

**“Oversight and Accountability in Counter-Terrorism:
Lessons from Regional Experiences in Africa and the Americas”**

Permanent Mission of Mexico to the United Nations, New York
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**Remarks of the Special Rapporteur on the promotion and protection of
human rights and fundamental freedoms while countering terrorism, Ben Saul**

Excellencies, distinguished guests

I thank the Civil Society Coalition on Human Rights and Counter-Terrorism, Mexico and Canada for hosting today’s event.

I am pleased to highlight the findings and recommendations on oversight, accountability and remedies from my recent annual report to the General Assembly on the role of regional organizations in protecting human rights while countering terrorism. In recent years there has been a lot of attention on human rights compliance at the national and United Nations levels, but the “missing middle” is the prolific counter-terrorism activities of regional organizations.

Many counter-terrorism efforts by regional organizations can directly or indirectly affect human rights, including their legal frameworks, information and intelligence sharing cooperation, the circulation of arrest warrants or terrorist “blacklists”, law enforcement, border security and military operations, technical assistance and capacity building.

Effective oversight and accountability mechanisms, and remedies, are essential in ensuring respect for and the protection of human rights by regional organizations in these activities. These also enhance security, since they help to ensure that counter-terrorism efforts are strictly necessary and do not waste scarce security resources; they deter further state violations of human rights that could be conditions conducive to more terrorist violence; they increase public confidence in counter-terrorism measures; and they increase the confidence of foreign states and other regional organizations in cooperating with the regional organization and its members.

Most regional organizations have not established oversight or monitoring bodies or procedures dedicated to counter-terrorism activities, but regional human rights systems and certain other mechanisms are available. The European Union (EU) and ECOWAS are among the few organizations to empower their regional courts to directly review regional laws and the actions of their institutions, and such direct scrutiny is to be strongly encouraged.

In most regions, however, at most regional human rights mechanisms, typically comprised of human rights commissions and/or courts, may allow individual and/or inter-state complaints against Member States, potentially including binding judicial remedies. They thus allow challenges to national implementation of regional counter-terrorism law but not to the regional measures directly. Mechanisms in Europe and the Americas have been most active in scrutinizing counter-terrorism activities.

Few other regional human rights systems have directly addressed terrorism. There is considerable scope for the vibrant African human rights system to do so in future. The strengths and weaknesses of different regional mechanisms are well known and questions about their effectiveness are often amplified on security issues. Many regional organizations have human rights bodies but not courts, with a stalled proposal for an Arab Court of Human Rights. Some can monitor state human rights compliance, but most have no or weak complaints procedures. The Arab Charter on Human Rights regrettably appears not to be fully consistent with international human rights law.

Other more specialized regional human rights bodies can supervise aspects of regional counter-terrorism practice, such as the EU Fundamental Rights Agency, EU Special Representative on Human Rights, Council of Europe Commissioner for Human Rights and the inter-governmental Arab Permanent Committee on Human Rights, and the Organization for Security Cooperation in Europe's Office for Democratic Institutions and Human Rights. Barriers identified in some regions, however, include inadequate resourcing of human rights bodies; insufficient consultation with human rights bodies by counter-terrorism bodies; and a lack of a human rights culture in the latter.

A few regions task other specialized mechanisms with aspects of human rights scrutiny relevant to counter-terrorism, such as the EU Data Protection Supervisor, internal fundamental rights officers, regional parliamentary committees, multi-partite human rights consultative mechanisms, and the European Ombudsman, European Anti-Fraud Office, European Court of Auditors, and Council of Europe Directorate of Internal Oversight.

Requiring review of the implementation of counter-terrorism standards is another positive means of identifying national inconsistencies with human rights. A rigorous example is the EU Commission's assessment of member state transposition of EU law into national law, with the possibility of binding, phased infringement proceedings culminating in referral to the EU Court of Justice. Other processes can also enable human rights scrutiny, such as regional strategies to counter-terrorism and violent extremism, as long as these are monitored and evaluated for human rights compliance.

Some regional instruments provide for periodic or *ad hoc* consultations among, or conferences of, states parties in relation to their implementation, which should proactively include consideration of human rights impacts. Separately, treaty procedures for periodic consideration of the adequacy of and proposed amendments to conventions can enable the normative framework itself to be reconsidered if human rights concerns have arisen. Many regional conventions have been updated over time with protocols, and future proposals should more squarely consider human rights issues. The Council of Europe is currently revising its definition of terrorism to align with the EU's, which raised human rights concerns; while the Organization of Islamic Cooperation is reviewing its 1999 instrument and considering a new protocol, including to address human rights.

Regional measures potentially can be scrutinized before international human rights procedures, although this is usually only indirectly through review of national implementation. Greater cooperation between regional counter-terrorism bodies and international human rights procedures is to be encouraged.

There is great variation between regional organizations in the level of disclosure of information and transparency about regional counter-terrorism activities. Lack of disclosure can reflect not only resource constraints, but also cultures of secrecy reflecting the prevailing attitudes of Member States. It is concerning that a number of regional organizations have failed to publish their regional strategies on countering terrorism and violent extremism, when these are the bases of extensive, intrusive exercises of public power. It is good practice for regional organizations to report on their counter-terrorism activities publicly, comprehensively, regularly and accessibly, including in relation to human rights and gender impacts; and to publicize in advance the agendas and documentation, and afterwards the records, of meetings.

Finally, civil society organizations can also play an indispensable role in monitoring and evaluating regional counter-terrorism activities, identifying and documenting violations of human rights, advocating for remedies and accountability, representing victims, and petitioning human rights procedures. All this assists to enhance human rights compliance by regional organizations and thus their public legitimacy and effectiveness. Regional organizations must, however, refrain from reprisals and intimidation against human rights defenders, systematically protect them from reprisals by Member States, and promote civic space, particularly in regions where many states are hostile to human rights defenders.

Thank you.