



**United Nations Counter-Terrorism Implementation Task Force  
Working Group ‘Protecting human rights while countering terrorism’**

**Regional Expert Symposium  
‘Securing the fundamental principles of a fair trial for persons accused of terrorist offenses’  
Bangkok, 17-18 February 2011**

**Concept Note**

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The Working Group ‘Protecting human rights while countering terrorism’, of the United Nations Counter-Terrorism Implementation Task Force (CTITF), is organizing an expert symposium, with State participation, on the protection human rights aimed at securing the fundamental principles of a fair trial for persons accused of terrorist offences, with particular reference to international standards, jurisprudence and practice.

This symposium is the first of a series of international meetings, held at the regional level on a rotating basis, on issues related to the protection of human rights in the context of countering terrorism. The aim of such a format is to facilitate meaningful participation of regional and national experts and practitioners working specifically on the issues examined, who can provide key first hand practical knowledge of the challenges and complexities encountered, as well as best practices to be recommended.

**I. Background**

In the United Nations Global Counter-Terrorism Strategy (A/RES/60/288), adopted by the General Assembly on 8 September 2006 and reaffirmed on 15 September 2008 by General Assembly resolution 62/272 and on 8 September 2010 by General Assembly resolution A/RES/64/297, all Member States agreed on a coordinated and comprehensive response to terrorism at the national, regional and global level and to situate respect for all human rights and the rule of law as the fundamental basis of the fight against terrorism. In particular, Member States reaffirmed that the promotion and protection of human rights for all and respect for the rule of law are essential to all components of the Strategy. They recognized that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

The Working Group on ‘Protecting human rights while countering terrorism’ of the CTITF is led by the Office of the United Nations High Commissioner for Human Rights, and other members include the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the United Nations Office of Drugs and Crime, the Counter-Terrorism Executive Directorate, the Office of Legal Affairs, the United Nations Interregional Crime and Justice Research Institute, the International Maritime Organization and the 1267 Monitoring Committee.

The United Nations Office for the Coordination of Humanitarian Affairs and UNHCR are observers. The mandate of the Working Group stems from the fourth pillar of action of the Strategy.

The Working Group supports efforts of Member States to ensure the promotion and protection of human rights in the context of counter-terrorism. This includes the identification of gaps and weaknesses, and the development of proposals for strengthening support to Member States at the national level. To this end, the Working Group, inter alia, facilitates an exchange of information on priority human rights concerns, as well as examples of good practice at the national and regional levels, including through workshops and the development of Basic Human Rights Reference Guides.

In 2008, the Working Group organised an expert seminar on the impact of terrorism and counter-terrorism measures on the enjoyment of economic, social and cultural rights. The Working Group aims to continue bringing together relevant stakeholders at the national and/or regional levels to help facilitate the exchange of information and experiences. Member States noted that they wanted the CTITF Working Groups to have additional regional focus to their work. As such, the Working Group on Protecting Human Rights While Countering Terrorism aims to organize five regional workshops. Through regional and international expertise, and a regional focus, these workshops would aim at examining specific thematic issues, draw conclusions and make recommendations based on international standards. This Workshop builds on these developments within the CTITF Working Group, as it is the first one of five regional Workshops.

The subject of respect for human rights in the context of fair trial is a recurring issue, and one that has been the subject of concern by many observers. In their fight against terrorism, some States have conducted activities which infringe basic standards of fair trial, while in others the implementation of counter-terrorism measures limits access to the judicial process. Some States have extended the maximum limit of pre-charge detention, limited the possibility of a review of the legality of detention, broadened the kind of evidence that can be withheld from the defence, taken measures that directly impact on the presumption of innocence, used evidence such as confession obtained through physical or undue psychological pressure, including torture or ill-treatment, made an overly broad use of anonymous witnesses, or rendered assistance by counsel extremely difficult. A number of countries have established special or specialized chambers within the ordinary courts or special courts to deal with terrorism-related cases, in some cases, in a manner that is inconsistent with human rights standards, without sufficient guarantees for the accused.

In the Global Counter-Terrorism Strategy and Plan of Action, States undertake to ‘make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with (...) obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms’. States are under the obligation to ensure that all guarantees of due process are respected when persons who are alleged to have committed terrorism-related offences are arrested, charged, detained and prosecuted. Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective, respect the rule of law and are seen to be fair.

This workshop will look into securing the fundamental principles of the right to a fair trial for persons accused of acts of terrorism, which includes various interrelated aspects<sup>1</sup>. The protection of the right to a fair trial and due process in the context of counter-terrorism necessarily includes the protection of a number of other human rights which are key to safeguarding the multi-faceted aspects of a fair trial and due process, and whose disregard may seriously impact on the existence of a fair trial. As such, this workshop will examine human rights issues related to the investigation phase, the pre-trial phase, and the absolute prohibition of torture, or cruel, inhuman or degrading treatment or punishment insofar as they impact on the right to a fair trial. The use of special courts<sup>2</sup> and military courts will also be examined as they are often characterized by a lack of independence and impartiality of the judiciary and lesser fair trial guarantees.

Persons charged with criminal offences, including terrorism-related crimes, are entitled to the usual series of specific due process rights, including that all persons should be equal before the courts and tribunals, the right to be presumed innocent, the right to a hearing with due process guarantees, to be tried within a reasonable time, to be tried by a competent, independent and impartial court or tribunal, and a right to have a conviction and sentence reviewed by a higher court or tribunal in conformity with international human rights law. Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which both aim at ensuring the proper administration of justice, set out the bedrock norms applicable in all trials, whether of alleged terrorists or otherwise.

International humanitarian law provides for substantially similar protections for the trial of persons in the context of armed conflicts. Given that the right to a fair trial is explicitly guaranteed under international humanitarian law during armed conflict, the Human Rights Committee has expressed the view that the requirements of fair trial also must be respected during a state of emergency in human rights law<sup>3</sup>. In July 2007, the Human Rights Committee adopted General Comment 32 on Article 14 of the ICCPR on the right to a fair trial and equality before the courts and tribunals. Article 14 of the ICCPR aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights. It underlines that the right to a fair trial and to equality before the courts and tribunals are key elements of human rights protection and serve by procedural means to safeguard the rule of law.

In its General Comment 32, the Human Rights Committee has noted that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.<sup>4</sup> Trials of civilians by military or special courts are not prohibited in all circumstances, but should be exceptional: it means they should be limited to cases where States can show that resorting to such trials is necessary and justified by objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials. Therefore, it is important to recall that States should take all necessary measures to ensure that such trials take place under conditions which genuinely afford these full guarantees. Regarding the use of

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<sup>1</sup> See Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/63/223, para. 7.

<sup>2</sup> See Report of the High Commissioner for Human Rights A/HRC/8/13, para. 40: "It has been argued by some that existing safeguards associated with the right to fair trial in prosecuting terrorist crimes are inappropriate to ensure that the guilty are convicted, and that special courts with special procedures can be more suitable instead. I fundamentally disagree with such an argument, which insufficiently recognizes the ultimately criminal character of terrorist acts".

<sup>3</sup> CCPR/C/21/Rev.1/Add.11, para. 15.

<sup>4</sup> CCPR/C/GC/32/CRP.1/Rev.1

military courts, the High Commissioner noted that the circumstances are rare that a military court will be the appropriate venue to try a civilian terrorist suspect<sup>5</sup>.

The practice of detaining terrorist suspects in secret detentions can result in numerous human rights violations. Secret detention outside the protection of the law is often resorted to with the purpose of depriving the detainee of the rights that he or she would otherwise enjoy as a person charged with a criminal offence, namely the right to a fair trial, as enunciated in article 14 of the International Covenant on Civil and Political Rights and the complementary guarantees contained in article 9, paragraphs 2 and 3<sup>6</sup>. Indefinite, secret and incommunicado detention of terrorist suspects without adequate access to courts and due process continues to be of grave concern, and has been identified by many commentators as providing a framework where torture or less forms of ill treatment can occur. Where any individual is detained - regardless of the context - appropriate due process, judicial review and recognition before the law - are essential. Safeguards must also be put in place to ensure that the due process guarantees set out in the Covenant are respected, that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, so that the court may decide on the lawfulness of the detention, and that governments do not act outside the law and do not by-pass the judicial process.

## **II. Objectives of the Regional Expert Symposium**

The objectives of the expert symposium are to assess and analyze the obstacles and challenges to implementing the requirements for fair trial as set out in international human rights law and standards; to identify other key rights to secure the fundamental requirements of a right to a fair trial in the context of counter-terrorism; to exchange experiences regarding good practices with respect to the protection of human rights in this regard. A report on the outcome of the expert symposium will be produced with a view to providing guidance to Member States on how human rights can best be protected in the context of fair trial.

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<sup>5</sup> See Report of the High Commissioner for Human Rights A/HRC/8/13, para. 42.

<sup>6</sup> See joint study on global practices in relation to secret detention in the context of countering terrorism Of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on arbitrary detention represented by its vice-chair, Shaheen Sardar Ali; and the Working Group on enforced or involuntary disappearances represented by its chair, Jeremy Sarkin, paras. 24-27.

**Regional Expert Symposium: “Securing the Fundamental Principles of a Fair Trial  
for Persons Accused of Terrorist Offences”**

**Bangkok, Thailand, 17-18 February 2011**

**Draft Agenda**

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**17 February 2010**

- 8:30 – 9:00      Registration**
- 9:00- 10:00      Introductory session**
- Applicable legal regime
  - States of exception
- 10:00 – 11:00      Pre-trial phase for persons accused of terrorism offences, including  
administrative detention regimes and procedures for review**
- exceptional periods of pre-trial detention
  - the right of habeas corpus
  - incommunicado detention (both as part of the prohibition of torture and as  
habeas corpus)
  - access to a lawyer of one's choice
  - presumption of innocence
  - right to a prompt trial (right to be tried without undue delay)
- 11:00-11:15      Coffee break**
- 11:15- 13:00      Discussion**
- 13:00- 15:00      Lunch**
- 15:00-16:00      Trial preparation and evidentiary issues for persons accused of terrorism**
- adequate time and facilities to prepare one's case
  - access to counsel during trial preparation
  - access to evidence/withholding of evidence on grounds of national security
  - evidence obtained in breach of the absolute prohibition of torture
- 16:00-16:15      Coffee break**
- 16:15-17:15      Discussion**

**18 February 2010**

- 9:00-10:00      Right to a fair trial and due process**

- access to courts
- privilege against self incrimination
- equality of arms: access to evidence, use of secret/intelligence information as evidence and use of anonymous witnesses
- right to be present at the trial, to legal representation and to a public hearing
- standards of proof/reversal of the burden of proof
- appeal

10:00-10:15 Coffee break

10:15-12:00 Discussion

**12:00-14:00 Lunch**

**Special session: The role of regional mechanisms and national human rights mechanisms in the promotion and protection of the right to a fair trial for persons accused of terrorist offences.**

**14:00- 15:00 Special civilian courts and military courts to try persons charged of terrorism offences**

15:00 -15:15: Coffee break

15:15 – 16:30 Discussion

**16:30 -17:15 Observations and conclusions**

**Closing of the seminar**