Antiterrorism and Human Rights

"Counter-Terrorism Measures and Human Rights, Keys for Compatibility"

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On the occasion of the hearing of the President of the Counter Terrorism Committee before the Third Committee of the UN General Assembly, the FIDH releases a report entitled:

« Counter-Terrorism Measures and Human Rights, Keys for Compatibility ».

September 11, 2001 terrorist attacks on the American soil marked a decisive turning point in the history of terrorist attacks as well as counter-terrorism measures and practices. The international community through the United Nations Security Council reacted to these attacks by adopting Resolution 1373 (2001) creating the Counter-Terrorism Committee (CTC) and imposing obligations on member States to raise national capacity to combat terrorism in all its forms. Following that resolution, States have started enacting specific counter-terrorism measures in their domestic law in a way incomparable to what had previously been done.

Increasingly, this new legislation shows a clear trend of numerous States to sacrifice the most basic human and civil rights in the name of the fight against terrorism, or even in the name of the « global war on terror », as some label it without carefully weighing the legal consequences of such a reference.

While human rights defenders are among the very first ones to condemn terrorist attacks, they also firmly believe that the most efficient ways to respond to this phenomenon are to be found within the democratic rule of law and the legal framework set forth in international human rights treaties - which provide for, under strict conditions, derogations and limitations; such derogations and limitations aim precisely at addressing such emergency situations. This has now been overtly repeated by the United Nations Secretary General Kofi Annan, as well as by the United Nations Committee on Human Rights, other UN treaty bodies, Special Procedures of the Commission on Human Rights and regional human rights bodies.

The content of this report is notably based on the various documents issued by these bodies over the past few years.

The objective of the present report is two-fold. On the one hand, it constitutes a denunciation in that it stresses which obligations arising from international human rights law counter-terrorism measures directly violate. The most disturbing transgressions include arbitrary detentions, torture, violations of the right to life, of the right to a fair trial by an impartial and independent tribunal, violations of the right to freedom of expression, private life and property, or refoulement of asylum seekers and expulsion of migrants suspected of taking part in terrorist activities to countries where they may face torture or cruel, inhumane or degrading treatment.

On the other hand, the report aims at recalling to States and to all actors involved in the elaboration of counter-terrorism legislations that the respect of human rights is not only necessary in order to achieve the objectives of these policies, but is also compatible with the fight against terrorism. It is too often assumed that, on the contrary, respecting international human rights obligations is a hindrance to the success of counter-terrorism measures.

However, human rights treaty law and jurisprudence, whether international or regional, do provide for concrete solutions and clear legal frameworks within which to act when States are facing such emergency and exceptional situations. According to these well-established and reaffirmed doctrines, States have the ability to adopt exceptional and temporary measures which derogate or limit human rights.

"At a time when the Bush administration has been trying to prevent the adoption of legislation prohibiting cruel,
inhuman or degrading treatment against people arrested in connection with terrorism, where people are regularly transferred so as to be interrogated in countries where torture is systematically used to extort confessions, while there is an increasing recourse to exceptional procedures to judge persons accused of terrorism. It is of the utmost importance to underline the keys for compatibility between anti-terrorist measures and human rights”, said Sidiki Kaba, President of FIDH.

The FIDH issues a number of recommendations to the CTC and to States in order to ensure that all legislation and measures taken in the context of the fight against terrorism are fully compatible with human rights and fundamental freedoms, which are the very essence of the rule of law.

For the FIDH, it is imperative to denounce an increasing arbitrary counter-terrorism, which is developing without constraints: in order to be credible and efficient, the struggle against terrorism must clearly remain within the scope of human rights.

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