



## Quaker United Nations Office



### JOINT DECLARATION ON THE NEED FOR AN INTERNATIONAL MECHANISM TO MONITOR HUMAN RIGHTS AND COUNTER-TERRORISM

#### FOUNDING SIGNATORIES:

The Coalition of International Non-Governmental Organizations against Torture (CINAT):

Amnesty International

Association for the Prevention of Torture (APT)

International Federation of Action by Christians for the Abolition of Torture (FIACAT)

International Commission of Jurists

International Rehabilitation Council for Torture Victims (IRCT)

Redress: Seeking Reparation for Torture Survivors

World Organization against Torture (OMCT)

Fédération Internationale des Ligues des Droits de l'Homme (FIDH)

Human Rights Watch

International Service for Human Rights

Friends World Committee for Consultation (Quakers)

The undersigned Non-Governmental Organisations,

*Considering* that all States have an obligation to ensure the respect, protection and promotion of human rights and fundamental freedoms;

*Recalling* UN General Assembly Resolution 57/219 of 18 December 2002, UN Security Council Resolution 1456 of 2003 and UN Commission on Human Rights Resolution 2003/68 of 25 April 2003, each of which affirm that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, refugee law and humanitarian law;

*Mindful* that every State has both the right and duty under international law to take measures to combat terrorism and *reaffirming* that in so doing States unequivocally retain all other obligations under international law, including those deriving from human rights law, international humanitarian law, refugee law and the principles of the Rule of Law and criminal law;

*Emphasising* that the odious nature and extreme gravity of acts of terrorism cannot serve as a justification for any State to breach its international law obligations and that the standards giving rise to these obligations, no less than counter-terrorism measures, are aimed towards protecting the security of the person;

*Profoundly alarmed* that in the name of fighting terrorism a number of States have adopted or announced measures that are clearly incompatible with international obligations in respect of human rights law, international humanitarian law and refugee law and the principles of the Rule of Law and criminal law;

*Gravely concerned* that human rights and fundamental freedoms have been or may be undermined by certain counter-terrorism measures adopted or contemplated, including, *inter alia*, the practices of administrative detention without judicial review; prolonged incommunicado detention; transfer, return, extradition, denial of entry, or expulsion of persons at risk of being subjected to torture in contravention of the principle of *non-refoulement* or asylum; the adoption of loose definitions of 'terrorism' or 'terrorist organisations', capable of resulting in breaches of the principle of legality and allowing for the criminalisation of legitimate acts in exercise of fundamental freedoms; the removal of basic safeguards to prevent torture or cruel, inhuman or degrading treatment or punishment and violations of the right to life; the adoption of measures which curtail the right to fair trial, freedom of association, basic labour rights, the right to asylum and the principle of non-discrimination.

*Concerned also* at the adverse consequences of certain counter terrorism measures for the enjoyment of rights of human rights defenders, migrants, asylum seekers, refugees, members of national or ethnic, religious and linguistic minorities, political activists and journalists, as highlighted by a number of special procedures mechanisms;

*Encouraged* that several UN human rights treaty bodies and Special Procedure mechanisms of the Commission on Human Rights have played a significant role in monitoring the impact of counter-terrorism measures on human rights and *underlining* in particular the importance of General Comment number 29 of the Human Rights Committee on article 4 of the International Covenant on Civil and Political Rights; the

statement adopted on 22 November 2001 by the Committee against Torture reminding States that the Convention obligations are non-derogable and must be observed in all circumstances; the statement on racial discrimination and measures to combat terrorism adopted by the Committee on the Elimination of Racial Discrimination; and the Joint Statement of Special Rapporteurs of 27 June 2003 expressing profound concern at the multiplication of policies, legislation and practices adopted by many countries in the name of the fight against terrorism which negatively affect the enjoyment of virtually all human rights;

*Taking into account* that the human rights treaty supervision system does not have universal scope, as not all States are party to the respective human rights treaties and the work of treaty bodies is restricted by a reporting cycle that precludes timely monitoring, so that the Human Rights Committee, for example, is able only to examine at most 15 reports in a year;

*Taking into account also* that monitoring by the thematic special procedures mandated by the Commission on Human Rights (CHR) is highly limited due to the circumscribed and particularised nature of each mandate;

*Encouraged by* the analytical contribution contained in the reports of the Special Rapporteur on terrorism and human rights of the Sub-Commission on the Promotion and Protection of Human Rights and the decision by the Sub-Commission in Resolution 2003/15 to further study the compatibility of counter-terrorism measures with international human rights standards with a view to elaborating detailed guidelines, but also *noting* that the Sub-Commission within the terms of its present mandate and capacities is not able to undertake country-specific monitoring;

*Recognising* that under both General Assembly Resolution 57/219 and Commission on Human Rights Resolution 2003/68 the Office of the High Commissioner on Human Rights is requested to make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking action to counter terrorism and *welcoming* initiatives the Office has already taken in this regard, including the Guidance and Further Guidance for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 and the Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights while Countering Terrorism;

*Noting with satisfaction* various regional efforts in respect of human rights and counter-terrorism measures, particularly the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism and the Report on Terrorism and Human Rights of the Inter-American Commission on Human Rights; *greatly concerned*, however, that in respect of the great majority of States, no regional monitoring mechanisms are available and that existing intergovernmental regional human rights systems are not endowed with the mechanisms or procedures to supervise the compliance of national counter-terrorism measures with international human rights obligations and norms at the regional level;

*Acknowledging with disappointment* that the Counter-Terrorism Committee of the UN Security Council (CTC) has so far declined to accept the application of a human rights analysis to its work and has failed to appoint a human rights specialist among its various

expert advisers and that neither the General Assembly, the Commission on Human Rights nor any other United Nations organ has established any human rights monitoring mechanism with the specific mandate to review the measures undertaken by Member States in this field;

*Deeply concerned* that no universal and comprehensive UN mechanism or system exists to monitor the compatibility of domestic counter-terrorism measures with international norms and human rights, especially such measures related to the implementation of Security Council resolution 1373 of 2001, and that there exists a substantial gap in monitoring exercised by the human rights treaty bodies and Special Procedures mechanisms of the Human Rights Commission;

1. Express profound conviction as to the urgency and indispensability of the establishment of a UN mechanism to monitor and to help to ensure the compliance of domestic counter-terrorism measures adopted or contemplated by all UN Member States with international norms and human rights obligations.
2. Call upon the United Nations Commission on Human Rights, at its sixtieth session in 2004, to establish as a matter of utmost priority an independent mechanism on the question of human rights and counter-terrorism measures;
3. Request that the Commission mandate such a mechanism to monitor and help ensure the compliance of States with their international human rights obligations in their efforts toward countering terrorism;
4. Request that so as to ensure a comprehensive human rights approach, the mechanism should:
  - (a) have the capacity to undertake *in situ* visits;
  - (b) establish a dialogue and enhanced cooperation with the CTC with a view to assisting States to better meet their human rights obligations in implementing UN Security Council resolution 1373;
  - (c) engage with and take into account the observations and recommendations of all relevant treaty bodies, including the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights;
  - (d) engage with and take into account the analyses, observations and recommendations of all Relevant Charter-based organs, including the Commission on Human Rights and its Special Procedures mechanisms and the Sub-Commission for the Promotion and Protection of Human Rights;
  - (e) engage with and take into account also the analyses, observations and recommendations of regional institutions and mechanisms, including the African Commission on Human and Peoples Rights, the Council of Europe, the European Committee for the Prevention of Torture, the European Court of Human Rights, the European Union Network of Independent Experts in Fundamental Rights, the Inter-American Commission on Human Rights, the Inter-American Court of

- Human Rights, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe;
- (f) Co-ordinate activities with the Office of the UN High Commissioner for Human Rights;

5. Call upon regional inter-governmental organisations, particularly those presently engaged in counter-terrorism efforts and including the African Union, the Association of South East Asian Nations, the Council of Europe, the European Union, the League of Arab States, the Organisation for Security and Cooperation in Europe, the Organisation of American States, and the Organisation of the Islamic Conference, to develop or strengthen effective systems to ensure that counter-terrorism measures adopted or contemplated in Member States are compatible with international human rights and humanitarian law.