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Tackling the Protection Gap: Host States' Responsibility to Prevent and Respond to Transnational Repression

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Co-hosted by the International Service for Human Rights, Human Rights Watch, the Observatory for the Protection of Human Rights Defenders, and Human Rights House Foundation

Question 1: How do counter-terrorism law and practices pose distinctive risks of transnational repression?

It is the experience of my mandate that international obligations to counter terrorism have been abused by some States to legitimize distinctive types of transnational repression. Of course, wholly extra-legal forms of transnational repression are also committed in the name of counter-terrorism, including violence and threats of violence, cross-border abductions and enforced disappearances, and online harassment and stigmatizing political labelling. But the twisting of counter-terrorism laws, often justified in the name of implementing Security Council obligations, seeks to perversely legalize other practices, and the global fight against terrorism generates unique pressures on other States to cooperate. I wish to highlight five trends.

Firstly, the abusive listing of individuals or groups as terrorist or extremist, typically without due process or judicial safeguards, has had many negative cross-border human rights impacts. Freezing assets interferes in rights to property, the home, work and an adequate standard of living and family life. Travel bans as watchlists interfere in freedoms of movement domestically and internationally. Banning organizations interferes in freedoms of expression and the media, association, assembly, political participation and minority cultural and religious rights. Other countries often feel political pressure to recognize and implement foreign terrorist lists. Listing can also result in banks and humanitarian actors "de-risking", cutting off funds for human rights work. If further stigmatizes individuals and impacts their right to reputation.

Secondly, we have witnessed abusive requests to extradite individuals based on false allegations of terrorism. The abolition of the political offence exception to extradition for terrorism offences has increased pressure to extradite, despite the absence of a common definition of terrorism. Extradition requests can compromise human rights where the host state lacks robust safeguards against refoulement to arbitrary deprivation of life, torture or ill-treatment, persecution, denial of justice or arbitrary detentions. Some requests are driven by the rights-deficient criminal cooperation procedures of regional organizations, such as Arab Interior Ministers Council arrest warrants for terrorist suspects, and even Interpol.

Thirdly, there have been attempts to forcibly repatriate refugees or asylum seekers, to circumvent extradition law. Threats against family members is another tactic used by some States to coerce refugees to return. False accusations of terrorism are used to manipulate exceptions to the refugee definition and non-refoulement, to add exceptions not found in refugee law, and even to invoke exceptional war-time powers to override non-refoulement.

Fourthly, the misuse of new surveillance technologies to counter terrorism has enabled the targeting of human rights defenders, including the use of spyware, facial recognition software, and border security tools for sharing passenger information. The development and export of such technologies has often not been subject to prior human rights due diligence assessments. Their application has often not been adequately regulated, including regarding authorization of use, privacy and personal data protection, and oversight, accountability and remedies. The collapse in responsible online moderation by big tech companies has turbocharged online harassment. Malicious use of AI is enabling predictive profiling and mass surveillance of exile communities, identifying new targets for transnational repression.

Finally, while many States have strong legal safeguards in the context of formal extradition, mutual assistance and refugee law processes, **they often lack comparable protections in relation to executive cross-border information sharing**, including by police, security agencies, financial intelligence units, border authorities, and military cooperation. Safeguards for privacy and data protection are often lowest in counter-terrorism contexts, despite the high stakes. Information sharing can identify targets of transnational repression, including for arbitrary arrest or worse.

2. How can States legally and effectively prevent and suppress transnational repression in the context of counter-terrorism abuses?

I have five recommendations to respond to the five trends identified above. **Firstly,** States should not automatically recognize foreign terrorist listings or give undue deference to them when assessing their validity, particularly in the absence of access to the source information on which the listing is based, and in the absence of any agreed international definition of terrorism. My report on administrative measures to the General Assembly last year (A/80/284) sets out best practice international standards on the grounds and procedures for terrorist listings, and laws in many States to not meet minimum standards. To prevent transnational repression, States should persuade and pressure other States to ensure that their terrorism definitions, laws and listings comply with international law.

Secondly, extradition and mutual assistance requests must likewise be subjected to rigorous scrutiny of foreign terrorism charges. The risks are heightened where the requested State does not require evidence of a prima facie case, and follows a less protective "rule of non-inquiry" into the foreign evidence. The United Nations Model Treaty on Extradition suggests that States could mandatorily refuse extradition "[i]f there is insufficient proof, according to the evidentiary standards of the requested State". Even where courts do not scrutinize the evidence, executive authorities often still have the final say and should act as a backstop. Non-discrimination, fair trial, and non-refoulement safeguards should also be legislated and applied.

Thirdly, States should carefully scrutinize any claims that seekers and refugees as terrorists who fall foul of the Refugee Convention exclusion clauses, the exception to non-refoulement, or the expulsion clause. Over-expansive interpretations in countering terrorism must be

avoided. The full scope of non-refoulement under human rights law must be applied even if a person is outside refugee protection, including in relation to risks of arbitrary deprivation of life, torture and other ill-treatment, enforced disappearance and arbitrary detention, and flagrant unfair trial and other serious human rights risks.

Fourthly, States must ensure adequate regulation of new technologies, including artificial intelligence,[1] that are deployed to counter terrorism, including prohibitions on the use or transfer technologies that cannot be used in compliance with human rights or pose unacceptable risks; effective regulation of corporate actors, including human rights due diligence; and online moderation to ensure digital safety.

Fifthly, States must strengthen and formalize safeguards on cross-border information sharing by all authorities, including in relation to human rights due diligence, privacy and data protection, and ensure effective transparency, independent oversight and accountability.

Transnational repression in counter-terrorism contexts also requires a host of other effective measures by like-minded States, which are also vital in preventing transnational repression generally:

- Sharing intelligence to prevent transnational repression and cooperating in criminal investigations to suppress it;
- Coordinating to impose Magnitsky-style sanctions on individual foreign officials allegedly responsible for violating rights, as lawful and proportionate counter-measures under international law, and even "State terrorism" sanctions in the case of lethal threats;
- Publicly supporting other States who denounce transnational repression, not appeasing powerful States; and
- Increasing practical security advice and protection for victims.

Finally, the United Nations counter-terrorism bodies, and the Security Council, should also be much more assertive in condemning TNR where it occurs in the name of counter-terrorism.

Only by relentlessly raising the price of repression can we hope to effectively reduce it.

Thank you.

[1] See the mandate's Position Paper on Protecting Human Rights while Using Artificial Intelligence to Counter Terrorism (2025), https://www.ohchr.org/en/documents/position-papers/protecting-human-rights-while-using-artificial-intelligence-counter.