

Terrorist label and crimes: depriving people of their agency

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Abstract

Human rights are often seen as resulting from the exercise of agency by various marginalized or vulnerable groups. The relationship between human rights and agency can also be seen in reverse: not only can agency advance the cause of human rights, but the deprivation of human rights can also deprive people of the possibility of exercising agency. This is the case of individuals or groups labeled as terrorists or assimilated to the concept of terrorism. The deprivation of agency of "terrorists" and "terrorist groups" takes the form of banning organizations, listing and sanctioning individuals and groups without due process guarantees, depriving individuals of their nationality, and criminalizing a wide range of activities. The activities targeted by such measures often include, for example, the legitimate exercise of human rights and freedoms, and humanitarian activities in armed conflicts. The whole discourse on terrorism that emerged after September 11, 2001, in which the terrorist is defined as the enemy and dehumanized, also deprives them of their agency. These policies and notions play with both aspects of agency: by restricting the subjectivity of "terrorists" and by diminishing the power granted to them. Yet these measures face important and legitimate concerns, compounded by the fact that terrorism is defined and construed differently in each State and that individuals and groups who do not engage in violence are often assimilated to terrorism, in some cases precisely to diminish their agency. Intentionally or not, terrorist labels and crimes thus become a way of depriving people of their agency because society disapproves of the way they exercise it. My paper seeks to explore how the discourse on terrorism as well as the counterterrorism framework, by restricting the human rights of people conceived as terrorists, also deprive them of their agency.

Introduction

Deprivation of agency is often examined through the lens of paternalism, according to which people who are perceived as less capable or different from the norm are in this sense partially deprived of their agency "for their own good". Another source of agency deprivation is not based on people's perceptions but on the lack of minimal means to claim and use agency; this is the case, for example, of people experiencing extreme poverty. Finally, some individuals or groups are deprived of agency because they are considered by the dominant group to be an inferior class of human beings who do not deserve to be heard and protected. Historically, this has been the case with slaves and colonized peoples around the world. "Terrorists" or people and groups labeled as such also fall into this latest category. Their disenfranchisement is motivated by their perceived "evilness", and justified on grounds of international and national security. In this sense, the media and political discourses on terrorism and counterterrorism allow for the embedding of such practices in

international and national law. Indeed, as a result of the "exceptional" legal framework on international security and counterterrorism, "terrorists" – or persons conceived as such – appear to be a group partially excluded from the benefit of human rights. In the process of selecting who is legitimate enough to exercise agency, society seems to have somehow globally accepted that "terrorists" are not deserving of their agency. Moreover, this labelling and disenfranchisement takes place without them having benefited from the regular guarantees of human rights, in particular because they are understood to have violated human rights themselves, especially the right to life.

The 9/11 attacks in the United States and the unambiguous national and international response that they provoked constitute the milestone in the development of an international legal framework to combat terrorism. Prior to 2001, the United Nations, for example, had little to do with terrorism. The UN Security Council devoted its first resolution to terrorism as late as 1999, while the UN General Assembly began referring to terrorism in 1972, treating it mainly from the perspective of state terrorism until 1993, and did not adopt a counterterrorism strategy until 2006¹. For both bodies, 2001 was a turning point in terms of the number of resolutions devoted to terrorism. Since then, the UN Security Council has been the main actor in elaborating a legal framework on terrorism, imposing obligations on States to be adopted at the national level under Chapter VII of the UN Charter, and adopting its own counterterrorism mechanisms such as the sanctions regime against the Taliban, Al-Qaeda, and Daesh. This framework is unique and unprecedented because it uses the powers of Chapter VII in a permanent way – as terrorism in general was qualified as a threat to international peace and security in Resolution 1368 in 2001² – but also because it imposes strict and strong measures in relation to terrorism without defining it. This allows States to mobilize these powers for virtually anything they decide to qualify as terrorism, even if it entails important restrictions on the human rights of the persons qualified as such.

Accordingly, this article will focus on how this international legal framework on counterterrorism interacts with the agency of individuals and groups designated as terrorists or associated with "terrorism". It will first clarify the relationship between human rights violations and the deprivation of agency. It will then turn to the specifics of how and through what measures terrorists and terrorist groups are deprived of their agency. Listing, profiling, restriction of civil liberties and deprivation of citizenship will be used to show how measures adopted in the name of counterterrorism negatively affect their quality as agents.

1. Setting the stage: agency and human rights

Since counterterrorism measures have a direct impact on both human rights and agency, we will begin by briefly examining the relationship between these two concepts. The relationship between human rights and agency cuts both ways. On the one hand, the mere fact of having human rights has a positive impact on one's agency. On the other hand, being

¹ See *Measures to eliminate international terrorism*, UNGA, 49th sess, UN Doc A/49/60 (1995) GA Res 49/60; see also *United Nations Global Counter-Terrorism Strategy*, UNGA, 60th sess, Doc NU A/RES/60/288 (2006), GA Res 60/288.

² See *Resolution 1368 (2001)*, UNSC, UN Doc S/RES/1368 (2001), UNSC Res 1368.

an agent allows one to claim human rights. This reciprocal relationship is based in part on the link between vulnerability and agency. Thus, portraying individuals or groups as vulnerable tends to deprive them of their agency, as in the case of child soldiers, for example. By contrast, by "focusing less on their vulnerability and more on their resilience, actors can emphasize the agency of children and support them for better participation as 'full humans'".³ In such cases, depriving groups or individuals of the full benefit of their human rights limits their capacity to act as agents.

Conversely, depriving people of their agency puts them in a situation of vulnerability where they cannot stand for themselves and for their rights. First, of course, agency plays an important role in the effective implementation of human rights, particularly through the claims and revendications of the human rights holders. Second, agency also plays a critical role in the development of human rights law, through a bottom-up approach. In both cases, being agents enables people to claim rights. Importantly, since "[r]ights are usually taken to be claims and/or entitlements that hold others to specific duties and obligations";⁴ once you take away someone's entitlement to claim them, they lose an important dimension of their value. Going further, Jiwei Ci argues about the relationship between severe poverty and deprivation of agency that "[w]henver material deprivation leads to agency deprivation, it undermines the respect for oneself that is part and parcel of a self. More than merely debilitating and humiliating, agency poverty is positively dehumanizing."⁵ It follows that agency not only allows for the claim of human rights, but humanity, and therefore human rights, are fundamentally based on the fact of having agency.

The inherent relationship between agency and human rights also emerges when we examine more closely what is meant by agency. According to Ann Cudd, agency is the fact of having choices as well as autonomy.⁶ Similarly, for Michael Bratman, agency involves the capacity to reflect on and plan one's actions.⁷ Thus, according to these views, agency involves freedom as well as the possibility and capacity to act as one wishes, to some extent. More narrowly, and from a political rather than an individual point of view, Amartya Sen sees agency as the capacity to act in ways that bring about change⁸. This conception of agency involves having or exercising power, or at least the ability to be heard. A third group of authors reconcile these two definitions of agency by conceptualizing it as the combination of power and subjectivity. For Ci, agency is indeed the "meaningful causality in which causal efficacy (or power, for short) is appropriated from, and in the interest of, a center of meaning (or subjectivity, for short, or self). To

³ Sylvie Bodineau, "Vulnerability and agency: figures of child soldiers within the narratives of child protection practitioners in the Democratic republic of Congo" (2014) 72:4 *Autrepart* 111–128 at para 62.

⁴ Duncan Ivison, "Human rights and political agency: on Pogge's analysis of human rights violations today" in David Kinley, Wojciech Sadurski & Kevin Walton, eds, *Human Rights: Old Problems, New Possibilities* (Edward Elgar Publishing, 2013) 73 at 75 [Human Rights].

⁵ Jiwei Ci, "Agency and Other Stakes of Poverty" (2013) 21:2 *Journal of Political Philosophy* 125–150 at 134.

⁶ See Ann E Cudd, "Agency and : How (Not) to Fight Global Poverty" in Diana Tietjens Meyers, ed, *Poverty, Agency, and Human Rights* (Oxford University Press, 2014) 0 at 198, 202, 204.

⁷ See Michael E Bratman, "Reflection, Planning, and Temporally Extended Agency" (2000) 109:1 *The Philosophical Review* 35–61 at 61.

⁸ See Amartya Sen, *Development as Freedom* (Anchor, 1999) at 18.

express this notion of agency in a formula, we can speak of agency as a matter of 'power organized as subjectivity' or 'subjectivity achieved through power'.⁹ Agency thus rests on a certain legitimacy to act or to speak, granted by the society or by dominant actors.

In any case, agency is, or should be, inherent to human beings, since it "is what sets us apart from robots or other nonhuman sentient creatures".¹⁰ As Redhead puts it, " Human beings are, among other things, agent-beings with the desire and capacity to act instead of merely being acted on".¹¹ Agency as an inherent component of the ideal of the political person is thus closely related to human rights, since human rights can be understood in this way as tools for making agency effective. Accordingly, social and economic rights would give a person the material capacity to act; while cultural, civil and political rights provide the means, protection and legitimacy to express oneself.

2. How counterterrorism deprives people and groups of their agency

Let us return to terrorists. Having briefly explored the relationship between human rights and agency, this section analyzes how counterterrorism measures affect agency both directly and through human rights violations.

2.1 Terrorist lists, sanctions and deprivation of agency

From 1999, the UN Security Council created an international list of terrorist entities associated with Al Qaeda, the Taliban and Daesh, which is accompanied with travel bans and asset freezes,¹² and in 2001 it required States to create national lists of terrorists and terrorist groups.¹³ At the international level, listing is not associated with due process guarantees: listing is done by the Sanctions Committee – a committee of State representatives – on the proposal of a UN member State. The listing need not be justified by States in order to be implemented, the national State is not obliged to notify the group or individual concerned, and the sanctions are immediately enforceable. Since 2009, listed groups or individuals can challenge their listing, but the review process – which is nonetheless often successful – is conducted by the Ombudsperson, who emits a recommendation, to be followed – or not – by the Sanction Committee¹⁴. Throughout this process, the listed group or individual does not have full access to the evidence and to the reasons for listing, and delisting does not entail reparations for human rights violations suffered. Indeed, the Ombudsperson does not review the legitimacy of the listing, but its continued relevance at the time of the review. With regard to terrorist lists at the national level, States retain full discretion as to who and what organizations can be designated as terrorist, the modalities of listing and the opportunity to allow periodic review and

⁹ Ci, *supra* note 5 at 132; see also Robin Redhead, "Agency and Practice" in *Exercising Human Rights* (Routledge, 2014) at 40.

¹⁰ Cudd, *supra* note 6 at 202.

¹¹ Redhead, *supra* note 9 at 40.

¹² See *Situation in Afghanistan*, UNSC, UN Doc S/RES/1267 (1999) SC Res 1267.

¹³ See *UNSC Resolution 1373*, UNSC, UN Doc S/RES/1373 (2001) SC Res 1373.

¹⁴ See *Resolution 1904 (2009)*, UNSC, UN Doc S/RES/1904 (2009) SC Res 1904 .

delisting. In most States, listing is done by the executive, rather than an impartial body, and there is no delisting procedure.

Typically, listing has disproportionately affected groups associated with Islam and stigmatized national minorities – including indigenous activist groups in Asia and Latin America and human rights defenders of religious minorities in China and India, for example. To illustrate, before the Christchurch attack in New Zealand, and even until the attack on the Capitol in the United States in 2021, very few far-right groups were listed as terrorists on national and international terrorist lists. To take Canada as an example, groups from the Arab world or associated with Islam still constitute the overwhelming majority of the 77 listed entities on the current list, the remainder being sprinkled with a few groups that have been involved in hostilities in Asia, Africa and Latin America, such as the Tamil Tigers and other Tamil-affiliated groups, Boko Haram and the FARC, ELN, Sendero Luminoso and of a few right-wing groups such as Proud Boys and Combat 18.¹⁵

Listing entails significant restrictions on several human rights, which may amount to human rights violations. The freedom of association of both groups and individuals is crucially affected by listing, as it generally results in the banning and dissolution of associations. Freedom of expression, non-discrimination, the principle of legality and the presumption of innocence – in a global sense that goes beyond the strictly criminal context – can also be undermined by listing and the sanctions associated with it. But even beyond these specific human rights violations, the limited safeguards afforded to the listing process at both the national and international levels fundamentally deprive individuals and groups designated as terrorists of their agency to challenge their designation. In addition, in cases where financial sanctions and travel bans are imposed, or when groups are dissolved, being listed deprives them of their material ability to act freely as agents and as full members of society.

2.2 Profiling, Discrimination and Deprivation of Agency

In the aftermath of 9/11, a significant number of States have adopted – formally or informally – the practice of predictive profiling. It has been implemented as an official policy in Germany (the *Rasterfahndung*), in Russia,¹⁶ in the United Kingdom,¹⁷ in the United States,¹⁸ and as an unofficial practice in many other countries, including Canada, as

¹⁵ See Public Safety Canada, “Currently listed entities”, (21 December 2018), online: <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>> Last Modified: 2022-05-20.

¹⁶ See Yakin Ertürk, *Integration of the Human Rights of Women and a Gender Perspective : Violence against Women. Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum. Mission to the Russian Federation*, UNHRC, UN Doc E/CN.4/2006/61/Add.2 (2006) at para 56; see also *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UNGA, UN Doc A/64/211 (2009) at para 37.

¹⁷ See Code A, 2005, as quoted in Daniel Moeckli, “Selective Use of Police Powers” in Daniel Moeckli, ed, *Human Rights and Non-discrimination in the “War on Terror”* (Oxford University Press, 2008) at 202–203 (UK Government official website only shows versions of Code A from 2009).

¹⁸ See United States Department of Justice, *Fact Sheet Racial Profiling* (2003); Human Rights Watch & Colombia Law School, *Illusion of Justice. Human Rights Abuses in US Terrorism Prosecutions*, Human Rights Institute (2014) at 18–20, 23.

denounced by the Commission on Maher Arar.¹⁹ Predictive profiling is the targeting of specific individuals at any level of governance, including by the police and intelligence bodies, on the basis of characteristics typically associated with a group conceived as having more chances of being involved in criminality – in this case, terrorism. Because such profiling is preventive, as it is associated with crimes not yet committed or identified, it is necessarily based on generalizations and stereotypes about the targeted group or community.

This practice is thus recognized as a violation of the prohibition on discrimination.²⁰ Such a distinction of treatment based on identification with a particular group cannot be objectively justified. Indeed, States generally rely on common sense rather than empirical facts to justify such practices.²¹ Moreover, as is the case of terrorists lists, such profiling places the targeted persons in a more vulnerable position from which it is more difficult to exercise agency, not only to challenge and denounce the profiling or the (often) misplaced and unfair suspicion, but also to allow members of the targeted group to act freely, in all aspects of their life, without fear of being targeted by law-enforcement operations.

2.3 Denationalization as a severe deprivation of agency

There has also been a trend towards revoking the citizenship of persons labeled as terrorists.²² In 2014, Canada amended its *Citizenship Act* to allow for the revocation of citizenship of dual citizens convicted of terrorist offenses and sentenced to at least five years in prison domestically or abroad.²³ This provision was criticized as violating equality as well as other rights and freedoms²⁴ and was repealed in 2017. Between 2007 and 2022, Australia could likewise deprive dual citizens from their citizenship on terrorism grounds.²⁵

¹⁹ See *Report of the events relating to Maher Arar- Analysis and recommendations*, by Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (Ottawa, 2006) at 356.

²⁰ See *Rosalind Williams Lecraft v Spain*, UNHRC, 96th Sess, UN Doc CCPR/C/96/D/1493/2006 (2009) Comm n°1493/2006 at paras 7–9; *Recommandation générale XXXI concernant la discrimination raciale dans l'administration et le fonctionnement du système de justice pénale*, Comité pour l'élimination de la discrimination raciale NU, 65e sess, UN Doc CERD/C/GC/31 (2005) at para 20; *The Situation of People of African Descent in the Americas*, Inter-Am Comm HR, OEA/Ser.L/V/II. Doc. 62 (2009) at paras 156–161; *Timichev c Russie*, n° 55762/00 et 55974/00, CEDH (2005) at para 58 [*Timichev (CEDH)*].

²¹ See Moeckli, *supra* note 17 at 212; *R v Commissioner of Police for the Metropolis and another*, UKHL 12 (2006) Po LR 26 AC (HL (Eng)) at para 42; *Report of the Official Account of the Bombings in London on 7th July 2005*, by Royaume-Uni, *Report of the Official Account of the Bombings in London on 7th July 2005*, by United Kingdom House of Commons, London, 2006, HC 1087 at 31.

²² For a more detailed analysis on this specific question, see Tufyal Choudhury, “The Radicalisation of Citizenship Deprivation : Citizenship, deprivation, revocation, failed citizens, counterterrorism” (2017) 37:2 *Critical social policy* 225–244.

²³ *An Act to amend the Citizenship Act and to make consequential amendments to other Acts*, (S.C. 2014, c. 22), 2014, s art.10(2)(b) and (f).

²⁴ *Bill C-24, Strengthening Canadian Citizenship Act*, by The Canadian Bar Association at 19; “Court challenge slams new Citizenship Act as ‘anti-Canadian’”, (20 August 2015), online: *thestar.com* <<https://www.thestar.com/news/immigration/2015/08/20/court-challenge-slams-new-citizenship-act-as-anti-canadian.html>>.

²⁵ Leah Ferris, “Invalidity of the Minister’s power to revoke citizenship”, online: *Parliament of Australia* <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/FlagPost/2022/June/Power_to_revoke_citizenship> Last Modified: 2022-07-06publisher:

From 1998 to the present, France has allowed naturalized dual citizens to be stripped from their citizenship by decree if they have been convicted of a terrorist offense, regardless of its seriousness and of the person's involvement²⁶. Belgium, Denmark and the Netherlands could also be cited as examples of States that have adopted similar practices. It is worth taking the United Kingdom as one last example because it provides for a broader case of denationalization. Since 2014, in addition to the possibility of depriving any dual citizen of his or her citizenship in cases where "deprivation is conducive to the public good", people who only possess British citizenship can be deprived of it on the same grounds if they are naturalized citizens,²⁷ thus allowing the production of stateless persons.

Revoking citizenship – even if it doesn't make people stateless – is not banal; it places people outside the political community.²⁸ It is related to one's "national identity, belonging and values".²⁹ It is also a "method of permanent exclusion"³⁰ that has important consequences for people who suffer it, including the possibility of having their rights protected in the face of the international community. Citizenship, as a legal status, is also associated with reinforced protection of rights, especially economic and social rights. Importantly, as serious as these implications may be, deprivation of citizenship is not always accompanied by due process standards and is often not imposed by an impartial tribunal but rather by the executive. Denationalization is thus one of the most severe deprivation of agency. It affects agency in several ways : it deprives the persons concerned of their material capacity to exercise their agency by limiting their access to basic services such as the right to stay in the territory, access to health care and to the labor market; it limits their means of exercising agency, through the right to vote, for example; and it limits the possibility of standing up for oneself to get rid of the terrorist label and to challenge denationalization, because of the nature of the process that leads to it and the lack of guarantees.

2.4 Restriction, criminalization of civil liberties and deprivation of agency

In addition to criminalizing direct participation in terrorist acts, States criminalize a wide range of activities under the guise of crimes such as material support and collaboration, glorification, apology, and indirect incitement. These crimes, because they are mostly preventive and anticipatory in nature and because they weaken the link between the act of violence and one's participation, give greater importance to the affiliation, ideology, or identity of the person whose acts are criminalized. Most of the activities covered by these labels meet a low threshold of seriousness, and some of them are even protected as legitimate exercises of civil liberties, such as freedom of expression, freedom of association, and the right to participate in political life or to hold political office. In

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²⁶ *Code civil français (as amended by Loi n°98-170 du 16 mars 1998 - art. 23 (JORF 17 mars 1998 en vigueur le 1er septembre 1998)*, 3, s 25.

²⁷ *British Nationality Act 1981*, 1981, 61, s 40(2) et (4A).

²⁸ See Choudhury, *supra* note 22 at 4.

²⁹ *Ibid.*

³⁰ NR Motaung, "Revocation of Citizenship in the Face of Terrorism" (2017) 50:2 Comp & Int'l LJ S Afr 214–229 at 214.

addition, their use can, and in some cases does have a discriminatory effect. In the case of the restriction or criminalization of the exercise of civil liberties, the impact on agency is quite straightforward.

Let us take the example of speech crimes to illustrate this effect. Speech crimes in relation to terrorism do not only punish certain expressions; more generally, they limit the space available for free expression in society, leading to self-censorship. Indeed, these crimes are broader than incitation; they do not require a causal link between the discourse and an increase in the likelihood that a terrorist attack will be committed. But the looser their relation to violence, the more the crimes focus on the content of the discourse. By criminalizing some speech as such, States direct people's speech in a particular direction and banish unpopular ideas or thoughts that, even if they are shocking, are part of the democratic life of a society (as long, of course, as they don't constitute hate speech). Indeed, if civil liberties can be restricted, the restriction must be proportionate to a legitimate end. This is not always the case when, as has been the case in many countries since 2001, criminalization leads to the penalization of individuals who denounce certain practices, raise certain issues in public fora, or justify or defend terrorist attacks *ex post facto*. In Spain, for example, the film director Alex Garcia and twelve rappers from the group La Insurgencia were prosecuted for glorification of terrorism for their artwork.³¹ Following their conviction, they were also banned from holding public office for 9 years. In a similar vein, all Basque newspapers have been banned by the Spanish government for their alleged collaboration with the group designated as terrorist ETA.³²

Similarly, various activities, be they unpopular, critical, or disruptive, have been restricted or criminalized, using counterterrorism as a tool, thus restricting the public space available for the free exercise of civil liberties. Many other examples could be listed here : the banning of Kurdish political parties in Turkey, which has been thoroughly examined and denounced by the European Court of Human Rights as a violation of the freedom of association;³³ the creation in 2008 of the Specialized Criminal Court to prosecute terrorist crimes in Saudi Arabia, that ended up trying mostly acts of dissent;³⁴ and the listing of humanitarian organizations – especially Muslim ones – as terrorist groups in the United States, as well as the criminalization of contacts with armed groups designated as terrorist, even for legitimate humanitarian purposes, under the aegis of material support to terrorist organizations. Even when these practices do not directly lead to imprisonment or ban from political life – which inherently entails a loss of the ability to exercise one's agency – in

³¹ See *Tweetez... si vous l'osez: les lois antiterroristes réduisent la liberté d'expression en Espagne*, by Amnistie Internationale, 2018 at 5–12.

³² See for example *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide. A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights*, by Human Rights Watch (2003) at 20.

³³ See for example *Parti communiste unifié de Turquie et autres c Turquie*, n° 19392/92, [1998] CEDH at paras 9, 27, 51–61 [*Parti communiste (CEDH)*]; *Parti socialiste et autres c Turquie*, n° 21237/93, [1998] CEDH at paras 41–54 [*Parti socialiste (CEDH)*].

³⁴ See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, Conseil des droits de l'homme, Un Doc A/HRC/40/52/Add.2 (2018) at paras 26, 69 et 71(a); see also *Muzzling Critical Voices. Politicized trials before Saudi Arabia's Specialized Criminal Court.*, by Amnistie internationale (2020).

some national contexts people, such as journalists, politicians, or activists, are compelled not to use their agency as they would like in order to avoid being labeled as terrorists.

Before concluding, let us recall that human rights were first developed to protect the most vulnerable, to ensure a minimal protection of their humanity and dignity, and to guarantee them a minimum level of agency. The first human rights to be codified were basic guarantees for those accused of criminal offenses. In some respects, the counterterrorism framework adopted in the aftermath of 9/11 has bypassed these historic and most fundamental rights by using the alternatives of listing and immigration law to identify and sanction those deemed to be terrorists. However, regardless of the legal framework used, and irrespective of the merits of the current qualification of groups and individuals as terrorists, human rights are not and should not be granted or protected on the basis of merits. On the side of agency, it goes without question that groups and individuals who control the discourse on terrorism have more space to exercise their agency. At the other end of the spectrum, reducing someone to his or her – presumed – quality as a terrorist, with all the direct and indirect effects this entails, reduces agency in all its forms to a minimum.

Conclusion

We have seen that, in adopting a very strong and unambiguous international legal framework on terrorism, without defining the term, counterterrorism measures adopted after 9/11 have negatively affected the agency of individuals and groups labeled as terrorists. Counterterrorism measures have done so by directly impairing their agency or through human rights violations that, in turn, have impacted their capacity to exercise it. While many other examples could have been chosen, the measures that have been developed here to illustrate the deprivation of agency are the terrorist lists and sanctions, predictive profiling to prevent terrorism, directed or restrained exercise of civil liberties and the deprivation of citizenship on the basis of involvement in terrorist activities. All of this illustrates how being associated with the term "terrorism" locks people into a state of passivity, with few means to challenge the label and to exist, or to act beyond it; in sum, to be something else than a terrorist in the eyes of society.

Since agency is the possibility and capacity to stand up for oneself or for a cause, "those without agency are at risk".³⁵ Indeed, "'the lower the capacity of the human subject the greater the need for some form of external assistance,' yet the incapacity (lack of agency) of the subject makes the delivery of external assistance entirely arbitrary and by no means guaranteed".³⁶ Thus, by limiting agency, one is increasing the space for arbitrariness. An example of an arbitrary mobilization of the counterterrorism legal and political framework is the essentialization of the relationship between Islam and terrorism after 9/11, even though this relationship is not based on any empirical or scientific evidence. This assimilation of Muslim people to a greater risk of committing terrorist acts in the public perception and in the conception of public policies is counterproductive, not only in the sense that it tends to ignore an important part of political violence based on other ideologies, beliefs, or ideas, but also because it conceptualize certain values, faith, and even

³⁵ Redhead, *supra* note 9 at 38.

³⁶ *Ibid.*

certain cultures as evil on an arbitrary basis. Yet one of the key components of the rule of law, on which the concept of human rights is also founded, is the protection against submission to arbitrary power. In general, the possibility for human beings to conceptualize themselves as agents and to be able to exercise their agency is one of the safeguards that prevents a political society from falling into arbitrariness.