Strasbourg, 20 May 2016

BACKGROUND NOTE[1]

PROTECTING HUMAN RIGHTS WHILE COUNTERING TERRORISM:

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

---

[1] This background note has been prepared by Dr Natasa Mavronicola, Lecturer in Law at Queen's University Belfast, for a brainstorming meeting on Protecting Human Rights while Countering Terrorism: The Role of National Human Rights Institutions organised by the Office of the Council of Europe Commissioner for Human Rights and the European Network of National Human Rights Institutions.

TABLE OF CONTENTS

1 INTRODUCTION

1. Terrorism poses continuing and evolving threats to our lives and our values. Across Europe, States' efforts to counter these threats have raised grave challenges to human rights protection and the rule of law. Whilst in principle counter-terrorism measures can be both effective and human rights-compliant, in practice counter-terrorism measures and practices have frequently encroached on a number of human rights, and have often done so at the expense of some of the most vulnerable individuals and groups. In light of this, National Human Rights Institutions (NHRIs) should, in their role in protecting and promoting human rights, give due regard to the human rights issues arising in the context of counter-terrorism and build mechanisms and strategies for addressing them. The purpose of this note is to provide an overview of challenges raised and consider the responsibilities of, and opportunities for, NHRIs in protecting and promoting human rights in the context of counter-terrorism.

2 THE INTERSECTION BETWEEN HUMAN RIGHTS AND COUNTER-TERRORISM MEASURES

2. The imperative for constitutional democracies is to protect persons from terrorism while at the same time adhering to human rights, democracy and the rule of law. Compliance with human rights preserves the very values which the terrorists are attacking, sustains wide and cross-community confidence in the State's governing institutions and their adherence to the rule of law and undercuts the root causes of terrorism. As highlighted by (former) UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin, 'compliance with all human rights while countering terrorism represents a best practice because not only is this a legal obligation of States, but it is also an indispensable part of a successful medium- and long-term strategy to combat terrorism'. The importance of respecting human rights when countering terrorism has been highlighted repeatedly by many organs of the United Nations,[2] the OSCE/ODIHR,[3] and many NHRIs.[4] The 2015 Position Paper of the Council of Europe (CoE) Commissioner for Human Rights buttresses this point and offers an insightful summary of key issues which have arisen in Europe in this context.

2.1 MEASURES AND PRACTICES ADOPTED IN THE CONTEXT OF THE SECURITY VS HUMAN RIGHTS NARRATIVE

3. States have a duty to protect the lives of those within their jurisdiction, but to do so in compliance with human rights. Unfortunately, as the Commissioner for Human Rights has observed, 'the protection of human rights has been presented as an obstacle to effective counterterrorism work when, in fact, it is essential to preventing and decreasing the incidence of terror around the world'. In a climate of fear spread by terrorism and the threat of further attacks, a dominant political narrative is that decisive action is needed, often at the expense of human rights, in what is portrayed as a necessary 'balancing' between protecting national security and people's safety on the one hand, and adhering to human rights on the other.

4. A number of measures and practices pursued in the context of counter-terrorism by States have violated human rights and/or eluded effective oversight. Some of these but by no means all have been premised on derogation from human rights treaties (governed in the CoE by Article 15 of the European Convention on Human Rights (ECHR)), while others have impinged on qualified rights (such as, in the CoE context, the right to private and family life under Article 8 ECHR); others still have involved breaches of absolute rights, such as the right not to be subjected to torture or inhuman or degrading treatment or punishment (in the CoE context, Article 3 ECHR). These have included: torture, inhuman and degrading treatment, and involvement in extraordinary rendition; *refoulement*; detention without trial; sweeping stop and search powers; extensive surveillance; administrative orders affecting fundamental rights and interests to which persons are subjected without a fair hearing; measures against 'radicalisation' which may affect the enjoyment of freedom of expression and other rights; warfare/drone strikes. Some of the human rights challenges arising in this context are helpfully outlined by the OHCHR in a relevant factsheet.

---

[2] For example, UN Security Council Resolution 1456 provides that 'States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law'. UN Security Council Resolution 1456 of 20 January 2003, doc. S/RES/1456 (2003), para. 6.

[3] See, for example, OSCE/ODIHR, *Countering Terrorism, Protecting Human Rights* (2007).

[4] See, for example, Commission Nationale Consultative des Droits de l'Homme (CNCDH), 'Une profonde solidarité avec les victimes et leurs proches' (Communiqué de presse, 15 November 2015); see also Northern Ireland Human Rights Commission, 'Terrorism, Counter-terrorism and Human Rights: the Experience of Emergency Powers in Northern Ireland: Submission by the Northern Ireland Human Rights Commission to the International Commission of Jurists Eminent Jurists Panel' (2006).

5. There is now a considerable body of case law on many of the above measures and practices, insofar as they have occurred within the jurisdiction of Member States of the CoE, by the European Court of Human Rights (ECtHR), helpfully set out in a number of factsheets.[5] The principles emanating from these judgments, which have found a number of measures and practices to fall foul of the ECHR, carry the force of precedent and should be brought to the attention of CoE Member States contemplating measures which have already been impugned by the ECtHR as incompatible with human rights.

2.2 OVERARCHING ASPECTS

6. A bird's eye view of counter-terrorism measures reveals certain overarching aspects, which can inform NHRIs' response.

7. *Extension*. Whilst it is very difficult, if not impossible, for any crimes to ever be completely eradicated, governments are often under considerable public pressure to minimise the risk of a terrorist attack to as close to zero as possible, due to their devastating and widely reverberating impact, which it is the very purpose of terrorist attackers to amplify. This pushes States to constantly increase the reach of counter-terrorism measures. This can result in overbroad measures which may disproportionately impinge on human rights. Moreover, counter-terrorist measures are often portrayed as temporary action necessitated by a terrorism threat which qualifies as an emergency. Nonetheless, it has been repeatedly observed that they have a tendency to expand and extend over time.[6]

8. *Contagion*. Related to the above, counter-terrorist measures are often portrayed as isolated exceptional steps required to neutralise the particular terrorism threat at issue, contained to precisely that action. Unfortunately, such measures have a tendency to spread: emergency/counter-terrorism laws and practices may become adopted in contexts and for purposes beyond those for which they were originally intended; and steps which are originally portrayed as exceptional aberrations from respect for human rights and the rule of law can become normalised and permeate the everyday functioning of government machinery. Important rule of law and human rights victories in the day-to-day functioning of the State and its law enforcement machinery may be dismantled. Moreover, the securitisation of persons fleeing conflict and/or seeking asylum in Europe is linked to the contamination potential of counter-terrorism;[7] as security is often cast as being in tension with human rights, this can entail that these persons' human rights may not be fully respected insofar as security is prioritised.

9. *Continuity*. Many forms of counter-terrorist measures and practices can be traced back through (recent) history, although they are refined and reshaped over time.[8] There are lessons to be learned from the successes, but also from the mistakes and failures, of counter-terrorism operations of the past. Lessons may also be gleaned from those bodies which have campaigned for democratic oversight, human rights, and the rule of law in the context of counter-terrorism in States where counter-terrorism has been practised extensively in the past, such as the Northern Ireland Human Rights Commission (one of whose key outputs on counter-terrorism and human rights can be found here).

---

[5] See *Factsheet: Terrorism* (ECtHR – Press Unit, March 2016); *Factsheet: Derogation in time of emergency* (ECtHR – Press Unit, December 2015); *Factsheet: Secret Detention Sites* (ECtHR – Press Unit, February 2016). See also, with many cases relating to the right to privacy in the context of counter-terrorism, *Factsheet: Personal Data Protection* (ECtHR – Press Unit, April 2016).

[6] See the seminal study from 1982: Nicole Questiaux, *Study of the Implications for Human Rights of Recent Developments Concerning Situations Known as States of Siege or Emergency* UN Doc. E/CN.4/Sub.2/1982/15; and Oren Gross, 'Chaos and Rules: Should Responses to Violent Crises always be Constitutional?' (2002-2003) 112 *Yale Law Journal* 1011.

[7] Anne Hammerstadt, 'The securitization of forced migration' in Elena Fiddian-Qasmiyeh et al, *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014.

[8] See, for example, International Commission of Jurists, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), p. 30.

10. *Export*. Effective counter-terrorism practices may be disseminated across States, particularly those aligned in their counter-terrorism agendas. Problematic practices may also be exported. Strikingly, many of the 'Enhanced Interrogation Techniques' ('EITs') employed in the US 'war on terror', have been associated with the practices of other States, notably the UK, in the context of colonial and other conflicts in the 20th century;[9] and these 'EITs', which have been found to amount to torture by the ECtHR, have touched many States, including several European States implicated in US extraordinary rendition. Additionally, the US practice of drone strikes has now been adopted by the UK and has been the topic of extensive [debate] and, on 10 May 2016, a [report] by the UK Parliament's Joint Committee on Human Rights.

11. A climate of fear and the responses that follow may well exacerbate the marginalisation of certain groups, or persons associated with such groups, both by State actors and by private persons. This is linked to alienation, which has been [identified] as conducive to the spread of terrorism. The incidence of ethnic and religious profiling, xenophobia and/or Islamophobia in the context of counter-terrorism is not always officially and systematically recorded. In addition, fear creates fertile conditions for the pursuit of counter-terrorism measures which disproportionately impact on the human rights of 'suspect' persons and groups without significant public contestation (or with considerable popular support).

12. These aspects can inform NHRIs' strategies. In particular, the continuities and exchanges in counter-terrorism measures and practices could be 'mirrored' by NHRIs, which could share and build on best practice, and learn lessons from bodies with historical experience of such practices. For instance, a 2011 [study] commissioned by the UK's Equality and Human Rights Commission (EHRC) has noted that '[e]xperience from Northern Ireland teaches us that counter-terrorism measures have the potential to stigmatise whole communities, to fuel resentment and even to bolster support for terrorist movements' and the 'danger that that Muslims…may become the new suspect community'. This is now a central issue in relation to the UK government's Prevent strategy, aimed at countering extremism, on which the UK's Independent Reviewer of Terrorism Legislation recently [commented] in a critical manner. Such experiences and insights can be harnessed, publicised and built on. In addition, they highlight the potential for pre-emptive planning and the formulation of strategy before tragic events occur in a particular jurisdiction, which may give rise to very rapid developments and deterioration in rights protection.

13. There are also new challenges raised in the intersection between counter-terrorism and human rights, notably in the use of technology. Moreover, today's transnational terrorism triggers transnational and supranational counter-terrorism measures, some of which may raise jurisdictional issues (eg extraterritoriality); the human rights response must therefore include a strong transnational and supranational dimension and have a global orientation.

14. Lastly, it is worth revisiting the relationship between security and human rights, and considering what nuanced perspectives might be offered on this topic, particularly in the context of NHRIs' communications strategies. The perception that human rights are obstructive in counter-terrorism and the false dichotomy between security and human rights is very difficult to shake. In this vein, creative methods, including on the promotion of human rights through communication, but also fostering open discussions on human rights, may be required.

---

[9] See Ian Cobain, *Cruel Britannia* (Portobello Books 2013).

15. NHRIs are key mechanisms towards embedding and improving human rights protection within States under a constitutional and/or legislative mandate to protect and promote human rights. They can be vital towards rebalancing any skewed approaches to security and human rights adopted by politicians and State machinery in the context of counter-terrorism and many of their qualities (insofar as they operate in compliance with the **Paris Principles**) make them particularly effective in this endeavour, which demands robust domestic, transnational and supranational strategies. These qualities include:

   ▪ that they are involved in both protecting and promoting human rights, thus being able to target challenges to human rights in the context of counter-terrorism 'root and branch';
   ▪ that they are part of the State structure, and therefore enmeshed and well-versed in the workings of government to enable effective monitoring and advising on human rights compliance, but at the same time are independent and therefore able to challenge problematic measures and practices – this secures access to key actors without in principle compromising the rigorous oversight undertaken;
   ▪ that they link national human rights protection and regional and international human rights systems, and can operate as a 'bridge' between civil society and the government,[10] enabling them to respond better to the multi-layered challenges raised by counter-terrorism and exploit synergies with other organisations, whilst remaining independent and impartial bodies;
   ▪ that they engage in efforts to combat all forms of discrimination, in particular racial discrimination, which is a prominent issue in the context of counter-terrorism;
   ▪ that they are involved in publicising human rights issues, notably by making use of all press organs, enabling them to contribute to and potentially disrupt dominant media narratives on the relationship between security and human rights;
   ▪ that they can contribute to programmes for teaching and research on human rights and their implementation, allowing them to raise broad awareness of human rights, their value, and their significance in the context of counter-terrorism.

16. Some NHRIs may have a significant complaints-handling or quasi-jurisdictional function, or be able to pursue legal proceedings in relation to human rights violations. Complaints-handling can allow NHRIs to be responsive to developments in this area, whilst the ability to pursue legal proceedings can be deployed strategically and to redress significant violations, or to represent particularly vulnerable persons.

3.1 CHALLENGES

17. Counter-terrorism subjects NHRIs to considerable challenges, in addition to the challenges already faced in delivering on the wide range of their competences and responsibilities in the promotion and protection of human rights. Besides the overarching issues outlined above, counter-terrorism measures are often legislated for and implemented in the context of actual or perceived crisis and widespread panic. NHRIs and other relevant actors may have less scope for direct scrutiny, intervention and input into the processes by which counter-terrorist measures are legislated for and implemented. Moreover, NHRIs may be under time pressures and have to confront a number of rapid developments alongside their day-to-day advice, monitoring and other functions.

18. Additionally, NHRIs are likely to be facing a more hostile environment as regards human rights both from government and from the public, and dominant narratives and discourses dichotomising security

---

[10] Office of the United Nations High Commissioner for Human Rights (OHCHR), *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (UN, New York and Geneva, 2010) p. 13.

and human rights and prioritising the former. Criticism may be unwelcome or actively suppressed. In Turkey, for example, criticism of counter-terrorism practices against Kurdish persons has attracted criminal investigations and sanctions, including against **journalists** and **academics**. In France, Christine Lazerges, President of the CNCDH, has acknowledged and confronted the increased popular and political support for limiting rights and liberties in order to (allegedly) strengthen security, and the capacity of terrorism and counter-terrorism to polarise opinion and stigmatise particular groups, in interviews on **27 November 2015** and **7 February 2016** in *Libération*.

3.2 OPPORTUNITIES AND RESPONSIBILITIES

19. Mindful of the layered responsibilities of NHRIs and of the 2004 Seoul Declaration, this part of the note considers (potential) responses, and opportunities for securing greater efficacy in NHRIs' efforts to protect and promote human rights in the context of counter-terrorism. Examples of initiatives undertaken, or which could be undertaken, in providing advice, monitoring, awareness-raising and complaints-handling, or a combination thereof, as well as in harnessing partnerships, are offered. These should be seen in light of NHRIs' general domestic and international work in protecting and promoting human rights (including some NHRIs' function as NPMs), in which the dimension of counter-terrorism may (increasingly) be covered.

Example 1: pooling resources towards addressing rapid developments in counter-terrorism law

20. Dedicating resources towards addressing rapid developments in counter-terrorism law can be crucial where an event occurs which triggers immediate and wide-ranging reactions, as occurred in France following the attacks in Paris in November 2015. The CNCDH in France has responded rapidly to developments in France to advise on counter-terrorism measures and to monitor ongoing developments for compliance with human rights.

    It has undertaken the following:
    - Statement of opinion on the draft law on organised crime and terrorism, 17 March 2016
    - Statement of opinion on the Constitutional Bill for the Protection of the Nation, 18 February 2016
    - Statement of opinion on the state of emergency, 18 February 2016
    - Declaration on the state of emergency, 15 January 2016

21. It has attended and contributed to hearings in parliament on legislative developments, and engaged in exchanges with relevant authorities, including a visit and exchange on policy with the Minister of the Interior on 3 February 2016. A list of hearings and exchanges leading up to 18 February 2016 is appended to its Statement of Opinion on the Constitutional Bill for the Protection of the Nation, and includes government members, journalists, academics, representatives of trade unions, an anti-Islamophobia group, and others. Moreover, it has monitored compliance of state of emergency measures with international obligations (raising issues *inter alia* through press releases) and used the media to communicate arguments against the strict opposition between security and liberty and against the association of Muslims, Arabs, foreigners and refugees with terrorism (an example being Christine Lazerges' interview on 7 February 2016 in *Libération*).

22. NHRIs could consider making counter-terrorism a priority – among other NHRI activities – and diverting some resources towards taking a range of steps to protect and promote human rights in this context.

Example 2: zooming in on unequal impact

23. One issue which may warrant special consideration is what structures are needed to ensure that equality and non-discrimination issues can be monitored in a counter-terrorism context, notably the need for data on the impact of counter-terrorism measures, particularly vis-à-vis certain communities, but also the incidence of hate crime by non-State actors. It is worth noting, in terms of the applicable human rights law on the latter issue, that the ECtHR has also established in its case law that violent

incidents which may have been motivated by racism must be thoroughly investigated under Article 3 ECHR.[11]

24. It can be useful to set up or preserve and secure the availability of data regarding the impact of counter-terrorism measures on certain communities, including stop and search, house searches, control orders, and others; and any attacks and discriminatory incidents by private persons that may be linked to the association of members of certain groups with terrorism should be recorded. Examples of such practices can be found in many jurisdictions – below is a small selection.

25. The UK's EHRC has conducted or commissioned research on the disparate impact of counter-terrorism laws. In *Human Rights Review 2012: How fair is Britain? An Assessment of how well public authorities protect human rights*, the EHRC *inter alia* looked at how far ethnic minority groups were more likely to be subject to stop and search and the detrimental effects of counter-terrorism legislation. Moreover, in the *Research report 72: The impact of counter-terrorism measures on Muslim communities* commissioned by the EHRC in 2011, researchers studied the impact of counter-terrorism laws, policies and practices on Muslim communities and found that counter-terrorism laws and practices contributed to a sense among Muslims of being treated as a 'suspect community'. As noted in a recent study on *Stop and Search powers*, the EHRC is currently undertaking research into the impact of counter-terrorism laws and policies, in particular in relation to ethnic minority communities.

Example 3: advance preparation towards safeguarding human rights and providing advice, monitoring, awareness-raising and guidance

26. NHRIs, either individually or within a network, could make 'risk assessments' as to the potential ways in which the law might be altered to restrict human rights in the context of counter-terrorism, taking into account both the experiences in other States and the specificities of their own legal system. Through foresight and a form of contingency planning, they would be able to respond more quickly to rapid developments and proposed or actual legislative and executive counter-terrorist measures following a terrorist attack. Strong structural safeguards can help weather a perceived or actual crisis or terrorist emergency, including:

   ▪ access to justice (including through ensuring the protection of lawyers and the availability of legal aid) and the independence of the judiciary;
   ▪ opportunities for effective democratic oversight and accountability for counter-terrorism measures and the operations of national security services, including challenging any expedited/'emergency' procedures;
   ▪ independence and freedom of the press, including investigative journalism;
   ▪ open and honest public conversations about counter-terrorism, its limits, and its relationship with human rights;
   ▪ promoting educational and community initiatives in support of human rights and against racism, religious discrimination, xenophobia and other forms of intolerance and othering;
   ▪ mainstreaming human rights and equality considerations which arise in (but are not isolated to) the counter-terrorism context into government action ranging from anti-radicalization to migration;
   ▪ policing by consent and good community relations which adhere to human rights.

27. Most of these structural safeguards come within the general remit of NHRIs' responsibilities, but they are especially vital in the context of counter-terrorism, given the fundamental challenges it poses. Robust human rights foundations across government and society are more likely to survive circumstances of crisis. Many of these structural safeguards can be transformed into potent resistance tools against undue encroachment on human rights.

---

[11] See recently, for example, *Sakir v Greece* App No 48475/09 (ECtHR, Judgment of 24 March 2016).

28. Clear, usable guidance on ensuring that human rights are taken into account and complied with in the context of counter-terrorism can play a role in both protecting and promoting human rights in this challenging context. An example of a resource which can prove valuable in this regard is the Danish Institute for Human Rights' Practical Guidance on Counter-terrorism and Human Rights. It encompasses a strategic overlaying of functions which is both multi-dimensional and multi-targeted, and is a tool through which human rights can be both protected and promoted.

29. The Danish Institute for Human Rights' [Practical Guidance on Counter-terrorism and Human Rights](#) consists of guidelines which can amount to:
   ▪ an assessment tool (PRIME – looking at Policy, Regulation, Implementation, Monitoring and Evaluation) which can be used at national level to identify and address possible approaches to, and weaknesses in, fighting terrorism and complying with human rights obligations;
   ▪ input towards easily accessible, practical and operational human rights guidelines in relation to counter-terrorism measures aimed at mainstreaming human rights in law enforcement and national security operations.

30. This is a valuable initiative towards ensuring that human rights concerns are embedded in counter-terrorism practice, rather than grounds on which only *ex post facto* accountability is sought. It is also particularly useful because it can be used by NHRIs and other bodies in their advice, monitoring and awareness-raising functions, to identify human rights concerns in the context of counter-terrorism and assess how to tackle them; and towards mainstreaming human rights considerations in security operations. This can be done in advance of any counter-terrorism measures or an actual or perceived terrorist emergency, or during such a situation.

Example 4: harnessing networks

31. Networks such as ENNHRI and GANHRI (Global Alliance of NHRIs formerly known as International Coordinating Committee of NHRIs) can serve to pool experiences of counter-terrorism and human rights and enable NHRIs to respond in a concerted manner to measures and practices which have a capacity to spread.

32. On 18 December 2015, for example, a letter was sent by Alan Miller, Chair of ENNHRI, on its behalf, voicing a number of the concerns outlined above in relation to France's counter-terrorism measures following the attacks in Paris in November. In the letter, it was highlighted that violations of human rights in the context of counter-terrorism are counter-productive. Noting the importance of the precedent set by France's actions, and in particular its derogation from the ECHR, the letter suggested that France should set an example to all other states that it is responding to terrorism in a way which is consistent with such international human rights treaty obligations. President Hollande responded that he heeded the points made in the letter.

33. Furthermore, the [Annual NHRI Academy](#) organised by ENNHRI and ODIHR will cover the protection and promotion of human rights in the context of the fight against terrorism.

34. This discloses the potential for such networks to play a role in offering supranational or transnational advice, raising awareness and building NHRIs' capacity in the intersection between counter-terrorism and human rights.

Example 5: partnerships

35. The challenges for the protection and promotion of human rights in the context of counter-terrorism are multiple, and partnerships with other specialised oversight mechanisms domestically can be useful towards maximising operational effectiveness on limited resources.

36. In the spirit of the Paris Principles and the requirement of pluralism, NHRIs can maintain consultation with other bodies tasked with the promotion and protection of human rights, and develop relations with the non-governmental organisations devoted to promoting and protecting human rights, with

particular focus on the intersection between counter-terrorism and human rights, perhaps through setting up a Working Group. In addition, NHRIs can avail of a growing network of expertise in counter-terrorism and human rights in academic and professional circles. For example, CNCDH set up a conference/debate on *Terrorism: permanent state of emergency?* on 12 February 2016, at Sciences Po, exploring the rule of law and derogations from human rights in the context of counter-terrorism.

37. NHRIs are generally well positioned to monitor human rights compliance in domestic laws and practices, but their expertise may be seen to lie chiefly in human rights, and less so on counter-terrorism. A valuable partnership might be a mechanism with thematic expertise, like the UK's Independent Reviewer of Terrorism Legislation (a role currently performed by David Anderson QC). The role of the Reviewer is to inform the public and political debate on anti-terrorism law in the United Kingdom. The Reviewer does this in reports prepared regularly for the government and laid before the UK Parliament, in evidence before specialised parliamentary committees, in articles and speeches, media interviews, public debates, and online.[12] The Reviewer is independent of government, and has access (a) to classified documents and other secret and sensitive national security information; and (b) to those most closely involved with defence against terrorism, notably: the police, security and intelligence agencies, prosecutors, civil servants, and Ministers. The Reviewer has been given a very high degree of clearance to secret and sensitive national security information and personnel, which may not always be given to NHRI representatives. Whilst the Reviewer is not strictly there as a defender of human rights, the role of the Reviewer encompasses a significant remit for safeguarding human rights and the rule of law. NHRIs may either seek to institute such an entity in their State, or consider how some of their activities in protecting and promoting human rights in the context of counter-terrorism can take on board some of the practices of the UK's Independent Reviewer.

38. In Europe, NHRIs can liaise with regional institutions which protect and promote human rights and harness the potential of ENNHRI and other platforms through which best practice can be exchanged and synergies developed and exploited. The Commissioner for Human Rights at the Council of Europe has been particularly vigilant and vocal on the human rights issues raised by counter-terrorism, as disclosed in the 2015 Position Paper. He regularly raises these topics with authorities in Council of Europe Member States and provides analyses and recommendations in various thematic and country-specific documents, and through his engagement with the Council of Europe bodies and thematic expert committees.

39. Moreover, OSCE/ODIHR have a dedicated programme focusing on the protection of human rights in the fight against terrorism. In existence since 2002, this programme is mandated to assist OSCE participating States in complying with their OSCE commitments and international human rights obligations when countering terrorism. Work is conducted in monitoring, capacity building, and expert advice, offering considerable synergies to NHRIs. In particular, OSCE/ODIHR is invaluable in providing expert, constructive input which heeds both security concerns and human rights. An example of such a resource is the 2014 OSCE/ODIHR Guidebook on *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*. There is potential for co-operating with OSCE/ODIHR to leverage resources, build on accumulated expertise, and pursue transnational capacity-building on complying with human rights *and* effectively countering terrorism. ODIHR is also organising, together with ENNHRI, the Annual NHRI Academy, which will cover the protection and promotion of human rights in the context of the fight against terrorism.

---

[12] For more information, see the Independent Reviewer's website:
https://terrorismlegislationreviewer.independent.gov.uk/; and the current Reviewer's Twitter profile:
https://twitter.com/terrorwatchdog.

40. In this regard, collaboration can allow NHRIs and other bodies domestically, transnationally and supranationally to exploit synergies in this area:
   ▪ in responding to counter-terrorism measures undertaken at the European (and international) level and developing concerted practices in this regard; and
   ▪ in exchanging best practice and/or collaborating towards concerted approaches to protecting and promoting human rights in the context of counter-terrorism domestically.

41. Efforts to exchange best practice and perhaps to set up broadly concerted approaches on these can maximise effectiveness and convey a united front in the face of various but often comparable State actions in countering terrorism.

42. Communication is a vital aspect of the work of NHRIs, particularly in promoting human rights, and initiatives in this area are only limited by resources and imagination.[13] In the context of counter-terrorism, effective communication can be a very potent tool in ensuring that human rights remain a central consideration for government actors and that they attain or retain the support of the general public. The two primary communication targets in this context would be: (a) national and supranational institutions which may undertake measures in the context of counter-terrorism which affect the domestic protection of human rights; and (b) the public. Engagement with the media, broadly construed, is a key mechanism through which a communication strategy can be pursued and help secure NHRIs' goals of protecting and promoting human rights in this challenging context.

43. Communication on human rights in the context of counter-terrorism could have a number of goals, including: disseminating relevant work by the NHRI or a partner/ally; mounting pressure on key political actors who may be pursuing overbroad counter-terrorism measures at the expense of human rights; countering dominant narratives on the conflict between security and human rights; correcting misrepresentations of the role of human rights (in the context of counter-terrorism) more broadly; etc.

4.1 COMMUNICATION WITH NATIONAL AND SUPRANATIONAL INSTITUTIONS

44. NHRIs typically communicate and interact with key institutional actors in their role promoting and protecting human rights. Where developments in counter-terrorism measures are occurring rapidly, new challenges are placed on such communication and interaction, as touched upon briefly above. In light of these challenges, NHRIs may have to mount pressure on key actors through meetings and exchanges. Moreover, the publication of key relevant advice or research outputs may be complemented by a press conference, press release, newspaper article or interview. The dual effects of such press engagement are that it reaches and engages the public, and at the same time augments the pressure mounted on key actors to acknowledge the human rights dimension of counter-terrorism measures. The CNCDH's layered initiatives outlined above reflect this multi-dimensional and multi-targeted approach to communication. With sufficient leverage, NHRIs alongside others can ensure that overreaching encroachments on human rights in the context of counter-terrorism are avoided or swiftly put to an end. To maximise the effect of such communication, NHRIs could make use of the network offered by ENNHRI and organise concerted action at critical stages of developments in counter-terrorism measures domestically and supranationally.

4.2 COMMUNICATION WITH THE PUBLIC

45. In light of the aforementioned issues stemming from widespread fear in the aftermath of terrorist attacks, the shaping of public perceptions on human rights in the context of terrorist attacks warrants intervention with a view to safeguarding and promoting human rights. The effect of such interventions will be maximised where they are part of a wider communication agenda on human rights by NHRIs.

46. It would be good for communication and media engagement strategies to reflect the increased significance of social media, including Twitter and Facebook, in communicating with the public, maintaining matters of concern in the public eye, speedily addressing misconceptions and misrepresentations of the role of human rights in the context of counter-terrorism and offering alternative perspectives to (some) mainstream media narratives. A number of States' NHRIs have strong social media presence, including (with links to a social media account): Albania's, Armenia's,

---

[13] See *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, p. 57.

Belgium's, the Czech Republic's, Denmark's, France's, Georgia's, Germany's, Greece's, Ireland's, Latvia's, the Netherlands', Norway's, Russia's, Serbia's, Spain's, Sweden's, and the United Kingdom's, including Northern Ireland's and Scotland's. Many of these NHRIs use Facebook, Twitter, and YouTube. At the same time, it is important to consider how to reach persons who may not have access to such resources.

47. In this area, and because resources may be a concern, NHRIs can also avail of avenues offered, or work conducted, by partners, including any appropriate NGOs and other civil society bodies, which may develop a particular capacity for communication on this front. Co-operation can maximise efficiency. At the same time, some duplication may not be problematic, given that it is likely to be countering widely replicated narratives which cause considerable damage.

48. In the UK, a number of bodies have emerged or have developed an increased (social) media engagement in recent years with a view to promoting human rights, countering misrepresentations of human rights and human rights-based judgments in the media, and/or resisting the repeal of the UK Human Rights Act 1998, which transposed rights enshrined in the ECHR into UK law and which is currently threatened with repeal by the Conservative government (to be replaced by a 'British Bill of Rights'). One example of this is RightsInfo, whose website describes it as being 'about using social media to find new ways to talk about and deliver human rights stories and information'. RightsInfo won the 2015 Plain English Communicator Award, with particular praise for its use of infographics; it has produced a very popular video highlighting the significance of human rights; and it has a large following on Twitter and Facebook. RightsInfo regularly engages in the promotion of human rights through providing clear and colourful 'explainers' and commentary on current human rights developments and on landmark occasions in human rights, such as International Workers' Day, and by disseminating these through social media. RightsInfo is overseen by a barrister, Adam Wagner, and supported by an experienced advisory board, comprising lawyers and communications specialists.

49. The CoE Commissioner for Human Rights' communications work may be considered during the roundtable. In addition, efforts of the European Union's Fundamental Rights Agency may be built on. For example, the Fundamental Rights Forum, which is due to take place on 21-23 June 2016, focuses *inter alia* on innovation for fundamental rights, rights-based governance and empowering rights holders. These may offer useful insights into pathways that could be adopted by NHRIs.

5 QUESTIONS FOR THE ROUNDTABLE

50. Taking into account the multi-faceted nature of today's terrorism threat and counter-terrorism measures and practices, their wider ramifications, and the climate in which they occur, the effective protection and promotion of human rights by NHRIs in the context of counter-terrorism requires multi-layered approaches and creative thinking, particularly in relation to communication. The following matters may be considered:

- What steps can be taken at European or international level to better prepare NHRIs for dealing with actual or perceived crisis associated with terrorist attacks and the human rights issues arising in the context of counter-terrorism? This assessment can include:
    - evaluating how best to facilitate the exchange of experience and good practice with NHRIs in other jurisdictions and other organisations transnationally, regionally and internationally;
    - considering how best to use resources available on counter-terrorism and human rights through the United Nations, the CoE, the OSCE/ODIHR, and other organisations;
    - assessment of potential (formal or informal) partnerships transnationally, regionally and internationally which can lead to co-operation, exchange of good practice, training, strategy formulation, and other benefits.

- What steps can NHRIs pursue domestically to strengthen their capacity to respond to human rights issues in the context of counter-terrorism? This assessment can include:
    - exchanging experience and good practice with other bodies domestically;
    - (re)evaluating the NHRI resources assigned to addressing human rights issues raised by counter-terrorism and how best to maximise the value attained through these, particularly through communication;
    - consideration of the utility of expertise on terrorism and counter-terrorism in developing the pluralism of the NHRI, potential partnerships or co-operation with other bodies.

- In light of the significance of communication in the promotion of human rights, what communication strategies should be pursued domestically and internationally (a) to reach as wide a section of society as possible in communicating on the work of the NHRI in protecting and promoting human rights, (b) to facilitate fruitful debate across government, academia, civil society, and the public on topical matters in counter-terrorism and human rights, and (c) to strengthen support for human rights both in the context of counter-terrorism and more generally across society and government?