Response to the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Call for Inputs: (1) Transnational repression in counter-terrorism contexts; (2) Concepts of 'violent extremism' and 'extremism'

Rights & Security International

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Executive Summary

- Rights & Security International (RSI) urges the Special Rapporteur not to seek to define either 'violent extremism' or 'extremism'. It is our position that neither term can be defined consistently with international human rights law, and that any attempt to do so would risk legitimising state practices that are incompatible with international human rights obligations.

- International law contains no agreed definition of 'violent extremism'. We note that it is always open to states to criminalise violent actions under ordinary domestic criminal law, and in some instances, international law obligates states to do this. However, 'extremism' is inherently a subjective concept. Further, we are concerned that states are using, or will use, the concept of 'violent extremism' to criminalise ideas, opinions, associations and/or protected free expression rather than violent acts.

- Some of the human rights that are relevant in this context are absolute, including the freedoms to hold opinions and to have or adopt a religion or belief. In other words, there is a human right to hold or explore beliefs, ideas or opinions that others might regard as 'extreme'. What state are permitted to regulate is violence or (in some circumstances) expression, not thought.

- These concerns are even more acute when states or international bodies use the term 'extremism' without the qualifier 'violent'. In the absence of a clear connection with violence, the criminalisation or other regulation of 'extremism' creates an even clearer risk of infringing on absolutely protected rights.

Scope and position of the submission

In this submission, Rights & Security International (RSI) responds to the second part of the Call for Inputs, and specifically questions (1), (2), (3) and (5) regarding the definition and use of the terms 'extremism' and 'violent extremism'. RSI draws primarily on its research in the United Kingdom of Great Britain and Northern Ireland (UK), alongside examples from other jurisdictions. The legal concerns identified are relevant to the use of these concepts by states more broadly.

RSI does not believe that it is desirable to seek to define 'violent extremism' or 'extremism'. While it may be possible to define 'violence', what constitutes an 'extreme' belief or idea is necessarily subjective; further, beliefs and ideas enjoy absolute protection under human rights law. In our assessment, any attempt to define 'violent extremism' or 'extremism' risks *de facto* legitimising state practices that are incompatible with international human rights law.

Question 1: What does 'violent extremism' mean? What conduct and ideologies are covered by 'violent extremism' that are not already covered by the definition(s) of terrorism? To what extent is this category redundant given the scope of 'terrorism'?
AND
Question 2: Is it necessary to legally define 'violent extremism'? Can it be defined in a manner that is consistent with international human rights law, and if so, how?

International law contains no agreed definition of 'violent extremism'. The UN Secretary-General's 2015 Plan of Action describes 'violent extremism' as 'a diverse phenomenon,

without clear definition' and leaves definitions to UN Member States.[1] Other UN experts, including Special Rapporteurs, have also highlighted the vague and subjective nature of this and other similar terms.[2]

In RSI's view, it is not possible to legally define 'violent extremism' in a way that is non-arbitrary and otherwise consistent with international human rights law; therefore, it is not advisable to attempt to do so.

First, what is 'extreme' will necessarily depend on the eye of the beholder. Beliefs, opinions, ideas and thoughts generally do not fall along a single line with easily identifiable 'extreme' ends. Further, beliefs that seem incorrect, objectionable, absurd or even odious to some may nevertheless be common. For example, many people may regard various modern technologies as harmful and choose not to use them. What counts as an 'extreme' reason for rejecting artificial intelligence, smartphones, automobiles, electricity or certain medical interventions? Who is entitled to say which beliefs are 'extreme' and which are not?

Second, we recall that several sources indicate that under human rights law, the freedoms of thought, opinion and belief are absolute.[3]

Third, it is not clear to us whether states understand the concept of 'violent extremism' to require the actual commission or planning of violence, or whether the qualifier 'violent' simply refers to the nature of the ideas. States can, and in some instances are obligated to, criminalise violence or attempted violence *per se*: for example, Article 4 of the Convention Against Torture

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[1] Plan of Action to Prevent Violent Extremism: Report of the Secretary-General, UN Doc A/70/674 (24 December 2015), paras. 2 and 5.

[2] See, e.g., United Nations, 'Violent extremism prevention 'only effective' if human rights are enshrined' (*UN News*, 4 March 2020): https://news.un.org/en/story/2020/03/1058681; United Nations, 'UN expert warns combat against violent extremism could be used as 'excuse' to curb free speech' (*UN News*, 3 May 2016): https://news.un.org/en/story/2016/05/528292.

[3] See, e.g., International Covenant on Civil and Political Rights (ICCPR), Arts. 18, 19(1) and 20(1). Human Rights Committee, General Comment No. 34 (2011), UN Doc CCPR/C/GC/34, para. 9; Human Rights Committee, General Comment No. 22 (1993), UN Doc CCPR/C/21/Rev.1/Add.4, paras. 1 and 3; Human Rights Committee, General Comment No. 10 (1983), para. 1; European Convention on Human Rights, Arts. 9(1) and 10(1); App. No. 52435/99, *Ivanova v. Bulgaria*, 12 April 2007, para. 79.

requires states to criminalise all acts of torture, including attempts and complicity.[4] However, as noted above, international law does not permit states to criminalise beliefs, opinions, ideas or thoughts.

In our view, violence as such is best addressed through domestic and international criminal laws, including 'terrorism' offences insofar as 'terrorism' can be defined at law in a rights-compliant manner. (As the mandate is aware, there is significant international debate regarding the definition of, and even the use of, the term 'terrorism'.[5]) If one takes 'terrorism' to mean acts intended to cause death or serious bodily injury, or the taking of hostages, for the purpose of provoking terror, intimidating a population or compelling a government, then it is entirely possible for states or international instruments to ban these acts without relying on concepts of 'extremism'.[6]

Some conduct that could potentially fall within a definition of 'violent extremism' is also covered by other criminal offences in many states and/or in international instruments. For example, states are already, under international law, required to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[7]

We are concerned that states have reached for the concepts of 'extremism' and 'violent extremism' precisely because they wish to evade the normal expectations of criminal law, which require a completed act (e.g. commission, attempt or preparation), as well as the restrictions of human rights law, such as the provisions protecting thought, belief, etc and those barring discrimination in respect for rights. We are further concerned that states' use of these concepts risks legitimising predictive policing, in the sense of criminalising ideas,

[4] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Art. 4. See also, among others, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, Art. 3; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973, Art. 2; United Nations Convention against Cybercrime, 24 December 2024, Arts. 7-21.

[5] Indeed, many states have defined 'terrorism' more broadly than the former mandate-holder, Martin Scheinin, elucidated in his model definition: see Human Rights Council, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism', A/HRC/16/51, 22 December 2010, paras. 26-28.

[6] UN Security Council resolution 1566 (2004), UN Doc S/RES/1566, para 3.

[7] See, e.g., ICCPR, Art. 20(2).

associations or behaviours that are otherwise lawful but that authorities say indicate a risk of *future* violence. It is our view that international law generally does not tolerate the arrest, detention or prosecution of individuals based on what state authorities believe a person *might* do in the future (as distinct from, e.g., actions that indicate concrete plans to commit violence). We recall here that under human rights law, when rights are not absolute and the state is contemplating interfering with them, it is for the state to show that the restriction on rights is necessary, including by establishing 'a direct and immediate connection' between the conduct restricted and the perceived threat -- whereas predictive measures instead rely on a tenuous purported link (or pseudoscience, or outright bias) rather than a clear, well-evidenced threat.[8] It is also for the state to show that less rights-restricting approaches would not be adequate. To the extent that the rights impacted by concepts such as 'extremism' and 'violent extremism' are not absolute (and we reiterate that at least some are), we believe states and intergovernmental bodies have not demonstrated that restrictions relying on these concepts are necessary.

For the reasons provided above, any attempt to define 'extremism' or 'violent extremism' in law would be not only unnecessary (as per the terms of the question), but arbitrary and harmful to rights.

Question 3: Are there legitimate purposes for the concept of "violent extremism", and what are they? Should the category only be used in non-coercive contexts (e.g. prevention, education, voluntary interventions) or also for coercive measures (e.g. criminal punishment, designation/listing of individuals or groups, and other binding administrative restrictions)?

As expressed above in our responses to questions (1) and (2), the concepts of 'extremism' and 'violent extremism' are inherently arbitrary. Therefore, they should not be used in any coercive contexts. We note in particular that Article 18(2) of the International Covenant on Civil and

[8] General Comment No. 34, paras. 27 and 35.

Political Rights prohibits any use of coercion that would impair an individual's right to adopt the religion or belief of their choice, and that Article 19(1) prohibits any interference (coercive or otherwise) with the right to hold any opinion.

Given the power disparity between state authorities (e.g. police, schools, prisons) and rights-holders, we question whether any state use of the concepts of 'extremism' or 'violent extremism' vis-à-vis individuals could be truly non-coercive. As noted above, since the freedoms of belief, thought and opinion are absolute, we also doubt whether any use of the concepts of 'extremism' or 'violent extremism' by authorities could be rights-respecting even in genuinely non-coercive contexts.

Question 5: Is there any need for a concept of 'extremism' without the qualifier 'violent'? What does it mean? Can it be defined consistently with international law, including so as to ensure respect for the rights to freedom of opinion, expression, religion and belief?

The same analyses that RSI makes above regarding the (non-)compliance of responses to 'violent extremism' with international human rights law also apply to the attempts to prevent or counter 'extremism' without the qualifier 'violent'. When it comes to 'extremism' without this qualifier, our legal concerns about potential arbitrariness and bias are even more acute.

Recommendations

RSI recommends that the Special Rapporteur, in his report to the Human Rights Council:

1. Avoid seeking to define 'extremism' or 'violent extremism'.

2. Clearly state why definitions of 'extremism' and 'violent extremism' would not resolve the human rights concerns associated with the use of these concepts.

3. Emphasise that the inherently subjective and arbitrary nature of these concepts, and the way state reliance on them will often violate absolute rights, makes them inappropriate for use by states or intergovernmental bodies.

4. Highlight the potential for discrimination in any deployment of these concepts.

5. Reaffirm the absolute protections of thought, conscience, opinion and the freedom to have or adopt a religion or belief, and the requirements of legality, legitimate purpose, non-arbitrariness and non-discrimination applicable to restrictions on qualified rights.

About RSI

Rights & Security International (RSI) is a London-based international organisation working to ensure that governments comply with international human rights laws when they take measures in the name of national security.

For more information, see our website: https://www.rightsandsecurity.org/