

Institution: University of Bedfordshire
Unit of Assessment: 20 – Law
Title of case study: Promoting effective protection of human rights in situations of exception through collaboration with non-governmental organisations (NGOs)
<p>1. Summary of impact</p> <p>This case study focuses on the impact on the legal and policy debate at the domestic and international level of research carried out within the Centre for Research in Law (CRiL) on the legal protection of fundamental rights in situations of exception.</p> <p>In particular, it discusses how the research in question has:</p> <ul style="list-style-type: none"> (a) assisted NGOs in shaping their strategies; (b) informed the debate within international organisations; (c) contributed to raising public awareness of issues relating to respect for fundamental rights in the context of counter-terrorism. <p>By raising awareness of the relevant legal constraints upon States and by assisting NGOs and international organizations, the research has contributed to reinforcing the protection of the fundamental rights of individuals belonging to specific groups and, more broadly, to the strengthening of the rule of law at both the domestic and international level.</p>
<p>2. Underpinning research</p> <p>The research underpinning this case study was carried out by Dr Silvia Borelli (Principal Lecturer, 2011-current; Director of CRiL, 2011-current) in the period since she joined UoB. Some aspects of the research build on work previously carried out by Borelli at the Catholic University of Milan (2002-03) and University College London (2005-10).</p> <p>The research focuses on the application of international human rights standards in situations of exception, and particularly in the context of counter-terrorism, national emergencies and military activities. Within that broader area of research, three principal strands can be identified:</p> <ol style="list-style-type: none"> 1) The <u>protection of human rights in the context of counter-terrorism</u>. This strand of the research focuses on the way in which certain policies and measures adopted in the name of counter-terrorism in the years since 9/11 have jeopardised basic principles of the rule of law and infringed the fundamental rights of individuals. Such measures include the indefinite detention of terrorist suspects; the practice of so-called extraordinary rendition; and the use of evidence obtained by torture. Borelli, who has acted as a consultant to civil society organisations involved in relevant litigation in this regard (both domestically and at the international level), has written a number of internationally recognised pieces on these issues and has presented extensively on this topic; her most recent publication in this area analyses the phenomenon of “extraordinary renditions” of individuals suspected of involvement in terrorism [3.3]. 2) The transversal question of the <u>relationship between national security and the protection of fundamental rights</u>. The research analyses international and domestic legal instruments and the practice of states and international monitoring bodies, and demonstrates that the protection of national security and effective respect for the fundamental rights of all individuals are not, nor should they be, mutually exclusive. Borelli argues that the current international legal framework for the protection of human rights is sufficiently flexible and allows states to counter threats to national security whilst at the same time respecting individual human rights. The research explores the role of various actors in upholding the correct balance between national security considerations and effective human rights protection; in particular, it critically examines the role of national security services and the limitations which should be imposed on their freedom of action. One output of that research was published in 2011 in the context of a project sponsored by the Intelligence Oversight Committee of the Norwegian Parliament [3.1]. The impact of “security legislation” (i.e. laws enacted in order to counter a – real or perceived – threat to national security) on the implementation of the

prohibition of torture and other ill-treatment is analysed in [3.2], a research report commissioned by REDRESS, a non-governmental organisation specialising in the protection of victims of torture around the world. [3.2], co-authored by Borelli and a staff lawyer at REDRESS, surveys and critically analyses a broad range of “security laws” adopted by states in the years since the events of 9/11 and highlights problematic issues which arise from such laws and/or their implementation in practice. The report concludes by identifying best practices and presenting recommendations addressed to policy makers, judges and civil society organisations, as well as a range of actors operating at the international level.

3) The investigation and prosecution of large scale human rights violations committed during situations of exception. Borelli was involved in the DOMAC project (www.domac.is), a major international collaborative research project which studied the domestic prosecution of mass atrocities from a variety of angles. In that regard, she was responsible for the work packages examining the impact of the case law of the European and the Inter-American Courts of Human Rights upon the capacity of States to undertake effective investigation and prosecution of large scale abuses carried out within their territory in the context of civil war, military occupation, and large scale counter-terrorism operations. [3.4], based on that research, was published in 2013 as part of the final output of the project.

3. References to the research

3.1 S. Borelli, ‘Rendition, Torture and Intelligence Cooperation’, in H. Born, I. Leigh, A. Wills (eds), *International Intelligence Cooperation: Challenges, Oversight and the Role of Law* (Routledge, 2011), pp. 98-123

Quality of the research: the article was produced in the ambit of a research project undertaken jointly by the Centre for the Democratic Control of Armed Forces (DCAF), Geneva, the Human Rights Centre at the University of Durham and the Intelligence Oversight Committee of the Norwegian Parliament. All contributions were subjected to a rigorous editorial review process by the coordinators of the project, both of whom are internationally recognised authorities on issues of accountability of the security services and the armed forces. The piece has been cited in the academic literature.

3.2 REDRESS, *Extraordinary Measures, Predictable Consequences: Security Legislation and the Prohibition of Torture* (by Silvia Borelli and Lutz Oette), September 2012, available at www.redress.org/downloads/publications/1209security_report.pdf

The report has also been translated and is available in French, Spanish and Arabic: www.redress.org/reports/reports

Quality of the research: although having an advocacy function, the report is in substance purely academic in its approach to the subject matter. Further, the report was externally peer-reviewed prior to publication. It is the result of a project sponsored by the European Commission and it was subjected to scrutiny by the funding body.

3.3 S. Borelli, ‘Rendition’, in B. Saul (ed.), *Handbook on International Law and Terrorism*, ch. 19 (Edgar Elgar, forthcoming, 2013), pre-publication version available at hdl.handle.net/10547/305481

Quality of the research: the piece has been reviewed by the editor of the volume, who is internationally recognised as one of the leading scholars in the field of international law and counter-terrorism. The findings of the research have also been presented at a number of academic events (University of Parma (9 April 2013); University of Trento (14 May 2013); City University, School of Law (2 October 2013)).

3.4 S. Borelli, ‘Domestic Investigation and Prosecution of Atrocities Committed during Military Operations: The Impact of Judgments of the European Court of Human Rights’, *Israel Law Review*, vol. 43, p. 369-404 (2013)

Impact case study (REF3b)

Quality of the research: the article was subjected to a rigorous anonymous peer review process prior to being accepted for publication.

4. Details of the impact

The research described in section 2 has had a clear impact outside academia, in particular in the following areas:

(a) Assisting NGOs in shaping their strategies (including litigation strategies)

Dr Borelli's research on human rights and counter-terrorism has both grown out of and fed into her long-standing collaboration with NGOs specialising in the international legal protection of human rights.

Through her consultancy work, Borelli's research has had an impact on the legal arguments put forward by human rights NGOs involved in human rights litigation. For instance, the knowledge and expertise acquired through research on prosecution of abuses committed during states of exception was put to practical use through contribution to and assistance in the drafting of an *amicus curiae* brief, submitted by members of the Lawyers Advisory Committee of the NGO Peace Brigades International UK to the Supreme Court of Justice of Colombia [5.7]. The case arises out of the 2005 massacre of residents of the San José de Apartado Peace Community by members of a paramilitary group, operating in conjunction with the Colombian Army. The case, which concerns the criminal responsibility of senior members of the Colombian armed forces for their role in the massacre, is, as of October 2013, pending before the Supreme Court of Justice.

Borelli's research has also contributed in a significant way to the shaping of advocacy policies of human rights NGOs. For instance, in April 2011, in light of her expertise in the field of human rights and national security, Borelli was commissioned by REDRESS to prepare [3.2]. A longer version of the report, including the background research carried out in order to identify problematic areas, has been made available to Redress for internal use with a view to assisting the organisation itself more generally to identify strategic areas for litigation and advocacy activities. The Report, which contains a detailed analysis of the international legal standards of protection against torture and ill-treatment, has also been used by Redress as background material in preparing training and discussion materials for meeting with governmental experts and human rights activists [5.3].

Finally, Borelli's research has also influenced public debate and informed relevant non-academic users. A good example of this is again [3.2]. First, it has assisted the organisation which commissioned it in identifying strategic areas for its action; in that regard, a senior officer of REDRESS noted that the research had "informed, and helped to shape REDRESS's advocacy on the issue of security legislation, which constitutes a critical development as it facilitates/perpetuates torture and frequently poses considerable obstacles to accountability and reparation". Second, the report, which has also been translated into French, Spanish and Arabic, has been widely distributed to and used by other human rights NGOs, including being reproduced on their websites as reference material. For instance, Dignity, a Danish human rights NGO with a similar mandate to that of REDRESS, included the report in the "toolkit" of materials for practitioners and human rights activists available on their website [5.4], whilst the Spanish NGO RIS (Rights International Spain), an independent non-governmental organisation whose stated mission is "to strengthen human rights accountability in Spain, focusing on access to justice for victims of human rights violations", has included it on the webpage dedicated to international reference materials on "Security and Human Rights" [5.5].

(b) Informing the debate within international organisations

Due to its nature and subject-matter, Borelli's research on counter-terrorism has had an impact on the public and institutional debate on counter-terrorism and influenced the work of international human rights monitoring bodies. A prime example of this type of impact is that deriving from the REDRESS Report [3.2]. As mentioned above, the Report was prepared in the context of a project funded by the European Commission and was prepared with the express intention to inform and influence domestic policy-makers and human rights institutions in a broad range of States, as well as to contribute to the debate on human rights and national security in relevant international fora,

including the European Union and the United Nations. The Report was submitted to the European Commission and is highlighted by the Division on Human Rights and Democracy of the Commission as one of its key references on torture from EU-funded projects and partner organisations [5.2]. The Report has also been circulated by REDRESS to members of various UN Human Rights bodies, including the Human Rights Council and the UN Committee Against Torture. The very fact of the publication of the report and its distribution by a leading NGO with a long history of cooperation with international human rights monitoring bodies ensures that the report is considered, given due weight and informs the debate within those bodies. Further evidence of the impact of the report on the international debate on the topic emerges from the fact that the Office of the United Nations High Commissioner for Refugees (UNOHCR) posted the report on its public website [5.6]; the website in question is a key point of reference for practitioners, policy makers and experts working on human rights issues.

(c) Contributing to the public debate on counter-terrorism and human rights

Borelli's research on human rights and counter-terrorism has informed public debate on the controversial question of the protection of the fundamental rights of terrorist suspects. An example of this type of impact is that deriving from the research on rendition and intelligence cooperation [3.1], carried out as part of a project on intelligence accountability jointly undertaken by DCAF, the Human Rights Centre at the University of Durham and the Intelligence Oversight Committee of the Norwegian Parliament. The project brought together intelligence practitioners and civil servants, members of oversight bodies, representatives of civil society organisations and academics to discuss new trends in international intelligence cooperation, examine the challenges faced by intelligence oversight bodies and make recommendations as to how oversight of international intelligence cooperation may be strengthened. The research was presented to the Intelligence Oversight Committee of the Norwegian Parliament, thereby contributing to informed discussion in that forum. As noted above, [3.2] has also influenced public debate on counter-terrorism measures.

5. Sources to corroborate the impact

- 5.1 Director, REDRESS.
- 5.2 European Commission (Democracy and Human Rights division), on "Torture", linking to the text of [3.2]: www.eidhr.eu/highlights/torture.
- 5.3 Regional Conference Report – Torture in Africa: The Law and Practice (REDRESS, September 2012), available at www.redress.org/downloads/publications/Africa%20regional%20report%20FINAL%2008%20OCT%202012.pdf, p.6, referring to [3.2] for information on the standards applicable to individuals deprived of their liberty.
- 5.4 Dignity – Danish Institute against Torture, webpage linking to [3.2]: www.dignityinstitute.org/topics/torture/purpose-of-torture.aspx.
- 5.5 RIS – Rights International Spain, linking to [3.2]: ris.hrahead.org/recurso-general/Recursos_Seguridad_Derechos_Humanos.
- 5.6 Website of United Nations High Commissioner for Refugees, reproducing in full the text of [3.2]: www.unhcr.org/refworld/docid/50641cae2.html.
- 5.7 *Amicus curiae* brief submitted to the Supreme Court of Colombia in the *San José de Apartado* case: www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Alliance_documents/San_Jose_de_Apartado-Amicus_Brief-English.pdf
- 5.8 Director, Peace Brigades International UK.
- 5.9 [Legal] Counsel, REDRESS.