



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the Human Rights Council 4th Session

### **Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism<sup>1</sup>**

#### **Mandate Holder**

Martin Schenin

#### **Mandate**

The mandate of the Special Rapporteur was established in 2005<sup>2</sup> as a reaction to the occurrence of violations of human rights and fundamental freedoms in the context of countering terrorism, and various initiatives to strengthen the promotion of human rights adopted by the United Nations, regional organizations, as well as by States. The aim of the mandate is to make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including country visits at the request of States, for the provision of advisory services or technical assistance on such matters; to examine alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders; and to identify, exchange and promote best practices and ideas.

#### **Activities**

- The Special Rapporteur conducted a fact-finding mission to Turkey, and conducted a study on human rights compliance while countering terrorism in 2006.
- The Special Rapporteur plans to visit South Africa in mid-May 2007, and has received a formal invitation from the Government of the USA to visit in the spring of 2007. The Special Rapporteur also hopes to carry out missions to Israel and the Philippines in 2007.
- The Special Rapporteur presented his report (E/CN.4/2006/98) to the second session of the Human Rights Council in September 2006.
- The Special Rapporteur visited Addis Ababa from 8 to 13 February 2006 and consulted with various officials of the African Union (AU). The discussion focused on the role and instruments of the AU in protecting and promoting human rights while combating terrorism.

#### **Annual Report<sup>3</sup>**

#### **Scope:**

---

<sup>1</sup> Written by Rami Chalabi, Intern, ISHR; edited by Gareth Sweeney, Information Program, ISHR.

<sup>2</sup> Commission resolution 2005/80.

<sup>3</sup> A/HRC/4/26, 29 January 2007.

- The report gives detailed description of the various activities carried out by the Special Rapporteur from December 2005-December 2006.
- The report focuses on the ascendance of terrorist ‘profiling’ as a significant component of States’ counter-terrorism efforts.

### **Summary and key conclusions**

- The EU has explicitly asked its member States to cooperate with one another to develop ‘terrorist profiles’, defined as ‘a set of physical, psychological or behavioural variables, which have been identified as typical of persons involved in terrorist activities and which may have some predictive value in that respect’.
- Profiling is in principle a permissible means of law-enforcement activity. However, when law-enforcement officials use broad profiles that reflect unexamined generalizations, their practices may constitute disproportionate interferences with human rights.
- Terrorist profiles have been employed in the context of data-mining initiatives.<sup>4</sup> This raises concerns with regard to a number of human rights guarantees. Data-mining activities based on broad terrorist profiles, that include group characteristics such as religion and national origin, may constitute a disproportionate and arbitrary interference with the right to privacy.
- Terrorist-profiling practices that involve distinctions according to a person’s presumed ‘race’ cannot be supported by objective and reasonable grounds, because they are based on the wrongful assumption that there are different human races, and therefore, involve unfounded stereotyping through a crude categorization of assumed races.
- The Special Rapporteur notes that suicide bombings present a particular challenge to counter-terrorism measures. Combined with profiling and shoot-to-kill policies by authorities, this can have lethal effects for innocent individuals.

### **Key recommendations**

- A profile would need to be narrow enough to exclude those persons who do not present a terrorist threat, and, at the same time, broad enough to include those who do.
- The Special Rapporteur recommends either universal or random security checks as preferred alternatives to race-based profiling.
- **Test of legitimate aim and proportionality:** For distinctions according to national and ethnic origins, there are two sub-tests which are generally applicable to determine the existence of an objective and reasonable justification. First, the difference in treatment **must pursue a legitimate aim**. Second, there has to be a **reasonable relationship of proportionality between the difference in treatment and the legitimate aim** sought to be realized.
- The Special Rapporteur is of the view that the use of lethal force by authorities must be regulated within a framework of human rights law and a strict standard of necessity.

### **Mission to Turkey<sup>5</sup>**

#### **Scope**

- The mission to Turkey took place from 16 to 23 of February 2006. The Special Rapporteur was very grateful for the full cooperation of the Turkish government. As he was able to meet with government officials, non-governmental organizations (NGOs) as well as detained people charged or convicted of terrorist offences without any limitations.

### **Summary and key conclusions**

---

<sup>4</sup> Searches of personal data sets according to presumed characteristics of subjects.

<sup>5</sup> A/HRC/4/26/Add.2

- The Special Rapporteur commends the changes made to the *Anti-Terror Act* in 2003. They clearly narrow the scope of the application of the law, which was previously used widely to prosecute political opponents. *Law No. 4928* repealed Article 8 of the *Anti-Terror Act*, which prohibited written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic or the indivisible unity of the nation.
- The Special Rapporteur voiced his concern about the prosecution for acts related to freedom of expression, association and assembly in relation to the notion of terrorism. There are elements both in the *Anti-Terror Act* and the Penal Code which may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions.
- Assessment of the *Act on the Compensation of Losses Resulting from Terrorist Acts and Measures Taken to Fight Against Terror (Law No. 5233)* was an important theme of the mission. While the Rapporteur commended the inclusion of victims in the Compensation Act, there have been complaints about it being implemented inconsistently.<sup>6</sup> Sums awarded and the rejection rate varied widely from province to province. These trends carry the risk of discriminating against certain applicants, and some might view the *Compensation Act* as biased.

### **Key recommendations:**

- The Rapporteur warns against Turkey guiding the reform of its anti-terror legislation by the most recent unrest in the country, and pressures to broaden the scope of its application and provide more power to the authorities. This will not be helpful to sustainable reform.
- The use of a separate definition of ‘terrorism’ beyond acts that constitute terrorist crimes should be reconsidered. The Turkish Government should also carefully account for the provisions of international conventions on terrorist acts when drafting new legislation against terrorism.
- If a need exists to classify an organization linked to terrorist crimes as a terrorist group, and this has adverse legal consequences, the procedure for such a designation should be open and transparent.
- The Special Rapporteur recommends the establishment of an **independent and impartial investigation mechanism** with the power to investigate promptly allegations of torture or other ill-treatment.
- The Rapporteur encourages Turkey to ratify the Optional Protocol to the *Convention against Torture* and the *Rome Statute of the International Criminal Court*.<sup>7</sup>
- Regarding the **victims of terrorism and prevention of terrorism**, the Special Rapporteur feels that while the *Act on Compensation of the Victims of Terrorism* is a step in the right direction, it falls short of restitution and rehabilitation.

### **Australia: study on human rights compliance while countering terrorism**

#### **Scope:**

This study was undertaken through an interactive written process. The Special Rapporteur identified a list of preliminary questions, which was provided to the Government of Australia, the academic community in Australia, as well as non-governmental organizations.

#### **Summary and key conclusions:**

---

<sup>6</sup> Of 181,147 applications filed under the Compensation Act by April 2006, 18,612 have been concluded with 11,123 rejections

<sup>7</sup> Available at <http://www.un.org/law/icc/index.html>

- Australia is a party to 11 of the 12 existing terrorism-related conventions. The obligations under the conventions have been implemented into domestic law through various Acts and Regulations of the Australian Commonwealth and States.
- In May 2005, the Government of Australia announced a counter-terrorism package totaling \$40.3 million over four years aimed at the development of counter-terrorism legal frameworks and measures to improve border control and maritime security.
- Many in civil society have questioned the need for legislative reform since 11 September 2001. Australia has itself reported that ‘extensive and effective legislation’ was already in place before 2001. According to the Rapporteur, Australia did need legislative reform in order to bring Australia into compliance with Security Council resolution 1373 (2001) and with the work of the Al-Qaida and Taliban Sanctions Committee.
- It appears that the federal government had not intended to release *Anti-Terrorism Act* (No. 2) for public consultation. Instead, the Bill was leaked by the Chief Minister of the Australian Capital Territory.
- It is of concern to the Special Rapporteur that Australia does not have domestic human rights legislation capable of guarding against undue limits being placed upon the rights and freedoms of individuals.
- The Rapporteur is disappointed that Australia does not have legislation put in place to **compensate victims** of terrorism.
- The Special Rapporteur is of the view that Australia’s definition of **terrorism as defined in Part 5.3 of the 1995 Criminal Code goes beyond the Security Council’s resolution 1566 (2004)** by including acts that go beyond an intention of causing death or serious bodily injury, or the taking of hostages, and including acts not defined by international conventions and protocols relating to terrorism
- Under the *Anti-Terrorism Act (no.2) 2005*, the powers of the Australian Federal Police have been extended to include the ability to conduct random searches where the Attorney-General has declared an area or place to be a ‘specified security zone’. These declarations have a 28-day life.

### **Key recommendations:**

- The anti-terrorism package should not replace, but supplement, its development assistance budget.
- Because of the potentially profound impact of counter-terrorism legislation on human rights and fundamental freedoms, it is particularly important that the Government seeks to secure the broadest possible political and popular support for such legislation.
- Australia should reconsider the definition of the term terrorist act.
- The 28-day life of declarations, which give the Australia Federal Police’s the ability to conduct random searches, impose a potentially unnecessary or disproportionate interference upon liberty and security and should be revoked.
- The Rapporteur comments Australia’s adoption, through the control order regime, of measures capable of protecting the public while avoiding detention, such as house arrest.