

## **ENNHRI General Assembly Seminar Human Rights and Counter-Terrorism**

**28 October 2016, Zagreb**

On 28 October 2016, ENNHRI hosted a Seminar in Zagreb, Croatia, on Human Rights and Counter-Terrorism at the occasion of ENNHRI's General Assembly. The Seminar gathered representatives from 35-member institutions, as well as stakeholders and experts from a wide range of international organisations and civil society organisations.

**Lora Vidović, ENNHRI Chair, Ombudswoman of Croatia**, emphasised that ENNHRI members had been calling for more cooperation and capacity building in this area. ENNHRI responded by organising several meetings, including a high-level brainstorming session with the Office of the Council of Europe (CoE) Commissioner for Human Rights in May 2016, an ENNHRI-OSCE/ODIHR session on human rights and counter-terrorism at the occasion of the NHRI Academy 2016 and a presentation given by Debbie Kohner, ENNHRI Secretary-General, on the impacts of terrorism at the Alpbach European Forum in August 2016, explaining with different NHRIs examples how to turn the tide on the dichotomy increasingly created between human rights and security.

### **1. Opening Session: Secrecy, Urgency, and States of Emergency: Engaging in the Human Rights Compliance of Counter-Terrorism Measures**

Counter-terrorism measures are increasingly being adopted across Europe, often in extreme circumstances following an attack. With an increase in fear and pressure to ensure 'security', the expedited development of legislation or policies is often adopted through secretive procedures or within the framework of states of emergency. This panel session explored how NHRIs can seek the human rights compliance of these measures.

**Julia Hall, Expert on Counter-Terrorism and Human Rights at Amnesty International**, highlighted that counter-terrorism is not a new phenomenon in Europe. For instance, she pointed to the deep involvement of both EU and Council of Europe member states in rendition and secret detention programmes during the United States-led global 'war on terror'. She shared the findings of an [Amnesty International report](#) showing that counter-terrorism measures in 14 EU member states passed through fast-track procedures without consultation of human rights actors, including NHRIs. She also pointed out the marginalisation of judicial oversight of these measures and their discriminatory application, encouraging NHRIs to push back on accelerated procedures.

**Magali Lafourcade, Secretary-General of the Commission Nationale Consultative des Droits de l'Homme (CNCDH), French NHRI**, pointed out that shifts in the scale and nature of the terrorist attacks striking France in recent years have created a climate of fear used to legitimate the adoption of a state of emergency. She expressed concerns that the dominant narrative in political debate and media discourse – that liberty must be sacrificed to achieve greater security – has created social stigma and tensions.

She also raised concerns about the reduction of the role of the judiciary in controlling counter-terrorism measures, the growing perception of foreigners, migrants and refugees as potential terrorists, and the disproportionality of the emergency measures.

CNCDH had set up a contact form for individual victims or witnesses of abuse. It also adapted its communication strategy to emphasise that fighting terrorism does not imply an opposition between security and freedom. The necessity of the state of emergency must be based on the existence of an 'imminent danger'.

**Mirosław Wroblewski of the Office of the Commissioner for Human Rights, Polish NHRI**, raised concerns about Poland's amendment of the surveillance law that granted extra powers to special services and the adoption of anti-terrorism legislation. He explained that the government refused contact with the institution, civil society organisations and experts regarding the new legislation, and that there was a lack of transparency and independent control over the legislative process.

He also pointed out that the NHRI put forward a motion to the Constitutional Court arguing that the measures bypassed constitutional provisions by being adopted outside the framework of a state of emergency. However, it was concerning that the court had become 'paralysed' and that the level of public awareness was rather low.

**Linda Ravo of the Fundamental Rights Unit, DG Justice, European Commission**, concurred that security and human rights are not mutually exclusive, identifying this principle as key in the [European Agenda on Security](#). She elaborated with three points:

- All security measures must comply with the principles of necessity, proportionality and legality, and accordingly, there must be no disproportionate interference with other fundamental freedoms.
- The proportionality assessment is particularly strict with regards to freedom of expression and information.
- All data processing operations constitute, in principle, an interference with the fundamental right to data protection, which could only be lifted should there be a proven necessity and proportionality.

Regarding the development of the EU Directive on Combating Terrorism, she explained that while a formal assessment had not been carried out given the urgency, all fundamental rights had been carefully examined. She added that the Commission had engaged with human rights organisations throughout the process and welcomed further engagement in the implementation phase.

Finally, underlining that the root causes of terrorism must be addressed through preventative measures, Ravo highlighted new actions undertaken by the Commission. These include the creation of an [EU High Level Group on combating racism, xenophobia and other forms of intolerance](#), and the agreement on a [Code of Conduct](#) with several information technology companies and EU member states to combat the spread of illegal hate speech online.

**Paul d'Auchamp, Acting Regional Representative of the OHCHR Regional Office for Europe**, pointed out that the United Nations General Assembly had reaffirmed the Counter Terrorism Strategy in July 2016, in light of the threat posed by new and more virulent terrorist groups. Through the [United Nations Secretary-General Plan of Action to Prevent Violent Extremism](#), the Strategy provides an integrated counter-terrorism approach with human rights and the rule of law at its core.

However, he acknowledged key challenges, including continuing violations of the prohibition of arbitrary or prolonged detention, torture and ill-treatment, and restrictions on civil society organisations' activities. He also mentioned the engagement of the OHCHR Regional Office for Europe in the process of adopting the EU Directive on Combating Terrorism, although expressing regret that it was proposed without external consultation. In addition, he raised three key challenges for NHRIs in this area:

- Even when defending the human rights of alleged terrorist perpetrators, the objective of protecting the rights of everyone needs to be explained and reaffirmed.
- To advise on effective counter-terrorism measures, it is important to understand the complex phenomena underlying terrorist activity, such as shifts from feelings of exclusion towards extremist attitudes and action.
- The stigmatisation of specific groups and the preservation of social cohesion are particularly challenging and require increased action.

Paul d'Auchamp concluded by encouraging NHRIs to continue monitoring the human rights compliance of counter-terrorism laws and measures, while promoting the positive contribution of human rights in counter-terrorism in the long run.

## **2. Small Group on 'New Legal Frameworks for a Changing Landscape'**

Taking into consideration the new counter-terrorism measures created across Europe to respond to an increased internationalisation, migration and digitisation, the first small

group discussed some key aspects and challenges of the new legal frameworks for a changing landscape.

**Róisín Pillay, Director of Europe Programme, International Commission of Jurists**, identified a shift in countering terrorism since 9/11, from intelligence-led strategies and attacks to an international high level political response. This change was enshrined in the [United Nations Security Council \(UNSC\) Resolution 2178](#), adopted in 2014, calling states to implement a series of measures on the phenomenon of foreign terrorist fighters. A Council of Europe (CoE) Protocol and an Action Plan were also adopted in line with the UNSC Resolution, which required states to enact offenses of travelling, providing and receiving training for terrorist purposes.

**Lilja Gretarsdottir, International Institutions and Civil Society, Council of Europe (CoE)**, raised that it was essential to counter the false dichotomy made between human rights and counter-terrorism. In effect, there could be no long-term security and protection against terrorism if human rights were not at the heart of any legislation or policy overhauling security laws.

She highlighted that the CoE recommendations on [‘Special Investigations Techniques’ in relation to serious crimes including acts of terrorism \(2005\)](#) were in the process of being reviewed. Finally, Lilja Gretarsdottir encouraged human rights experts and activists to fully and directly engage with counter-terrorism experts working outside this field, such as security services.

**Kersty McCourt, Senior Advocacy Advisor, Open Society Justice Initiative**, highlighted the speeded-up process the EU Directive had gone through while also underlining that no impact assessment had been carried out. On the content of the EU Directive, she raised concerns on the lack of accuracy and the low degree of proximity to the principal offence. According to McCourt, this type of legislation increased the criminalisation of some individuals compared to organised crime.

McCourt stressed that the way forward for human rights experts should be to focus on the transposition and implementation phases of the EU Directive, as most of its content had already been negotiated. Fostering national debates during the transposition phase could help achieving higher accuracy when incorporated in national laws.

**Rebecca Hilsenrath, Equality and Human Rights Commission (EHRC), British NHRI**, raised that the measures taken to protect citizens from terrorist attacks were justified where adequate safeguards were taken to protect other human rights than the right to life. She drew on this observation by addressing the new Investigatory Powers Bill being introduced in Great Britain.

The EHRC had welcomed a change in legislation. In order to ensure that the counter-terrorism measures are in accordance with the principles of necessity and

proportionality, it had also raised that the bill must have effective safeguards for any interferences with the right to privacy and other rights. NHRIs had a particular role to play in promoting this balancing act throughout the development, implementation and interpretation of surveillance legislation.

Hilsenrath added that EHRC had collaborated with ENNHRI to challenge the British current legal framework. ENNHRI's Legal Working Group was in the process of intervening in two cases at the European Court of Human Rights on the lawfulness of bulk interception of communications by the UK and on the receipt of foreign intercept material from the US ([App No 58170/13 Big Brother Watch v UK](#) and [App No 24960/15 10 Human Rights Organisations v UK](#)).

### **3. Small Group on 'Discriminatory Impacts of some Counter-terrorism Measures'**

The second small group explored the potentially discriminatory impacts of counter-terrorism measures and discussed how NHRIs could use their multi-faceted functions to address them.

**Adriana Van Dooijeweert, ECC Member, Netherlands Institute for Human Rights**, pointed out the need to look at the causes of terrorism and radicalisation. She further mentioned what could be done by NHRIs to combat new occurrences of stigmatisation and encourage dynamic and interactive processes to tackle this issue. Indeed, the attacks in Paris and Brussels had triggered stigmatisation on ethnic profiles and suspicion of foreigners.

**Patrick Charlier, Unia – Centre Interfédéral pour l'Égalité des Chances, Belgian NHRI**, focused on the evolution of racism and discrimination in Europe and the world since 2001. Unia, with its Equality Body mandate, supported that terrorist attacks could be seen under the lens of a hate crime, where victims are targeted because of their religion and/or origins. Unia viewed hate speech as an integral part of the radicalised groups' strategies to recruit.

Charlier noted that the objective of those planning and organising terrorist attacks was to polarise societies, leading to negative reactions against specific communities, especially Muslims. The feeling of exclusion has been growing and contributed to the phenomenon of radicalisation. He said that NHRIs had a particular role to play in breaking this circle when addressing, for example, discrimination, exclusion, participation in education, employment, health, culture and housing.

On the other hand, some measures taken by the Belgian authorities had triggered serious human rights concerns. In principle, these issues were difficult to be addressed through an Equality Body mandate, as it was particularly challenging to conclude that draft laws were discriminatory. Yet, Unia received and acted upon a wide range of

discrimination cases arising from new legislation and practices, and questioned the motivation, relevance and proportionality of police interventions.

**Anastasia Crickley, President, UN Committee on the Elimination of Racial Discrimination**, raised the necessity to look beyond 9/11 when putting into context counter-terrorism policies and practices. Structural discrimination, securitisation and migration policies and practices had to be addressed. She recommended a range of actions to turn the tide of these global developments, including: raising awareness against discriminatory measures and practices deriving from counter-terrorism, such as profiling; the training of law enforcement officers; taking a closer look at cases of hate speech; calling on politicians to take their responsibilities when giving speeches; and working towards a counter-narrative which could be relayed by regional and international institutions.

Finally, she underlined the need to include the gender aspect in the fight against terrorism. That could be done through national action plans on women, peace and security, allowing their inclusion in implementation processes of counter-terrorism policies.

**Evelyn Collins, Chair of Equinet, Chief Executive of the Equality Commission for Northern Ireland**, agreed on the potential of European counter-terrorist measures to lead to discrimination based on religion, nationality, ethnic profile and so on. She emphasised that Equality Bodies and NHRIs were mandated to not only trigger change at the individual level, but also at the institutional and societal levels.

Regarding counter-terrorism measures, NHRIs have a specific role in countering the prevailing narrative, by promoting and protecting the principles of inclusion and human rights standards, based on their independence and specific mandate.

#### **4. Small Group on ‘Promoting Human Rights in a Climate of Security and Fear’**

**Günther Kräuter, International Ombudsman Institute, Austrian Ombudsman Board** said that the climate of fear has grown since recent attacks in Europe, with political speeches and religious and cultural conflicts contributing to this phenomenon. In spite of this shift in public opinion, NHRIs and Ombuds institutions must continue to use the instruments they have at their disposal to ensure human rights are protected. That includes ex-officio investigation as well as cooperation with NGOs, civil society, parliaments and international networks.

Kräuter stressed that also cooperation with media is important, especially in the current climate of increased security and fear. The Austrian NHRI has had particular success in this area, having set up a partnership with the country’s national television broadcaster to air a weekly outreach programme on human rights.

Finally, Kräuter added that the IOI and ENNHRI are working together to reinforce cooperation between NHRIs and Ombuds institutions. The 2015 Memorandum of Understanding between GANHRI and IOI has also triggered further collaboration.

**Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission**, focused on the lessons learned from the Northern Ireland conflict. He highlighted that current responses to counter-terrorism tend to mirror past actions in the country.

He added that safeguards, oversight, accountability and human rights took a long time to catch up in Northern Ireland's experience. Human rights became a contested public issue. Some demanded justice, truth and reparations, while others called for turning of a new leaf. According to Les Allamby, NHRIs can resolve this situation by:

- Basing their work on international human rights standards as well as using international treaty monitoring mechanisms and other human rights platforms;
- Building local and global alliances while protecting their independence;
- Communicating effectively, despite the often-limited resources allocated for communication purposes; and
- Engaging the community, with both supportive and non-supportive actors.

Northern Ireland's experience shows that building a post-conflict society can often be a long-term, inter-generational project. NHRI was an essential part of the peace-building process, with powers to act during and after the conflict.

**Valeriya Lutkovska, Parliamentary Commissioner for Human Rights, NHRI Ukraine**, summarised the difficulties in Ukraine and stressed that NHRIs should promote and protect human rights to the best of their abilities during conflict and post-conflict situations. An international conference in Kyiv in October 2015 helped clarify NHRIs' role for operating in such a context and outlined standards for taking stronger positions.

NHRIs should be key actors in promoting dialogue between various stakeholders in conflict settings, including opposing parties, authorities, non-state actors, and civil society organisations. The NHRI's specific role also requires strict impartiality and independence in all regards. Lutkovska recognised that in carrying out these mediating functions, NHRIs are likely to face strong criticism and threats from national authorities. Accordingly, they have to be protected from any interference in their work, reprisals, and intimidation, including through functional immunity.

**Saša Janković, Protector of Citizens, Serbian NHRI** noted that the very definition of security included human rights, so the two are inherently linked. In Serbia, a controversial legislation was passed recently on intercepting people. After Janković stood against it, he was criticised by some media for being 'on the side of terrorists'.

Another problem pointed out by Janković is the lack of authority of NHRIs engaging with national security agencies. This needed to be addressed, as those agencies were often likely to commit the most human rights breaches. Fortunately, the Serbian NHRI had powers to supervise the work of such agencies. Janković himself had visited security services and reported on human rights concerns, which has led to an increase in public trust.

## **5. Concluding panel on ‘the Role of NHRIs in addressing Human Rights Implications of Counter-terrorism Measures’**

**Matthieu Birker, Advisor on counter-terrorism issues, Office of the Council of Europe Commissioner for Human Rights**, outlined the main conclusions of the meeting hosted by ENNHRI and the CoE Commissioner for Human Rights in May 2016. He said that cooperation between NHRIs is essential to show support to the most exposed NHRI(s), to assist in the preparation of members and to ensure consistency in their positions. Birker recalled that the discussions tackled the shift in types of acts leading counter-terrorism challenges in terms of intelligence, propaganda, (de)radicalisation, recruitment, traveling, return of foreign fighters and terrorism funding.

These new counter-terrorism measures could require NHRIs to monitor topics under the lenses of data protection; freedom of movement, expression, assembly and association; or the right to a fair trial. Birker explained that monitoring law and decision-making procedures also evolved due to their emergency nature and democratic oversight of some national security and intelligence services. Finally, he added that the Commissioner stands ready to support European NHRIs. It developed several activities in this area, including country reports, letters to members of parliaments, and awareness-raising activities such as interviews and workshops.

**Beate Rudolf, Chair of GANHRI; ECC Member; German Institute for Human Rights** suggested that NHRIs should thrive to change the dominant discourse and push for a better balance between freedom and security. However, ‘balancing’ could imply a clear margin of appreciation, and if so, NHRIs might get ‘trapped’ in the security discourse. One could argue that security is not an aim in itself and that it would be an illusion to pretend that it may be fully achieved. Instead, NHRIs should contribute to a positive message: it is unlikely that security and freedom are on an equal footing in a state respecting human rights. Absolute security is in that perspective not possible, as democratic systems are supposed to be strong enough to resist fear.

In addition, to break cycles leading to violent extremism in their national jurisdictions, NHRIs could:

- Address the issue of ‘access to justice’;

- Advocate for more reflection before reacting to a terrorist attack, especially when engaging with the public;
- Take into account that violent extremism can be rooted in violations of economic and social rights, and base monitoring activities on this recognition;
- Organise public hearings, for example when laws are fast-tracked and adopted in secrecy;
- Reflect upon human rights issues arising from previous counter-terrorism laws and policies and show where they failed to improve the situation.

**Sarah Rinaldi, Deputy Head of Unit, DG DEVCO, Human Rights, Gender, Democratic Governance Unit, European Commission** noted that there has been a gradual expansion of EU development and cooperation policies into security-related areas (such as counter-terrorism, the fight against organised crime, and more recently cyber-crime and security). This increase has been accompanied by a heightened pressure to deliver effective capacity building in partner countries in these security-related areas (i.e. food security, energy, peace), in which human rights are key. For this reason, the EU has a firm commitment to integrate a rights-based approach to development cooperation into all EU development instruments and activities. In 2014, it adopted a Rights-Based Approach Toolbox with a comprehensive set of training materials for EU officials at headquarters and in EU Delegations.

Another important element for the EU is to support NHRIs, which is also reflected in the EU Action Plan on Human Rights and Democracy as the first objective of the first action. DG DEVCO thrived to fund two strategic, targeted programmes:

- The 'Capacity Building of National Human Rights Institutions' programme, started in November 2015 for a period of 3 years with an EU contribution of 5 million euros, with the aim to support the capacity of NHRIs and their cooperation with their regional and international networks, focused on thematic areas: economic, social and cultural rights; business and human rights; human rights education and strengthening of core NHRI mandates;
- A project to enhance the effectiveness of NHRIs in 2017, to promote and protect human rights in situations of conflict and post-conflict in wider Europe, through capacity building; dialogue and cooperation between concerned NHRIs; and engagement with national, regional and international actors.

**Isabelle Tschan, Programme Specialist Human Rights, Rule of Law, Justice and Security, UNDP** noted the importance of the work on preventing violent extremism in Europe for UNDP, especially in the framework of the tripartite project. Firstly, UNDP is engaging with governments on national strategies to prevent violent extremism, to ensure that strategies adopted are multidimensional and based on human rights standards, but also to include dialogue and engagement with youth. Secondly, UNDP supported civil society organisations to conduct research in this area and in particular

on specific drivers of radicalisation and recruitment. Thirdly, UNDP supported peer exchange on ongoing national initiatives at a more regional level.

Tschan noted that it was particularly important for UNDP to include NHRIs in the process of adopting national action plans and strategies regarding violent extremism. In addition, she mentioned the Kiev Declaration, in which NHRIs can find recommendations on early warnings and conflict preventions related to this area. To conclude, Tschan mentioned a few areas in which UNDP is committed to build further cooperation with NHRIs:

- Building partnerships regarding the mandate of NHRIs on human rights education;
- Support the implementation of the Kiev Declaration;
- NHRI input into research conducted on security and inter-communities' dialogues, in particular to complement risk-assessment data; and
- NHRI strengthening and capacity building, to allow maximum support in the above-mentioned areas.

**Marc Van Gool, Human Rights Adviser, Human Rights Department, OSCE/ODIHR** introduced OSCE/ODIHR's cross-dimensional approach to security and pointed out that human rights and counter-terrorism were conceived as mutually reinforcing in the OSCE's comprehensive concept of security. He mentioned that ODIHR has a longstanding experience of working on issues such as anti-discrimination and violent extremism.

OSCE participating States have repeatedly pledged to counter-terrorism in compliance with their human rights obligations. In 2016, ODIHR planned to prepare its 'Human Rights and Anti-Terrorism Programme', which aims at providing:

- Capacity building through training for law enforcement officers on compliance with human rights standards;
- Expert policy advice and analysis; and
- Legislative support on counter-terrorism, through ODIHR's Legislative Support Unit assisting states in drafting and reviewing legislation for compliance with relevant international human rights standards.

ODIHR welcomed further cooperation with individual NHRIs and ENNHRI to explore how to meet the needs of NHRIs in addressing country specific issues. Van Gool listed some areas in which NHRIs' work could create synergies with ODIHR's activities:

- Bilateral engagement: NHRIs could call on ODIHR to provide opinions on new legislations in a state of emergency;
- Development of trainings for public officials in this area: NHRIs could also propose ideas for training to ODIHR; and
- NHRI capacity building, for example in the framework of the NHRI Academy.

**Debbie Kohner, ENNHRI Secretary-General**, stressed that joining forces and fighting discriminations are crucial elements, as highlighted throughout this report. In addition, she commended the excellent expert collaboration and support that NHRIs had received from ENNHRI's partners. However, the collaboration with stakeholders, such as security authorities, is equally important. Good examples of cooperation between NHRIs, civil society organisations and other actors were raised. These showed how much NHRIs could learn from each other. The way forward is to see how this should be integrated into ENNHRI's work, for example within its thematic areas, through its Legal Working Group or within the ENNHRI Conflict Project.

NHRIs were either way recognised to be essential actors for the promotion and protection of human rights in this area, with their multi-faceted and reinforcing functions of monitoring, advising, awareness-raising, and complaints handling.

## ANNEX 1: Agenda

TIME	ITEM & SPEAKERS
09.00	Coffee & Registration
09.15	<b>Introduction</b> by Lora Vidović, ENNHRI Chair, Ombudswoman of Croatia
09.30	<b>Opening Panel:</b> 'Secrecy, Urgency, and States of Emergency: Engaging in the Human Rights Compliance of Counter-Terrorism Measures' <i>Speakers: Julia Hall (moderator), Magali Lafourcade, Adam Bodnar, Linda Ravo, Paul d'Auchamp</i>
11.00	Coffee break
11.15	<b>Small Group Discussions</b>
	<b>A:</b> New legal Frameworks for a Changing Landscape <i>Speakers: Róisín Pillay (moderator), Rebecca Hilsenrath, Lilja Gretarsdottir, Kersty McCourt</i>
	<b>B:</b> Discriminatory Impacts of Counter-terrorism Measures <i>Speakers: Adriana Van Dooijeweert (moderator), Patrick Charlier, Anastasia Crickley, Evelyn Collins</i>
	<b>C:</b> Promoting Human Rights in a Climate of Security and Fear <i>Speakers: Günther Kräuter, Les Allamby, Valeriya Lutkovska, Saša Janković</i>
12.30	Lunch break & informal discussions
13.45	<b>Plenary Panel:</b> Report back from Small Groups Discussions <i>Speakers: Maria Gavouneli, Sirpa Rautio, Niko Tatulashvili</i>
14.10	<b>Concluding Panel:</b> The Role of NHRIs in addressing Human Rights Implications of Counter-terrorism Measures <i>Speakers: Matthieu Birker (moderator), Omer Fisher, Sarah Rinaldi, Isabelle Tschan, Beate Rudolf</i>
15.40	<b>Conclusions &amp; Next Steps</b> by Debbie Kohner, ENNHRI Secretary-General
16.00	Closing