



OSCE Office for Democratic Institutions and Human Rights (ODIHR)

**ODIHR Submission for the
Call for inputs on definitions of “terrorism”, “terrorist organisation”
and “violent extremism”**

issued by the

***UN Special Rapporteur on the protection and promotion of human rights and
fundamental freedoms while countering terrorism***

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I. INTRODUCTION

OSCE participating States have consistently re-affirmed their commitment to respect and protect human rights in the fight against terrorism.¹ They tasked the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to provide technical assistance and advice on the development and implementation of human rights-compliant legislation, policies and practices aimed at countering the threats posed by terrorism, and violent extremism and radicalization that lead to terrorism (VERLT). Upon request, ODIHR also reviews individual pieces of draft and existing legislation, including pertaining to terrorism, VERLT and so-called “extremism”, to assess their compliance with OSCE human dimension commitments and international human rights standards, and has published its findings and recommendations.²

While OSCE participating States have recognized the importance of protecting human rights in countering terrorism and preventing VERLT, overbroad and vague definitions of terrorism and “extremism” in a number of states’ legal frameworks raise serious human rights concerns, including with regard to their impact on democratic values and civic space.

ODIHR welcomes this call for inputs as an important initiative of the UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism (hereinafter: UN Special Rapporteur on Human Rights and Counter-Terrorism) and is pleased to provide observations to the mandate’s forthcoming thematic report on definitions of “terrorism”, “terrorist organisation” and “violent extremism”.³ The following overview of related concerns on a select number of topics as raised in the call of the UN Special Rapporteur on Human Rights and Counter-Terrorism is based on ODIHR’s legal opinions, publications and tools with a focus on human rights and counter-terrorism.⁴ While these comments are limited to a number of topics raised in the call for inputs by the UN Special Rapporteur on Human Rights and Counter-Terrorism, this should not be interpreted as support or opposition to any of the other points raised in the call. ODIHR is available to formulate additional written or oral recommendations or comments on relevant issues in the course of the present consultation process or in separate processes in the future.

II. OVERBROAD AND VAGUE DEFINITIONS OF “TERRORISM” AND “EXTREMISM” – AND THEIR IMPACT

As underlined at the international and OSCE level, respect for human rights for all and the rule of law should constitute the fundamental basis of the prevention of and fight against terrorism.⁵ The protection and promotion of all human rights, as well as effective counter-terrorism measures are not exclusive, but rather complementary and mutually reinforcing objectives,⁶ which also constitute the very essence of the OSCE’s comprehensive concept of security. Furthermore, the identification of terrorism with any nationality, religion or ethnicity has been expressly rejected by OSCE participating States.⁷ While not underestimating the existence of potential terrorist threats and recognizing the importance of legal and institutional counter-terrorism frameworks, legislation, policy and practices in this field, any definition of terrorism must comply with international law, including international human rights law, international refugee law and international humanitarian law, as well as rule of law principles.

Establishing an accurate definition of terrorism that is compliant with human rights and the rule of law is central to effectively combating terrorism in a comprehensive manner. Precise legal definitions are fundamentally important to upholding the principle of legality, as discussed below. This matters, as definitions related to terrorism will structurally shape the counter-terrorism framework – at a national

¹ For OSCE commitments related to the protection of human rights while combating terrorism, see [ODIHR website](#).

² See ODIHR [work on countering terrorism](#), [webpage](#) on legislative support and for legislative reviews on counter terrorism and “extremism”, see [Legislationline](#).

³ See OHCHR, [Call for Inputs: Definitions of “terrorism”, “terrorist organisation” and “violent extremism”](#).

⁴ See footnote 2.

⁵ See OSCE, [Charter on Preventing and Combating Terrorism](#), Porto 2002, paras. 5-7. See also UN, [Global Counter-Terrorism Strategy and Plan of Action \(2006\)](#), Pillar IV.

⁶ UN High Commissioner for Human Rights, [Report on the protection of human rights and fundamental freedoms while countering terrorism](#), A/HRC/4/88, 9 March 2007, para. 2.

⁷ OSCE, [Charter on Preventing and Combating Terrorism](#), Porto 2002.

level and beyond. They form the very basis of legislation, which sets out the powers of authorities in preventing and countering conduct that is or may be of terrorist nature. The formulation and application of these terms have thus significant implications, both domestically and internationally, in terms of the legal basis, for instance, for the effectiveness of investigations, international co-operation such as sharing of intelligence and the provision of mutual legal assistance, the freezing and confiscation of assets, and extradition. The effectiveness, legitimacy of, and trust in the state's action against terrorism will be undermined if the state, through any of its agencies, uses these powers in contravention of international human rights standards.

Despite this, ODIHR has long expressed concern about the human rights impact of overbroad and vague counter-terrorism and so-called "anti-extremism" laws, which are prone to erroneous, arbitrary or even abusive application. Overbroad and vague definitions in counter-terrorism and "anti-extremism" legislation raise serious concerns about non-violent acts being targeted by such legislation, including the activities of peaceful opposition groups, civil society, human rights defenders and activists, including activists on environmental issues, across the OSCE area.⁸ A few pertinent issues are set out below.

Defining "terrorism"

In order to comply with international human rights guarantees, the definition of "terrorism" and associated offences in national law must first comply with the principle of legality.⁹ Criminal offences must be defined in precise and unambiguous language, so that the law is reasonably foreseeable in its application and consequences.¹⁰ An offence must be clearly enough defined in law that "the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him [or her] liable".¹¹ All the essential elements of the offence – the individual conduct concerned and the intent – therefore need to be clearly stipulated in law. The relevant laws and regulations must be formulated in a non-discriminatory and non-retroactive manner, and be accessible to the public and lawfully applied by public authorities, including the police and the judiciary, in a transparent manner. This is a prerequisite for people to understand the law and adapt their behaviour accordingly. Legal frameworks should also include adequate safeguards against arbitrary prosecution, conviction and punishment, and any ambiguity should be resolved in favour of the accused.¹²

ODIHR therefore has consistently called on OSCE participating States to follow the approach of UN Security Council Resolution 1566 (2004) and strictly confine terrorist offences to acts that meet all of the elements contained therein, including the "intention of causing death or serious bodily injury, or the taking of hostages".¹³ The UN Special Rapporteur on Human Rights and Counter-Terrorism has noted

⁸ In addition to legal opinions, comments and notes, see ODIHR, [ODIHR Submission for the Call for Inputs: Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space](#), 2023 (ODIHR Submission on Counter-Terrorism and Civic Space); ODIHR, [Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework](#), 2018, p. 54 (ODIHR FTF Guidelines); and ODIHR, [The Responsibility of States: Protection of Human Rights Defenders in the OSCE Region \(2014–2016\)](#), 2017. Concerns about the use of anti-extremism laws to "silence the society" have also been raised in the [Moscow Mechanism Report On Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#), 2020, and are well documented in the OSCE [Moscow Mechanism Report on Russia's Legal and Administrative Practice in Light of its OSCE Human Dimension Commitments](#), 2022. See also statements of the OSCE Representative on freedom of the media, e.g., regarding [Belarus in 2022](#) and [Russia in 2022](#). With regards to activists on environmental issues, including climate activists who have been labelled, among other things, as "extremists" or "terrorist" groups, see [Position Paper](#) of the UN Special Rapporteur on Environmental Defenders on state repression of environmental protest and civil disobedience: a major threat to human rights and democracy and the [Report](#) of the UN Special Rapporteur on freedom of peaceful assembly and of association, 2021, A/76/222, paras. 22-23.

⁹ As guaranteed by Article 15 of the International Covenant on Civil and Political Rights.

¹⁰ ECtHR, *Sunday Times v. UK*, 26 April 1979, para. 49: "the law should be ... formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

¹¹ ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, 25 May 1993, para. 52

¹² See generally, ODIHR FTF Guidelines, pp. 35-36.

¹³ UN Security Council Resolution 1566 (2004), S/RES/1566 (2004), para. 3.

that any definition of terrorism should be confined to conducts that are of a “genuinely terrorist nature”.¹⁴ This means it should be confined to acts that meet three cumulative criteria:

- (1) they amount to acts passing a certain threshold of seriousness, i.e., either
 - (a) the intentional taking of hostages, or
 - (b) acts intended to cause death or serious bodily injury to one or more members of the general population or segments of it, or
 - (c) acts involving lethal or serious physical violence; and
- (2) they are done with the intention of provoking terror in the general public or a segment of it or compelling a government or international organization to do or abstain from doing something; and
- (3) they correspond to an offence under the universal terrorism-related conventions (or, in the alternative, they correspond to all elements of a serious crime defined by national law).¹⁵

This approach has been reiterated by ODIHR in its legislative assistance and other programmatic work. ODIHR has also advocated that states, in defining terrorism in criminal or other legislation, expressly state that no aspect of a definition should be interpreted as imposing restrictions to fundamental rights and freedoms, unless such restrictions are compliant with international human rights standards. For rights that are subject to restrictions, the criteria of being prescribed by clear and foreseeable law, necessary in a democratic society in order to achieve any of the legitimate aims provided in international instruments, proportionate to these aims and non-discriminatory, must be met.¹⁶

Considerations regarding Criminal Conduct (actus reus)

When defining the term “terrorist offence”, there is the need to clearly and strictly circumscribe the constitutive elements of the offence, including the *actus reus*, to ensure compliance with the principle of legality and to prevent the potentially erroneous or arbitrary interpretation and discriminatory application, which could otherwise have far-reaching implications on the exercise of human rights.

ODIHR identified concerns in legislative reviews and legal notes regarding a number of aspects related to the content and scope of terrorist offences. Broad or vague formulations concerning certain conduct to be criminalized (e.g., “research into [specific] weapons”, “arson”, “infliction of considerable material damage” or open-ended references to “other criminal acts”) may cover a number of acts and omissions that go beyond the offences listed in the UN Security Council Resolution 1566 and the model definition of terrorism noted above, and may not comply with the principle of legal certainty.¹⁷ ODIHR has emphasized that terms used to define terrorist acts should be narrowly defined to ensure that they are

¹⁴ UN Special Rapporteur on Human Rights and Counter-Terrorism, [Report to the UN Commission on Human Rights, E/CN.4/2006/98](#), 2005, para. 42

¹⁵ See UN Special Rapporteur on Human Rights and Counter-Terrorism, [Annual Report: Ten areas of best practices in countering terrorism](#), A/HRC/16/51, 2010, Practice 7 (model definition of terrorism), para. 28; and UN Security Council Resolution 1566 (2004), S/RES/1566 (2004), para. 3. It is worth emphasizing that the UN Special Rapporteur on Human Rights and Counter-Terrorism has also expressly stated that “[d]amage to property, absent other qualifications, must not be construed as terrorism”. See UN Special Rapporteur on Human Rights and Counter-Terrorism, [2019 Report to the UN Commission on Human Rights](#), A/HRC/40/52, 2019, para. 75 (c). On the definition of “terrorism” within the OSCE context, see OSCE, [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#), 2014, pp. 27-30. See also e.g., ODIHR, [Opinion on the Draft Law of Tunisia Related to the Fight against Terrorism and Prevention of Money Laundering](#), 9 December 2013, paras. 18-27. Also, UNODC, [Model Legislative Provisions Against Terrorism](#), 2009, p. 12: “It is understood, in line with the International treaties, that the conducts described therein have to be criminalized by States Parties when committed ‘unlawfully’ and ‘intentionally’”.

¹⁶ ODIHR, [Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism](#), 2023, p. 3 (ODIHR Note on CoE Definition).

¹⁷ See, for example, ODIHR Note on CoE Definition, para. 14; ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan](#), 2016, para. 27 (ODIHR Preliminary Opinion – Kazakhstan); ODIHR, [Comments on the Law on Combatting Terrorism of the Republic of Uzbekistan](#), 2019, para. 35 (ODIHR Comments “Terrorism” – Uzbekistan).

limited to acts passing a certain threshold of seriousness.¹⁸ Wrongful acts should correspond to the offences under the universal terrorism-related instruments or, alternatively, fulfil all elements of a serious crime defined by national law that is compliant with international human rights standards and that passes a certain threshold of seriousness.¹⁹

Among other issues, ODIHR expressed concern about the inclusion of certain inchoate offences, such as “threats” as one of the possible reprehensible acts constituting a terrorist offence. Such an inclusion is considered problematic in several ways. Firstly, it is questionable whether mere threats, which generally constitute evidence of the intent or *mens rea* of the “terrorist offence”, without any concrete acts or *actus reus*, reaches the level of seriousness required to constitute in and of itself a “terrorist offence”. Secondly, if not strictly and narrowly defined, there would be a high risk of criminalizing the mere legitimate exercise of the right to freedom of expression. Therefore, ODIHR has urged that “threats” are not included in the definition of “terrorist offences”.²⁰

Further, preparatory acts, which may include planning or conspiracy with a view to committing or contributing to a terrorist offence, may be prosecuted, but only if there is an actual risk that the terrorist act takes place (as opposed to an abstract danger), with a meaningful proximate link between the behaviour and the ultimate wrong, and while demonstrating criminal intent (intent to act and to cause the harm, or at least, to create a serious risk of foreseeable harm).²¹

Considerations regarding Criminal Intent (*mens rea*)

With regard to defining the criminal intent related to terrorist offences, an important safeguard is that terrorist actions are committed ‘intentionally’. However, a definition should not only specify that the perpetrator must have intended the commission of the act(s) but also the consequences contemplated.²²

Terrorism may be considered a special (dual) intent crime, linked to the particular nature – and often the onerous sanctions – of terrorism in criminal law.²³ The individual should not only intend to carry out the conduct but also intend to make the relevant contribution to a “terrorist” act by spreading fear or terror or coerce public authorities or international organizations (special intent). When defining terrorist aims and motives, states should align their definitions with the model definition of terrorism in order to avoid vague and unforeseeable wording. Referring to broad and vague objectives such as “destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation”,²⁴ “caus[ing] socio-political destabilization”²⁵ or “complicat[ing] international relations”²⁶ would significantly broaden the definition and thus may not be specific and

¹⁸ ODIHR Note on CoE Definition, para. 14.

¹⁹ ODIHR Preliminary Opinion – Kazakhstan, para. 27.

²⁰ However, if states nevertheless consider including the term “threats”, the notion should be narrowly defined with appropriate qualifiers, connecting it to a real and immediate danger, when a perpetrator would have the capacity to commit such an offence or making a target reasonably believe in it. For more information, see ODIHR Note on CoE Definition, para. 14.

²¹ ODIHR FTF Guidelines, pp. 37-38. See also e.g., ODIHR Comments “Terrorism” – Uzbekistan, Sub-Section 3.3; and ODIHR, [Comments on the Law on Countering “Extremism” – Uzbekistan, 2019](#), para. 52 (ODIHR Comments on “Extremism” – Uzbekistan).

²² Regarding ancillary, preparatory or inchoate offences, it is also essential that the nature of the intent of all responsible, and the relationship between the conduct, intent and the ‘aims’ specified in respect of all responsible individuals is clearly defined. ODIHR Note on CoE Definition, paras. 15-16.

²³ See Special Tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging (2011), p. 3, which states: “On the basis of treaties, UN resolutions and the legislative and judicial practice of States, there is convincing evidence that a customary rule of international law has evolved on terrorism in time of peace, requiring the following elements: (i) the intent (*dolus*) of the underlying crime and (ii) the special intent (*dolus specialis*) to spread fear or coerce authority; (iii) the commission of a criminal act, and (iv) that the terrorist act be transnational.”

²⁴ ODIHR Note on CoE Definition, para. 12.

²⁵ Also, reference to other commonly invoked but undefined terms, such as “*national security*” that is not itself a term defined internationally, compounds the problem of vagueness and uncertainty of the legal provisions. ODIHR Comments “Terrorism” – Uzbekistan, paras. 37-38.

²⁶ ODIHR Preliminary Opinion – Kazakhstan, para. 28.

precise enough to comply with the principles of legal certainty, foreseeability and specificity of criminal law. In practice, such vague definition risks being used by state authorities as a tool for the suppression of legitimate activities such as political dissent, democratic participation or human rights non-governmental organizations, labour union strikes or civil disobedience.²⁷

The definition of the mental element (*mens rea*) for support or preparatory offences is particularly significant in terms of gender implications and the broader it is defined, the more likely it may affect the rights of child and family life, and potentially affect women disproportionately. Indeed, women in some contexts may have far less access to information and may have no or very limited knowledge about the full scope of behaviour of their spouse or family members or may not be in a position to challenge that behaviour or to refuse to assist. Moreover, the broader scope of the mental element could favour the prosecution of persons who provide support to a family member engaged in terrorism, even where that support is provided out of a sense of family duty or loyalty, rather than for the purpose of supporting terrorist activities, and this has been shown as disproportionately affecting women.²⁸

Exceptions or exclusion clause to safeguard legitimate activities

Depending on the breadth or scope of a “terrorism” definition, its elements may trigger far-reaching responses that may unduly thwart or punish a range of legitimate activities. This underlines the importance of including a clause to the definition with the purpose of safeguarding legitimate activities, especially the exercise of human rights and fundamental freedoms and activities of human rights and humanitarian organizations, or create exceptions or exclusion clauses for example, as seen in some other contexts.²⁹ ODIHR has underlined the importance of providing for “careful, narrowly constructed but effective exceptions” to ensure that those engaged in genuine human rights and humanitarian work are not unduly restricted in that work, while noting however that such exceptions are no substitute for clear terrorism provisions that are strictly construed.³⁰

ODIHR therefore has advocated for the inclusion of clear exceptions or exclusion clauses in terrorism definitions to safeguard legitimate activities, especially the defence or exercise of human rights and fundamental freedoms, activities of human rights and humanitarian organizations, and other legitimate activities, such as for education, scientific and academic research, legal assistance, journalistic or artistic purposes.³¹

Further considerations regarding overbroad and vague definitions and associated legislation

ODIHR has set out specific concerns about several aspects of such vague and overbroad definitions. Some examples include, but are not limited to, the following issues:

- ODIHR emphasized that overly broad or ill-defined definitions of terrorism may facilitate arbitrary application of criminal law and procedures with consequences for the enjoyment of rights including the rights to respect for private life, rights to freedom of peaceful assembly and of association, freedom of expression, freedom of thought, conscience, religion or belief, the right to political participation as well as the right to liberty and security and the right to a fair trial. Broad or vague definitions of criminal offences also run the risk of discriminatory application for instance on grounds of national or ethnic origin, religion or belief, political or other opinion, sex, gender identity, migration status, minority status, descent, socio-economic status, birth or other status – or the intersection of any of these grounds, contrary to international standards.³²

²⁷ ODIHR Note on CoE Definition, para. 19; and ODIHR Comments “Terrorism” – Uzbekistan, para. 39.

²⁸ ODIHR, [Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism](#), 2020, para. 69 (ODIHR Note on the Shanghai Convention).

²⁹ See ODIHR FTF Guidelines, pp. 26-28. Examples from national legislation include sections 5, 9(1) and (2) of the New Zealand Terrorism Suppression Act 2002, Article 260ter and Article 260quinquies (3) of the Swiss Penal Code, or Canadian Federal Criminal Code, S83.01.

³⁰ ODIHR FTF Guidelines, pp. 26-28.

³¹ ODIHR Note on CoE Definition, para. 24. See also ODIHR Preliminary Opinion – Kazakhstan, para. 31.

³² See legislative reviews noted above and ODIHR FTF Guidelines, pp. 62-63; and ODIHR, [Freedom of Religion or Belief and Security: Policy Guidance](#), 2019.

- ODIHR also underlined that definitions of terrorism should be narrowly defined so as not to include “forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion”. In practice, vague terrorism definitions can be misused by state authorities seeking to use counter-terrorism legislation to target political dissent, be it political opposition, independent media or journalists, human rights defenders or other civil society actors.³³ The same applies to vague definitions of “terrorist acts” as outlined above, provisions about the content and scope of “participating in terrorist activities”, “membership of a terrorist organization” or the liquidation of “terrorist organizations”, which could be misused to dissolve non-governmental organizations or associations carrying out legitimate activities.³⁴
- In the context of state measures to prevent and counter the “foreign terrorist fighters” (FTF) phenomenon, ODIHR pointed out that national legislation adopted following UN Security Council resolutions 2178 (2014) and 2396 (2017) criminalizing FTF-related conduct, and its interpretation and application in practice, clashes with the fundamental rule of law principles, including the requirement of legality and certainty in criminal law. Crimes, inchoate offences and modes of liability that target not only travel for some ill-defined purpose, but also other forms of support, such as funding or facilitating travel, in relation to FTF activities are extremely expansive in their potential scope of application, and are ridden with ambiguity. ODIHR has emphasised that problems associated with the lack of a clear definition of terrorism are compounded by the inherent breadth and ambiguity of terms used to describe FTF-related conduct.³⁵
- In light of the increasing breadth and use, in many OSCE participating States, of terrorism-related offences limiting freedom of expression³⁶, ODIHR has urged to avoid overly broad criminal offences – such as apology, glorification or condoning of terrorism – that frequently fall short of the threshold of incitement to discrimination, hostility or violence and lead to impermissible limitations of freedom of expression.³⁷ As regards “incitement to terrorism” specifically, UN Security Council Resolution 1624 (2005) expressly called on states to prohibit such behaviour. However, banning and prosecuting crimes based only on expression of opinion should be exceptional, and as such, the criminal offence and constitutive elements should be clearly defined and strictly circumscribed, so as to prevent undue restrictions, which have been increasingly frequent in counter-terrorism practice internationally. To be human rights-compliant, the offence of “incitement to terrorism or acts of terrorism” must be prescribed by law in a precise language and (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; (b) be limited to the incitement to conduct that is truly terrorist in nature; (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases, for instance when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.³⁸

³³ See ODIHR Submission on Counter-Terrorism and Civic Space; ODIHR Note on CoE Definition, para. 19. Also, ODIHR Comments “Terrorism” – Uzbekistan, para. 91 (with reference to the Joint ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2010).

³⁴ ODIHR Comments “Terrorism” – Uzbekistan, paras. 47, 57 and 81. Concerning legal certainty and the definition of “terrorist acts” see also ODIHR Preliminary Opinion – Kazakhstan, paras. 25-28, 34.

³⁵ For further analysis of criminal law responses in the FTF context, see ODIHR FTF Guidelines, section 3.3.

³⁶ For example, [the Joint Declaration on Freedom of Expression and countering violent extremism](#) by UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and others in 2016.

³⁷ ODIHR FTF Guidelines, p. 53 as well as pp. 34-36 and 55-59. Concerning “extremism”-related content restrictions and the destruction or removal of “extremist” materials, see also ODIHR Preliminary Opinion – Kazakhstan, para. 102; ODIHR Comments on “Extremism” – Uzbekistan, para. 49; and ODIHR, [Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan](#), 2019. Concerning restrictions to freedom of expression, ODIHR also recommended to include defences or exceptions when statements were intended as part of good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest. See ODIHR Comments on “Extremism” – Uzbekistan, para 27; and ODIHR Preliminary Opinion – Kazakhstan, para 31.

³⁸ UN Security Council Resolution 1624 (2005), S/RES/1624 (2005). Also, ODIHR Comments “Terrorism” – Uzbekistan, para. 54.

Definitions of “extremism” and anti-“extremism” legislation

ODIHR raised principled concerns regarding “extremism” as a legal concept and the vagueness of such a term particularly in the context of criminal legislation.³⁹ The criminalization of “extremism” is problematic due to the inherently vague and subjective nature and the broad spectrum of, also non-violent, conduct that may be captured by the term as well its potential human rights implications. The prohibition and prosecution of so-called “extremism” carries the risk that the mere expression of opinions or ideas will be criminalized.⁴⁰ International human rights standards protect the right to hold opinions without interference; and freedom of expression, often described as a cornerstone of democracy, embraces the freedom to express ideas and opinions that “offend, shock or disturb”, i.e., the peaceful expression of ideas that some may consider radical or extreme.⁴¹

The mere existence of “extremism” crimes is also likely to have a chilling effect on the exercise of a number of rights, including freedom of thought, conscience, religion or belief, expression, association, peaceful assembly, political participation as well as the right to education and academic freedom.⁴² The same applies to procedures in relation to, for example, the issuance of official warnings or notices for “extremist activity”, contained in such laws.⁴³

As a strategic focus area in the fight against terrorism, participating States explicitly committed to preventing and countering violent extremism and radicalization that lead to terrorism (VERLT).⁴⁴ The policy term VERLT is directly connected with violence and terrorism, and as such is clearly distinct from so-called “extremism”.⁴⁵

Despite OSCE commitments emphasizing that terrorism must not be identified with any ethnicity, nationality, religion or belief, in practice there are concerns that programmes to prevent VERLT have often had a disproportionate or even exclusive focus on certain groups in society, namely Muslims and specific ethnic groups.⁴⁶ Moreover, concerns about “extremism” are often cited by states as justification for the need to strictly control the activities of individuals, or even entire religious or belief communities, in the interest of security.⁴⁷

Given the inherent difficulty of defining the term legally and the serious human rights concerns that arise from it, ODIHR has questioned the practice of adopting specific legislation to counter so-called “extremism” in the first place, while also noting recommendations by other international human rights mechanisms that states should repeal provisions regulating “extremism” in their laws.⁴⁸

³⁹ See e.g., ODIHR Note on the Shanghai Convention, para. 54 (ODIHR Note on the Shanghai Convention); ODIHR Comments on “Extremism” – Uzbekistan, para. 14; ODIHR, [Opinion on the Law on Countering Extremist Activity of the Republic of Moldova](#), 2019, para. 15; ODIHR Preliminary Opinion – Kazakhstan, para. 21; and ODIHR, [Urgent Interim Opinion on the Draft Law “On Non-Profit Non-Governmental Organizations” and Draft Amendments on “Foreign Representatives – Kyrgyz Republic”](#), 2022, para. 39.

⁴⁰ ODIHR Note on the Shanghai Convention, 2020, p. 2 and para. 30.

⁴¹ Ibid. para. 57; ODIHR FTF Guidelines, pp. 55-57.

⁴² ODIHR Note on the Shanghai Convention, para. 58.

⁴³ See e.g., ODIHR Opinions on Moldova and Uzbekistan.

⁴⁴ OSCE Ministerial Council, [Decision on “Further Promoting the OSCE’s Action in Countering Terrorism”](#), MC.DEC/10/08, 5 December 2008. Reaffirmed in OSCE, [Permanent Council Decision No. 1063](#), PC.DEC/1063, 7 December 2012; and OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism](#), MC.DOC/4/15, 4 December 2015.

⁴⁵ For further discussion of VERLT, see OSCE, [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#), 2014, pp. 35-39.

⁴⁶ See ODIHR FTF Guidelines, section on discrimination, pp. 62-63.

⁴⁷ ODIHR, [Freedom of Religion or Belief and Security – Policy Guidance](#), 2019, p. 31, 35.

⁴⁸ States should ensure that legal definitions and other related substantive provisions exclusively address “violent extremism” and fully comply with international human rights standards and OSCE commitments, while safeguarding legitimate activities, especially the exercise of human rights and fundamental freedoms and activities of human rights and humanitarian organizations. See ODIHR Note on the Shanghai Convention and other legislative reviews on “extremism” referred to above.

III. CONCLUSION

Vague and overbroad counter-terrorism definitions in national legislation related to terrorism, VERLT and so-called “extremism” raise serious concerns with regard to their impact on human rights and the rule of law. The misuse of such laws in practice and the unwarranted application of offences related to terrorism or “extremism” against people expressing dissent, journalists, human rights defenders, activists and other groups is well documented in a number of countries, also within the OSCE region. For effective and human rights compliant counter-terrorism measures, states should ensure that legislation designed to criminalize terrorist-related offenses is based on clear and precise definitions of terrorism and strictly construed to minimize the risk of excessive, politically-motivated or otherwise abusive application.⁴⁹

ODIHR assists participating States in strengthening their counter-terrorism efforts in line with international human rights standards and rule of law principles, including their legal definitions and frameworks, and their application, *inter alia*, through providing tailored expert advice and capacity building, legislative reviews and support for democratic lawmaking.⁵⁰

⁴⁹ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#), 2014, p. 57, para 101.

⁵⁰ See references in footnote 2, and also, ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#), 2024.