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Statement by Martin Scheinin

**SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM**

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Mr. President, distinguished delegates, ladies and gentlemen,

This year my main report, as Special Rapporteur on human rights and counter-terrorism, deals with best practice in countering terrorism (A/HRC/16/51). The report is based on my soon six years of experience as the first Special Rapporteur assigned to the mandate of promotion and protection of human rights and fundamental freedoms while countering terrorism. As a synthesis report, it is based on the following sources and forms of earlier work under the mandate:

Firstly, correspondence with Governments and a series of country visits over the period from 2006 to 2010;

Secondly, Government submissions collected specifically for this report through an open-ended questionnaire sent by the Office of the High Commissioner for Human Rights last June; 48 in total. Many of the submissions were received after the deadline of 10 August but nevertheless taken into account. Less than a handful came too late for inclusion in the actual report, and another equally small group of responses are not mentioned in the report, as they did not directly relate to those 10 areas of best practice that I had meanwhile identified for inclusion in the final report. All Government submissions are included in full in the addendum (A/HRC/16/51/Add.4).

Thirdly, the report is based on earlier thematic and conceptual work under the mandate, reflected in my annual reports to the General Assembly and the Human Rights Council since 2005.

A fourth and final source of inspiration for this report is the participation of my mandate in the Counter-Terrorism Implementation Task Force, an inter-agency coordination body. Within the CTITF I have cooperated with all UN agencies involved in counter-terrorism, including the respective Committees of the Security Council and their expert secretariats. This inter-agency coordination is based on the 2006 Global Counter-Terrorism Strategy of the General Assembly (A/RES/60/288) which reaffirms that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

Indeed, the notion of "best practice" is mentioned not only in the resolutions by the Commission on Human Rights and the Human Rights Council, establishing and extending the Special Rapporteur's mandate I am entrusted with, but also, one of the central Security Council resolutions related to counter-terrorism, Resolution 1624 (2005), uses the same notion when identifying the tasks of the Security Council's Counter-Terrorism Committee.

For a definition of the notion of best practice, let me quote paragraph 10 of the report in front of you:

"... best practice refers to legal and institutional frameworks that serve to promote and protect human rights and the rule of law in all aspects of counter-terrorism. Best practice refers not only to what is required by international law, including human rights law, but also includes principles that go beyond these

legally binding obligations. The identification of best practice is based upon three criteria: (a) a credible claim that the practice is an existing or emerging practice, and/or one that is required by, or has been recommended by or within, international organizations, international treaties or the jurisprudence of international, regional or domestic courts; (b) the practice relates to and promotes the effective combating of terrorism; and (c) the practice complies with human rights and/or promotes the enjoyment of human rights and fundamental freedoms."

On the basis of these criteria, the report identifies ten areas of best practice in countering terrorism. Of course, this is not meant as an exhaustive compilation but, rather, as a first effort to consolidate elements of best practice. As mentioned in concluding paragraph 39 of the report, best practices could also be identified in training programmes, in the allocation of resources and in national counter-terrorism strategies. While the now identified ten areas of best practice mainly relate to legislative models, there is clearly a need to go beyond good laws, towards a comprehensive approach rooted in human rights and addressing conditions conducive to the spread of terrorism, in order to build societies without terrorism, including through securing the full enjoyment of all human rights, that is, economic and social rights as well as civil and political rights.

The 10 areas of best practice identified in the report relate to the following issues:

1. Consistency of counter-terrorism law with human rights, refugee law and humanitarian law.
2. Consistency of counter-terrorism practice with human rights, refugee law and humanitarian law.
3. The principles of normalcy and specificity.
4. Regular review of counter-terrorism law and practice.
5. The requirement of effective remedies for human rights violations.
6. Reparations and assistance to victims of terrorism and victims of counter-terrorism measures.
7. Model definition of terrorism.
8. Model definition of the offence of incitement to terrorism.
9. Minimum safeguards in the listing of terrorists.
10. Core rules concerning the arrest and interrogation of terrorist suspects.

Mr. President,

I would like to defend the best practice approach adopted in this report by highlighting three advantages it in my opinion has:

Firstly, I see the identification of best practice as a complement to a "more law" or "better law" approach. As evidenced by the work of the Counter-Terrorism Committee of the Security Council, its Counter-Terrorism Executive Directorate and the UN level coordination body, the Counter-Terrorism Implementation Task Force, also softer methods of persuasion besides reference to Chapter VII obligations under the UN Charter, or to treaty obligations under human rights law, are needed in order to reach true compliance, commitment and optimal performance in countering terrorism.

A *second* advantage of a best practice approach is in its capability of resolving the tension between counter-terrorism and human rights through a pragmatic method of dialogue and learning. While there are legal obligations both on the counter-terrorism side and the human rights side of the equation, and while a concrete clash between the two can be resolved through the approach of "more law", it is safer - both for human rights and for counter-terrorism - to look for broadly applicable solutions, rules of thumb that work - in short, for best practice.

A *third* advantage of a best practice approach is in its explicit combination of law and policy. Policy-makers cannot be reduced to mere messenger boys who pass the issue to the judiciary for the application of "better law". Policy-makers need to look into the future, be proactive and search for general solutions and not just for the resolution of an actual hard judicial case. Here, best practice can be guided by the results of a "better law" approach but not limited by what it has already produced.

Mr. President,

I want to use this opportunity to thank the Governments of Tunisia and Peru for hosting my country visits in 2010, including for providing access to persons detained under terrorism charges or sentences.

The mission to Tunisia was undertaken in January 2010 and is documented in the mission report (A/HRC/16/51/Add.2). As in many other countries, I expressed the concern of wide definitions of terrorism and of associated crimes having far-reaching negative consequences for the rights to freedoms of expression, association and peaceful assembly. In Tunisia, my findings corroborated by the Government's own statistics, showed that hundreds of people were annually detained and prosecuted for "membership" in a terrorist organization without having used violence or being in any other way involved in any act of terrorism. We collected evidence, including through interviewing prisoners and examining the logbook of a central police station, of a systematic practice of secret detention by the security police, prior to the official registration of arrest. We received first-hand testimonies of people being detained and tortured in the basement of the Ministry of Interior in the centre of Tunis, and my report also lists the methods of torture used.

It is with relief that I can state that a page has been turned in Tunisia since my visit. After a massive wave of peaceful demonstrations in December and January, the old regime fell and a transition to democracy is now on its way. Recent events in Tunisia and elsewhere have shown how widely crafted anti-terrorism laws have been abused to arrest peaceful demonstrators and stifle legitimate political debate. In Tunisia, the notion of terrorism was used by former President Ben Ali to stigmatize demonstrators by accusing them of "unpardonable terrorist acts". This happened on January 10, two days after Tunisian security forces had begun deliberately killing protesters there. This is not an isolated phenomenon. Last week Colonel Gaddafi of Libya has accused demonstrators to be drugged by al Qaeda fighters, and by using this stigma he justified the use of brutal force against them. These remarks stress again the importance of well-defined terrorism offences. Other countries, such as Egypt and Algeria that are contemplating replacing a state of emergency with a proper counter-terrorism law should keep this in mind. Broad and vague terrorism definitions and their abusive use to suppress dissent prove to be a galvanizing factor in society, bringing together very different groups targeted by authoritarian regimes for various reasons.

The ongoing reform process in Tunisia involves many of the issues identified in my recommendations after the mission. Persons convicted under the abusive anti-terrorism law have been pardoned and the law itself is under review. The secret detention and interrogation facility in the basement of the Ministry of Interior has been closed, but preserved for investigation by the ICRC, the findings of which are expected to be public. Tunisia has decided to ratify a number of human rights instruments, including the Optional Protocol to the Convention against Torture, opening all places of detention for an independent national visiting mechanism and the OPCAT Sub-Committee on Prevention of Torture.

The Government of Tunisia was not monolithic during my visit a year ago. And the transitional Government there now is not monolithic, either. Therefore, I need to be loud and clear in repeating some of the recommendations contained in the mission report:

- Revise the definition of terrorism and associated crimes in Law 2003-75, to prevent any abusive use of the notion of terrorism in the future;
- Introduce proper guarantees against secret detention, including by providing access to a lawyer from the moment of arrest;
- Put into practice the decision to ratify OPCAT and open all places of detention to national and international monitors;
- Proceed with amnesties, or retrials through proceedings that meet international fair trial standards, in all cases where evidence obtained by means of torture or other ill-treatment was admitted in the proceedings; and
- Strengthen the independence of the judiciary.

Mr. President,

My mission to Peru in September of last year (A/HRC/16/51/Add.3) also took place at a critical time. On the day of my arrival the Government utilized its delegated legislative authority to enact Decree Law 1097 that could have resulted in impunity for gross human rights violations committed by State officials in the name of countering terrorism in earlier decades, including during the regime of former President Alberto Fujimori Fujimori who is now in prison following a fair trial for crimes against humanity. A wide range of actors representing very different strata of Peruvian society, including the judiciary, prosecutors, members of Congress and prominent intellectuals and other civil society actors, stood up against this measure during my mission, and the issue was high on the agenda of my meetings with the authorities.

While commending the Government and legislature of Peru for their courageous decision to repeal Legislative Decree 1097 only a week after my mission, I also want to repeat my grave concern at simultaneously promulgated Legislative Decree No. 1095, which is based on a serious misconception of the legal application of international humanitarian law and includes a definition of "hostile groups" that could be applied to legitimize the use of military force against social protest by indigenous peoples' movements.

Likewise, although I commend the work of the Truth and Reconciliation Commission and the progress in implementing collective and individual reparation schemes for victims of terrorism and victims of the State's counter-terrorism measures, I repeat my recommendation to guarantee the full participation of women in the implementation of collective reparation programmes and to ensure that women subjected to gender-based violence, including the numerous cases of rape perpetrated during the internal armed conflict, have access to individual reparations and other remedies.

Further, I want to reiterate my commitment to engage with Peru in the replacement of the Fujimori era framework of Decree Law 25.475 with a proper counter-terrorism law, to be adopted by Parliament, as outlined in paragraphs 44 and 45 of my mission report.

Mr. President,

Let me outline to you and your colleagues my plans for the remainder of my term as Special Rapporteur: During the remaining five months I hope to conduct one or two country visits. Paragraph 2 of my report mentions the countries where I have requested access. Also, I will continue to engage in correspondence with Governments, in particular by sending substantive follow-up letters to the countries that I have visited over last 5 years. I will also continue to participate in the CTITF and in related initiatives to remain involved in the inclusion of full attention to human rights in the counter-terrorism work of the United Nations and other international organizations.

Mr. President, ladies and gentlemen,

Allow me to close this introductory statement with a quote from paragraph 12 of the report in front of you, encapsulating what I see as the essence of the relevance of human rights for counter-terrorism:

"Through the careful application of human rights law it is possible to respond effectively to the challenges involved in the countering of terrorism while complying with human rights. There is no need in this process for a balancing between human rights and security, as the proper balance can and must be found within human rights law itself. Law is the balance, not a weight to be measured."

I look forward to a constructive dialogue with the delegates.