

Open Society Institute for Eastern Africa Statement to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights¹

Dear Madam Chair,

I would like to take this time to compliment the Chair and congratulate the African Commission on Human and Peoples' Rights for holding its 53rd Ordinary Session. All protocols observed.

At this session, the Open Society Institute for Eastern Africa kindly calls on the Commission to seek ways to better ensure that States engaged in fighting terrorism fully comply with their human rights obligations.

While the AU and individual States have established a robust anti-terrorism regime, including the Algiers Convention, a similar regime aimed at protecting human rights in counterterrorism operations has never been fully implemented.

This is the case at a time when the number of civilians harmed by terrorism and counterterrorism operations is on the rise.

Moreover, the civilian victims of this violence often go unnoticed and have found little relief from their governments, the parties responsible, or the African Union.

For these reasons, we kindly request the Commission to take the five following steps:

One - Update itself on the situation of human rights and terrorism on the continent.

Two - Emphasize the need for the African Union to take a coherent approach to the issue of human rights and terrorism. To this end, we kindly call on the Commission to regularly engage with the Peace and Security Council and update the PSC on the situation of human rights and terrorism.

Three - Ensure that the special procedures and mechanisms of the African Commission coordinate their efforts to promote a coherent approach in their work on human rights and terrorism, as committed to in the Commission's 2005 resolution.

Four - Organize a meeting of experts on the protection of human rights and the rule of law within the framework of the fight against terrorism in Africa, as committed to in the Commission's 2005 resolution.

¹ This Statement was presented on 10 April 2013 by Jonathan Horowitz of the Open Society Justice Initiative.

Five - Consider developing for AU Member States Draft guidelines and principles on the protection of human rights in the fight against terrorism in Africa.

Madam Chair, because the fight against terrorism does not take primacy over respecting the fundamental rights of individuals, counterterrorism operations must respect the right to life, the prohibition of arbitrary arrest, the right to a fair hearing, the prohibition of torture, and many more human rights.

Domestic anti-terrorism laws must also conform to human rights standards and cannot codify arbitrary or indefinite detention, or infringe on freedom of speech or assembly in ways that are incompatible with human rights law.

Additionally, when States do commit human rights violations, authorities must effectively and adequately investigate the allegations, seek to hold the perpetrators accountable, and provide reparations to the victims.

Madam Chair, we are also concerned with the practice of unlawful renditions and violations of the principle of non-refoulement. Governments are increasingly cooperating with each other in countering terrorism. In doing so, intelligence sharing arrangements and joint operations must be conducted such that States are not complicit in, or aiding and abetting, another State's human rights violations.

Madam Chair, we are also concerned with the proliferation of weaponized and surveillance "drones" on the continent, which embody technology that allow States to more easily locate individuals and carry out targeted killings.

Also, we strongly support the right of the public to access national security-related information. To this end, civil society groups, in consultation with the Commission's Special Rapporteur on Access to Information and Freedom of Expression, and her fellow mandate holders at the UN and OAS, are working to finalize a set of Principles on National Security and the Right to Information.

Finally, we are concerned with human rights issues raised by private military and security companies. It is essential that contractors are not permitted to violate human rights and, when they do, they are held accountable.

In addition to being unlawful, counterterrorism-related human rights violations have other drawbacks. They demonstrate a State's willingness to violate the rule of law, which can be destabilizing. In addition, counterterrorism-related abuses often indiscriminately target entire communities and, as a result, erode community trust in government. This extinguishes opportunities for authorities to enter into dialogues with the same communities that can be instrumental in reducing terrorism.

Madam Chair, we want to be clear that we recognize that terrorism has had a devastating impact on the people of Mali, Nigeria, Kenya, Somalia, Uganda, and elsewhere. Several statements today and yesterday have drawn attention to this important and undeniable point.

That said, although terrorists are the ones primarily responsible for the harm they cause, there are several human rights responsibilities that fall squarely on States due to this violence.

These include the duty to protect, through which States must fulfill its responsibility to protect those within its territory or jurisdiction from the human rights abuses that result from terrorist attacks. As part of the duty to protect, States may also be required to conduct investigations and hold perpetrators of terrorism accountable.

We also wish to emphasize that States must fulfill their obligation to provide victims of terrorist attacks with sufficient care and consideration so to ensure that those victims are able to enjoy the rights of the African Charter and other international treaties. In this context, the UN Special Rapporteur on human rights and countering terrorism has urged States to “voluntarily accept a binding international obligation to provide reparation to the victims of all acts of terrorism occurring on their territory.”

Finally, Madam Chair, I wish to note that a letter reflecting much of the content of my statement has been signed by several African human rights organizations and it will be presented to the Commission.

Thank you Madam Chair.