

Amnesty International

Statement to Working Session 4: Rule of Law II, Protection of human rights and fighting terrorism

7 years after the devastating attacks on the USA on 11 September 2001, ending human rights violations in the context of terrorism and counter terrorism remains one of the key challenges of our times.

The United Nations Strategy to Counter Terrorism, and the OSCE's own commitments have recognised that counter-terrorism measures are to be conducted in accordance with international law, in particular international human rights law, refugee law and humanitarian law. This, unfortunately, has been little more than mere hollow rhetoric.

Rather, the response to the real threat of terrorism continues to be characterised, in the OSCE area and beyond, by practices such as:

- Indefinite detention without charge or trial, and incommunicado detention;
- Use of interrogation techniques which amount to torture or other cruel inhuman and degrading treatment;
- Enforced disappearance and secret detention;
- Extrajudicial executions and indiscriminate or disproportionate attacks;
- Government attempts to justify transfers to states which use torture or other ill-treatment, including on the basis of "diplomatic assurances".

What is most problematic, in this context, is not just that countries have resorted to these practices – torture, for example, could in no sense be considered an invention of the so called "war on terror" – but these countries have argued that they are justified – that human rights needs to be either balanced against security, or abandoned altogether. This approach can also be seen in the introduction of counter terrorism legislation – incorporating over broad definitions of terrorism, provisions for lengthy detention without charge or trial and other practices.

This approach to counter terrorism has been exemplified by the USA's holding detainees at its offshore "war on terror" facility at Guantanamo Bay, its authorisation of interrogation techniques and conditions of detention that amount to cruel, inhuman or degrading treatment, and its operation of a programme of rendition and secret detention by the Central Intelligence Agency.

And the role of European states in these US led programmes has been widespread, ranging from active participation to tacit collusion. European agents in Sweden, Macedonia and Bosnia and Herzegovina have detained suspects and turned them over to US custody without judicial process. Europe's airports have been freely used by CIA-operated planes that have transported victims of rendition, hooded and chained, to interrogation and ill-treatment in secret incommunicado detention in locations around the world. Investigations by the Council of Europe indicated that between 2003 and 2005, **Poland and Romania** hosted secret prisons run by the CIA.

Moreover, despite the scandal that followed revelations of European states' involvement, and the egregious violations involved, European states have not taken measures to prevent further European involvement in rendition and secret detention, and have failed to investigate violations carried out by their nationals or on their territory. Although individual prosecutors in some countries have made laudable efforts to investigate and ensure accountability for past violations, most recently here in **Poland** the national prosecutors office has opened an investigation, but European governments have invoked national security or state secrecy grounds to thwart investigations.

Perhaps more importantly, it must be noted that it was not the accountability mechanisms of European states that exposed this scandal – it was the work of journalists, human rights organisations and even plane spotters – preventive measures must be put in place to ensure it is not allowed to happen again.

Equally worrying to Amnesty international has been the less clandestine assault on human rights in the context of counter terrorism, particularly with regard to detention without charge, the introduction of anti terrorist legislation, and on the issue of refoulement to countries known to practice torture and other ill-treatment.

In January 2008 the government of the **United Kingdom** introduced the Counter-Terrorism Bill 2008 in Parliament. If enacted, this would be the fifth major piece of legislation in the UK aimed at countering terrorism since 1997. Rather than repairing the damage done by previous counter-terrorism legislation, it seeks to entrench and to extend some of the most damaging provisions of that legislation.

Since 2000 the maximum length of time for which a person suspected of a terrorism-related offence can be detained without charge in the UK has increased from seven to 14 to 28 days. If enacted the Counter-Terrorism Bill would give a government minister the power to further extend this maximum period to 42 days (that is, six weeks).

Amnesty International considers that prolonged detention under this power would fail to give effect to one of the crucial components of the right to liberty and freedom from arbitrary detention – the right of the person detained to be promptly informed of any charges against her or him. The UK is but one recent and current example of a trend across Europe.

Amnesty International is also gravely concerned by continued attempts by a number of European states, including the **United Kingdom, Denmark, France and Italy**, to deport individuals suspected of involvement in terrorism-related activity to countries where they will face a real risk of grave human rights violations, including torture or other ill-treatment. Amnesty International welcomed the recent re-affirmation, by the European Court of Human Rights, in the case of *Saadi v Italy*, of the absolute nature of the prohibition on returning an individual to a country where they will face a real risk of torture or other ill-treatment. Amnesty International was dismayed by arguments advanced in that case by the United Kingdom and Italy seeking to persuade the Court to allow states to 'balance' the risk that an individual would be tortured in the country to which they were to be deported against the alleged risk posed by that individual to the national security of the country seeking to deport him, and was relieved to see those arguments unequivocally dismissed by the European Court of Human Rights.

Amnesty International does not consider that diplomatic assurances as to the treatment of these individuals on their return, where those have been sought and obtained, offer any effective protection against the risk of grave human rights violations. Moreover, the very act of seeking and relying on such assurances, which are inherently unenforceable, undermines the absolute nature of the prohibition on torture. These policies should be condemned and abandoned.

There are, however, some encouraging signs.

There is almost universal condemnation of the detention facility at Guantanamo Bay, Cuba. Both candidates for the US presidency have said they will close it, as, in fact has the current President. Amnesty International welcomes this fact, as well as the fact that many OSCE governments have joined Amnesty's call for closure. We call for urgent action to end this human rights scandal once and for all and OSCE governments can play a further positive role – through accepting detainees held at Guantanamo, deemed not to be a threat, but unable to be returned to countries where they would face torture or other serious violations of their human rights.

There are also some positive moves towards disclosure and accountability with regard to scandal of rendition and secret detention that implicated a large number of European states, as noted there are ongoing investigations in Poland, Germany and a trial underway in Italy.

But it is clear that more must be done by OSCE governments if their deeds are to match the rhetoric of putting human rights at the centre of the strategy to counter terrorism.