement resolution 1373 (2001)
- CTED should strengthen its links with OHCHR, the Special Rapporteur, other relevant special procedures and mechanisms of the Human Rights Council, treaty bodies, regional human rights organizations, and non-governmental organizations, as appropriate
- CTED should remain an active participant in the CTITF working group on the protection of human rights while countering terrorism, as well as other relevant CTITF working groups
- Relevant human rights issues should continue to be addressed in the context of the Committee's Technical Guide and global implementation surveys
- The Committee and CTED should incorporate human rights and rule-of-law aspects more proactively into their technical assistance recommendations to States, to strengthen national systems for bringing terrorists to justice and improve international cooperation
- The Committee and CTED should incorporate human rights more proactively into their communications strategies to dispel the misperception that human rights are not taken into account in the Committee's work or are not relevant to effective counter-terrorism.

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For Member States

- States should continue to ensure that any measures they take to implement resolution 1373 (2001) comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular, international human rights, refugee, and humanitarian law
- States should take a proactive approach to ensuring the human rights compliance of their counter-terrorism measures, including by promoting exchange of views between and among relevant Government authorities and other entities as appropriate, such as human rights ministries, national human rights institutions, civil society organizations, and others
- States should make full use of resources available to them to help ensure the human rights compliance of measures they take to implement resolution 1373 (2001), including the advice and assistance of OHCHR, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and regional human rights organizations
- States should strive to ensure that human rights training is incorporated as appropriate into professional development and awareness-raising programs for all officials involved in the implementation of counter-terrorism measures at all stages, including prevention, investigation, detention, and prosecution.