

# **Terrorism Offences and Human Rights in the EU**

## **A Short Guide**



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### Introduction

International and EU law impose obligations on States to criminalise a wide range of conduct related to terrorism. States also have international law obligations to respect and protect the human rights of all those affected by terrorism and counter-terrorism, including victims of terrorism, persons suspected or accused of terrorism-related offences and their families.

This Guide outlines the EU and international law frameworks for the protection of human rights in applying criminal offences related to terrorism, in EU Member States.

UN Security Council Resolutions, notably [UN Security Council Resolution 2178](#) (2014) (SCRes2178) require states to criminalise not only acts of "terrorism", but also a wide range of acts preparatory to or associated with acts of terrorism, including participation in a terrorist group, travel for the purposes of terrorism, and providing and receiving training for terrorism. [UN Security Council Resolution 1624 \(2005\)](#) requires States to criminalise offences of incitement, including indirect incitement of terrorism.

The Council of Europe's, [Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism](#) (2015) imposes similar requirements.

Taking into account these international standards, on 15 March 2017 the European Union (EU) adopted [EU Directive 2017/541 on Combatting Terrorism](#) ("the Directive") which Member States had to transpose into national law by September 2018.

The EU Directive requires Member States to enact laws establishing criminal offences encompassing:

- Committing acts of terrorism (as defined in Article 3)
- Directing or participating in a terrorist group (Article 4)
- Public provocation to commit a terrorist offence (Article 5)
- Recruitment for terrorism (Article 6)
- Providing or receiving training for terrorism (Article 7 and 8)
- Travelling for the purposes of terrorism (Article 9)
- Organising or otherwise facilitating such travel (Article 10)
- Financing of terrorism (Article 11)
- Aiding and abetting, inciting, attempting or facilitating these offences (Articles 10, 14) and other offences related to terrorist activities (Article 12).

Adequate investigation of, and accountability for, violent acts of terrorism that involve serious violations or abuses of human rights, is necessary to protect the rights of victims of terrorism. Carrying out prompt, thorough, independent investigations of such acts, and holding the perpetrators accountable in accordance with the right to liberty and to a fair trial (consistent with articles 9 and 14 ICCPR and articles 5 and 6 ECHR), is a legal obligation incumbent on all States.

Nevertheless, application of these offences, which criminalise conduct far removed from direct involvement in acts of terrorism, can have very significant implications for human rights in practice, including for rights protected under the [European Convention on Human Rights](#) (ECHR), the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [Convention on the Elimination of Racial Discrimination](#) (CERD), treaties which are binding on all EU Member States, and rights under the [EU Charter of Fundamental Rights](#). Depending on the terms of the national legislation, and how it is applied by law enforcement agencies, prosecutors and the courts, these offences may raise issues of:

- Freedom of expression (Article 19 ICCPR, Article 10 ECHR, Article 11 EU Charter)
- Freedom of association (Article 22 ICCPR, Article 11 ECHR, Article 12 EU Charter)
- Freedom of assembly (Article 21 ICCPR, Article 11 ECHR, Article 12 EU Charter)



- Freedom of religion or belief (Article 9 ECHR, Article 18 ICCPR, Article 10 EU Charter)
- Right to respect for private and family life (Article 8 ECHR, Article 17 ICCPR, Article 7 EU Charter)
- Freedom of movement (Article 12 ICCPR and Article 2 of Protocol 4 ECHR)
- Right to political participation (Article 25 ICCPR)
- Non-discrimination (Article 14 ECHR, Article 2.1 and Article 26 ICCPR, Article 21 EU Charter, CERD or CEDAW)

Prosecution and trial of these offences may also be subject to special or exceptional procedures, raising procedural rights concerns of:

- the right to fair trial (Article 14 ICCPR, Article 6 ECHR, Article 47 EU Charter),
- the right to liberty, (Article 5 ECHR, Article 9 ICCPR, Article 6 EU Charter) or
- the protection from torture or other cruel, inhuman or degrading treatment or punishment (UN [Convention against Torture](#) (CAT), Article 7 ICCPR, Article 3 ECHR).

Numerous UN Security Council Resolutions, UN General Assembly and Human Rights Council Resolutions, other international instruments, and the EU Directive, all make clear that the application of counter-terrorism laws must comply in law and practice with international human rights law obligations.

UN Security Council 2178 states that counter-terrorism measures must “comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.”

The EU Directive provides: “this directive has to be implemented in accordance with those rights and principles taking also into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights *obligations under international law* (Recital 35).”

Although some of the rights concerned, such as freedom of expression and association, are not absolute rights, they may be limited only to the extent that they are prescribed by law that is clear and accessible, they serve a legitimate aim prescribed under human rights treaties such as national security, are necessary and proportionate to that aim, and are non-discriminatory.

The burden is on the State to demonstrate that these conditions are met, and that applying the criminal law, and the penalties imposed, are justified in the particular case.

Further limitations on certain rights permissible in a proclaimed state of emergency that threatens the life of the nation, are also subject to requirements of necessity and proportionality (see further below).

National governments and legislatures, in developing and reviewing counter-terrorism laws and regulations, and judges, prosecutors and law enforcement officers in applying them, all have responsibilities to uphold the human rights obligations of the State by doing all in their power to ensure that these principles are complied with. (For specific guidance on this see [Counter-terrorism and human rights in the courts: guidance for judges, prosecutors and lawyers on application of EU Directive 2017/541 on combatting terrorism](#), ICJ, 2020).

## 1. What is terrorism?

There is no comprehensive and internationally agreed definition of terrorism, although there have been [draft definitions under discussion for nearly two decades](#).

The UN Human Rights Committee has regularly found over-broad definitions of terrorist offences in domestic law are insufficiently clear to meet the requirements of the principle of legality under international human rights law (UN HRC, [Concluding Observations: Belgium](#), 2004, UN Doc. CCPR/CO/81/BEL).

Successive UN Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism have expressed concern at efforts to shore up preventive criminal law approaches to terrorism, without a common understanding what 'terrorism' actually means.

For example, the former UN Special Rapporteur on Counter-terrorism and Human Rights, Martin Scheinin, noted: *"The absence of a universal, comprehensive and precise definition of "terrorism" is problematic for the effective protection of human rights while countering terrorism. [...] It is essential, in the meantime, to ensure that the term "terrorism" is confined in its use to conduct that is genuinely of a terrorist nature."* ([Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism](#), para 50).

An appropriate definition of terrorism has been proposed by the UN Special Rapporteur on Counter-terrorism and Human Rights Martin Scheinin, on the promotion and protection of human rights while combatting terrorism, in his 2010 report, [UN Doc A/HRC/16/51](#):

"Terrorism means an action or attempted action where:

- (1) The action: (a) Constituted the intentional taking of hostages; or (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and
- (2) The action is done or attempted with the intention of: (a) Provoking a state of terror in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something; and
- (3) The action corresponds to: (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or (b) All elements of a serious crime defined by national law."

The definition of terrorist offence under [Article 3 of the EU Counter-terrorism Directive](#) (2017/541) is overbroad, with an uncertain scope in several respects, including the scope of the harm encompassed, the nature of the terrorist purpose, and the nature of the intention required to commit the offence. The scope of the conduct criminalised under the EU Directive and under anti-terrorism legislation in many countries, is widened further by offences preparatory or related to terrorism (such as travelling for terrorism, or providing and receiving training for terrorism), which depend on a broad definition of terrorism or terrorist act.

## 2. Rights of victims

States have the duty to respect and ensure respect for the rights of all those within their jurisdiction. This includes the positive obligations of States to take all reasonably feasible steps to protect from acts of violence, and where there are victims of terrorist violence, to respect their rights to truth, justice and reparation. Victims of terrorism have the right to access justice, fair treatment and effective remedies.

They are entitled to receive appropriate information, support and protection and are able to participate in criminal proceedings. States must ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner (Victims Rights Directive, [EU Directive 2012/29/EU](#), Article 1.1)

A victim of terrorism is that defined in Article 2 of Directive 2012/29/EU, namely a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offence, or a family member of a person whose death was directly caused by a terrorist offence and who has suffered harm as a result of that person's death.

Recital 27 EU Directive 2017/541

See further [Human Rights of Victims of Terrorism A Compilation of Selected International Sources](#), ICJ, 2019.

## 3. Rights of suspects

The human rights of suspects and accused persons must be respected and ensured throughout all stages of the process, including during investigation, prosecution, trial and punishment of all offences.

Certain rights that may be violated in counter-terrorism investigations and prosecutions, such as the freedom from torture, inhuman or degrading treatment or punishment, are absolute rights, and cannot be subject to any restrictions. However restrictions on certain other human rights, such as the right to private life (Art. 17 ICCPR, Art. 8 ECHR, Art. 7 EU Charter), manifesting religion (Art. 18(3) ICCPR, Art. 9.2 ECHR, Art. 10 EU Charter), free expression (Art. 19 ICCPR, Art. 10 ECHR, Art. 11 EU Charter), or assembly (Art.21 ICCPR, Art. 11 ECHR, Art. 12 EU Charter) and association (Art.22, Art. 11 ECHR, Art. 12 EU Charter) may be lawful, and appropriate, or in limited circumstances such as expression that incites violence, even required, under international human rights law. Any restrictions on these rights must be clearly set out in law, pursue a legitimate aim, be necessary and proportionate to that aim, and be non-discriminatory.

Legislators, and also prosecutors and judges must always consider:

- whether the offence - on its face and as construed and expressed in the charging documents - is prescribed in a law that is clear and the application of which is foreseeable,
- whether investigation or prosecution genuinely serves a legitimate aim (such as national security),
- whether the intrusion on rights involved in the investigation or prosecution of the individual for a particular offence can be justified as necessary and proportionate to that aim
- Whether the investigation or prosecution is discriminatory

✓ **The offence must be prescribed by a law that is clear and foreseeable**

The requirement that an offence should be adequately prescribed by law reflects the principle of legality, protected by international human rights law (Article 7(1) ECHR, Article 11(2) Universal Declaration of Human Rights, Article 15 ICCPR, Article 49 EU Charter) and which is also a basic principle of criminal law. It means that no-one can be prosecuted for an offence without an adequate basis in a law that is clear and whose application is foreseeable. It requires that:

- Laws must not be retroactive. Only crimes established and defined in law at the time of their commission can be prosecuted. A heavier penalty cannot be imposed than the one in force at the time of the commission of the offence.
- The law must be strictly applied and narrowly construed, and doubt regarding the scope of crimes must be resolved in favour of the accused.
- The law must be sufficiently clear to allow individuals to ascertain with a reasonable degree of certainty how it will affect them. Laws must not be couched in a vague and overbroad manner that will lend itself to an arbitrary application by executive authorities. The courts should ensure the consistent, predictable and fair application of the law, free from discrimination.
- The law must be strictly applied and narrowly construed, and doubt regarding the scope of crimes must be resolved in favour of the accused.
- Individuals can be only prosecuted and punished commensurate with their own culpable conduct and intent.

The broad framing and interpretation of 'preventive' offences in the anti-terrorism context have sometimes failed to meet the test of prescription by law.

Offences under the EU Directive raise similar issues. For example, to comply with human rights law obligations, the offence of "participation in a terrorist group" under Article 4 of the EU directive, needs to be interpreted so as to clarify and narrow the scope of "terrorist group" and "structured group", and the meaning of "participation" in a terrorist group, so as to ensure legal certainty.

✓ **The offence must serve a legitimate aim and be necessary for and proportionate to that aim**

The purpose of the restriction on rights involved in the investigation or prosecution of a terrorist offence must be to serve a legitimate aim, such as the protection of national security, public health or the protection of the rights of others. The restriction on rights will only be justified if it can be justified as necessary and proportionate to this aim, meaning that, in all the circumstances of the particular case, the measure taken it is the least restrictive available to serve the legitimate aim, and is subject to sufficient safeguards. Furthermore, following conviction, any penalty imposed is proportionate.

In the counter-terrorism context, in particular as regards ancillary offences, the principle of proportionality requires consideration in each case of whether the (legitimate) aim could have been served by non-criminal law measures, or by prosecution for a lesser offence or one that did not carry the special stigma of terrorism. For example, depending on the circumstances of the case, it may amount to a disproportionate interference with private or family life or freedom of association, to prosecute as "participation in a terrorist group" incidental or unintentional contributions to a terrorist group, such as cooking meals, providing other services or goods not directly linked with violent or terrorist acts, or the mere fact of association with other individuals. It would also probably be disproportionate to prosecute for this offence where the "participation" was not voluntary or the person did not know that they were likely to contribute to the commission of a principal terrorist offence.

See more details and recommendations on directing and participation of a terrorist group in [Counter-terrorism and human rights in the courts: guidance for judges](#),

[prosecutors and lawyers on application of EU Directive 2017/541 on combatting terrorism](#), ICJ, 2020, p. 21.

#### Freedom of expression and incitement to terrorism

Offences of indirect incitement to terrorism, including "glorification", "apology" or "provocation" of terrorism, may also lead to unjustified interference with human rights, in particular with rights to freedom of expression.

International standards make clear that where speech does not contribute to future criminal acts, but purports to justify prior acts or simply consists of expressions of opinion, it is very difficult to justify its criminalisation as necessary and proportionate under international human rights law. (UN Secretary-General Report on Human Rights and Terrorism, 2008, para. 61; [A joint opinion of UN experts on the freedom of expression](#)).

Expressions of opinion that have no (or negligible) effect, or which have no intent to contribute to terrorist violence, must therefore not be prosecuted.

See more details and recommendations on directing and participation of a terrorist group in [Counter-terrorism and human rights in the courts: guidance for judges, prosecutors and lawyers on application of EU Directive 2017/541 on combatting terrorism](#), ICJ, 2020, p. 24.

#### ✓ **Counter-terrorism laws and their implementation in practice must not discriminate**

Counter-terrorism offences, and their investigation and prosecution in practice, must not be directly or indirectly discriminatory, including on grounds of race, colour, sexual orientation or gender identity, age, gender, religion, language, political or other opinion, citizenship, nationality or migration status, national, social or ethnic origin, descent, health status, disability, property, socio-economic status, birth or other status, or the intersection of any of these grounds. Discrimination can be direct and indirect, intended and inadvertent – it may arise through the investigation, gathering, use or evaluation of evidence, during trial and/or sentencing.

Safeguards against discrimination, through conscious or unconscious bias, need to be in place at all stages of the criminal process.

Discrimination is protected against by Article 2 Universal Declaration of Human Rights (UDHR), Articles 2(1) and 26 ICCPR (including equality and equal protection of the law) as interpreted and applied by the Human Rights Committee, Article 14 ECHR and Protocol 12 Article 1; and Article 20 (equality before the law); the Revised European Social Charter (article E) and Article 21 EU Charter, Article 14 of the [Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010](#), [1997 Convention for the Suppression of Terrorist Bombings](#), and [1999 Convention for the Suppression of the Financing of Terrorism](#).)

Article 21 of the EU Charter and Article 26 of the ICCPR are free-standing provisions of non-discrimination, meaning they apply to all State laws and conduct, and are not confined to any specific area of rights protection or international or domestic law. Therefore, all counter-terrorism laws fall under their protection.

#### Application of international human rights obligations in times of crisis

Under international treaties binding on EU Member States, including the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), States may take emergency measures to derogate from



certain of their international human rights law obligations in times of crisis, only to the extent strictly necessary to protect the life of the nation (Article 4 ICCPR, Article 15 ECHR, Siracusa Principles).

Rights which are never subject to derogation include ICCPR Article 6, ECHR Article 2 (right to life); ICCPR Article 7, ECHR Article 3 (freedom from torture and other ill-treatment); Article 8(1,2), ECHR Article 4(1) (freedom from slavery and servitude); ICCPR Article 11 (freedom from imprisonment for failure to fulfill a contract); ICCPR Article 15, ECHR Article 7 (freedom from retroactive criminal liability); ICCPR Article 16 (right to recognition as a person before the law), and ICCPR Article 18 (freedom of thought, conscience and religion).

Even where derogation is permitted however, the necessity to derogate must be continually re-assessed to ensure that derogating measures remain necessary and proportionate and so that they apply for the shortest time possible and certain rights may never be derogated from. See A/HRC/37/52 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights challenges of states of emergency in the context of countering terrorism

✓ **There must be no discrimination against women**

In deciding to prosecute women or men, the complexity of individuals' roles should be taken into account. Denying women's agency, and assumptions as to their role, or that of men, based on their sex, may amount to unlawful discrimination. The disproportionate impact on women of criminalising or prosecuting certain conduct, such as financing and supporting family members, or harbouring or failure to report criminal behaviour, needs to be taken into account to avoid indirect discrimination (UNODC 2019 Report).

Factors to be taken into account include *'the disproportionately high percentage of women who are coerced into joining terrorist or extremist organisations, including Boko Haram, Al-Shabaab and Islamic State in Iraq and the Levant...'* (UNDP, ['Journey to Extremism in Africa: Drivers, Incentives, and the Tipping Point for Recruitment'](#), 2017, p. 495). Care must be taken to avoid prosecution of trafficked women, as the "principle of non-punishment of victims of trafficking" is reflected in international standards (2019 UNODC Report).

✓ **The rights and best interests of children must be upheld**

In matters relating to children, including where children may be investigated or prosecuted for crimes of terrorism, or may be indirectly affected by these measures, the best interests of the child must always be a primary consideration (Article 3.1 [Convention on the Rights of the Child](#)). Children must be treated as children and primarily as victims and not perpetrators. When children are subject to proceedings or are affected by them, all authorities involved in the case must make sure to uphold the best interests of the child and protect and fulfill their rights including under the Convention of the Rights of the Child.

✓ **The right to defend human rights should not be undermined**

Especially if broadly interpreted, offences under Article 11 may have a damaging impact on legitimate activities of civil society, including activities aimed at protecting human rights through the provision of humanitarian assistance. Recital 38 of the Directive acknowledges that the Directive does not apply to humanitarian aid: "The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall within the scope of this Directive, while taking into account the case-law of the Court

of Justice of the European Union.” However, the Directive fails to apply the principle to other forms of public activity, including the work of human rights defenders.

The investigation, prosecution or conviction under counter-terrorism laws of action in defence of human rights must be particularly scrutinised for necessity and proportionality, in light of the right to freedom of assembly, freedom of expression, the right of political participation (Article 25 ICCPR), and the right to defend human rights (UN Declaration on Human Rights Defenders).

✓ **Due process safeguards should not be weakened**

Procedural safeguards applied to the investigation, prosecution and trial of all criminal offences should also be applied to offences relating to terrorism.

Safeguards should not be weakened or disregarded in practice on the grounds of the “exceptional” nature of terrorism offences. Even where exceptional procedures are provided for in law, and/or during a lawfully declared and proclaimed state of emergency involving lawful derogations from international human rights obligations, they should be interpreted and applied so as to preserve the safeguards for human rights in ordinary criminal procedure to the greatest extent possible. They must at all times meet core non-derogable standards of fair trial.

✓ **Evidence must be sufficient and not obtained in violation of human rights**

To avoid violations of human rights through the application of counter-terrorism criminal laws, investigations or prosecutions should only take place where there is sufficient corroborating evidence, at the same level as would apply to ordinary offences, in light of the presumption of innocence. Inclusion on a terrorist list should not in itself be considered sufficient evidence of any offence.

There should be no reliance on:

- Uncorroborated intelligence information, from either domestic or foreign intelligence services
- Information obtained by torture, cruel, inhuman or degrading treatment, coercion, or other means which constitute a serious violation of the human rights of a defendant or third party (Article 15 Convention against Torture, Guidelines on the Role of Prosecutors, Guideline 16)
- Evidence based on discriminatory presumptions (such as evidence of religious practice or dress)

✓ **Search, surveillance, interception of communications should respect privacy**

Search, surveillance and interception of communications will almost always interfere, to varying extents, with the right to privacy (Article 17 ICCPR) and the right to respect for private and family life, the home and correspondence (Article 8 ECHR).

Searches, surveillance and interception of communications carried out in counter-terrorism investigations must be clearly provided for in law, must limit these rights only to the extent that is necessary and proportionate in the circumstances of the particular case, and must not discriminate (Human Rights Council Resolution A/HRC/RES/42/15, The Right to Privacy in the Digital age, 26 September 2019). In particular they:

- should be targeted in their scope,
- be time-limited,
- be subject to independent and thorough judicial authorization or review,

- not be used disproportionately against any group, including particular national, ethnic, national or religious groups.

✓ **There must be effective safeguards against arbitrary detention**

Everyone has the right to liberty and security of person (Article 9 ICCPR, Article 5 ECHR, Article 6 EU Charter). Deprivation of liberty must never be arbitrary and must be in accordance with a procedure prescribed by law on one of the grounds permitted under Article 5 ECHR and Article 9 ICCPR, including following arrest on criminal charges, or following a lawful conviction. Administrative detention is generally not permitted without a valid derogation from Article 5 ECHR and Article 9 ICCPR.

Pre-trial detention on charges relating to terrorism should not be presumed or automatic but should be a last resort, imposed by a court only in exceptional cases where alternative measures are not sufficient.

Prompt, independent and effective judicial review of detention is a right guaranteed by international law at all times, and is crucial to protect against arbitrary deprivation of liberty (Article 5 ECHR, Article 9 ICCPR (UN [HRC General Comment 36](#), Article 6 EU Charter) as well as to protection against torture or other ill-treatment in detention (Article 3 ECHR, Article 7 ICCPR, Article 4 EU Charter, CAT). In addition to the right to be promptly brought before a court pursuant to detention, all persons detained have the right at any time while they are subjected to deprivation of their liberty to have access to a court to challenge the lawfulness of their detention through habeas corpus or similar proceedings (Article 9(4) ICCPR, Article 7 ECHR).

✓ **The right to fair trial must be upheld equally in counter-terrorism cases**

The right to fair trial by a competent, independent and impartial tribunal established by law (Article 14 ICCPR and Article 6 ECHR) applies equally in counter-terrorism cases and should not be eroded through special procedures or weakening of safeguards, in law or in practice.

At all times and in all circumstances, alleged offenders should be tried only by an independent and impartial tribunal established by law and be accorded full fair trial guarantees, including the presumption of innocence, equality of arms between the prosecution and defence, the rights of defence, especially the right to legal advice and effective legal counsel, the right to interpretation and translation where necessary, and the right of judicial appeal. Judges must ensure that the accused has the opportunity to access and test evidence that is presented in their case and to challenge the lawfulness of the evidence and oppose its use.

If anonymous witnesses are used, the defence must have an opportunity to challenge them.

Security measures taken in court and during transfer of suspects to court in counter-terrorism cases (including handcuffs or other restraints), can affect perceptions of a defendant and therefore the presumption of innocence. Such measures should be kept to the minimum necessary in the circumstances of the case.

Judges trying and lawyers defending those accused of terrorist offences must be able to perform their professional functions without intimidation, hindrance, harassment or improper interference ([UN Basic Principles on the Independence of the Judiciary](#), [UN Basic Principles on the Role of Lawyers](#)).

Military courts should not be used to try persons in counter-terrorism cases, but instead must be limited to trying military personnel for military offences.

Penalties must be proportionate to the crime and the individual's role in it. Children should not be tried as adults but treated in accordance with the rules of juvenile justice. In prosecutions or trials of children for offences related to terrorism, proceedings should be adapted to ensure that the child is able to participate effectively in the proceedings.

✓ **Administrative measures must not circumvent procedural safeguards**

Criminalisation of conduct relating to terrorism can lead not only to criminal investigation or prosecution, but also to administrative measures that may have weighty consequences for human rights, including restrictions on liberty, deportation, citizenship-stripping, searches, interception of communications, or removal of online content.

Such measures may lead to violations of the right to liberty, or disproportionate or discriminatory interference with freedom of expression, association, right to privacy, right to private and family life, freedom of belief or freedom of movement, on the basis of a mere suspicion of a crime. This is particularly likely where, as is often the case, they are subject to weak procedural safeguards, and involve a wide scope of discretion for police forces or counter-terrorism agencies, without prior judicial authorisation or prompt, regular and effective judicial review.

✓ **Cross border transfers and criminal justice co-operation must apply human rights safeguards**

Nobody should be expelled or extradited or otherwise transferred to country where there are substantial grounds to believe that they may be at real risk of a serious violation of their human rights (such as torture, cruel, inhuman or degrading treatment or punishment, right to life, flagrant denial of justice, flagrant denial of the right to liberty), or whose life or freedom would be threatened on grounds of race, religion, nationality, membership of a particular social group or political opinion (See [ICJ Guidance on extraditions and expulsions in Central Asia](#)). The duty to ensure that rights are not being violated through cooperation applies even in cases where there is mutual trust between the two countries.