



The Criminalization of Healthcare

Appendices: Country profiles

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Afghanistan

Historical counterterrorism law and practices by Afghan security forces

Prior to the adoption of the 2017 Penal Code of Afghanistan, provisions in the nation's counter-terrorism law had the potential to encompass medical care within the ambit of punishable offenses. The Law on Combat Against Terrorist Offenses 2008 defined support for terrorist members or groups to include "counsel and assistance" and "transportation services."¹ As the law gave no exceptions or protections for medical care, such terms had the potential to be interpreted as including provision of medical care or transport.² It is unclear whether any medical providers faced criminal charges under this law, but in the context of Afghanistan's fight against terrorism, practices by security forces have hindered the provision of medical care.

Reports from medical providers indicate that security forces have harassed and intimidated medical workers in connection to the care they provide, often in the context of combating terrorist elements in Afghanistan. The 2017 UN Assistance Mission in Afghanistan (UNAMA) Report on Protection of Civilians in Armed Conflict described a July incident where local police entered a Kunduz hospital searching for a member of the Taliban. When told he had already been transferred by police, the authorities harassed the medical staff.³ In another incident in May 2017, police in Nimroz province assaulted a medical worker for not evacuating one of their colleagues quickly enough.⁴

According to the Safeguarding Health in Conflict Coalition, over 60 Afghan Special Forces troops entered and searched a medical facility in Maidan Shar on January 11, 2016, interrogating medical staff about patients treated the previous night and warning them not to provide medical care to insurgents.⁵ Multiple news reports described another incident in February 2016, when Afghan National Army forces raided a health center run by the Swedish Committee for Afghanistan. A spokesman from the medical organization reported that the troops first found an ambulance driver in his home and detained him, after which he led them to the clinic. The soldiers entered the clinic, began arresting and assaulting medical staff, then found two patients and their 15-year-old caregiver, took them outside and killed them.⁶ Some area officials alleged that the US coalition provided air support for the raid, which was being investigated, according to a coalition spokesperson. An Afghan army brigade commander confirmed that four alleged insurgents had been killed, two wounded, and one arrested in the raid, though he denied responsibility by the army.⁷ According to Human Rights Watch, the results of a NATO inquiry into the incident had not been made public as of July 2016.⁸

Criminal and counterterrorism laws: Significant advances with the new Penal Code of 2017

The 2017 Penal Code of Afghanistan, which entered into force in February 2018,⁹ significantly changed the legal framework for criminal and terrorism charges, combining multiple previous statutes into one document encompassing criminal as well

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1. Law on Combat Against Terrorist Offences. Afghanistan. (2008). http://www.vertic.org/media/National%20Legislation/Afghanistan/AF_Law_on_Combat_against_Terrorist_Offences.pdf. Accessed April 14, 2018.
 2. Ibid.
 3. United Nations Assistance Mission in Afghanistan. Annual Report on the Protection of Civilians in Armed Conflict. (February 2018). https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_6_march.pdf. Accessed April 14, 2018.
 4. Ibid.
 5. Safeguarding Health in Conflict Coalition. Impunity Must End: Attacks on Health in 23 Countries in Conflict in 2016. (May 2017). <https://www.safeguardinghealth.org/sites/shcc/files/SHCC2017final.pdf>. Accessed May 3, 2018.
 6. Craig T, Salahuddin S. Three killed, including 15-year-old, in Afghan security raid on health clinic. *The Washington Post*. (February 18, 2016). https://www.washingtonpost.com/world/three-die-including-15-year-old-in-afghan-security-raid-of-health-clinic/2016/02/18/8a46eea4-d647-11e5-be55-2cc3c1e4b76b_story.html. Accessed April 15, 2018.
 7. Ibid.
 8. Human Rights Watch. Letter to NATO re: Civilian protection in Afghanistan. (July 6, 2016). <https://www.hrw.org/news/2016/07/06/letter-nato-re-civilian-protection-afghanistan>. Accessed June 8, 2018.
 9. Afghanistan: UN mission welcomes new penal code, urges measures to protect women from violence UN News. February 22, 2018. <https://news.un.org/en/story/2018/02/1003271>. Accessed June 13, 2018.

as terrorist offenses, including financing of terrorism. The UN Office on Drugs and Crime welcomed the new Penal Code as being more effective in “preventing, reducing, deterring, and fairly punishing criminal behavior,” and bringing Afghanistan’s laws into closer alignment with international treaties to which the country is a signatory.¹⁰

The new Penal Code includes significant advances in outlining protections for and duties of medical practice. Article 119 states that no “necessary medical procedures” are to be considered crimes if they are carried out within the “technical principles of the medical profession” and the patient, family, or legal representative has given consent.¹¹ Surgical procedures performed in emergencies according to medical principles are also not to be labeled as crimes. Furthermore, the duty to provide medical care is addressed in Article 888, which states that any health personnel refusing care to a patient may be punished if the refusal results in physical or mental harm.¹² These provisions provide stronger support for the protection of medical care in Afghanistan, but the practices of authorities now that the law is in effect will determine whether health workers will be able to provide care according to their code of ethics and without fear of reprisal.

10. New Penal Code adopted in Afghanistan. UN Office of Drugs and Crime.

11. Penal Code, 2017. Afghanistan. (2017). (Official English Translation).

12. Ibid.

Australia

Multiple pieces of Australia's national security legislation govern the conduct of Australian citizens in foreign countries, including foreign incursion laws and counterterrorism laws. Though some sections of these laws contain exceptions for providing humanitarian assistance, this exception is not universally present, and health workers who provide care under certain circumstances outside the country may risk prosecution under national security laws.¹³

Foreign incursion offenses

Statutes governing “foreign fighters” began with the enactment of the Crimes (Foreign Incursions and Recruitment) Act in 1978.¹⁴ This act, now incorporated in revised form within the Criminal Code Act 1995, criminalizes conduct connected to serving with a non-state armed group, but allows service connected to foreign government forces.¹⁵ Under Section 119.1 of the Criminal Code, any person who engages in “hostile activities” as part of a non-state armed group or enters a foreign country with the intent to do so may be prosecuted.¹⁶ “Hostile activities” are conduct linked to specific objectives, such as overthrow of the government, destruction of government property, death or harm to a government official, or “intimidating the public or a section of the public.”¹⁷ “Conduct” is not defined, and there is no exception for humanitarian aid in Section 119.1.¹⁸ Therefore, providing medical care preferentially to a non-state group could be potentially interpreted as conduct linked to the group’s objectives.

Other foreign incursion offenses provide exceptions for humanitarian aid. Section 119.2 assigns criminal charges for entering or remaining in a “declared area,” as proscribed by the Ministry of Foreign Affairs.¹⁹ A person cannot be prosecuted for being present in a declared area if such presence was solely for purposes of “aid of a humanitarian nature,” however the accused must provide evidence that humanitarian aid was the sole objective.²⁰ Thus far, Raqqa, Syria, and Mosul, Iraq, have been the only “declared areas,” though Raqqa’s designation has since been rescinded.²¹ Media reports indicate that Australian physician Tareq Kamleh, who left to join the Islamic State in Syria as a doctor, faces charges under the declared area offense and several other statutes if he returns to Australia,²² and the burden would be on Dr. Kamleh to prove he entered Raqqa solely to provide medical care.

Section 119.4 details offenses of various “preparatory acts” for foreign incursions. Under subsection (5), it is a crime to provide goods or services to an organization “with the intention of supporting or promoting the commission of an offence” of engaging in “hostile activities.” Preparatory offenses in Section 119.4 also are covered by an exception for acts whose sole purpose is providing humanitarian aid, and as in Section 119.2, the accused must prove that humanitarian assistance was the sole purpose.²³ One Australian nurse, whose case is discussed below, is awaiting trial for charges including “performing services with intention of supporting a person to engage in a hostile activity in a foreign state” for providing medical care to the Islamic State in Syria.²⁴ This indicates that the humanitarian exemption is not a deterrent to prosecution. The prosecutors may argue that the exemption does not apply for medical care delivered in a partisan fashion to one armed group, or that humanitarian assistance was not the sole purpose of the nurse’s action.

13. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018. Crimes (foreign incursions and recruitment) Act 1978. Australia. 1978. <http://www.legislation.gov.au/Details/C2005C00715>. Accessed June 3, 2018. Walker B. Annual Report 7th November 2013. *Independent National Security Legislation Monitor*. (November 7, 2013). <https://www.inslm.gov.au/sites/default/files/publications/inslm-annual-report-2013.pdf>. Accessed June 4, 2018

14. Crimes (foreign incursions and recruitment) Act 1978. Australia. 1978. <http://www.legislation.gov.au/Details/C2005C00715>. Accessed June 3, 2018.

15. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed Apr 19, 2018.

16. Ibid.

17. Ibid.

18. Ibid.

19. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

20. Ibid.

21. Attorney-General’s Department. Declared area offence. (2018). <https://www.nationalsecurity.gov.au/WhatAustraliaIsDoing/Pages/DeclaredAreaOffence.aspx>. Accessed June 5, 2018.

22. Wroe D. Suspected diary of Tareq Kamleh reveals Australian doctor’s despair with IS. *The Sydney Herald*. (November 11, 2017). <https://www.smh.com.au/politics/federal/suspected-diary-of-tareq-kamleh-reveals-australian-doctors-despair-with-is-20171110-gzj1gc.html>. Accessed June 5, 2018.

23. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

24. Coletta F. ‘May Allah grant him his freedom’: Wife of the first Australian man charged with supporting ISIS after returning home from Syria says he should be ‘hailed a hero’. (July 31, 2016). <http://www.dailymail.co.uk/news/article-3717358/May-Allah-grant-freedom-Wife-Australian-man-charged-supporting-ISIS-returning-home-Syria-says-hailed-hero.html>. Accessed June 5, 2018.

Terrorism offenses

Since September 11, 2001, Australia has enacted dozens of new counterterrorism laws, most of which are contained within the Criminal Code Act 1995.²⁵ In practice, Criminal Code Section 102 on offenses linked to terrorist organizations is relied upon most frequently to prosecute cases, including some cases of medical providers.²⁶ According to Section 102.1, a terrorist organization may be listed by the Attorney General, or a group may meet the definition by “directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.”²⁷ A “terrorist act” includes a range of actions intended to “coerce or influence the public or any government... to advance a political, religious or ideological cause,”²⁸ and the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has declared that the definition goes beyond the UN Security Council’s recommendations of acts that should be included in terrorism offenses.²⁹ Dr. Ben Saul, in a submission to the Council of Australian Governments for the 2013 Review of Counter-Terrorism Legislation, raised the concern that the definition has the potential for sweeping criminalization of non-state armed groups, as there is no exception for situations of armed conflict.³⁰ Based on Saul’s concern, medical care to a non-state armed group could be punishable under certain provisions of counterterrorism law.

Section 102.5 criminalizes providing, receiving, or participating in training with a terrorist organization, with no exception for humanitarian activities. Australia’s Independent National Security Legislation Monitor (INSLM) has stated that as there is no requirement based on intent for the training to be used to help in terrorist activity, humanitarian law or medical training “would therefore come within the scope of the offences.”³¹ In the 2013 Review of Counterterrorism Legislation, the review committee recommended that the Council of Australian Governments introduce exemptions in the Section 102.5 to allow training in humanitarian law, human rights treaties, conflict mediation, and medical care.³² However, the Council rejected the recommendation, stating that a humanitarian exemption would pose too many “practical difficulties.”³³

Australia has multiple pieces of terrorism financing legislation, including Section 102.6 of the Criminal Code, which states it is an offense to “directly or indirectly” provide funds to a terrorist organization.³⁴ Section 21 of the Charter of the United Nations Act 1945 states that it is an offense to provide assets to a “proscribed organization.”³⁵ Australia’s terrorism financing laws also provide no exceptions for humanitarian purposes.³⁶ Therefore, according to the INSLM, “the provision of medical supplies to a hospital or funds to employ a doctor could constitute assets and funds for the purposes of Australia’s terrorism financing laws.”³⁷ Indeed, in 2010, three Australian citizens were convicted under Section 21 of the Charter of the United Nations Act for “making funds available to a proscribed entity,” after having sent funds for humanitarian assistance to remote areas in Sri Lanka through the Liberation Tigers of Tamil Eelam,³⁸ a proscribed organization. At the time the men were arrested, an Australian judge expressed concern that similar counterterrorism charges could be brought against a

25. Baydas L, Green S. Counterterrorism Measures and Civil Society: Changing the Will, Finding the Way. *Center for Strategic and International Studies*. (March 22, 2018). <https://www.csis.org/analysis/counterterrorism-measures-and-civil-society>. Accessed March 22, 2018.

26. McGarrity N, Williams G. The Proscription of Terrorist Organisations in Australia. *Terrorism and Political Violence*. pgs 216-235. (March 2, 2018). doi: 10.1080/09546553.2018.1432200.

27. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

28. *Ibid.*

29. Scheinin M, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Australia: Study on Human Rights Compliance while Countering Terrorism. *UN Human Rights Council*. (December 14, 2006). http://digitallibrary.un.org/record/589971/files/A_HRC_4_26_Add-3-EN.pdf. Accessed April 19, 2018.

30. Saul B. Submission to the Council of Australian Governments’ Review of Counter-Terrorism Legislation. (2012). <https://www.ag.gov.au/Consultations/Documents/COAGCTReview/Professor%20Ben%20Saul.PDF>. Accessed June 4, 2018.

31. Bret Walker. Annual Report 7th November 2013. *Independent National Security Legislation Monitor*. (November 7, 2013). <https://www.inslm.gov.au/sites/default/files/publications/inslm-annual-report-2013.pdf>. Accessed June 4, 2018.

32. Council of Australian Governments. Review of Counter-Terrorism Legislation. (2013). <https://www.ag.gov.au/Consultations/Documents/COAGCTReview/Final%20Report.PDF>. Accessed April 19, 2018

33. Council of Australian Governments. COAG Response to the COAG Review of Counter-Terrorism Legislation. (2013). <https://www.coag.gov.au/sites/default/files/communique/COAG%20Response%20to%20COAG%20Review%20of%20Counter-Terrorism%20Legislation%20-%20PDF.pdf>. Accessed June 5, 2018.

34. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

35. Charter of the United Nations Act 1945. Australia. (July 6, 2016). <http://www.legislation.gov.au/Details/C2016C00742>. Accessed June 12, 2018.

36. Walker B. Annual Report 7th November 2013. *Independent National Security Legislation Monitor*. (November 7, 2013). <https://www.inslm.gov.au/sites/default/files/publications/inslm-annual-report-2013.pdf>. Accessed June 4, 2018.

37. *Ibid.*

38. Supreme Court of Victoria. *R v. Vinayagamoorthy & Ors*. [2010] VSC 148 (March 31, 2010). [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2010/148.html?stem=0&synonyms=0&query=title\(vinayagamoorthy%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2010/148.html?stem=0&synonyms=0&query=title(vinayagamoorthy%20)). Accessed June 10, 2018.

pediatrician who provided aid to Tamil Tiger-controlled areas of Sri Lanka after the 2004 tsunami.³⁹

Section 102.7 of the Criminal Code criminalizes providing “support or resources that would help the organization engage in” terrorist activity, or “preparing, planning, assisting in or fostering the doing of a terrorist act.”⁴⁰ The INSLM has questioned whether providing general aid such as food or medicine would be considered assisting in “fostering the doing of a terrorist act,” particularly given the broad nature of the terms “support or resources.”⁴¹ In the case of the Australian nurse currently on trial, Section 102.7 is being applied to actions he allegedly performed for the Islamic State, including providing medical care.⁴²

Section 102.8 on “association with a terrorist organization,” provides a similar exception to that of some foreign incursion laws, stating that no offense shall have been committed if an association with a terrorist organization was “only for the purpose of providing aid of a humanitarian nature,” but the accused must provide evidence that the association was “only” for humanitarian purposes.⁴³

Nurse facing charges that include the provision of medical care

In 2014, nurse Adam Brookman traveled to Syria, allegedly for purposes of providing humanitarian medical services to people caught up in the conflict.⁴⁴ According to media reports, the Australian government has argued that though Brookman may have originally entered Syria for humanitarian purposes, once in the country he intentionally provided support to the Islamic State and Chechen rebels.⁴⁵ His alleged support for the Islamic State includes “guard duty and medical services,” and he reportedly faces charges under “providing support to a terrorist group” and “breaching Australia’s foreign incursion laws.”⁴⁶ His trial is in progress as of the time of writing.

39. Hagan K. 'Terror' arrest: Police warned. *The Sydney Morning Herald*. (February 5, 2010). <https://www.smh.com.au/national/terror-arrest-police-warned-20100204-ng6s.html>. Accessed June 12, 2018.

40. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

41. Walker B.. Annual Report 7th November 2013. *Independent National Security Legislation Monitor*. (November 7, 2013). <https://www.inslm.gov.au/sites/default/files/publications/inslm-annual-report-2013.pdf>. Accessed June 4, 2018.

42. Coletta F. 'May Allah grant him his freedom': Wife of the first Australian man charged with supporting ISIS after returning home from Syria says he should be 'hailed a hero'. *MailOnline*. (July 31, 2016). <http://www.dailymail.co.uk/news/article-3717358/May-Allah-grant-freedom-Wife-Australian-man-charged-supporting-ISIS-returning-home-Syria-says-hailed-hero.html>. Accessed June 5, 2018.

43. Criminal Code Act 1995. Australia. (2017). https://www.legislation.gov.au/Details/C2017C00408/Html/Volume_1, <http://www.legislation.gov.au/Details/C2017C00408>. Accessed April 19, 2018.

44. Coletta F. 'May Allah grant him his freedom': Wife of the first Australian man charged with supporting ISIS after returning home from Syria says he should be 'hailed a hero'. *MailOnline* July 31, 2016. <http://www.dailymail.co.uk/news/article-3717358/May-Allah-grant-freedom-Wife-Australian-man-charged-supporting-ISIS-returning-home-Syria-says-hailed-hero.html>. Accessed June 5, 2018.

45. LeGrand C. Aussie Adam Brookman faces terror charge over Syrian airport attack. (February 1, 2018). <https://www.theaustralian.com.au/news/nation/aussie-adam-brookman-faces-terror-charge-over-syrian-airport-attack/news-story/cc75d174b629e6f599359fdee486e0e8>. Accessed June 5, 2018.

46. Coletta F. 'May Allah grant him his freedom': Wife of the first Australian man charged with supporting ISIS after returning home from Syria says he should be 'hailed a hero'. *MailOnline* July 31, 2016. <http://www.dailymail.co.uk/news/article-3717358/May-Allah-grant-freedom-Wife-Australian-man-charged-supporting-ISIS-returning-home-Syria-says-hailed-hero.html>. Accessed June 5, 2018.

Bahrain

Counterterrorism and criminal law

Though Bahrain's constitution states in Article 8 that "Every citizen is entitled to health care,"⁴⁷ the country's criminal and counterterrorism laws have been used to criminalize the provision of healthcare. Law No. 58 on Protection of the Community Against Terrorist Acts (Law No. 58) defines "terrorist crimes" as any acts considered crimes under the Penal Code or any other Bahrain law "if the purpose of committing them is a terrorist one."⁴⁸ Though "terrorist purpose" is not defined, the definition of "terrorism" includes aims of "disrupting public order, threatening the Kingdom's safety and security, damaging national unity...causing damage to the environment, public health, national economy or public utilities, facilities or properties or seizing them and obstructing the performance of their business activities, preventing or obstructing the government authorities, places of workshop or academic institutions from carrying out their activities."⁴⁹ Article 6 criminalizes organizations that use "terrorism methods" and assigns a minimum ten years imprisonment for those who provide their members with "supplies, machinery or information... premises, accommodation or facilities" that are "intended for use in their activities... while being aware of what they call for and their methods." The law makes no exceptions or protections for the provision of medical care.⁵⁰

When Bahrain drafted Law No. 58, the then UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism determined that the legislation did not align with international human rights law. The former Special Rapporteur cited concerns that the law defined terrorism far too broadly and imposed excessive limitations on the rights to free speech, assembly, and due process of law.⁵¹ The law was nonetheless promulgated in 2006.⁵²

The Bahrain Penal Code of 1976 also contains provisions germane to medical care and its provision to those who participate in acts of dissent. In the special section "Offences Affecting External State Security", Chapter 3 describes multiple acts of assembly that can be prosecuted under "Demonstrations and Riots."⁵³ Assistance to those who commit these or any other criminalized acts is then punishable under provisions such as Article 44, which states that anyone who "knowingly aids the offender in any manner in the commission thereof, making the occurrence thereof possible, due to such aid," is an accomplice to a crime. Article 252 assigns criminal penalty to anyone who "helps in the escape of an accused person."⁵⁴ The Penal Code contains no protections or exceptions for providing medical care.⁵⁵

Practice: arrest, harassment, assault, and administrative sanction for treating protestors

In February 2011, during the early days of pro-democracy protests in Bahrain, medical personnel from Salmaniya Medical Complex responded to multiple cases of injured protestors, receiving wounded in the hospital and setting up medical tents near demonstrations. The Bahrain Independent Commission of Inquiry confirmed that during the height of the protests, authorities blocked ambulance access to protest sites at a key roundabout, and security forces assaulted paramedics trying to reach wounded protestors.⁵⁶ On March 16, Bahraini Defense Forces took over the hospital.⁵⁷ In the course of these events, dozens of healthcare providers faced formal charges for their role in medical care to protestors, and at least 40 other health workers were abducted or detained without charge.⁵⁸

47. Constitution of Bahrain of 2002 (rev. 2012). 2012. https://www.constituteproject.org/constitution/Bahrain_2012?lang=en. Accessed April 15, 2018.

48. Law No. 58 of 2006 with Respect to Protection of the Community against Terrorist Acts. (August 12, 2006). http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Law_No_58_Protection_Community_against_Terrorist_Acts.pdf.

49. Ibid.

50. Ibid.

51. Bahrain terror bill is not in line with international human rights law – UN expert. (July 25, 2006). <https://news.un.org/en/story/2006/07/186792-bahrain-terror-bill-not-line-international-human-rights-law-un-expert>. Accessed April 15, 2018.

52. Bahrain: US State Department Documents Decline In Terrorism Last Year, Continued Rights Concerns. (July 21, 2017). <http://www.adhrb.org/2017/07/bahrain-us-state-department-documents-decline-terrorism-continued-rights-concerns/>. Accessed April 15, 2018.

53. Bahrain Penal Code 1976. (20 March, 1976). https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf.

54. Ibid.

55. Ibid.

56. Report of the Bahrain Independent Commission of Inquiry. (December 10, 2011). <http://www.bici.org.bh/BICIreportEN.pdf>. Accessed June 6, 2018.

57. Ibid.

58. Physicians for Human Rights. Medics on Trial in Bahrain. (2017). <http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/medics-on-trial-in-bahrain.html>. Accessed April 15, 2018.

Physicians for Human Rights interviewed many health workers facing felony charges for treating protesters, at least nine of whom described being subjected to torture or physical attack while in detention. Many were forced to sign false confessions to acts such as promoting the overthrow of the state, stealing medication, participating in unauthorized rallies, and spreading false information.⁵⁹ On September 29, 2011, 20 health workers were convicted of felony charges in a military National Safety Court of First Instance on charges including weapons possession, inciting sectarian anger and hatred against the regime, obstructing the law, destroying public property, jeopardizing general security, and forcefully occupying the hospital.⁶⁰ Thirteen of them were sentenced to 15 years imprisonment, two received ten-year sentences, and five were sentenced⁶¹ to five years.⁶²

Following sustained international outcry, nine of the 20 health workers were acquitted, and most others had their sentences reduced to a maximum of three years.⁶³ However, Dr. Ali al-Ekri, an orthopedic surgeon who was operating on a teenage boy when security forces arrested him, served five years on over a dozen charges including “possession and concealment of weapons, occupying a public building, promoting the downfall of the regime and inciting sectarian hatred.”⁶⁴ Like many others, he had been tortured in detention and forced to sign a false confession. He was released in March 2017.⁶⁵

An additional four health workers were convicted separately on felony charges. Nurse Hassan Matoq was sentenced to three years for participating in a public gathering; hospital administrator Younis Ashoori received three years for delivering oxygen and medical support to a camp of demonstrators; pharmacist Ahmed Almushatat was sentenced to two years for transferring medications to injured protesters; and medical student Hassan Alarabi received a six-month sentence for participating in unlicensed protests.⁶⁶ All four served their full sentences.⁶⁷ 28 health workers faced misdemeanor charges for “illegal gathering to protest against the regime,”⁶⁸ with one paramedic among them serving a prison sentence of three months.⁶⁹ In March 2013, 21 of them were acquitted.⁷⁰

Health workers also faced administrative sanction. According to a written statement to the UN Secretary General by the Kham Rehabilitation Center for Victims of Torture, over 200 medical staff were dismissed from their positions in the wake of the protest events.⁷¹

Dr. Ahmed Omran, a physician who held senior research and leadership positions at the Ministry of Health, had assisted wounded protesters and attempted to bring them for treatment. He was arrested, tortured, sentenced to fifteen years on felony charges, and later acquitted. He was suspended by the Ministry of Health, which refused to reinstate him to his previous positions, offering him a role he had attained 21 years prior.⁷² Dr. Omran described the medical system in the days after the protests. “Medical neutrality was seriously jeopardized since the uprising in 2011,” he said. “[M]edical and management staff were deprived from their positions and were replaced by pro-government staff, most of whom are

59. Physicians for Human Rights. Doctors in Bahrain: In Their Own Words. (2013). <http://physiciansforhumanrights.org/library/multimedia/doctors-in-bahrain-in-their-own-words.html>. Accessed April 15, 2018.

60. Bahrain court hears medics' appeal. *Al Jazeera News*. (October 23, 2011). <https://www.aljazeera.com/news/middleeast/2011/10/201110235173013184.html>. Accessed June 9, 2018.

61. The difference in charges related to varying lengths of sentences is unclear.

62. Toumi H. Bahrain sentences 13 doctors to 15 years in jail. *Gulf News*. (September 29, 2011). <https://gulfnews.com/news/gulf/bahrain/bahrain-sentences-13-doctors-to-15-years-in-jail-1.881279>. Accessed June 9, 2018.

63. Physicians for Human Rights. Medics on Trial in Bahrain. (2017). <http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/medics-on-trial-in-bahrain.html>. Accessed April 15, 2018.

64. Americans for Democracy and Human Rights in Bahrain. Dr. Ali al-Ekri completes sentence, released from prison. (March 10, 2017). <https://www.adhrb.org/2017/03/dr-ali-al-ekri-completes-sentence-released-prison/>. Accessed April 15, 2018.

65. Ibid.

66. Physicians for Human Rights. Bahrain government must drop misdemeanor charges against 28 health professionals. (July 3, 2012). <http://physiciansforhumanrights.org/press/press-releases/bahrain-government-must-drop-misdemeanor-charges-against-28-health-professionals.html?print=t>. Accessed June 9, 2012.

67. Physicians for Human Rights. Medics on Trial in Bahrain. (2017). <http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/medics-on-trial-in-bahrain.html>. Accessed April 15, 2018.

68. Physicians for Human Rights. Bahrain government must drop misdemeanor charges against 28 health professionals. (July 3, 2012). <http://physiciansforhumanrights.org/press/press-releases/bahrain-government-must-drop-misdemeanor-charges-against-28-health-professionals.html?print=t>. Accessed June 9, 2012.

69. Physicians for Human Rights. Medics on Trial in Bahrain. (2017). <http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/medics-on-trial-in-bahrain.html>. Accessed April 15, 2018.

70. Jamjoom M. Bahrain clears 21 medics of charges in protests. *CNN*. (March 31, 2013). <https://www.cnn.com/2013/03/31/world/meast/bahrain-medics/index.html>. Accessed June 9, 2018.

71. Kham Rehabilitation Center for Victims of Torture. Bahrain: Abuse of Medical Neutrality (A/HRC/30/NGO/8). *Written statement to the UN Secretary General*. (August 17, 2015). https://www.ecoi.net/en/file/local/1043412/1930_1443017129_g1519671.pdf. Accessed June 8, 2018.

72. Physicians for Human Rights. Doctors in Bahrain: In Their Own Words. (2013). <http://physiciansforhumanrights.org/library/multimedia/doctors-in-bahrain-in-their-own-words.html>. Accessed April 15, 2018.

neither qualified nor have enough experience.”⁷³

Dr. Taha al-Derazi, another physician forced to resign his post after the events of 2011, reported how the suspensions of medical staff from Salmaniya Medical Complex in the wake of the 2011 protests had weakened the quality of health services there. He made this statement to the European Centre for Democracy and Human Rights and Defenders for Medical Impartiality for a submission to the UN Human Rights Council.⁷⁴ In the summer of 2016, Dr. al-Derazi was banned from international travel when he was to attend a meeting at the UN Human Rights Council. He was subsequently arrested in June 2016 for “illegal gathering” for his participation in a sit-in.⁷⁵

The Ministry of Interior currently plays an active role in the administration of healthcare in Bahrain. According to Americans for Democracy and Human Rights in Bahrain, the Ministry of Interior is the institution “most directly involved in the suppression of activists and dissidents.”⁷⁶ The government has reportedly issued statements requiring a Ministry of Interior official to be present for treatment of any patients with injuries that could have been sustained during protests. In January 2017, security forces shot 18-year-old Mustafa Ahmed Hamdan in the head several times during a protest. The hospital where he first arrived refused to treat him due to the stated requirement of having a Ministry of Interior official present.⁷⁷ Authorities arrested the nurse who first treated Mustafa.⁷⁸ In February 2018, the king issued a decree to transfer control of the nation’s ambulance services to the Ministry of Interior.⁷⁹

73. Physicians for Human Rights. Doctors in Bahrain: In Their Own Words. (2013). <http://physiciansforhumanrights.org/library/multimedia/doctors-in-bahrain-in-their-own-words.html>. Accessed April 15, 2018.

74. European Centre for Democracy and Human Rights (ECDHR) and Defenders for Medical Impartiality (DMI). Statement for consideration at the 27th session of the UN working group. (2016). <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4037&file=EnglishTranslation> Accessed June 9, 2018. 17. UN Office of the High Commissioner for Human Rights. Summary of stakeholders' submissions on Bahrain. (2017).

75. Committee of Concerned Scientists. Bahraini Neurosurgeon Arrested and Charged with “Illegal Gathering” for Participating in a Sit-In. (September 6, 2016). <http://concernedscientists.org/2016/09/bahraini-neurosurgeon-arrested-and-charged-for-participating-in-a-sit-in/>. Accessed April 15, 2018.

76. Americans for Democracy and Human Rights in Bahrain. Dr. Ali al-Ekri completes sentence, released from prison. (March 10, 2017). <https://www.adhrb.org/2017/03/dr-ali-al-ekri-completes-sentence-released-prison/>. Accessed April 15, 2018.

77. Americans for Democracy and Human Rights in Bahrain. Dr. Ali al-Ekri completes sentence, released from prison. (March 10, 2017). <https://www.adhrb.org/2017/03/dr-ali-al-ekri-completes-sentence-released-prison/>. Accessed April 15, 2018.

78. Arrest of nurse Abbas al-Asfour from his workplace at Salmaniya hospital. *Bahrain Today*. (January 2017). <https://www.bahrainalyoum.co.uk/?p=79178>. Accessed April 15, 2018.

79. Royal decree transferring ambulance services to MoI. *Bahrain Mirror*. (February 22, 2018). <http://bhmirror.myftp.biz/en/news/44867.html>. Accessed June 9, 2018.

Colombia

Protections for impartial medical care in Colombian domestic law

While some gaps remain in the Colombian legal system that have allowed for punishment of some health providers for giving impartial care, the country has consistently established and revised legal frameworks to support the care of the wounded and sick according to medical ethics. Article 93 of the 1991 Constitution of Colombia gives priority in domestic law to ratified international treaties that “recognize human rights and prohibit their limitation in states of emergency.”⁸⁰ Colombia ratified Additional Protocol II of the Geneva Conventions in 1995, thus incorporating its protections for medical care in the setting of Colombia’s protracted internal armed conflict, forbidding punishment of health workers for “having carried out medical activities compatible with medical ethics.”⁸¹

Article 49 of the Constitution guarantees to all the right to access services that “promote, protect, and restore health,” assigning to the state the duty to “organize, direct, and regulate” such services.⁸² Article 209 declares that state functions must follow principles that include equality and impartiality.⁸³ This supports statements in Colombia’s Code of Medical Ethics, which requires that doctors provide medical care to all who need it and “disregard religious and political creed, race, nationality, and social class.”⁸⁴

The duty to provide assistance in emergency situations is not limited to medical personnel. Article 95 of the Constitution assigns the duty to all individuals to respond in situations where a person’s life or health is in danger, under the principle of social solidarity.⁸⁵ The Colombian Penal Code, Law 599 of 2000, assigns criminal penalties to those who disregard this duty.⁸⁶ The Penal Code also penalizes the offense of obstructing or impeding acts of medical or humanitarian assistance in the context of armed conflict.⁸⁷

Colombian law makes specific provisions for medical care of those victimized by the ongoing violence in the country. Law 782 of 2002, which expands legislation introduced in 1997, requires hospitals to provide immediate care to victims of terrorist attacks or any armed conflict, regardless of ability to pay.⁸⁸ The Victims and Land Restitution Act of 2011 reiterates this responsibility.⁸⁹

Gaps in protection: The law and punishment for medical providers

Despite robust historic legal protections for the provision of medical care, health personnel who provided care to members of armed groups such as the Revolutionary Armed Forces of Colombia (FARC) have still faced arrest and prosecution, largely based on the crime of rebellion. Article 467 of the Penal Code defines the crime of rebellion, stating that “those who, through the use of arms, intend to overthrow the national government or remove or modify the existing constitutional or legal regime shall incur a prison sentence of six to nine years and a fine of 100 to 200 minimum legal monthly salaries.”⁹⁰ Linares and Chau with the International Committee of the Red Cross (ICRC) Delegation of Colombia state that providing a form of funding to an armed group could be considered collaboration with the armed group and punishable under the crime of rebellion.⁹¹ Some court cases against medical providers have demonstrated that the courts interpret protections for medical care to be limited to provision of emergency medical care or any care that is urgently needed.⁹² Thus, provision of medical services that fall outside emergency care have been subject to prosecution.

80. Constitution of 1991 with amendments through 2005. Colombia. (2005). https://www.constituteproject.org/constitution/Colombia_2015?lang=en. Accessed April 4, 2018.

81. International Committee of the Red Cross. Treaties, states parties, and commentaries - additional protocol (II) to the Geneva conventions, 1977. 1977. <https://ihl-databases.icrc.org/ihl/INTRO/475?OpenDocument>. Accessed April 12, 2018.

82. Constitution of 1991 with amendments through 2005. Colombia. (2005). https://www.constituteproject.org/constitution/Colombia_2015?lang=en. Accessed April 4, 2018.

83. Ibid.

84. Ley 0023 de Febrero 18 de 1981 - ministerio de educación nacional de Colombia. Colombia. (February 18, 1981). <https://www.mineduacion.gov.co/1759/w3-article-104670.html>. Accessed April 10, 2018.

85. Constitution of 1991 with amendments through 2005. Colombia. (2005). https://www.constituteproject.org/constitution/Colombia_2015?lang=en. Accessed Apr 4, 2018.

86. Ley N° 599 de 2000 (24 de Julio) - por la cual se expide el código penal. Colombia. (July 24, 2000). <http://www.wipo.int/wipolex/en/text.jsp>. Accessed April 9, 2018.

87. Ibid.

88. Linares EO, Chau MS. Reflections on the Colombian case law on the protection of medical personnel against punishment. *International Review of the Red Cross*. 2013;95(890):251. doi:10.1017/S1816383114000204.

89. Ibid.

90. Ley N° 599 de 2000 (24 de Julio) - por la cual se expide el código penal. Colombia. (July 24, 2000). <http://www.wipo.int/wipolex/en/text.jsp>. Accessed April 9, 2018.

91. Linares EO, Chau MS. Reflections on the Colombian case law on the protection of medical personnel against punishment. *International Review of the Red Cross*. 2013;95(890):251. doi:10.1017/S1816383114000204.

92. Ibid.

In 2005, a Colombian physician was convicted of rebellion for having provided repeated medical care to FARC members, including surgical interventions for combat wounds and referral to specialists in Bogota. He was sentenced to three years in prison and a fine equal to over four years' salary.⁹³ The Supreme Court upheld the decision in 2009, concluding that referral services went beyond emergency medical care into the realm of sustained support, as those who recovered were able to return to the fight.⁹⁴

In another case, also upheld by the Supreme Court, a Colombian pharmacist was convicted for having provided care to a wounded FARC member one day after he had been shot. The court ruled that care provided 24 hours or more after the initial gunshot wound was no longer urgently needed and thus did not constitute emergency medical care.⁹⁵

Other medical providers have faced charges for treating members of the FARC, even though they provided the care in question under coercion or false pretense. In February 2008, police arrested physician Luis Alfredo Moreno García, charging him with rebellion for having treated members of the FARC.⁹⁶ Moreno García asserted that he was brought to a FARC camp in 2003 after being invited to take part in a paid "medical mission."⁹⁷ Once there he agreed to treat FARC members, fearing the consequences if he refused. He returned to provide treatment a second time, which he alleged was under coercion.⁹⁸ The prosecution argued that he received payment for the services and did not report what happened to the authorities.⁹⁹ The Criminal Procedural Code, Law 906 of 2004, assigns to all the civic duty to report any knowledge of crimes to the authorities, and there is no exception made for medical care.¹⁰⁰ After one year of prison, Dr. Moreno García was granted his appeal to be transferred to house arrest.¹⁰¹

In 2008, Colombian authorities arrested another physician who had been coerced to travel to treat a FARC member wounded by a landmine.¹⁰² The doctor, who shared his story on condition of anonymity, was accused of membership in the FARC and placed in preventive detention, but later transferred to house arrest. "The suffering and humiliation I've endured are indescribable," he said.¹⁰³

Manual of the Medical Mission 2012

Recognizing an ongoing need to strengthen protections for health providers, Colombia drafted in 2008 a document to protect and regulate the medical mission, revised in 2012 to cover all violent contexts, not only those limited to armed conflict.¹⁰⁴ The Ministry of Health and Social Protection Resolution 4481 of 2012, adopting the Manual of the Medical Mission, was the culmination of collaborative efforts between Red Cross entities and Colombian state ministries, including the Ministry of Justice and Law and the Ministry of Interior.¹⁰⁵ The Manual formally sets out the rights and duties of health personnel, standardizes the medical emblem and its use, and declares certain acts as offenses against the medical mission.¹⁰⁶

93. Sentencia de corte suprema de justicia - sala de casación penal nº 27227 de 21 de mayo de 2009. Colombia. (May 21, 2009). <https://corte-suprema-justicia.vlex.com.co/vid/sentencia-suprema-justicia-sala-penal-69223885>. Accessed April 10, 2018.

94. Linares EO, Chau MS. Reflections on the Colombian case law on the protection of medical personnel against punishment. *International Review of the Red Cross*. 2013;95(890):251. doi:10.1017/S1816383114000204.

95. Ibid.

96. Doctors working for FARC: Medical mix-up? *Semana*. (February 13, 2009). <https://www.semana.com/international/print-edition/articulo/doctors-working-for-farc-medical-mix-up/100099-3>. Accessed April 30, 2018.

97. Ibid.

98. Ibid.

99. Ibid.

100. Ley 906 de 2004: Código de procedimiento penal. Colombia. (2004). http://leyes.co/codigo_de_procedimiento_penal.htm. Accessed April 30, 2018.

101. Guerra A. Ordenan detención domiciliaria a médico acusado de atender guerrilleros. (March 17, 2009). <http://www.wradio.com.co/noticias/judicial/ordenan-detencion-domiciliaria-a-medico-acusado-de-atender-guerrilleros/20090317/nota/779515.aspx>. Accessed April 30, 2018.

102. Francisco Fernandez C, Perilla S. Se reabre debate sobre si asistir médicamente a una persona al margen de la ley es delito. <http://www.eltiempo.com/archivo/documento/CMS-4542240>. Accessed April 30, 2018.

103. Ibid.

104. International Committee of the Red Cross. Medical services: A priority in Colombia - ICRC. (February 13, 2009). <https://www.icrc.org/eng/resources/documents/article/health-care-in-danger/2014-02/hcid-colombia-medical-services.htm>. Accessed April 29, 2018.

105. International Committee of the Red Cross. Health care in danger: Continuing to protect the delivery of health care together. (2015). http://rcrcconference.org/wp-content/uploads/2015/04/321C-HCID-Background-Report_EN.pdf. Accessed April 28, 2018.

106. Resolución no. 4481 de 2012. Colombia. (December 28, 2012). http://www.idsn.gov.co/images/documentos/normatividad2013/res4481_2012mm.pdf.

The Manual describes the standardized format and acceptable use of the medical emblem of Colombia, first given national priority for protection in 2002.¹⁰⁷ This complements laws regulating and protecting the use of the Red Cross and Red Crescent emblems (distinct from the medical emblem of Colombia) which first appeared in 1998. The latest form of the law, Decree 138 of 2005, forbids improper use of the Red Cross and Red Crescent emblems and states that authorities must protect those providing medical or humanitarian assistance in emergency situations.¹⁰⁸

The rights guaranteed to health workers in the 2012 Manual include not only the respect and protection of their mission, but also the right not to be punished for performing medical care and to not be obliged to act contrary to medical ethics.¹⁰⁹ The manual also assigns the responsibility, among others, to provide medical care without discrimination, prioritizing medical cases impartially using medical criteria alone.¹¹⁰

The enactment of Resolution 4481 marked a major advancement in the protection of medical care in Colombia. Following the signing of the peace agreement between the government and members of the FARC, the ICRC reports violence continues between many other armed groups and calls for respect of international humanitarian law.¹¹¹ It remains to be seen what adjustments will be necessary to the laws protecting medical care as negotiations for a peace process evolve.

107. International Committee of the Red Cross. Medical services: A priority in Colombia - ICRC. (February 13, 2009). <https://www.icrc.org/eng/resources/documents/article/health-care-in-danger/2014-02/hcid-colombia-medical-services.htm>. Accessed April 29, 2018.

108. Cruz Roja Colombiana. Decreto 138 de 2005 | reglamenta la ley 875 de 2004. Colombia. (January 25, 2005). <http://www.cruzrojacolombiana.org/conozca-la-cruz-roja/decreto-138-de-2005>.

109. Resolución no. 4481 de 2012. Colombia. (December 28, 2012). http://www.idsn.gov.co/images/documentos/normatividad2013/res4481_2012mm.pdf.

110. Ibid.

111. International Committee of the Red Cross. Humanitarian challenges after a peace agreement.(2018). <https://www.icrc.org/en/challenges-armed-conflict-and-violence-colombia>. Accessed June 6, 2018..

Egypt

Counterterrorism laws

Prior to 2011, Article 179 of the Constitution of Egypt gave the government broad authority to restrict individual rights and freedoms in its counterterrorism efforts.¹¹² In a 2011 public referendum, Egyptians voted to eliminate Article 179.¹¹³ In the 2014 Constitution, which remains in force, Article 237 declares a national commitment to fighting terrorism “with guarantees for public rights and freedoms.”¹¹⁴ Article 93 specifies that any human rights “agreements, covenants, and international conventions” which are ratified by the state immediately carry the force of law.¹¹⁵ Although these amendments purportedly show a greater commitment to protection for human rights, multiple changes to counterterrorism law are inconsistent with the human rights provisions of the Constitution. Egypt’s criminal and counterterrorism laws have been applied to punish thousands of protesters and dissidents, as well as those who provide them with medical care.

The Emergency Law of 1958 (Law 162), which enters into force when the president declares a state of emergency, has been relied upon as a primary framework for anti-terrorism measures in Egypt.¹¹⁶ A state of emergency was in effect for more than three decades under President Hosni Mubarak until it was officially lifted in May 2012, which was a key demand from the people during protests in 2011.¹¹⁷ The Emergency Law, which has been temporarily reinstated multiple times since 2012,¹¹⁸ grants special provisions for the government in counterterrorism measures to forego judicial authorization in surveillance, search and seizure, and arrest and detention.¹¹⁹ It also establishes that the President can send civilian cases to State Security Emergency Courts, which have no appeals process.¹²⁰

The Law to Combat Terrorism of 1992 (Article 86 of the Egyptian Penal Code) defines terrorism to include “any threat or intimidation” aimed at “disturbing the peace or jeopardizing the safety and security of the society” with purposes such as “to prevent or impede the public authorities in the performance of their work or thwart the application of the Constitution or of laws or regulations.”¹²¹ Article 86 of the Penal Code criminalizes the establishment of any organization whose purpose is to “interrupt the provisions of the constitution or laws,” or “prevent any state institutions or public authorities from exercising their works,” or “encroach on the personal freedom of citizens.”¹²² Membership and association with these organizations are punishable offenses, as is “supplying them with physical or financial assistance,” and there is no exception for providing medical care.¹²³ The former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism voiced concerns regarding the definition in Article 86, stating it “runs the risk of including acts that do not comprise a sufficient relation to violent terrorist crimes.”¹²⁴

Recent laws have expanded the existing counterterrorism legal frameworks. Egypt’s Terrorist Entities Law of 2015 (Law

112. Scheinin M, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Mission to Egypt. *UN Human Rights Council*. (October 14, 2009). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add2.pdf>. Accessed April 20, 2018.

113. Feuille J. Reforming Egypt’s constitution: Hope for Egyptian Democracy? (2012). *Tex Int’l LJ*. 2012;47:237-260. <http://www.tilj.org/content/journal/47/num1/Feuille237.pdf>. Accessed April 20, 2018.

114. Constitution of 2014. Egypt. (2014). https://www.constituteproject.org/constitution/Egypt_2014?lang=en. Accessed April 20, 2018.

115. *Ibid.*

116. Scheinin M, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Mission to Egypt. *UN Human Rights Council*. (October 14, 2009).

117. *Ibid.*

118. Egypt’s Emergency Law Explained. *Al Jazeera News*. (April 10, 2017). <https://www.aljazeera.com/indepth/features/2017/04/egypt-emergency-law-explained-170410093859268.html>. Accessed June 12, 2018.

119. Scheinin M, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Mission to Egypt. *UN Human Rights Council*. (October 14, 2009). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add2.pdf>. Accessed April 20, 2018.

120. Egypt’s Emergency Law Explained. *Al Jazeera News*. (April 10, 2017). <https://www.aljazeera.com/indepth/features/2017/04/egypt-emergency-law-explained-170410093859268.html>. Accessed June 12, 2018.

121. Scheinin M, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Mission to Egypt. *UN Human Rights Council*. (October 14, 2009). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add2.pdf>. Accessed April 20, 2018.

122. Criminal Code of Egypt as of 1992 (English Version). Egypt. (1992). https://www.unodc.org/cld/document/egy/1937/criminal_code_of_egypt_english.html 1992. Accessed April 20, 2018.

123. *Ibid.*

124. Scheinin M, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Mission to Egypt. *UN Human Rights Council*. (October 14, 2009). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add2.pdf>. Accessed April 20, 2018.

8), promulgated in 2015,¹²⁵ defines a terrorist entity as “any group which disrupts public order or threatens the safety, security or interests of society, or harms or frightens individuals or threatens their lives, freedoms, rights or security or harms national unity...”¹²⁶ The Cairo Institute for Human Rights Studies (CIHRS) called for the president not to sign the law, expressing grave concern over the broad definition that labeled as a terrorist entity any group who, “through any means,” called for the overturning of a court ruling or the repeal or non-enforcement of a law.¹²⁷ According to CIHRS, this definition meant that “human rights defenders, political parties, or developmental associations may be easily labeled terrorist entities and their members terrorists.”¹²⁸ The offense of funding such organizations includes “supplying, transferring, or providing funds...data, information, materials or other, directly or indirectly, by any means,” to an organization, knowing it will be used in a terrorist crime or to “provide a safe haven” for one or more terrorists or those who fund them.¹²⁹

The Law on Combating Terrorism of 2015 (Law 94) defines terrorist acts and, among other provisions, sets out a mandatory death sentence as punishment for 12 terrorism offenses, including financing a terrorist group or a terrorist act.¹³⁰ The definition of terrorist acts maintains elements of the definition of terrorism in Article 86 of the Penal Code, though expanding it to include acts designed to “harm national unity or social peace” or to “damage the environment or natural resources.”¹³¹ The definition of “funding terrorism” is essentially identical to the definition contained in the Terrorist Entities Law, and there are no exceptions for medical or humanitarian actions.¹³² The Law also establishes special courts for terrorism cases, gives expanded powers to prosecutors in terrorism cases, and allows pretrial detention without judicial authorization. Under a recent amendment to the Criminal Procedure Code, prosecutors can apply to extend pretrial detention for up to two years in serious cases.¹³³

Violence, harassment, arrest and prosecution of healthcare providers

During protests in recent years, health workers who provide medical care to protesters or who have spoken out about abuses against medical personnel, protesters, and political prisoners have faced violence, harassment, and arrest. During Egypt’s 2011 demonstrations, in which thousands gathered in Tahrir Square to protest the Mubarak regime, Egyptian security forces responded with tear gas, rubber bullets, and in some cases live ammunition.¹³⁴ Local health providers who set up field hospitals to treat wounded protesters faced violence, intimidation, and threats of arrest from security forces.¹³⁵

In the summer of 2013, after popular protests demanding early elections in Egypt, military forces deposed Mohamed Morsi, the country’s first elected civilian president and a leader in the Muslim Brotherhood movement. When Muslim Brotherhood supporters organized sit-ins and protests to call for Morsi’s reinstatement, military and police forces opened fire, killing over 1,150 protesters, according to a report by Human Rights Watch.¹³⁶ Medics set up field hospitals, but security forces blocked roads and fired on ambulances, killing some ambulance drivers.¹³⁷

125. Cairo Institute for Human Rights. Law on terrorist entities allows rights groups and political parties to be designated terrorists. (February 28, 2015). <https://cihrs.org/law-on-terrorist-entities-allows-rights-groups-and-political-parties-to-be-designated-terrorists/?lang=en>. Accessed June 12, 2018.

126. Suto RJ. Egypt’s new anti-terrorism law. MENA Source, *Atlantic Council*. (December 12, 2014). <http://www.atlanticcouncil.org/blogs/menasource/egypt-s-new-terrorism-law>. Accessed April 20, 2018.

127. Ahram Online. Egyptian NGO urges president not to ratify ‘terrorist entities’ law. (December 14, 2014). <http://english.ahram.org.eg/NewsContent/1/64/117091/Egypt/Politics-/Egyptian-NGO-urges-president-not-to-ratify-terrori.aspx>. Accessed April 20, 2018.

128. Cairo Institute for Human Rights. Law on terrorist entities allows rights groups and political parties to be designated terrorists. (February 28, 2015). <https://cihrs.org/law-on-terrorist-entities-allows-rights-groups-and-political-parties-to-be-designated-terrorists/?lang=en>. Accessed June 12, 2018.

129. Terrorist entities law, law 8 of 2015 (unofficial English translation). Egypt. *Egypt Justice - Expert Insight Into the Egyptian Judiciary and Exploration of Egypt’s Justice System*. (2015). <https://egyptjustice.com/criminal-law/>. Accessed June 12, 2018.

130. Human Rights Watch. Egypt: Counterterrorism law erodes basic rights. (August 19, 2015). <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>. Accessed April 20, 2018.

131. Anti-terrorism law. *Official Gazette - No. 33 (bis) issued on 15 August 2015*. (unofficial English translation). Egypt. (2015). http://www.atlanticcouncil.org/images/EgyptSource/Egypt_Anti-Terror_Law_Translation.pdf. Accessed April 23, 2018.

132. Ibid.

133. Human Rights Watch. Egypt: Counterterrorism law erodes basic rights. (August 19, 2015). <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>. Accessed April 20, 2018.

134. Defenders for Medical Impartiality, European Centre for Democracy and Human Rights. Doctors in Distress: Systematic Violations of Medical Impartiality. (March 2016). <http://defendmedicalimpartiality.org/wp-content/uploads/2016/03/Doctors-in-Distress.pdf>. Accessed June 10, 2018.

135. Davies C. Volunteer medics risk their lives to treat Tahrir injured. *CNN*. (December 21, 2011). <https://www.cnn.com/2011/12/20/world/meast/tahrir-doctors/index.html>. Accessed June 12, 2018.

136. Human Rights Watch. All According to Plan | the Rab’a Massacre and Mass Killings of Protesters in Egypt. (August 12, 2014). <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>. Accessed June 12, 2018.

137. Ibid.

Dr. Ahmed El Sarawi, a surgeon who taught at Cairo University and a member of the Muslim Brotherhood, helped run a field hospital during the pro-Morsi protests of 2013. In September 2013, he was arrested from his home and charged with “forming a gang to rob luxury homes and terrorizing his neighbors.”¹³⁸ Dr. El Sarawi’s brother viewed the charges as “ludicrous,”¹³⁹ but did believe the government would prosecute him.¹⁴⁰

Doctor Ibrahim El Yamani, who also provided medical care to protesters during the pro-Morsi protests, was arrested on August 17, 2013, while working in a field hospital at al-Fath mosque near Cairo.¹⁴¹ Dr. El-Yamani had been charged with documenting casualties to protestors, and he spoke to the media about the death of a woman who suffocated after security forces fired tear gas canisters into the mosque with more than one thousand protesters trapped inside.¹⁴² Dr. El Yamani protested his unlawful detention by going on two hunger strikes lasting 89 days and more than 150 days, during which security officers beat him and subjected him to solitary confinement.¹⁴³ Defenders for Medical Impartiality reported that as of late September, 2016, Dr. El Yamani was still in detention without trial.¹⁴⁴ The group also reported that between June 30 and October 6, 2013, at least 319 doctors were arrested in Egypt, many of whom suffered abuse, excess pre-trial detention time, and poor detention conditions, according to figures from the Freedom and Rights Committee of the Doctors’ Union.¹⁴⁵ Though Defenders for Medical Impartiality did not report the charges filed against doctors, they stated that many doctors had no political affiliation and were not participating in protests.¹⁴⁶

The figures regarding arrests reported by the Freedom and Rights Committee of the Doctors Union were gathered by Dr. Taher Mokhtar, the Committee chair,¹⁴⁷ also a physician and activist who “played a key role in defending doctors’ and patients’ rights in Egypt.”¹⁴⁸ On January 14, 2014, security forces arrested Dr. Mokhtar on charges of “possessing publications calling for the overthrow of the regime.”¹⁴⁹ According to Human Rights Watch, Mokhtar’s charges were likely linked to his advocacy work, including denouncing lack of medical care for prisoners and calling for accountability for police officers who beat to death an Alexandria resident in 2010.¹⁵⁰ Dr. Mokhtar had also contributed to a report titled “Medical Neglect in Places of Detention is a Crime,” which was found among materials gathered when authorities searched his apartment.¹⁵¹ Dr. Mokhtar was kept in preventive detention for several months,¹⁵² questioned without legal counsel and endured solitary confinement and inhumane conditions.¹⁵³ “At times we were so crammed together that I had to stand on one foot and then the other,” he said. “We organized rotations to sit, lie down or try to sleep on the floor... During those seven months I... could experience first-hand how hard it is for prisoners to gain access to medical treatment. Illnesses result from incarceration and unsanitary conditions.”¹⁵⁴ Dr. Mokhtar was released on bail after seven months pre-trial detention. Fearing he would be arrested again, he left the country. He is now in self-imposed exile in France.¹⁵⁵

138. Chick K. Morsi Supporters Disappear from Egypt’s Streets as Jail Cells Fill. *Christian Science Monitor*. (December 19, 2013). <https://www.csmonitor.com/World/Middle-East/2013/1219/Morsi-supporters-disappear-from-Egypt-s-streets-as-jail-cells-fill>. Accessed June 11, 2018.

139. *Ibid.*

140. Authors were unable to find documentation of an outcome to these charges.

141. Egyptian hunger striker Ibrahim el-Yamani ‘deteriorating’: Campaign. *Ahram Online*. (November 26, 2014). <http://english.ahram.org/NewsContent/1/64/116479/Egypt/Politics-/Egyptian-hunger-striker-Ibrahim-ElYamani-deteriora.aspx>. Accessed June 12, 2018.

142. Abdulrahim R. Cairo mosque still surrounded; police fire tear gas inside. *Los Angeles Times*. (August 17, 2013). <http://articles.latimes.com/2013/aug/17/world/la-fg-wn-cairo-mosque-tear-gas-20130817>. Accessed June 13, 2018.

143. Defenders for Medical Impartiality. HRC33: DMI calls attention to unlawful detention of doctors in Egypt. (2016). <https://defendmedicalimpartiality.org/?p=1641>. Accessed June 12, 2018.

144. *Ibid.*

145. *Ibid.*

146. *Ibid.*

147. *Ibid.*

148. Egypt Solidarity Initiative. Doctors delegation takes protest letter to Egypt embassy. (January 29, 2016). <https://egyptsolidarityinitiative.org/2016/01/29/doctors-delegation-takes-protest-letter-to-egypt-embassy/>. Accessed June 12, 2018.

149. Egypt Solidarity. Doctors’ union activist Taher Mokhtar charged following dawn raid. (January 15, 2016). <https://egyptsolidarityinitiative.org/2016/01/15/doctors-union-activist-taher-mokhtar-charged-following-dawn-raid/>. Accessed June 12, 2018.

150. Human Rights Watch. Egypt: Detained for protesting jail conditions. (May 3, 2016). <https://www.hrw.org/news/2016/05/03/egypt-detained-protesting-jail-conditions>. Accessed April 21, 2018.

151. *Ibid.*

152. Masriya A. Health activist Taher Mokhtar, 2 students released after 7 months in jail. *Egypt Independent*. (August 3, 2016). <http://www.egyptindependent.com/health-activist-taher-mokhtar-2-students-released-after-7-months-jail/>. Accessed April 20, 2018.

153. Guy M. Egypt: A physician, committed to helping prisoners, imprisoned himself. *Prison Insider | Testimonials*. (April 19, 2017). <https://www.prison-insider.com/en/testimonials/egypte-un-medecin-engage-en-faveur-des-prisonniers-incarcere>. Accessed April 20, 2018.

154. *Ibid.*

155. *Ibid.*

Ethiopia

Counterterrorism laws

The Ethiopian constitution incorporates human rights protections consistent with the Universal Declaration of Human Rights and includes provisions for general public health.¹⁵⁶ Proclamation 661 addresses medical practice by requiring health professionals to provide care in emergencies and to practice in accordance with the ethics of their profession.¹⁵⁷ Such ethical standards include the physicians' Code of Medical Ethics, which stipulates that doctors must practice without discrimination and provide all possible assistance to patients in emergencies.¹⁵⁸

Commitment to and protection of medical care for the sick and wounded is weakened, however, by Anti-terrorism Proclamation 652 of 2009, which defines terrorism in language broad enough to include medical care within the ambit of punishable offenses.¹⁵⁹ The UN Human Rights Committee report on Ethiopia found in 2011 that the law gave an "unclear definition of certain offences," and the Office of the High Commissioner for Human Rights sent several communications to the Ethiopian government expressing concern at the application of the law against dissenting groups, and that such application effectively "criminalizes peaceful protests."¹⁶⁰ The 2009 Proclamation states that anyone who "provides a skill, expertise or moral support or gives advice" or "provides any training, instruction or directive" in support of a terrorist act or terrorist organization commits the offense of support to terrorism, punishable by up to 15 years imprisonment.¹⁶¹ As there are no exemptions for medical or humanitarian acts,¹⁶² this definition could encompass medical care and counsel to those who oppose the government. Many health workers have been arrested for providing care to protesters; however, it is unclear what role the law itself has played in these arrests as they have largely not resulted in formal charges or trial.¹⁶³

Punishment for medical care to those who oppose the government

Richard Downie of the CSIS Global Health Policy Center has reported that despite Ethiopia's "genuine commitment" to improving health access for some marginalized groups, "[t]here have long been suggestions... that services have been denied to groups that are perceived to be [anti-government]."¹⁶⁴

Human Rights Watch reported on multiple cases of intimidation, arrest, and forced disappearance of health workers who treated or attempted to treat those involved in the Oromo protests of 2015-2016.¹⁶⁵ Several health workers in the zones of East Wollega and West Arsi told HRW that following the demonstrations, they were arrested for treating wounded protesters, though no charges were mentioned. Some reported that other health colleagues went missing around the same time, and many feared they had been "disappeared."¹⁶⁶

Other health staff described to HRW how Ethiopian security forces entered health facilities to obstruct medical care to wounded protesters, and that in at least six cases protesters were completely denied access to care. In one case, police forced a health worker at gunpoint to treat an officer's minor injuries while neglecting wounded protesters, one of whom died that evening.¹⁶⁷ Other patients said they were refused care because healthcare workers feared arrest. According to a student who sought care for his injuries in East Wollega, "[the health workers] said they couldn't treat me. Security forces had arrested two of their colleagues the day before because they were treating protesters."¹⁶⁸

156. Constitution of the Federal Democratic Republic of Ethiopia. Ethiopia. (December 8, 1994). http://www.wipo.int/wipolex/en/text.jsp?file_id=234349. Accessed April 12, 2018.

157. National Legislative Bodies / National Authorities. Proclamation 661/2009: A Proclamation to Provide for Food, Medicine and Health Care Administration and Control. (January 13, 2010). https://www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/661.pdf. Accessed April 12, 2018.

158. Ethiopian Medical Association. Medical Ethics for Doctors in Ethiopia. (April, 2016). http://www.emacpd.org/sites/default/files/resource_center/Medical%20Ethics.pdf. Accessed April 12, 2018.

159. Proclamation No. 652/2009 of 2009, Anti-terrorism Proclamation. Ethiopia. (August 28, 2009). <http://www.refworld.org/docid/4ba799d32.html>. Accessed April 12, 2018.

160. Office of the High Commissioner for Human Rights. Special Communication to the Government of Ethiopia: Alleged brutal repression of peaceful protests since mid-November 2015 in the Oromia region. (December 28, 2015). <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=18911>.

161. Proclamation No. 652/2009 of 2009, Anti-terrorism Proclamation. Ethiopia. (August 28, 2009). <http://www.refworld.org/docid/4ba799d32.html>. Accessed April 12, 2018.

162. Ibid.

163. Horne F. "Such a Brutal Crackdown" | Killings and Arrests in Response to Ethiopia's Oromo Protests. *Human Rights Watch*. (June 15, 2016). <https://www.hrw.org/report/2016/06/15/such-brutal-crackdown/killings-and-arrests-response-ethiopia-oromo-protests>. Accessed April 12, 2018.

164. Downie R. Sustaining Improvements to Public Health equity in Ethiopia. *CSIS Global Health Policy Center*. (March 2016). https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/160226_Downie_SustainImprovementsEthiopia_Web.pdf. Accessed May 25, 2018.

165. Horne F. "Such a Brutal Crackdown" | Killings and Arrests in Response to Ethiopia's Oromo Protests. *Human Rights Watch*. (June 15, 2016). <https://www.hrw.org/report/2016/06/15/such-brutal-crackdown/killings-and-arrests-response-ethiopia-oromo-protests>. Accessed April 12, 2018.

166. Ibid.

167. Ibid.

168. Ibid.

Beyond arrest and intimidation, health workers who treated protesters also faced violence at the hands of security forces. There have been reports of health workers attacked for disobeying orders not to treat wounded protesters. Social media posts recounted how security forces shot Dr. Gebeyehu Jalata multiple times as he attended to wounded protesters at a private clinic in East Wallaga Nekemt town. Doctor Jalata died from his injuries less than two weeks later.¹⁶⁹

169. Ethiopia: State - sponsored terrorism and military brutality in Oromia, (August 17, 2016). <http://ayyaantuu.net/ethiopia-state-sponsored-terrorism-and-military-brutality-in-oromia/>. Accessed Apr 12, 2018.

India

Federal and state counterterrorism law and medical care in Chhattisgarh

Provisions in India's federal and state counterterrorism laws have been used in charges against doctors who provided care to members of groups banned by the government. The Unlawful Activities Prevention Act of 1967, a federal counterterrorism law, defines terrorism, "unlawful activity," and many offenses in connection to them.¹⁷⁰ A "terrorist act" includes actions likely to "threaten the unity, integrity, security... or sovereignty of India," or "strike terror in the people," using "any means of whatever nature," causing or likely to cause death or injury, property damage, or "disruption of any supplies or services essential to the life of the community in India or in any foreign country."¹⁷¹ An "unlawful activity" includes any action (including speech and communication) that supports claims for secession or that is intended to "disrupt the sovereignty and territorial integrity of India" or "cause disaffection against India."¹⁷² National and international human rights groups have expressed concerns that such definitions are so broad as to encompass activities of peaceful dissent and serve as a tool for targeting minority groups.¹⁷³

The Unlawful Activities (Prevention) Act allows the Home Ministry to immediately designate a group as a "terrorist organization" or "unlawful association" based on the definitions of terrorism and "unlawful activity."¹⁷⁴ Under Section 39, anyone who "invites support for a terrorist organization" intending to further the organization's activities is subject to up to ten years imprisonment.¹⁷⁵ Under Section 40, anyone who provides money or property to a terrorist organization and "has reasonable cause to suspect that it would or might be used for the purposes of terrorism" may be imprisoned for up to 14 years. There is no exception in the law for provision of medical care to members of proscribed groups.¹⁷⁶

The state of Chhattisgarh enacted its own counterterrorism legislation in the context of a longstanding government conflict with Maoist insurgents or "Naxalites," whose political parties are listed by the federal government as banned terrorist organizations.¹⁷⁷ The Chhattisgarh Public Security Act of 2005, drafted during escalations in Naxalite violence in the state, defines "unlawful activities" to include acts "which constitute a danger or menace to public order, peace and tranquility."¹⁷⁸ Section 8 states that anyone who "solicits any contribution for the purpose of an unlawful organization shall be punished with imprisonment" for up to three years. There is no exception for providing medical care.¹⁷⁹

Dr. Binayak Sen, a pediatrician and human rights activist devoted to "improving the health and welfare of some of the most marginalized and poverty-stricken people in India,"¹⁸⁰ had spoken out against government policies affecting the populations in "Maoist areas," where he reported widespread hunger and lack of basic health services threatened the survival of entire communities.¹⁸¹ He had also publicly criticized the Chhattisgarh Public Security Act on grounds that its broad definitions could be used to stifle peaceful dissent.¹⁸² In 2007, Dr. Sen was detained on charges that he acted as a courier for jailed Maoist leader Narayan Sanyal. Dr. Sen served as Sanyal's physician, visiting him multiple times in prison under supervision by prison authorities. After his arrest authorities searched Dr. Sen's home, collecting documents allegedly showing his links with Maoists.¹⁸³ Dr. Sen was convicted of sedition and conspiracy under the Indian Penal Code, as well as violations of Section 8 of the Chhattisgarh Public Security Act and several provisions of the Unlawful Activities (Prevention) Act. He was

170. The Unlawful Activities (Prevention) Act, 1967 (with Amendments). India. (2013). https://mha.gov.in/sites/default/files/A1967-37_0.pdf. Accessed June 6, 2018.

171. Ibid.

172. Bhuta N. Back to the Future | India's 2008 Counterterrorism Laws. *Human Rights Watch*. (July 27, 2010). <https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws>. Accessed April 20, 2018.

173. Ibid. Centre, South Asia Human Rights Documentation, Nair R. The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes. *Economic and Political Weekly*. 2009;44(4):10-14. <http://www.jstor.org/stable/40278825>. Accessed April 21, 2018.

174. Bhuta N. Back to the Future | India's 2008 Counterterrorism Laws. *Human Rights Watch*. (July 27, 2010). <https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws>. Accessed April 20, 2018.

175. The Unlawful Activities (Prevention) Act, 1967 (with Amendments). India. (2013). https://mha.gov.in/sites/default/files/A1967-37_0.pdf. Accessed June 6, 2018.

176. Ibid.

177. Government of India. List of banned terrorist organizations under Section 35 of the Unlawful Activities Prevention Act, 1967. (April 18, 2018) <http://mha.gov.in/related-links/banned-organizations>. Accessed April 20, 2018.

178. People's Union for Democratic Rights. The Chhattisgarh Special Public Safety Bill of 2005, a Memorandum to the President of India. (March 3, 2006). http://puodr.org/sites/default/files/pdfs/memo_on_chhattisgarh_bill.pdf. Accessed April 14, 2018.

179. Chhattisgarh Public Safety Act 2005, English version. Chhattisgarh vishesh jan suraksha adhiniyam, (2005). https://cpic.files.wordpress.com/2007/07/cspsa_english.pdf. Accessed June 6, 2018.

180. Binayak Sen's conviction: A mockery of justice. *The Lancet*. 2011;377(9760):98. <https://www.clinicalkey.es/playcontent/1-s2.0-S0140673611600032>. doi: 10.1016/S0140-6736(11)60003-2.

181. Vyawahare M. A Conversation with: Human Rights Activist Binayak Sen. *The New York Times*. (December 10, 2012). <https://india.blogs.nytimes.com/2012/12/10/a-conversation-with-human-rights-activist-dr-binayak-sen/>. Accessed June 7, 2018.

182. Ganguly M. "Between Two Sets of Guns" | Attacks on Civil Society Activists in India's Maoist Conflict. *Human Rights Watch*. (July 30, 2012). <https://www.hrw.org/report/2012/07/30/between-two-sets-guns/attacks-civil-society-activists-indias-maoist-conflict>. Accessed April 14, 2018.

183. Ibid.

sentenced to life in prison.¹⁸⁴ The Supreme Court granted him bail in 2011, stating that materials obtained from Dr. Sen's home were insufficient to prove he had provided active support to Maoists.¹⁸⁵

In 2009, authorities also arrested Dr. S.K. Haneef, who treated patients from tribal populations displaced from Chhattisgarh, alleging that he was providing medical care to Maoists.¹⁸⁶ In speaking of the tribal population, Dr. Haneef said, "[t]he police regard most of them as Maoist supporters, and have filed cases against a number of people, alleging that they provide food, medicine or shelter to the Maoists." Dr. Haneef was released on bail by an Andhra Pradesh district court, but after the case, he stopped working with the displaced population.¹⁸⁷ "I am a doctor and could have safely made money somewhere else," he said, "but I wanted to help people. But I was rewarded with a police case."¹⁸⁸

Jammu and Kashmir: harassment and violence against medical workers

Though no medical providers in Jammu and Kashmir have faced criminal charges for care to the sick and wounded, state security and emergency laws have supported a context of impunity for authorities who threaten and assault healthcare workers who provide care to protesters or those deemed a threat to "public order." Jammu and Kashmir state has its own state security law, the Public Safety Act of 1978, which allows the authorities to detain an individual without charge or trial for up to two years for offenses that include "acting in any manner prejudicial to the maintenance of public order."¹⁸⁹ UN experts expressed serious concern that the law has possibly been used in "direct retaliation" for human rights activism.¹⁹⁰ Emergency law has also been in force in the state for decades. The Armed Forces (Jammu and Kashmir) Special Powers Act of 1990 allows the authorities to arrest, detain, and perform search and seizure for anyone "against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence."¹⁹¹ The law also allows authorities to open fire or use deadly force in certain prohibited situations where the government has declared a "disturbed area."¹⁹² During times of civil unrest, medical workers treating protesters have come under fire.

During the height of the 2016 protests in the Indian-controlled areas of Jammu and Kashmir state, Physicians for Human Rights (PHR) reported multiple cases of harassment and violence towards healthcare workers who treated and transported protesters.¹⁹³ Movement was highly restricted during the unrest with the imposition of curfews and checkpoints. "Moving around, including trying to get to the hospital, has become so difficult. Despite all our identity cards, white coats, and stethoscopes, it is hard to get past the Indian security forces," said one Srinagar physician.¹⁹⁴

Multiple ambulance drivers reported being fired upon, harassed, and assaulted by security personnel while transporting wounded protesters. Sofi, who drove an ambulance during the height of the unrest, told PHR, "...the drivers whose route was through south Kashmir saw a lot of violence. They were beaten and humiliated often, their patients were beaten up inside the ambulances. There was a time in these months when no ambulance had any windows here."¹⁹⁵ The Doctors Association of Kashmir has issued multiple statements condemning the ongoing attacks, including the thrashing of an ambulance driver by security forces,¹⁹⁶ and beatings of staff. In one instance, security forces beat a nurse on his way to work. Forces had assaulted multiple staff members on their way home just a week prior.¹⁹⁷

184. Dr Binayak Sen found guilty of sedition, gets life imprisonment. Times of India. (December 24, 2010). <https://timesofindia.indiatimes.com/india/Dr-Binayak-Sen-found-guilty-of-sedition-gets-life-imprisonment/articleshow/7156208.cms>. Accessed April 21, 2018.

185. Ganguly M. "Between Two Sets of Guns" | Attacks on Civil Society Activists in India's Maoist Conflict. *Human Rights Watch*. (July 30, 2012). <https://www.hrw.org/report/2012/07/30/between-two-sets-guns/attacks-civil-society-activists-indias-maoist-conflict>. Accessed April 14, 2018.

186. Ibid.

187. Ibid.

188. Ibid.

189. India: Act No. 6 of 1978, Jammu and Kashmir Public Safety Act, 1978. <http://www.refworld.org/docid/3ae6b52014.html>. Accessed April 21, 2018.

190. OHCHR | UN experts urge India to release prominent human rights defender detained for over a month. (October 19, 2016). <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>. Accessed April 20, 2018.

191. Refworld | India: Act No. 21 of 1990, Armed Forces (Jammu and Kashmir) Special Powers Act. (1990). <http://www.refworld.org/docid/3ae6b52a14.html>. Accessed April 21, 2018.

192. Ibid.

193. Physicians for Human Rights. Blind to Justice: Excessive use of Force and Attacks on Health Care in Jammu and Kashmir, India. (December, 2016). https://s3.amazonaws.com/PHR_Reports/Kashmir-Report-Dec-2016.pdf. Accessed April 14, 2018.

194. Ibid.

195. Ibid.

196. Doctors Association Kashmir. DAK condemns thrashing of ambulance driver at Hajin. (October 18, 2017). <http://doctorsassociationkashmir.com/dak-condemns-thrashing-ambulance-driver-hajin/>. Accessed April 14, 2018.

197. Kashmir Observer. Stop attacks on medical staff: DAK. (July 31, 2016). <https://kashmirobsrver.net/2016/city-news/stop-attacks-medical-staff-dak-8988>. Accessed April 14, 2018.

Hospital medical staff said security forces entered hospitals, interrogated patients, and fired tear gas in or near health facilities. One surgeon reported, "I was operating on a young boy hit by a bullet, and two policemen walked into the operating theater with their shoes on and everything. They started asking me what was the boy's name and address. ... There are plain clothes policemen everywhere here and our patients run away because of the fear of arrests."¹⁹⁸

198. Physicians for Human Rights. *Blind to Justice: Excessive use of Force and Attacks on Health Care in Jammu and Kashmir, India*. (December 2016). https://s3.amazonaws.com/PHR_Reports/Kashmir-Report-Dec-2016.pdf. Accessed April 14, 2018.

Counterterrorism law: Broad language and sweeping application

Since the beginning of 2013, over 8,800 detainees have been convicted on terrorism-related charges in Iraq, and more than 3,000 of those have been sentenced to death, according to the Associated Press. 11,000 more are detained, awaiting trial, or being interrogated.¹⁹⁹ According to Human Rights Watch, Iraq is relying heavily on its 2005 Anti-Terrorism Law No. 13/2005, and to some extent the 2006 Law on the Combat of Terrorism in the Iraq Kurdistan Region No. 3/2006 (Kurdish Anti-Terrorism Law), to prosecute offenses tied to alleged affiliation with ISIS.²⁰⁰ The government has applied these laws to some health workers through detention and sometimes criminal charges for those who provided care under the ISIS regime, and at least one doctor has been deprived of the right to practice medicine.²⁰¹

The 2005 Iraqi Anti-Terrorism Law defines terrorism to include any act which aims to “disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos...”²⁰² The International Centre for Counter-Terrorism – The Hague described this definition as “very broad,” adding that the law refers to “terrorist motives” and “terrorist goals” but does not define these terms, which creates ambiguity and the potential for misuse of the law.²⁰³ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also called the 2005 Law “both vague and overly broad,” encompassing “serious and petty crimes, ranging from killings to vandalism.” The Special Rapporteur expressed serious concern in its application in the post ISIS era, particularly as it has been used to widely assign the death penalty.²⁰⁴

The American Bar Association Center for Human Rights (ABA) analyzed the 2005 Iraq Anti-Terrorism Law at the request of the Iraq National Commission on Human Rights. The ABA critiqued several sections of the law, including Article 2.3, which defines a terrorist as anyone who has “organized, chaired or participated in an armed terrorist gang.”²⁰⁵ The authors pointed out that this definition could encompass legitimate activities with no criminal intent.²⁰⁶ Article 5 on “Waiver of Punishment, Legal Excuses and Extenuating Legal Circumstances” offers no exceptions for medical or humanitarian assistance, and arrests of medical workers suggest that this “participation” is being interpreted to include medical activities performed within the networks established by the Islamic State, although it is still unclear which section of the law is being relied upon in such cases.²⁰⁷

The Kurdish areas of Iraq employ distinct regional laws for cases against alleged ISIS members, including the 2006 Kurdish Anti-Terrorism Law. Though this law expired in 2016, courts continue to employ it in some ISIS trials, with judges justifying its use because the crimes in question took place when the law was still in effect.²⁰⁸ The Kurdish Anti-Terrorism Law also defines terrorism in broad terms, including acts aimed at “undermining public order.”²⁰⁹ It sets out mandatory punishment of the death penalty for eight terrorism-related offenses, including support for terrorism, described as “facilitating the entry or exit of terrorists to and from the region, or harboring or assisting them...”²¹⁰ “Harboring or assisting” could potentially be

199. Associated Press. Iraq holding 19,000 on ISIL and terrorism allegations. (March 22, 2018). <https://www.thenational.ae/world/mena/iraq-holding-19-000-on-isil-and-terrorism-allegations-1.715167>. Updated 2018. Accessed June 5, 2018.

200. Human Rights Watch. Flawed Justice | Accountability for ISIS Crimes in Iraq. (December 5, 2017). <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>. Accessed March 14, 2018.

201. Abdul-Ahad G. How the people of Mosul subverted ISIS 'apartheid'. *The Guardian*. (January 30, 2018). <http://www.theguardian.com/cities/2018/jan/30/mosul-isis-apartheid>. Accessed March 15, 2018.

202. Law No. 13 of 2005: Anti-Terrorism Law. Iraq. (November 7, 2005). http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf. Accessed June 10, 2018.

203. Mehra T. Bringing (Foreign) Terrorist Fighters to Justice in a post-ISIS Landscape Part I: Prosecution by Iraqi and Syrian Courts. (December 22, 2017). <https://icct.nl/publication/bringing-foreign-terrorist-fighters-to-justice-in-a-post-isis-landscape-part-i-prosecution-by-iraqi-and-syrian-courts/>. Accessed June 5, 2018.

204. End of Visit Statement of the Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions on Her Visit to Iraq. *UN Office of the High Commissioner for Human Rights*. (November 2017). <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22452&LangID=E>. Accessed April 30, 2018.

205. Law No. 13 of 2005: Anti-Terrorism Law. Iraq. (November 7, 2005). http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf Accessed June 10, 2018

206. American Bar Association Center for Human Rights. Compliance of Iraq's Anti-Terrorism Law (2005) with International Human Rights Standards. (June 2014). https://www.americanbar.org/content/dam/aba/administrative/human_rights/ABA%20Center%20for%20Human%20Rights%20Analysis%20of%20Iraq%20CT%20Law.authcheckdam.pdf. Accessed April 30, 2018.

207. Human Rights Watch. Flawed Justice | Accountability for ISIS Crimes in Iraq. (December 5, 2017). <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>. Accessed March 14, 2018.

208. *Ibid.*

209. Amnesty International. Unjust and Unfair: The Death Penalty in Iraq. (April 2007). <https://www.amnesty.ie/wp-content/uploads/2016/04/Iraq-Unjust-and-unfair.-The-Death-Penalty-in-Iraq.pdf>. Accessed May 2, 2018.

210. Human Rights Watch. Caught in the Whirlwind: Torture and Denial of due Process by the Kurdish Security. (July 2007). <https://www.hrw.org/sites/default/files/reports/kurdistan0707webcover.pdf>. Accessed May 1, 2018.

applied to medical care, although so far none of the known arrests of medical workers have occurred in the Kurdish region.

Human Rights Watch has reported that in non-Kurdish regions, Iraq seems to be exclusively employing its 2005 Anti-Terrorism Law in ISIS cases, often using membership in the Islamic State as the sole basis for prosecution. In a context where the Islamic State seized control of swaths of land and set up its own bureaucracy in such areas, many Iraqis had no choice but to contribute to that system, as was the case with many medical providers who often practiced under threat from ISIS forces.²¹¹ In both Iraqi and Kurdish regions, cases are tried in counterterrorism courts, and Human Rights Watch has observed swift proceedings and shortcomings in due process, both pre-trial and in court. Arbitrary arrest and detention have been commonplace, and individuals are often convicted based on confessions extracted under duress and without cross-examinations of witnesses.²¹²

Legal charges or administrative sanction for medical workers who practiced under Islamic State rule

Many health practitioners stayed in regions taken over by the Islamic State and continued their practice voluntarily, often led by their commitment to the Hippocratic Oath.²¹³ However, it is well-known that some medical personnel were compelled to work for ISIS. The Safeguarding Health in Conflict Coalition reported multiple instances in 2016 of health workers who were threatened, abducted, or killed if they refused care to ISIS militants.²¹⁴ Nevertheless, Iraqi authorities have punished medical professionals who practiced under the Islamic State with criminal charges or administrative sanction. In Tal Kayf, a senior counterterrorism judge stated that the court was weighing whether to bring charges against a plastic surgeon for having worked in an ISIS-run hospital.²¹⁵ Another physician arrested in Tal Kayf in the spring of 2017 was still awaiting trial in April 2018.²¹⁶

Some medical workers have escaped arrest or prosecution only to face administrative sanction. One doctor named Wassam had just graduated medical school when the Islamic State overtook Mosul in 2014. She continued working in Al Jamhuri hospital under the new “two-tiered” system of the Islamic State, in which she and other medical staff were forced to give medical priority to militants and give lesser care or deny care to civilians.²¹⁷ “As a doctor, I am supposed to treat all people equally,” she said, “but they would force us to treat their own patients only. I felt disgusted with myself.”²¹⁸ Wassam responded by running a secret underground clinic for civilians in her basement, even performing surgical procedures there. She was nevertheless punished by Iraqi authorities once government forces regained control of the region. She was not allowed to sit for medical examination boards, which are necessary for her to continue medical practice.²¹⁹ “The ministry said they won’t give me security clearance because I had worked under ISIS administration,” she said. “I am back to square one. And you ask me why Mosul is angry? Of course we are angry, if you continue to treat us as if we are all ISIS.”²²⁰

211. Ibid.

212. Ibid.

213. Abdul-Ahad G. How the people of Mosul subverted ISIS 'apartheid'. *The Guardian*. (January 30, 2018). <http://www.theguardian.com/cities/2018/jan/30/mosul-isis-apartheid>. Accessed March 15, 2018.

214. Safeguarding Health in Conflict Coalition. Impunity must End: Attacks on Health in 23 Countries in Conflict in 2016.. (May 2017). <https://www.safeguardinghealth.org/sites/shcc/files/SHCC2017final.pdf>. Accessed May 3, 2018.

215. Human Rights Watch. Flawed Justice | Accountability for ISIS Crimes in Iraq. (December 5, 2017). <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>. Accessed March 14, 2018.

216. Associated Press. Iraq's IS trials bring swift verdicts, almost all guilty. *News 24*. (April 29, 2018). <https://www.news24.com/World/News/iraqs-isis-trials-bring-swift-verdicts-almost-all-guilty-20180429>. Accessed May 2, 2018.

217. Abdul-Ahad G. How the people of Mosul subverted ISIS 'apartheid'. *The Guardian*. (January 30, 2018). <http://www.theguardian.com/cities/2018/jan/30/mosul-isis-apartheid>. Accessed March 15, 2018.

218. Ibid.

219. Ibid.

220. Ibid.

Myanmar (Burma)

Legal frameworks supporting abuses by government authorities

Myanmar enacted its first anti-terrorism legislation in 2014 with Counter-Terrorism Law No. 23/2014, which criminalized financing of terrorism among other offenses.²²¹ There are as yet no cases of the counterterrorism law being directly applied to punish medical care to opposition groups. However, previous pieces of legislation have been linked to arbitrary arrest and detention by authorities, such as the Unlawful Associations Act of 1908 and the Peaceful Assembly and Peaceful Procession Law of 2011.²²² The UN Special Rapporteur on the situation of human rights in Myanmar reported in an April 2017 statement to the Human Rights Council that both laws “continue to be abused to arbitrarily arrest and detain individuals for exercising their rights to freedom of expression, peaceful assembly and association, including on the basis of their ethnicity or political beliefs.”²²³ Activists, including some doctors, have faced criminal charges for activities of peaceful protest or assembly,²²⁴ and many health workers have been arrested while attempting to provide care in remote areas, though reports of formal charges or links to specific statutes are difficult to find.²²⁵

Local authorities also have issued statements affecting or potentially affecting the ability of health workers to carry out their duties according to medical ethics. In February 2018, the Administrator of Muse Township in northern Shan State sent an official letter to health departments within the Muse District, instructing health facilities not to give medical treatment to “insurgents”²²⁶ and to “immediately inform the local military battalion” on any such insurgents who sought care.²²⁷ It is unclear, however, what reprisals would ensue for health workers who disobeyed this order. The letters were reportedly withdrawn a few days later.²²⁸

In the past, however, there have been such reprisals. Burmese security forces have engaged in kidnapping, arrests, and harassment of health workers offering care to populations in areas, such as Shan State, where insurgent forces are operating.²²⁹ More recently, Backpack Health Workers, who provide mobile healthcare in remote areas of Myanmar to ethnic minority and displaced populations, reported multiple attacks, harassment, and arrests while carrying out their medical duties.²³⁰ In 2011, The Guardian reported that since the group’s founding in 1998, nine health workers and one traditional birth attendant had been killed by gunfire or landmines, and many had been arrested.²³¹ In October 2011, members of the Myanmar Army abducted two of the group’s medics on their way to care for a woman with postpartum hemorrhage, according to Physicians for Human Rights. Eyewitnesses stated the two were unarmed and carrying clearly visible medical equipment. The medics never reached the patient, who died without receiving care, and both health workers were held in detention until January 2012.²³²

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221. Pyidaungsu Hluttaw Law No. 23/2014 - Counter-Terrorism Law (Burmese). (2014). <http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2014/pyidaungsu-hluttaw-law-no-23-2014-counter-terrorism-law-burmese.html>. Accessed May 31, 2018.
 222. The Unlawful Associations Act. Myanmar. (1908). <http://www.icnl.org/research/library/files/Myanmar/UNLAWFUL.pdf>. Accessed May 30, 2018.
Amnesty International. Urgent action: Immediately release Kachin prisoner of conscience. (May 3, 2017). https://www.amnestyusa.org/files/uaa08317_1.pdf. Accessed May 31, 2018.
Right to Peaceful Assembly and Peaceful Procession Law, 2011 (Pyidaungsu Hluttaw Law No. 15/2011). (December 2, 2011). http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=93087&p_country=MMR&p_count=86. Accessed June 1, 2018.
 223. United Nations Human Rights Council. Resolution adopted by the human rights council on 24 March 2017 (34/22): Situation of human rights in Myanmar. (April 3, 2017). <http://burmacampaign.org.uk/media/G1708198.pdf>. Accessed May 30, 2018.
 224. Amnesty International. Urgent action: Election candidate held for peaceful protest. (October 20, 2015). <https://www.amnesty.org/download/Documents/ASA1627052015ENGLISH.pdf>. Accessed June 1, 2018.
Burma Campaign for Human Rights, Democracy, and Development in Burma. A community leader jailed in Burma – free Tun Aung. (October 12, 2012). <http://www.burmacampaign.org.uk/a-community-leader-jailed-in-burma-free-tun-aung/8/>. Accessed June 1, 2018.
 225. Backpack Health Worker Team. 2016 annual report: Provision of primary healthcare among the internally displaced persons and vulnerable populations of Burma. (May 25, 2017). <http://backpackteam.org/wp-content/uploads/2017/06/BPHWT-2016-Annual-Report-25-05-2017.pdf>. Accessed May 30, 2018.
Cynthia Maung: Filling the gap in Burma’s healthcare. (July 25, 2016). <http://rmaward.asia/rmtli/filling-the-gap-in-burmas-health-care/>. Accessed June 1, 2018.
Physicians for Human Rights. Backpack medics released. (January 23, 2012). <http://physiciansforhumanrights.org/blog/backpack-medics-released.html>. Accessed May 31, 2018.
 226. Shan Herald Agency for News. Hein H. Muse district orders health departments not to treat injured soldiers from ethnic armed groups. (February 20, 2018). <https://www.bnionline.net/en/news/muse-district-orders-health-departments-not-treat-injured-soldiers-ethnic-armed-groups>. Accessed June 1, 2018.
 227. Soe P. Muse township bans medical treatment to wounded ethnic soldiers. DVB News. (February 19, 2018). <http://www.dvb.no/news/muse-township-bans-medical-treatment-wounded-ethnic-soldiers/79773>. Accessed June 1, 2018.
 228. Shan Herald Agency for News. Hein H. Muse district orders health departments not to treat injured soldiers from ethnic armed groups. (February 20, 2018). <https://www.bnionline.net/en/news/muse-district-orders-health-departments-not-treat-injured-soldiers-ethnic-armed-groups>. Accessed June 1, 2018.
 229. Footer KHA, Meyer S, Sherman SG, Rubenstein L. On the frontline of eastern Burma’s chronic conflict—listening to the voices of local health workers. *Social Science & Medicine*. 2014;120:378-386. doi: 10.1016/j.socscimed.2014.02.019.
 230. Backpack Health Worker Team. 2016 annual report: Provision of primary healthcare among the internally displaced persons and vulnerable populations of Burma. (May 25, 2017). <http://backpackteam.org/wp-content/uploads/2017/06/BPHWT-2016-Annual-Report-25-05-2017.pdf>. Accessed May 30, 2018.
 231. Tang A. In eastern Burma conflict, medics face the same dangers as those they treat. The Guardian. (January 25, 2011). <http://www.theguardian.com/world/2011/jan/25/thailand-burma-conflict-medic-tang>. Accessed June 1, 2018.
 232. Physicians for Human Rights. Backpack medics released. (January 23, 2012). <http://physiciansforhumanrights.org/blog/backpack-medics-released.html>. Accessed May 31, 2018.

The Ramon Magsaysay Foundation also reported in 2016 that many Backpack workers continued to be arrested and tortured by the government.²³³ The organization reported that obstacles to care continued throughout 2016, including multiple government checkpoints, fees to bring medicines into certain areas, and harassment by military personnel. In the Kachin and northern Shan states, “offensive military operations” by the Myanmar Army and military clashes with ethnic armed groups meant that staff were “unable to travel freely... and face[d] the risks of being arrested/killed by the Burma Army or being maimed/killed by landmines in order to provide health care to their targeted populations.”²³⁴

233. Cynthia Maung: Filling the gap in Burma's healthcare. (July 25, 2016). <http://rmaward.asia/rmtli/filling-the-gap-in-burmas-health-care/>. Accessed June 1, 2018.

234. Backpack Health Worker Team. 2016 annual report: Provision of primary healthcare among the internally displaced persons and vulnerable populations of Burma. (2017). <http://backpack-team.org/wp-content/uploads/2017/06/BPHWT-2016-Annual-Report-25-05-2017.pdf>. Accessed May 30, 2018.

Nigeria

Counterterrorism law and medical care

In 2011, Nigeria enacted its first comprehensive counterterrorism legislation, the 2011 Terrorism (Prevention) Act, amended by the 2013 Terrorism (Prevention) (Amendment) Act.²³⁵ The 2011 Act and 2013 Amendment define and set out punishment for terrorism and related offenses, including financing, support, and training.²³⁶ According to the 2013 Amendment, anyone who “omits to do anything that is reasonably necessary to prevent an act of terrorism, assists or facilitates the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act... commits an offence under this Act and is liable on conviction to maximum of death sentence.”²³⁷ In Section 5, support to an act of terrorism or a terrorist group includes providing a wide range of resources including “material assistance,” “training,” and “moral assistance,” which are not further defined. Under Section 13 on financing, a person commits an offense who “makes available funds, property or other services by any means to terrorists or terrorist groups, directly or indirectly... having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit an offence under this Act or in breach of the provisions of this act.”²³⁸ Neither the 2011 Act nor the 2013 Amendment make any exceptions for medical care or humanitarian action,²³⁹ thus terms such as “material or moral assistance,” “training,” and “making available property or other services” could be applied to medical care. Although we were unable to obtain any records of specific terrorism charges against health workers, at least one doctor has been incarcerated for alleged connections to Boko Haram.²⁴⁰

Since 2016, the Nigerian government has held discussions on a new anti-terrorism bill, the Terrorism (Prevention and Prohibition) Bill 2016.²⁴¹ This bill would repeal the 2011 Act and the 2013 Amendment, incorporating and updating their provisions in one unified counterterrorism law. The new bill imposes stiffer punishments for certain terrorism offenses, defines terrorism in broader terms, and incorporates new offenses, including under financing of terrorism.²⁴² Progress has stalled since the federal government postponed a stakeholders’ validation forum scheduled for September 2016.²⁴³ However, the Attorney General of the Federation and the Minister of Justice stated in an April 2018 counterterrorism regional workshop that a new bill was underway, the provisions of which “seek to enhance coordination amongst relevant law enforcement, intelligence, prisons and security agencies.”²⁴⁴

October 22, 2012, army and police arrested Dr. Muhammad Mari Abba, a physician and consultant for the WHO, in Yobe state as he was reportedly returning from a WHO program.²⁴⁵ According to media reports, the authorities accused him of carrying medical equipment used to provide medical services to Boko Haram.²⁴⁶ Amnesty International reported in 2016 that Dr. Abba had been held incommunicado since his arrest in 2012.²⁴⁷ In May 2016, he sued the government, demanding that the Federal High Court in Abuja declare his four-year detention illegal, unlawful, unconstitutional, and an infringement on his fundamental rights to personal liberty.²⁴⁸ In June 2017, a federal judge ordered the Attorney General of the

235. Terrorism (Prevention) (Amendment) Act 2013. Nigeria. (2013). <https://nigeriaii.org/ng/other/Terrorism%20%28Prevention%29%20%28Amendment%29%20Act%202013.pdf>.

Accessed June 5, 2018. Terrorism (Prevention) Act, 2011. Nigeria. (2011). [http://www.lawnigeria.com/LawsoftheFederation/Terrorism-\(Prevention\)-Act,-2011.html](http://www.lawnigeria.com/LawsoftheFederation/Terrorism-(Prevention)-Act,-2011.html). Accessed June 5, 2018.

236. *Ibid*

Ajileye A. Legal Framework for the Prevention of Terrorism in Nigeria. (2015). https://www.researchgate.net/publication/277021838_Legal_Framework_for_the_Prevention_of_Terrorism_in_Nigeria. Accessed June 6, 2018.

237. Terrorism (Prevention) (Amendment) Act 2013. Nigeria. (2013). <https://nigeriaii.org/ng/other/Terrorism%20%28Prevention%29%20%28Amendment%29%20Act%202013.pdf>. Accessed June 5, 2018.

238. *Ibid*.

239. *Ibid*.

240. Omonobi K. WHO, Boko Haram's doctor arrested. Vanguard News. (August 9, 2013). <https://www.vanguardngr.com/2013/08/who-boko-harams-doctor-arrested/>. Accessed June 6, 2018.

241. Oyedele D. House Moves to Strengthen Anti-Terrorism Laws. (November 16, 2016). <https://www.thisdaylive.com/index.php/2016/11/16/house-moves-to-strengthen-anti-terrorism-laws/>. Accessed June 7, 2018.

242. *Ibid*.

243. Anjorin S. FG postpones stakeholders forum on terrorism bill. Business Day. (September 15, 2016). <http://www.businessdayonline.com/fg-postpones-stakeholders-forum-on-terrorism-bill/>. Accessed June 7, 2018.

244. Adesomoju A. AGF seeks stiffer sanctions against terrorists, financiers in new bill. Punch NG News. (April 10, 2018). <http://punchng.com/agf-seeks-stiffer-sanctions-against-terrorists-financiers-in-new-bill/>. Accessed June 7, 2018.

245. Chioma U. Medical doctor detained since 2012 drags FG to court, demands N500m damages. (May 16, 2016) <http://thenigerialawyer.com/medical-doctor-detained-since-2012-drags-fg-to-court-demands-n500m-damages/>. Accessed June 6, 2018.

246. Omonobi K. WHO, Boko Haram's doctor arrested. Vanguard News. (August 9, 2013). <https://www.vanguardngr.com/2013/08/who-boko-harams-doctor-arrested/>. Accessed June 6, 2018.

247. Amnesty International. Report 2015/16 - Nigeria. (February 2016). <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>. Accessed Jun 6, 2018.

248. Chioma U. Medical doctor detained since 2012 drags FG to court, demands N500m damages. (May 16, 2016) <http://thenigerialawyer.com/medical-doctor-detained-since-2012-drags-fg-to-court-demands-n500m-damages/>. Accessed June 6, 2018.

Federation of the Nigerian Army to produce Dr. Abba in court. In response to reports that Dr. Abba was “missing,” the judge stated that as there was a record of charges filed in 2015 against Dr. Abba, authorities must know his location.²⁴⁹ As of this date, the status of Dr. Abba’s trial, his release, or the outcome of his lawsuit, is not clear.

Laws on reporting of gunshot wounds and harassment of medical staff

Other legislation has also led to harassment of health providers and obstruction of care for the wounded. The Robbery and Firearms (Special Provisions) Act of 2004 states that “[i]t shall be the duty of any person, hospital or clinic that admits, treats or administers any drug to any person suspected of having bullet wounds to immediately report the matter to the police.”²⁵⁰ Failure to report is punished by five years in prison or, in the case of a hospital or clinic, closure of the facility and a large fine.²⁵¹ Enforcement of this law has led to refusal of treatment for many gunshot victims. Following a 2005 visit to Nigeria, the former UN Special Rapporteur on extrajudicial, summary, or arbitrary executions reported that “police have systematically encouraged a practice whereby medical personnel will not treat individuals reporting with bullet or knife wounds before receiving police authorization. Since permission is often delayed or withheld, many casualties occur.”²⁵²

During protests by pro-Biafra groups in 2015-2016, Amnesty International reported many institutions and health workers refused treatment to gunshot victims who did not produce a letter of authorization from the police.²⁵³ One 35-year-old man shot in Port Harcourt in November 2015 said “[t]he hospitals were afraid of the police. I was bleeding but no hospital agreed to treat me. The hospitals said they do not treat bullet wounds.”²⁵⁴ He eventually received treatment, but others died from delays in finding a hospital willing to treat gunshot wounds, according to other witnesses interviewed for the report.²⁵⁵

The Nigerian National Assembly attempted unsuccessfully on two separate occasions to amend the 2004 Robbery and Firearms Act.²⁵⁶ To address the trends of increasing discrimination in medical care based on the type of wound or injury, as well as the need for better protection of medical care, the Rivers state Ministry of Health agreed to collaborate with the International Committee of the Red Cross in 2016 to create a working group.²⁵⁷ This working group, comprised of public and private sector health professionals and academics, developed a protocol and advocacy tool outlining the rights and responsibilities of health professionals providing medical care in emergencies. The group also collaborated with Nigerian police at the federal level, developing a written memorandum regarding the Inspector General of Police’s directive on medical treatment to people with gunshot wounds.²⁵⁸

In December 2017, the President signed into law the Compulsory Treatment and Care for Victims of Gunshot Act. The Act declares that hospitals must accept any victims of gunshot wounds for immediate treatment, with or without police authorization, and that police must facilitate the immediate treatment of such victims.²⁵⁹ Section 13 of the law states that “any police officer or other security agents or hospital who stands by or omits to do his bit which results in the unnecessary death of any person with bullet wounds commits an offence and shall on conviction be liable to 5 years imprisonment a fine of N50,000.00 or both.”²⁶⁰ The Rivers state working group and the 2017 law mark important steps in Nigeria’s protection of medical care for people with gunshot wounds and those who provide it.

249. Olasanmi K. Boko haram: Court orders AGF, army, IGP to produce WHO consultant in court. *Leadership Newspaper*. (June 5, 2017). <https://leadership.ng/2017/06/05/boko-haram-court-orders-agf-army-igp-produce-consultant-court/>. Accessed June 6, 2018.

250. Robbery and Firearms (Special Provisions) Act. Nigeria. (2004). <http://lawsfnigeria.placng.org/view2.php?sn=483>. Accessed June 6, 2018.

251. *Ibid.*

252. UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, Alston P. Mission to Nigeria, E/CN.4/2006/53/Add.4. *Commission on Human Rights*. (2006). <https://undocs.org/E/CN.4/2006/53/Add.4> Accessed June 6, 2018.

253. Amnesty International. Bullets were Raining Everywhere: Deadly Repression of Pro-Biafra Activists. (2016). <https://reliefweb.int/sites/reliefweb.int/files/resources/AFR4452112016ENG-LISH.pdf>. Accessed June 6, 2018.

254. *Ibid.*

255. *Ibid.*

256. Abdul Ganiyu M. Compulsory Treatment and Care for Victims of Gunshot Act 2017, an appraisal. (2018). https://www.academia.edu/35587445/COMPULSORY_TREATMENT_AND_CARE_FOR_VICTIMS_OF_GUNSHOT_ACT_2017_AN_APPRAISAL. Accessed June 6, 2018.

257. International Committee of the Red Cross. Working towards safer access to health care in rivers state. (2016). <https://www.icrc.org/en/document/working-towards-safer-access-health-care-rivers-state>. Accessed June 6, 2018.

258. *Ibid.*

259. Abdul Ganiyu M. Compulsory Treatment and Care for Victims of Gunshot Act 2017, an appraisal. (2018). https://www.academia.edu/35587445/COMPULSORY_TREATMENT_AND_CARE_FOR_VICTIMS_OF_GUNSHOT_ACT_2017_AN_APPRAISAL. Accessed June 6, 2018.

260. *Ibid.*

Pakistan

Laws and regulations

The Code of Ethics for the Pakistan Medical and Dental Association prohibits the discrimination in medical care based on a range of factors, including criminal record.²⁶¹ Pakistan's Injured Persons and Emergency (Medical Aid) Act of 2004 declares that medical care for the injured in emergencies must be given priority, prohibits police interference in such care or harassment of those transporting the injured to a hospital, and states that medical aid and treatment must be given before any person is taken to a police station.²⁶² However, current counterterrorism laws as written may supersede other laws,²⁶³ and they have been used as a tool to punish actions related to medical care.

Pakistan has enacted several laws on counterterrorism, including the 1997 Anti-Terrorism Act (ATA), the 2014 Protection of Pakistan Act (PPA), and the 2015 Pakistan Army (Amendment) Act (PAAA), which authorized military courts to try civilian terrorism cases.²⁶⁴ The PPA gave authorities expanded powers for preventive detention, incommunicado detention, and retrospective authorization for arbitrary arrest and detention, and gave broader license to law enforcement to "shoot at sight."²⁶⁵ Although the PPA lapsed in 2016 and the military courts have not functioned since January 2017, Pakistan's Research Society for International Law reports that these acts set precedents in the country's counterterrorism strategy that are "deeply concerning from a human rights perspective."²⁶⁶

The primary counterterrorism legislation in Pakistan is the Anti-Terrorism Act, which defines terrorist acts, authorizes the federal government to designate a group as a "proscribed organization," creates special anti-terrorism courts, and includes a provision for anti-terrorism law to supersede other general laws.²⁶⁷ Section 6 of the law lists actions that constitute acts of terrorism if intended to "coerce and intimidate...the Government, the public, a section of the public," or "create a sense of fear or insecurity in society" or to "advance a religious, sectarian or ethnic cause."²⁶⁸ The list of actions is broad, including "serious coercion or intimidation of a public servant," and communicating "ideas, teachings, and beliefs" via radio or "any other means of communication without explicit approval of the government."²⁶⁹

Section 11F of the ATA defines support to proscribed organizations and declares that a person who "solicits or invites support" or "solicits, collects or raises money or property" for a proscribed organization commits an offense under the law.²⁷⁰ Under Section 11L, anyone who "believes or suspects" that another person has committed a terrorism offense and does not immediately inform authorities will be prosecuted. There are no exceptions for medical care or humanitarian action.²⁷¹ Furthermore, the law is used in preliminary reports of charges filed by police who are often not well-versed in the law, and the Supreme Court has cautioned lower courts against using charges under counterterrorism legislation for ordinary criminal offenses under the Anti-Terrorism Act.²⁷²

Practice: Doctors charged under the Anti-Terrorism Act

Many health workers have faced charges under the ATA. On October 5, 2015, the Counter Terrorism Department (CTD) raided the Zubaida Medical Centre in Bahadurabad, arresting two patients for alleged membership in a terrorist organization. The CTD also arrested three doctors at the Medical Centre for having provided medical care to terrorists without informing the authorities. The doctors were released only after making statements that they were unaware the

261. Pakistan Medical and Dental Council. Code of Ethics for Medical and Dental Practitioners. (2001). <http://www.pmdc.org.pk/Ethics/tabid/101/Default.aspx>. Accessed April 14, 2018.

262. Injured Persons (Medical Aid) Act (Act no. XII of 2004). Pakistan. (December 8, 2004). http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86209&p_country=PAK&p_count=447. Accessed April 20, 2018.

263. The Anti-Terrorism Act, 1997 (XXVII of 1997). Pakistan. (1997).

264. *Ibid.*

Ahmad T. Legal Provisions on Fighting Extremism: Pakistan. *Law Library of Congress*. (November 2015). <https://www.loc.gov/law/help/fighting-extremism/pakistan.php>. Accessed June 8, 2018.

265. Dawn News. ICJ terms Protection of Pakistan Act as "oppressive and ineffective". (June 30, 2016). <http://www.dawn.com/news/1268211>. Accessed June 8, 2018.

266. Research Society for International Law, Pakistan. Human Rights and Pakistan's Counter-Terrorism Legislative Landscape. (January 2017). <http://rsilpak.org/wp-content/uploads/2017/05/2.-2017-Human-Rights-and-Pakistan%E2%80%99s-Counter-Terrorism-Legislative-Landscape-Final.pdf>. Accessed June 6, 2018.

267. The Anti-Terrorism Act, 1997 (XXVII of 1997). Pakistan. (1997).

268. *Ibid.*

269. *Ibid.*

270. *Ibid.*

271. *Ibid.*

272. Iqbal N. SC warns against use of Anti-Terrorism Act over 'non-terrorist actions'. Dawn News. (August 15, 2017). <https://www.dawn.com/news/1351635>. Accessed April 14, 2018.

Soomro I. 15 teachers booked under Anti-Terror Law for being absent, misusing buildings. (February 11, 2018). <https://www.thenews.com.pk/print/279482-15-teachers-booked-under-ata-for-being-absent-misusing-buildings>. Accessed April 14, 2018.

patients were militants.²⁷³

In another case involving alleged medical treatment to terrorists, federal paramilitary forces arrested Dr. Asim Hussain on August 26, 2015 in Karachi, placing him under 90 days preventive detention. He was later charged with multiple offenses, including financing terrorist activity and harboring and providing medical care to terrorists.²⁷⁴ A judge found there was sufficient evidence to try Dr. Hussain in an anti-terrorism court (ATC), evidence which included documents seized from Ziaddun hospital, owned by Hussain, and a statement from Hussein's associate, Dr. Sattar, that "several terrorists associated with political and religious outfits were given medical attention."²⁷⁵ Dr. Sattar, who was also arrested, reported Hussein had provided discounted rates for militants treated at the hospital, but the defense argued this statement was acquired under duress. Human Rights Watch expressed concern about the lack of transparency and due process,²⁷⁶ as well as conditions of his treatment in custody leading to poor psychological health.²⁷⁷ Dr. Hussain was released on bail in March 2017,²⁷⁸ and media reports in October 2017 indicated that ATC proceedings would continue.²⁷⁹

In December 2017, judges entered the Taluka Hospital Mehar in Dadu district, finding many staff absent and hearing multiple complaints from patients about the quality of services. After this, authorities arrested six doctors and other hospital staff, filing charges against a total of 27 health workers.²⁸⁰ The First Information Report filed by police alleged infractions such as unauthorized absence from duty, destroying government property, and giving expired medicines to patients, with provisions from the ATA used as the basis for some of the charges. During a protest response, the leader of the local chapter of the Pakistani Medical Association stated, "It has never happened in the history of Pakistan that doctors are handcuffed and produced in the anti-terrorism court like terrorists."²⁸¹ The sections from the ATA were eventually withdrawn from the report.²⁸²

273. Tanoli I. Three doctors held for treating 'militants' released. *Dawn News*. (November 18, 2015). <http://www.dawn.com/news/1220375>. Accessed April 14, 2018.

274. Arqam A. The curious case of Dr Asim. *Newsline*. (September 2016). <http://newsline magazine.com/magazine/curious-case-dr-asim/>. Accessed April 14, 2018.

275. Ashraf Z. Dr Asim Hussain to be tried in ATC. *The Express Tribune*. (December 22, 2015). <https://tribune.com.pk/story/1014195/dr-asim-hussain-to-be-tried-in-atc/>. Accessed June 8, 2018.

276. Arqam A. The curious case of Dr Asim. *Newsline*. (September 2016). <http://newsline magazine.com/magazine/curious-case-dr-asim/>. Accessed April 14, 2018.

277. Human Rights Watch. Pakistan: Independently investigate Aftab Ahmad's death. (2016) <https://www.hrw.org/news/2016/05/06/pakistan-independently-investigate-aftab-ahmads-death>. Accessed April 14, 2018.

278. *Ibid*.

279. Husain ZA. ATC considers making JIT's findings against Dr Asim part of trial. (October 31, 2017). <https://www.thenews.com.pk/print/240797-ATC-considers-making-JITs-findings-against-Dr-Asim-part-of-trial>. Accessed June 8, 2018.

280. Khushik IA. PMA urges Sindh govt to resolve ATC FIR issue against medical staff. *Daily Times UK*. (December 10, 2017). <https://dailytimes.com.pk/156317/pma-urges-sindh-govt-resolve-atc-fir-issue-medical-staff/>. Accessed June 10, 2018.

281. The Express Tribune. Protests against arrests of doctors, paramedics. (December 10, 2017). <https://tribune.com.pk/story/1580291/1-protests-arrests-doctors-paramedics/>. Accessed April 14, 2018.

282. Soomro I. 15 teachers booked under Anti-Terror Law for being absent, misusing buildings. (February 11, 2018). <https://www.thenews.com.pk/print/279482-15-teachers-booked-under-ata-for-being-absent-misusing-buildings>. Accessed April

Peru

Legal frameworks

Article 7 of Peru's Constitution of 1993 (rev. 2009), states that “[e]veryone has the right to protection of his health, ... just as it is his duty to contribute to [its] development and defense.”²⁸³ Article 9 affirms the state's responsibility to draft, direct, and oversee enforcement of national health policy “to facilitate equal access for everyone to health services.”²⁸⁴ Despite this stated commitment to equal access, broadly written counterterrorism laws have been used to prosecute medical workers who provide care to all.

Article 4 of Peru's counterterrorism law, Decree Law 25475 of 1992 (DL 25475) defines collaboration in terrorism to include the “knowing transfer of persons belonging to terrorist groups or linked to their criminal activities, as well as providing any type of help that favors their escape.”²⁸⁵ It provides no exceptions for the provision of medical care.²⁸⁶ This provision has been used to charge health workers who treated members of the “Sendero Luminoso” or “Shining Path,” labeled as a terrorist group by the state.²⁸⁷ The Inter-American Commission on Human Rights has described the counterterrorism law as “abstract and vague,” violating a key tenet of criminal law that “the individual needs to know precisely what acts and omissions may trigger his or her criminal liability.”²⁸⁸

Medical providers have also faced charges of treason under Decree Law 25659 of 1992 (DL 25659),²⁸⁹ as the definition of treason in this law was identical to the definition of terrorism in DL 25475. Decree Law 25659 declared that “[t]he commission of acts set out in Article 2 of the Decree Law 25475 constitute the crime of treason,” provided that “certain modalities” were employed, and stipulated that the trial of such offenses would be consistent with procedures set out in DL 25475.²⁹⁰ This use of a single definition for two separate crimes, giving discretion to courts as to which law applies in a particular situation, was later found to violate the principle of legality by the Constitutional Court of Peru in its 2003 review of multiple provisions of the anti-terror and treason laws.²⁹¹ Although the Court ruled that some elements of these laws were unconstitutional or needed further interpretation, multiple provisions were upheld, and at least one medical provider was prosecuted on terrorism-related charges after the review.²⁹²

Provisions in DL 25475, some of which have been amended or are no longer in force, have deprived health workers of rights to due process and a fair trial. The law allowed trials by “faceless judges,” in which judges' identities were kept secret and they were not required to sign judgments, until the practice was abolished by Decree Law 26671 of 1996.²⁹³ Pretrial detention without a court order was allowed for up to 15 days, including “incommunicado” detention,²⁹⁴ a practice the Inter-American Commission on Human Rights has declared conducive to torture and false confession.²⁹⁵ The Constitutional Court held in 2003 that pretrial detention was allowed under Peruvian penal code, but said that authority for incommunicado detention needed to be clearly delineated.²⁹⁶ Decree Law 922 passed in 2003 stipulated that a judge

283. Constitution of Peru 1993 (rev. 2009). Peru. (2009). https://www.constituteproject.org/constitution/Peru_2009?lang=en. Accessed May 9, 2018.

284. *Ibid.*

285. Establecen La Penalidad Para Los Delitos De Terrorismo Y Los Procedimientos Para La Investigación, La Instrucción Y El Juicio Decreto Ley No. 25475. Peru. (1992). http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/C2A2E22765BE9D2805257A6E0057619E/%24FILE/DL_25475.pdf. Accessed May 10, 2018.

286. *Ibid.*

287. McDonald A. De la Cruz-Flores v. Peru, case summary. *Loyola of Los Angeles International and Comparative Law Review* (ILR). 2014;36. <https://iachr.ils.edu/cases/de-la-cruz-flores-v-peru>. Accessed May 9, 2018.

Inter-American Commission on Human Rights. Pollo Rivera V. Peru, Report no. 42/07, Petition 156-05. (July 2007). http://www.worldcourts.com/iamchr/eng/decisions/2007.07.23_Pollo_Rivera_v_Peru.pdf. Accessed May 9, 2018.

288. Inter-American Commission on Human Rights: Organization of American States. Second Report on the Situation of Human Rights in Peru. (June 2000). <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>. Accessed May 9, 2018.

289. Inter-American Commission on Human Rights. Pollo Rivera v. Peru, Report no. 42/07, Petition 156-05. (July 2007). http://www.worldcourts.com/iamchr/eng/decisions/2007.07.23_Pollo_Rivera_v_Peru.pdf. Accessed May 9, 2018.

290. Decreto Ley No. 25659 Por El Que Se Regula El Delito De Traición a La Patria. Peru. (August 13, 1992). <https://peru.justia.com/federales/decretos-leyes/25659-aug-12-1992/gdoc/>. Accessed May 10, 2018.

291. Ruebner R, Burns LA, Duignan BC, et al. The war on terrorism: Peru's past and present, a legal analysis. *John Marshall Institutional Repository: Center and Clinic White Papers*. (2004). <https://repository.jmls.edu/whitepapers/6>. Accessed May 16, 2018.

292. *Ibid.*

293. Ruebner R, Burns LA, Duignan BC, et al. The war on terrorism: Peru's past and present, a legal analysis. *John Marshall Institutional Repository: Center and Clinic White Papers*. (2004). <https://repository.jmls.edu/whitepapers/6>. Accessed May 16, 2018.

294. *Ibid.*

295. Inter-American Commission on Human Rights: Organization of American States. Second Report on the Situation of Human Rights in Peru. (June 2000). <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>. Accessed May 9, 2018.

296. Ruebner R, Burns LA, Duignan BC, et al. The war on terrorism: Peru's past and present, a legal analysis. *John Marshall Institutional Repository: Center and Clinic White Papers*. (2004). <https://repository.jmls.edu/whitepapers/6>. Accessed May 16, 2018.

could order incommunicado detention.²⁹⁷ The Constitutional Court upheld provisions in section 12(f) of DL 25475 that does not allow access to defense counsel until after a suspect has made a statement in the presence of a Public Ministry representative.²⁹⁸ It reinterpreted the provision excusing police or armed forces involved in preparing the case file from testifying in court, declaring the provision was not unconstitutional.²⁹⁹

Doctors prosecuted for providing medical care

On March 27, 1996, the National Intelligence Directorate (DINCOTE) arrested pediatrician Dr. Maria de la Cruz-Flores without a court order, alleging that she had been providing medical care to members of the Shining Path under the alias of “Eliana”.³⁰⁰ After her initial court appearance where she denied these charges, Dr. de la Cruz-Flores was held for over a month, denied communication with family or her lawyer, and given limited access to medical care.³⁰¹ Dr. de la Cruz-Flores’s case was tried before the Special Criminal Chamber and the Special Terrorism Chamber of the Lima Supreme Court, the latter of which tried her in a faceless tribunal closed to the public. During these proceedings, she and her counsel had limited access to her case file, little detail on the charges against her, and no permission to question witnesses incriminating her.³⁰² On November 21, 1996, Dr. de la Cruz-Flores was convicted by the Special Criminal Chamber convicted of “unlawful collaboration with terrorists” under Article 4 of DL 25475, at least in part based on provision of medical care to members of the Shining Path, and sentenced to 20 years in prison.³⁰³

In 2003, Marcelino Tineo Silva and more than 5,000 citizens filed a lawsuit challenging the constitutionality of provisions in Decree Law 25475.³⁰⁴ After the court ruled that certain elements of the law were unconstitutional and several amendments were enacted, the National Terrorism Chamber declared that oral judgments in previous terrorism proceedings were null.³⁰⁵ Subsequently, Dr. de la Cruz-Flores’s charges were declared unsubstantiated, yet she remained imprisoned for over one more year. She was conditionally released in July 2004, having served more than eight years in detention.³⁰⁶ Her case was brought to the Inter-American Court of Human Rights (IACtHR), which issued a finding on November 18, 2004,³⁰⁷ that Peru had violated the principle of legality in her prosecution and conviction, for reasons including “penalizing a medical activity, which is not only an essential lawful act, but which it is also the physician’s obligation to provide.”³⁰⁸ The IACtHR also stated that her conviction violated the right to freedom from ex post facto laws, as some of the events used to incriminate her occurred before the passage of DL 25475 in 1992.³⁰⁹

Another physician, Dr. Luis Williams Pollo Rivera, was also arrested by DINCOTE on November 6, 1992, for having provided medical services to the Shining Path. The arrest followed statements made during the prosecution of a Shining Path member, who stated that Dr. Pollo Rivera had amputated his leg.³¹⁰ Dr. Pollo Rivera stated he was taken to DINCOTE offices, interrogated and tortured, resulting in damage to his spine that left him with leg weakness and intense pain necessitating use of a wheelchair.³¹¹ He was tried, convicted, and sentenced to life in prison for the crime of treason by a panel of faceless judges who presided over military courts. He filed an appeal and was acquitted in 1994 by the Specialized Chamber for Terrorist Crimes, following a written statement by the Shining Path member who accused him, saying that police pressured him to make a false accusation.³¹² The Supreme Court upheld the acquittal in 1996.³¹³

297. *ibid.*

298. *ibid.*

299. *ibid.*

300. McDonald A. De la Cruz-Flores v. Peru, case summary. *Loyola of Los Angeles International and Comparative Law Review* (ILR). 2014;36. <https://iachr.ils.edu/cases/de-la-cruz-flores-v-peru>. Accessed May 9, 2018.

301. *Ibid.*

302. *Ibid.*

303. *Ibid.*

304. Ruebner R, Burns LA, Duignan BC, et al. The war on terrorism: Peru’s past and present, a legal analysis. *John Marshall Institutional Repository: Center and Clinic White Papers*. (2004). <https://repository.jmls.edu/whitepapers/6>. Accessed May 16, 2018.

305. McDonald A. De la Cruz-Flores v. Peru, case summary. *Loyola of Los Angeles International and Comparative Law Review* (ILR). 2014;36. <https://iachr.ils.edu/cases/de-la-cruz-flores-v-peru>. Accessed May 9, 2018.

Inter-American Court of Human Rights. Case of de la Cruz-Flores v. Peru: Judgment of November 18, 2004. http://www.corteidh.or.cr/docs/casos/articulos/seriec_115_ing.pdf. Accessed May 22, 2018.

306. *Ibid.*

307. Inter-American Court of Human Rights. Case of de la Cruz-Flores v. Peru: Judgment of November 18, 2004. http://www.corteidh.or.cr/docs/casos/articulos/seriec_115_ing.pdf. Accessed May 22, 2018.

308. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015). <https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

309. *Ibid.*

310. Inter-American Commission on Human Rights: Pollo Rivera V. Peru, Report no. 42/07, Petition 156-05. (July 2007). http://www.worldcourts.com/iacmhr/eng/decisions/2007.07.23_Pollo_Rivera_v_Peru.pdf. Accessed May 9, 2018.

311. *Ibid.*

312. *Ibid.*

313. *Ibid.*

In August 2003, DINCOTE arrested Dr. Pollo Rivera again, after other alleged members of the Shining Path gave statements that he provided medical care to the group in 1989-1991.³¹⁴ He was charged with collaboration in terrorism under DL 25475, convicted and sentenced to ten years in prison by the National Terrorism Chamber in 2004.³¹⁵ The Supreme Court upheld the ruling, stating that Dr. Pollo Rivera “rendered support to the Shining Path through his medical knowledge” and providing “medical assistance,” “drugs and other forms of care.”³¹⁶ The Court declared that “the actions of the accused were related to the aims of the terrorist organization – keeping its members operational so they could carry out terrorist acts.”³¹⁷ Dr. Pollo Rivera was transferred to a medical facility with failing health in 2007, remaining under detention there until his death in 2012.³¹⁸

314. *Ibid.*

315. *Ibid.*

316. *Ibid.*

317. *Ibid.*

318. Freedom Now. Dr. Luis Williams Pollo Rivera. (2012). <http://www.freedom-now.org/campaign/dr-luis-williams-pollo-rivera/>. Accessed May 9, 2018.

Syria

Counterterrorism law of 2012: “Effectively criminalizing medical aid to the opposition”

In July 2012, Syria passed a series of counterterrorism laws that “effectively criminalized medical aid to the opposition,” according to the UN Independent International Commission of Inquiry on the Syrian Arab Republic.³¹⁹ Law 19 of 2012 broadly defines terrorist acts as those designed to “disturb public security,” using specified weapons or “by means of any tool that serves the same purpose.”³²⁰ “Financing terrorism” is defined as “any direct or indirect raising or supplying of money, arms, munitions, explosives, telecommunications means, information or any other object to be used in a terrorist act perpetrated by a terrorist individual or terrorist organization.”³²¹ According to a 2015 report by the Violations Documentation Center (VDC), most people detained under counterterrorism laws faced charges of “financing, supporting, and promoting ‘terrorism’,” some for actions that included medical care to the wounded and providing medicines to protestors.³²² There are no protections in Law 19 for medical actions.³²³

Other laws in the counterterrorism bill provide further means and structure to punish the provision of medical care. Law 20 of 2012 declares that any state employee convicted of a terrorism offense will be immediately dismissed from civil service.³²⁴ Law 22 of 2012, which established counterterrorism courts, gives discretion to prosecutors to send non-terrorism civilian cases to the courts and stipulates that one of a court’s three judges must be a member of the military.³²⁵ The law stipulates that these courts are not required to follow certain standard procedures for trial and appeals processes, allowing for closed trials and trials in absentia.³²⁶ Human Rights Watch and the VDC have both reported the use of confessions extracted under torture as evidence in court proceedings.³²⁷

History of practices by government security forces: targeting impartial healthcare

Although counterterrorism laws provided a framework for punishing medical providers, health providers faced arrest, harassment, and violence beginning even before the passage of the law. The UN Human Rights Council and several human rights organizations have reported arrests, harassment, torture, and enforced disappearances of health personnel by Syrian authorities, along with direct attacks on facilities and staff, some of which date back to the beginning of uprisings in March 2011.³²⁸ In 2011, authorities began instructing hospitals to report information on all wounded patients and also questioned the wounded as to who performed their medical care, leading to more arrests.³²⁹ Some medical workers were forced to sign statements agreeing to refuse treatment to members of the opposition, and those who resisted were often violently punished.³³⁰ By December 2011, Physicians for Human Rights reported approximately 250 doctors had been arrested or interrogated for having treated wounded protesters.³³¹

Waves of arrests of healthcare providers by government authorities were reported in 2011 and 2012. The Independent

319. Independent International Commission of Inquiry on the Syrian Arab Republic. Assault on Medical Care in Syria, A/HRC/24/CRP.2. (September 13, 2013). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>. Accessed April 24, 2018.

320. Violations Documentation Center in Syria - VDC. Special Report on Counter-Terrorism Law no. 19 and the Counter-Terrorism Court in Syria. (April 2015). <http://www.vdc-sy.info/pdf/reports/1430186775-English.pdf>. Accessed April 24, 2018.

321. Ibid.

322. Ibid.

323. Ibid.

324. Ibid.

325. Human Rights Watch: Syria: Counterterrorism Court used to Stifle Dissent. (June 25, 2013). <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>. Accessed April 26, 2018

326. Ibid.

327. Ibid.

Violations Documentation Center in Syria - VDC. Special Report on Counter-Terrorism Law no. 19 and the Counter-Terrorism Court in Syria. (April 2015). <http://www.vdc-sy.info/pdf/reports/1430186775-English.pdf>. Accessed April 24, 2018.

328. Independent International Commission of Inquiry on the Syrian Arab Republic. Assault on Medical Care in Syria, A/HRC/24/CRP.2. (September 13, 2013). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>. Accessed April 24, 2018.

Amnesty International. Health Crisis: Syrian Government Targets the Wounded and Health Workers. (2011). https://www.amnestyusa.org/files/mde240592011en_22.pdf. Accessed April 24, 2018.

Physicians for Human Rights. Syria: Attacks on Doctors, Patients, and Hospitals. (December 1, 2011). https://s3.amazonaws.com/PHR_Reports/syria-attacks-on-drs-patients-hospitals-filnal-2011.pdf. Accessed June 5, 2018.

329. Ibid.

330. Independent International Commission of Inquiry on the Syrian Arab Republic. Assault on Medical Care in Syria, A/HRC/24/CRP.2. (September 13, 2013). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>. Accessed April 24, 2018.

Sparrow A. Syria’s assault on doctors. *The New York Review of Books*. (November 3, 2013). <http://www.nybooks.com/daily/2013/11/03/syria-assault-doctors/>. Accessed April 24, 2018.

331. Physicians for Human Rights. Syria: Attacks on Doctors, Patients, and Hospitals. (December 1, 2011). https://s3.amazonaws.com/PHR_Reports/syria-attacks-on-drs-patients-hospitals-filnal-2011.pdf. Accessed June 5, 2018.

International Commission on Syria reported mistreatment and torture of many health personnel arrested in Damascus between April and June 2011.³³² In May 2011, in Baniyas City, a witness detained along with health workers told Amnesty International that in detention authorities would single out medical providers for beatings. “Soldiers and security would come in turn and ask: ‘Where is the doctor?’” he said. “Then they would beat him very hard.”³³³ Health workers detained in Homs in August 2011 gave similar accounts of being beaten and interrogated about providing care to wounded protesters.³³⁴ They were released later that month but faced charges of “participating in anti-government demonstrations and undermining the image of the state.”³³⁵

In a report by the Johns Hopkins Center for Public Health and Human Rights and the Syrian American Medical Society, medical workers in detention reported concealing their roles in care to the wounded, for fear of further torture.³³⁶ One physician arrested in 2012 in Aleppo stated, “[t]hey told me that if I didn’t admit to working in a field hospital they would torture me more, but I did not for fear they would kill me.”³³⁷ Dentists arrested and tortured in 2012 and 2013 said that their interrogators were unaware of their work in field medical operations, and that they believe this saved them from further torture, even death. “The most important thing was not to reveal my role in medical work,” one stated.³³⁸

In Idlib, one surgeon described being detained at the Red Crescent hospital for days when military forces took over the facility in March 2012. “I was interrogated and forced to sign several commitments not to treat anyone not pro-regime. Of course, as soon as I was released I violated it immediately...the city was full of wounded and sick people.”³³⁹ After violating the order, the surgeon was placed on a wanted list. He fled the country, but authorities found and executed his brother.³⁴⁰

By September 2013, at least 469 health workers had been imprisoned and approximately 15,000 physicians had fled the country.³⁴¹ Many other medical workers faced administrative punishments for providing treatment to members of the opposition or for simply being in opposition-held territory. In 2014, after the Islamic State took over Raqqa, the Syrian government dismissed 45 health workers from Raqqa national hospital, accusing them of “aiding terrorists and evading military conscription,” according to one nurse among those who were fired.³⁴²

Torture, death in detention, and extrajudicial killings of medical personnel

The extreme abuses inflicted on Syria’s medical providers extend beyond arrest and detention, as countless health workers have been tortured, forcibly disappeared, and even killed for having provided medical care during the conflict. The Independent International Commission on Syria reported multiple disappearances and deaths among medical personnel from Aleppo’s Al Zarzou hospital in 2012,³⁴³ while Amnesty International reported medical personnel forcibly disappeared in Aleppo and Yarmouk between 2011 and 2013.³⁴⁴ Furthermore, according to Physicians for Human Rights, government forces executed or tortured to death at least 167 medical providers between the start of the conflict and December 2017.³⁴⁵

In February 2012, Syrian authorities in Damascus arrested Osama Baroudi, a gastroenterologist who had been integral to coordinating efforts to treat the wounded since the beginning of the protests.³⁴⁶ Baroudi was shuffled between multiple

332. Independent International Commission of Inquiry on the Syrian Arab Republic. Assault on Medical Care in Syria, A/HRC/24/CRP.2. (September 13, 2013). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>. Accessed April 24, 2018.

333. Amnesty International. Health Crisis: Syrian Government Targets the Wounded and Health Workers. (2011). https://www.amnestyusa.org/files/mde240592011en_22.pdf. Accessed April 24, 2018.

334. *Ibid.*

335. *Ibid.*

336. Johns Hopkins Center for Public Health and Human Rights, Syrian American Medical Society. Syrian Medical Voices from the Ground: The Ordeal of Syria’s Healthcare Professionals. (February 2015). https://www.sams-usa.net/wp-content/uploads/2016/09/Syrian-Medical-Voices-from-the-Ground_F.pdf. Accessed June 6, 2018.

337. *Ibid.*

338. *Ibid.*

339. Sparrow A. Syria’s assault on doctors. *The New York Review of Books*. (November 3, 2013). <http://www.nybooks.com/daily/2013/11/03/syria-assault-doctors/>. Accessed April 24, 2018.

340. *Ibid.*

341. Brundtland GH, Glinka E, zur Hausen H, d’Avila RL. Open letter: Let us treat patients in Syria. *Lancet*. 2013;382(9897):1019-1020. Accessed April 26, 2018. doi: 10.1016/S0140-6736(13)61938-8.

342. al-Dimashqi Y. Conversations: Life as a Paramedic During ISIS’ Rule of Raqqa. *News Deeply*. (December 7, 2017). <https://www.newsdeeply.com/syria/articles/2017/12/07/conversations-life-as-a-paramedic-during-isis-rule-of-raqqa>. Accessed April 27, 2018.

343. Independent International Commission of Inquiry on the Syrian Arab Republic. Assault on Medical Care in Syria, A/HRC/24/CRP.2. (September 13, 2013). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>. Accessed April 24, 2018.

344. Amnesty International. ‘Between Prison and the Grave’: Enforced Disappearances in Syria. (November 5, 2015). <https://www.amnesty.org/en/documents/document/?indexNumber=m-de24%2f2579%2f2015&language=en>. Accessed April 26, 2018.

345. Physicians for Human Rights. Anatomy of a Crisis: A Map of Attacks on Healthcare in Syria. (December 2017). https://s3.amazonaws.com/PHR_syria_map/findings.pdf. Accessed April 26, 2018.

346. Arie S. Syrian doctor who gave medical aid to protesters dies in custody. *BMJ*. 2013;347:f5951. Accessed April 26, 2018.

prisons, and one witness reported seeing him and another doctor frequently tortured in detention.³⁴⁷ Baroudi died in detention in September of 2013. Syrian authorities never confirmed what charges were brought against him, and they did not confirm a cause of death.³⁴⁸ His family believes he was tortured to death.³⁴⁹

In November 2012, British orthopedic surgeon Abbas Khan, who had gone to Syria to provide medical care for those wounded in the conflict, was detained in Aleppo by Syrian authorities. He was held for over a year, during which time he was tortured while many lobbied for his freedom.³⁵⁰ Four days before he was due to be released, authorities from a Syrian detention center reported that he had hanged himself in his prison cell, though his family believed he had been drugged and hanged, his body flushed with fluids to mask evidence of sedatives.³⁵¹ Authorities embalmed Khan's body against his family's wishes before handing him over to them.³⁵² A London jury determined in 2014 that Khan "was deliberately and intentionally killed without any legal justification," though the exact cause of death was unknown.³⁵³

347. *Ibid.*

348. *Ibid.*

349. *Ibid.*

350. Tran M. British doctor Abbas Khan unlawfully killed in Syrian prison, jury says. (October 27, 2014). <http://www.theguardian.com/world/2014/oct/27/british-doctor-abbas-khan-unlawfully-killed-syria-jury-inquest>. Accessed June 5, 2018.

351. Taher BA. British surgeon killed in Syria was drugged and hanged, say family. (December 28, 2013). <http://www.dailymail.co.uk/news/article-2530457/Family-British-surgeon-killed-Syria-say-drugged-hanged-captors-body-flushed-fluids-ruin-post-mortem.html>. Accessed June 5, 2018.

352. *Ibid.*

353. Tran M. British doctor Abbas Khan unlawfully killed in Syrian prison, jury says. (October 27, 2014). <http://www.theguardian.com/world/2014/oct/27/british-doctor-abbas-khan-unlawfully-killed-syria-jury-inquest>. Accessed June 5, 2018.

Turkey

Terrorism and criminal offenses applied to the provision of medical care

The Law on Fight Against Terrorism of Turkey, Act No. 3713 of 1991 (Anti-Terror Law 3713), defines terrorism and terrorist offenses, designating certain offenses within the Turkish Penal Code 2004 as terrorist offenses.³⁵⁴ Article 1 of Anti-Terror Law 3713 defines terrorism as any criminal action that aims to “change the attributes of the Republic as specified in the Constitution,” or any of its government systems, “damage the unity” or “jeopardize the existence” of the state, “enfeeble, destroy or seize the state authority,” “eliminate basic rights and freedoms,” or “damage the internal and external security of the state, the public order, or general health.”³⁵⁵ Article 2 states that anyone who is a member of “organizations formed to achieve the aims specified under Article 1,” is a terrorist offender, even if the person “does not commit the targeted crime.”³⁵⁶

Most offenses that have been used to prosecute health workers are contained within the Penal Code of 2004 (amended in 2016),³⁵⁷ including those listed as terrorist offenses by the Anti-Terror Law 3713.³⁵⁸ Many of the criminal offenses are contained in Article 220 of the Penal Code on “Establishing Organizations for the Purpose of Committing Crimes,”³⁵⁹ which has often been employed in the context of the government’s conflict with armed groups in the Kurdish regions of the country.³⁶⁰ Article 220 sets out offenses for establishment, membership, and leadership of such groups, as well as crimes of association, such as aiding and abetting or the making of propaganda for a group. Article 220/7 states that “any person who aids and abets an organization knowingly and willingly, although he does not belong to the structure of that organization, shall also be sentenced for the offence of being a member of that organization.”³⁶¹ “Aid and abet” is not further defined, and the article gives no protections for medical providers or medical care.³⁶² Article 283/1 imposes a sentence of up to five years in prison for anyone who “provides an offender with the opportunity to avoid a search, his detention or arrest, or the enforcement of a judgment against him...”³⁶³

The offense of “littering in a mosque” contained in Article 153 of the Penal Code has also been employed against those who provided care inside a mosque during protests.³⁶⁴ Article 153/2 stipulates that “soiling places or structures” in a house of worship is punishable by fine or up to a year in prison.³⁶⁵

Articles 312 and 314 of the Penal Code fall under terrorist offenses as laid out in the Anti-Terror Law 3713. Article 312/1 sets a penalty of “aggravated life imprisonment” for anyone using “force and violence” to overthrow the government or “prevent it... from fulfilling its duties.”³⁶⁶ Article 314 sets out punishments for establishment, membership and leadership of a terrorist organization. The definitions are very similar to those in Article 220 for offenses related to “criminal organizations,” however organizations described in Article 314 have aims to commit offenses “against state security” or “against the constitutional order and its functioning.”³⁶⁷ Thus, offenses in Article 314 are terrorist offenses and many are punishable with longer prison sentences than those in Article 220. The crimes of association with an organization also apply, and there is no exception for the provision of medical care.³⁶⁸

354. Law on Fight Against Terrorism of Turkey, Act no. 3713. Turkey. (1991, as amended through 2010). http://www.legislationline.org/download/action/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf. Accessed April 22, 2018.

355. Ibid.

356. Ibid.

357. Turkish penal code (2004). Turkey. *European Commission for Democracy Through Law*. (February 15, 2016). http://www.legislationline.org/download/action/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf. Accessed April 20, 2018.

358. Law on Fight Against Terrorism of Turkey, Act no. 3713. Turkey. (1991, as amended through 2010). http://www.legislationline.org/download/action/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf. Accessed April 22, 2018.

359. Turkish penal code (2004). Turkey. *European Commission for Democracy Through Law*. (February 15, 2016). http://www.legislationline.org/download/action/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf. Accessed April 20, 2018.

360. Mehta C, Özkalıpci Ö. Southeastern Turkey: Health Care Under Siege. *Physicians for Human Rights*. (August 2016). https://s3.amazonaws.com/PHR_Reports/southeastern-turkey-health-care-under-siege.pdf. Accessed April 22, 2018.

361. Turkish penal code (2004). Turkey. *European Commission for Democracy Through Law*. (February 15, 2016). http://www.legislationline.org/download/action/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf. Accessed April 20, 2018.

362. Ibid.

363. Ibid.

364. Translate for Justice. “Shame on you!”: Press release by the Turkish Medical Association Central Council. (December 4, 2015). <https://translateforjustice.com/2015/12/04/2827/>. Accessed June 10, 2018.

365. Turkish penal code (2004). Turkey. *European Commission for Democracy Through Law*. (February 15, 2016). http://www.legislationline.org/download/action/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf. Accessed April 20, 2018.

366. Ibid.

367. Ibid.

368. Ibid.

Turkish Health Bill of 2014: law directly criminalizing medical acts

On January 2, 2014, Turkey passed Health Bill 6514,³⁶⁹ in which Article 46 states that “[w]ith the exception of health services in emergency situations by authorized and competent persons until the arrival of formal health services, those who deliver or commission others to deliver health services without proper license shall be subject to imprisonment from one to three years and administrative fine equivalent to that of twenty thousand days.”³⁷⁰ Thus, at the site of a medical emergency, the presence of one state-authorized ambulance could be enough to bar health workers from providing medical care or punish them for doing so,³⁷¹ with imprisonment or fines up to two million Turkish Lira (over 900,000 USD).³⁷² The UN Special Rapporteur on the right to health expressed “grave concern” that the bill allegedly criminalized independent emergency medical care, violated medical ethics, and posed serious consequences for the availability of health services in emergencies.³⁷³

During the Gezi Park protests of 2013, the Ankara Chamber of the Turkish Medical Association (TMA) called on the Turkish government to provide adequate emergency services to the scores of protesters wounded in the demonstrations.³⁷⁴ When an adequate response was not provided, the Ankara Chamber organized doctors and other health workers to provide necessary treatment to the wounded.³⁷⁵ On January 27, 2014, the Turkish government filed a lawsuit against members of the Ankara Chamber of the TMA, for their role in organizing medical care to wounded protesters.³⁷⁶ The members were charged with “engagement in activities out of their original mission by establishing illicit, unauthorized and unsupervised healthcare service units under the name of ‘infirmary,’” and the Ministry of Health demanded the dismissal of the Ankara Chamber’s governing and disciplinary board members.³⁷⁷

During the hearing in the Ankara 23rd Court of First Instance, the head of the Union of Turkish Bar Associations testified that “there were a few ambulances belonging to the ministry at the protests, but they did not help injured people on side streets where the incidents were intense. If there were no voluntary doctors,” he said, “the number of deaths or permanent disabilities would have been higher.”³⁷⁸ After hearing testimony and statements, the Court dismissed the case on February 20, 2015.³⁷⁹ Health Bill 6514 remains in effect.

Arrests of health workers on criminal and terrorism charges

For decades, health workers in Turkey have faced the threat of criminal charges for providing care to those deemed enemies of the state. In 1999, Amnesty International documented the arrest and prosecution of doctors who provided documentation for victims of injuries sustained during torture at the hands of Turkish security forces throughout the previous decade.³⁸⁰ According to the International Rehabilitation Council for Torture Victims, psychiatrist Alp Ayan has faced countless charges and over 200 court hearings since 1989 for providing rehabilitation care to torture victims.³⁸¹ In recent

369. Turkish Ministry of Health, Affiliates of Organization, and Duties of Law. Amending Decree with Some Law in: Law No. 6514 (January 2, 2014). <https://www.global-regulation.com/translation/turkey/521525/ministry-of-health-and-affiliates-of-organization-and-duties-of-law-amending-decree-with-some-law-in.html>. Accessed April 23, 2018.

370. Grover A, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Letter to the minister of the permanent Mission of Turkey to the UN: a draft health law “concerning the organization and duties of the Ministry of Health and its attached units and amendments in some laws”. (December 3, 2013). <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=18371>. Accessed April 23, 2018.

Physicians for Human Rights. Brief of Amicus Curiae Physicians for Human Rights in Support of Defendant and Acquittal. *Ministry of Health, Republic of Turkey v. Turkish Medical Association, Ankara Medical Chamber*. 2014;5:556-561. https://s3.amazonaws.com/PHR_other/tma-amicus-brief-2014.pdf. Accessed April 23, 2018.

371. Iacopino V, Nathanson V, Kloiber O, et al. We must unite against health law that threatens medical neutrality in Turkey. *BMJ*. 2013;347:f7472. Accessed April 23, 2018.

372. The World Medical Association. Turkish Medical Association: Pressure on Physicians and Medical Neutrality in Turkey. (October 17, 2014). <https://www.wma.net/wp-content/uploads/2016/11/GA-2014-Open-session-Turkey.pdf>. Accessed April 23, 2018

373. Grover A, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Letter to the minister of the permanent Mission of Turkey to the UN: a draft health law “concerning the organization and duties of the Ministry of Health and its attached units and amendments in some laws”. (December 3, 2013). <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=18371>. Accessed April 23, 2018.

374. Physicians for Human Rights. Brief of Amicus Curiae Physicians for Human Rights in Support of Defendant and Acquittal. *Ministry of Health, Republic of Turkey v. Turkish Medical Association, Ankara Medical Chamber*. 2014;5:556-561. https://s3.amazonaws.com/PHR_other/tma-amicus-brief-2014.pdf. Accessed April 23, 2018.

375. *Ibid.*

376. *Ibid.*

377. The World Medical Association. Turkish Medical Association: Pressure on Physicians and Medical Neutrality in Turkey. (October 17, 2014). <https://www.wma.net/wp-content/uploads/2016/11/GA-2014-Open-session-Turkey.pdf>. Accessed April 23, 2018.

378. ‘Gezi doctors’ win case against health ministry. *Hürriyet Daily News*. (February 20, 2015). <http://www.hurriyetdailynews.com/gezi-doctors-win-case-against-health-ministry-78645>. Accessed June 10, 2018.

379. Standing Committee of European Doctors. Ankara Chamber of Medicine (ATO) case dismissed. (2015). <https://www.cpme.eu/ankara-chamber-of-medicine-ato-case-dismissed/>. Accessed April 23, 2018.

380. Amnesty International. Turkey: The Duty to Supervise, Investigate and Prosecute. (April 1999). <https://www.amnesty.org/download/Documents/148000/eur440241999en.pdf>. Accessed June 12, 2018.

381. International Rehabilitation Council for Torture Victims. In prison for protecting torture victims in Turkey. (May 26, 2010). <https://irct.org/media-and-resources/latest-news/article/572>. Accessed May 20, 2018.

years, health workers who provide care to protesters or members of government opposition groups have faced criminal or terrorism charges.

During the 2013 Gezi protests, Dr. Erenç Yasemin Dokudan and Dr. Sercan Yüksel treated wounded protesters inside the Bezm-i Alem Mosque in Istanbul.³⁸² The doctors were prosecuted on charges of “protecting an offender” and “damaging places of worship or cemeteries” under Articles 283 and 153 of the Penal Code.³⁸³ In October 2015, the two doctors were found guilty of “littering in a mosque,” while the other charge was dropped.³⁸⁴ They were sentenced to ten months in prison, though they were released from prison while they appealed.³⁸⁵

Turkish health workers have also been subjected to waves of arrests for alleged links to political or armed opposition groups. Physicians for Human Rights reported that in mid-2015, President Erdogan sent thousands of military and special operations troops to the southeast amid escalating conflict between the government and Kurdish armed groups such as the Kurdistan Workers’ Party (PKK) and the Patriotic Revolutionary Youth Movement (YDG-H).³⁸⁶ Between August 2015 and July 2016, government forces reportedly imposed curfews at least 65 times in 22 districts and seven major cities. In that time frame, numerous health care workers were charged with crimes such as “making terrorist propaganda” and “being part of an illegal organization.”³⁸⁷ Some charges were directly linked to medical care.³⁸⁸

Dr. Abdullah Köçeroğlu was arrested in January 2016 after he documented gunshot injuries to hospital patients in Nusaybin and sent the documentation to the Mardin Medical Chamber.³⁸⁹ He was charged with “providing first-aid medical education to terrorist organization members” and “being a member of an illegal organization” under Articles 220/7 and 312/2 of the Penal Code.³⁹⁰ Dr. Köçeroğlu and his lawyer argued he was being punished under fabricated charges for having treated members of opposition groups and for speaking to patients in Kurdish.³⁹¹ He was detained without trial until May 12, 2016, when charges were dropped for insufficient evidence.³⁹²

Dr. Serdar Kuni, a physician from Cizre, treated patients during and after clashes between government forces and armed groups in 2015. He contributed to a report by the Human Rights Foundation of Turkey on human rights abuses during the clashes, including civilian deaths at the hands of Turkish forces.³⁹³ Police arrested Dr. Kuni on October 29, 2016 on charges of membership in a terrorist group. He spent six months in pretrial detention.³⁹⁴ Evidence in his trial included anonymous testimony that he had provided medical care to protesters and “people injured in illegal incidents.”³⁹⁵ On April 24, 2017 he was convicted under Article 220/7 of the Penal Code, for “aiding and abetting” of a criminal group,³⁹⁶ though the three judges released him until his lawyers could file an appeal.³⁹⁷

After the failed coup attempt of July 2016, arrests of health workers spread throughout the country, targeting perceived government critics, according to the Stockholm Center for Freedom.³⁹⁸ Many faced charges of terrorism and coup plotting, with some charges linked to providing medical care. In October 2016, Dr. Ali İlker Baştan and his wife, Dr. Esma Kuriş Baştan, both dentists, were detained for alleged ties to Fethullah Gülen, a vocal critic of the Turkish government based in

382. Translate for Justice. “Shame on you!”: Press release by the Turkish Medical Association Central Council. (December 4, 2015). <https://translateforjustice.com/2015/12/04/2827/>. Accessed June 10, 2018.

383. Turkish penal code (2004). Turkey. *European Commission for Democracy Through Law*. (February 15, 2016). http://www.legislationline.org/download/action/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf. Accessed April 20, 2018.

Istanbul Medical Chamber. Physicians are in the Mosque, on the Street, in the Hospital: Wherever they are Needed. (2014). <http://www.ttb.org.tr/images/stories/file/2014/dolmabahce-brosuren.pdf>. Accessed April 23, 2018.

384. Translate for Justice. “Shame on you!”: Press release by the Turkish Medical Association Central Council. (December 4, 2015). <https://translateforjustice.com/2015/12/04/2827/>. Accessed June 10, 2018.

385. Torjesen I. Two Turkish doctors who went to aid of protesters are sentenced to prison. *BMJ*. 2015;351:h5869. Accessed April 23, 2018.

386. Mehta C, Özkalıpci Ö. Southeastern Turkey: Health Care Under Siege. *Physicians for Human Rights*. (August 2016). https://s3.amazonaws.com/PHR_Reports/southeastern-turkey-health-care-under-siege.pdf. Accessed April 22, 2018.

387. *Ibid.*

388. *Ibid.*

389. *Ibid.*

390. *Ibid.*

391. *Ibid.*

392. *Ibid.*

393. Mehta C. Opinion | A doctor’s trial in a Turkish border town. *The New York Times*. (May 29, 2017). <https://www.nytimes.com/2017/05/29/opinion/a-doctors-trial-in-a-turkish-border-town.html>. Accessed April 23, 2018.

394. *Ibid.*

395. *Ibid.*

396. Turkey: Dr. Serdar Kuni sentenced to more than 4 years despite the absence of concrete evidence. (April 25, 2017). <https://www.wri-irg.org/en/story/2017/turkey-dr-serdar-kuni-sentenced-more-4-years-despite-absence-concrete-evidence>. Accessed April 23, 2018.

397. Mehta C. Opinion | A doctor’s trial in a Turkish border town. *The New York Times*. (May 29, 2017). <https://www.nytimes.com/2017/05/29/opinion/a-doctors-trial-in-a-turkish-border-town.html>. Accessed April 23, 2018.

398. Stockholm Center for Freedom. Turkey Cracks Down on Health Care Professionals. (December 6, 2017). https://stockholmcf.org/wp-content/uploads/2017/12/Turkey-Cracks-Down-On-Health-Care-Professionals_report_06.12.2017.pdf. Accessed June 10, 2018.

the US.³⁹⁹ Charged with “aiding and abetting a terror organization,” “membership in a terror organization,” and “involvement in activities on behalf of a terror organization” the couple faced up to 15 years in prison.⁴⁰⁰ Specifically, Dr. Ali Baştan was charged with providing dental treatment to Gülen and traveling to the US multiple times for that purpose.⁴⁰¹ Dr. Ali Baştan denied knowing Gülen and stated the travel was for medical conferences and educational programs.⁴⁰² In April 2018, courts declared that Dr. Esmâ Baştan’s case file would be separated from her husband’s proceedings.⁴⁰³ The court convicted Dr. Ali Baştan and sentenced him to seven years, six months detention under house arrest.⁴⁰⁴

Administrative sanctions and practices of security forces targeting health workers

In addition to the threat of prosecution, thousands of health workers have faced administrative sanction. The Stockholm Center for Freedom estimates that over 20,000⁴⁰⁵ health professionals had been suspended from their public or private positions as of December 2017, including almost 3,000 doctors and nearly 12,000 other healthcare providers.⁴⁰⁶ Dismissals were initiated based on vague grounds such as “connections to terrorist organizations.”⁴⁰⁷ Those dismissed from the public sector were often not told the reasons and had no means of challenging the decisions.⁴⁰⁸

Physicians for Human Rights also reported a pattern of administrative sanctions for health workers during clashes in the southeast in 2015 and 2016.⁴⁰⁹ Many who did not face criminal charges were subjected to administrative inquiry for participating in peace protests, making media statements, and in some cases, for treating alleged YDG-H or PKK members in areas under curfew.⁴¹⁰ The Turkish Medical Association Secretary General and local chambers of the Health Workers Union for Turkey estimated that hundreds of cases, both administrative and criminal, were brought against their members between July 2015 and August 2016.⁴¹¹ In the case of Dr. Köçeroğlu, prosecuted after he documented gunshot injuries, the court invoked a provision of the Penal Code under Article 53, which disqualified him of certain rights, including the undertaking of a position in public service.⁴¹² As he was employed by the Ministry of Health, this provision effectively terminated his position and his ability to practice at any state health facility.⁴¹³

Health workers also endured threats and harassment by security forces. During curfews imposed in the southeast in 2015 and 2016, security forces often occupied hospitals, preventing health staff from entering certain areas where they worked.⁴¹⁴ Some staff described how security forces would monitor patients entering and leaving, and pressure staff to deny treatments to members of certain groups. Others reported that “curfews meant extensive body searches and identity checks for patients and staff at all entrances to the hospitals.”⁴¹⁵ Multiple health workers described a raid on a health facility in which nine “heavily armed” security officers entered the hospital, “demanding identification, and pointing their weapons at several doctors and other staff.”⁴¹⁶ One health worker who described the event stated the security forces in the raid “were looking for evidence that the hospital was harboring ‘terrorists.’”⁴¹⁷

399. Ibid.

400. Ibid.

401. Ibid.

402. Ibid.

403. The dentist couple decided in the case of the FETP. Efoya News. (April 6, 2018). <https://efolya.com/the-dentist-couple-decided-in-the-case-of-the-fetp/17447/>. Updated 2018. Accessed June 11, 2018.

404. Ibid.

405. The figure also includes medical academics and hospital staff workers other than healthcare providers.

406. Stockholm Center for Freedom. Turkey Cracks Down on Health Care Professionals. (December 6, 2017). https://stockholmcf.org/wp-content/uploads/2017/12/Turkey-Cracks-Down-On-Health-Care-Professionals_report_06.12.2017.pdf. Accessed June 10, 2018.

407. Ibid.

408. Ibid.

409. Mehta C, Özkalıpcı Ö. Southeastern Turkey: Health Care Under Siege. *Physicians for Human Rights*. (August 2016). https://s3.amazonaws.com/PHR_Reports/southeastern-turkey-health-care-under-siege.pdf. Accessed April 22, 2018.

410. Ibid.

411. Ibid.

412. Ibid.

413. Ibid.

414. Ibid.

415. Ibid.

416. Ibid.

417. Ibid.

United Kingdom

Counterterrorism law with the potential to encompass medical care

The UK has enacted multiple pieces of antiterror legislation, including the Terrorism Act of 2000, which defines terrorism and many related offenses.⁴¹⁸ The definition of terrorism in this Act has been described as “one of the broadest in the world,” granting “unusually wide discretion to all those concerned with the application of the law,” according to analysis from Chatham House.⁴¹⁹ The report found that “there is potential for the law to have a ‘chilling effect’ if it deters what is otherwise legitimate activity. The Supreme Court in *R v Gul* acknowledged this potential when it noted that prosecutorial discretion leaves citizens ‘unclear as to whether or not their actions or anticipated actions are liable to be treated by the prosecution authorities as innocent or criminal.’”⁴²⁰ Although no health professionals have been prosecuted in the UK for medical activities, this lack of clarity in certain provisions of British counterterrorism law has the potential to include medical care in the realm of punishable offenses.

Support for terrorism in the 2000 Terrorism Act includes actions involving “the provision of money or other property” and those offering non-material support.⁴²¹ Section 15, on fundraising, states that “[a] person commits an offence if he provides money or other property, and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.”⁴²² The UK Independent Reviewer of Terrorism has stated that such definitions of property-related terrorism offenses are “‘monstrously’ broad” in UK legislation and have had “an impact on humanitarian charities, particularly when working abroad and when working in areas that are under the de facto control of a proscribed or designated group.”⁴²³ As there is no exception in the 2000 Terrorism Act for providing medical care or humanitarian aid,⁴²⁴ medicines and medical equipment would fall under the definition of property in Section 15, and providing medical care would invariably involve the provision of such property. Therefore, providing health care to a terrorist would be prohibited, if the provider has reasonable cause to suspect the person would go on to commit an act of terrorism.

In 2015, a parliamentary committee recommended that the government consider introducing exceptions for humanitarian activities into counterterrorism legislation.⁴²⁵ The Home Office and Treasury Office of Financial Sanctions Implementation responded: “[w]e assess that introducing a specific exemption for humanitarian and/or conflict resolution work would create a loophole that could be exploited by unscrupulous individuals and leave NGOs vulnerable to abuse.”⁴²⁶ No explanation was given, however, as to the basis for this assessment, and the government has indicated a preference to exercise prosecutorial discretion in potential cases of humanitarian action in the context of counterterrorism efforts.⁴²⁷ In 2016, the government was reportedly attempting to convince a group of 18 UK medical students, recruited as medics to the Islamic State from their university in Sudan, to return to the UK, with officials stating that they “would not automatically face prosecution if they returned to Britain under anti-terror legislation, so long as they could prove they have not been fighting.”⁴²⁸

418. Terrorism Act 2000. United Kingdom. (2000). <https://www.legislation.gov.uk/ukpga/2000/11/section/1>. Accessed May 28, 2018.

419. International Law Programme, International Security Department. UK Counterterrorism Legislation: Impact on Humanitarian, Peacebuilding and Development Action. *Chatham House Royal Institute of International Affairs*. (November 11, 2015). <https://www.chathamhouse.org/sites/files/chathamhouse/UK-Counterterrorism-Legislation111115.pdf>. Accessed May 28, 2018.

420. *Ibid.*

421. Terrorism Act 2000. United Kingdom. (2000). <https://www.legislation.gov.uk/ukpga/2000/11/section/1>. Accessed May 28, 2018.

422. *Ibid.*

423. UK Parliament Joint Commission. Draft Protection of Charities Bill. (2014). <https://publications.parliament.uk/pa/jt201415/jtselect/jtcharity/108/10808.htm>. Accessed May 30, 2018.

424. Terrorism Act 2000. United Kingdom. (2000). <https://www.legislation.gov.uk/ukpga/2000/11/section/1>. Accessed May 28, 2018.

Jones K. Humanitarian Action and Non-State Armed Groups: The UK Regulatory Environment. *International Security Department and International Law Programme, Chatham House*. (February 2017). <https://www.chathamhouse.org/sites/default/files/publications/research/2017-02-17-humanitarian-action-non-state-armed-groups-uk-jones.pdf>. Accessed May 30, 2018.

425. Jones K. Humanitarian Action and Non-State Armed Groups: The UK Regulatory Environment. *International Security Department and International Law Programme, Chatham House*. (February 2017). <https://www.chathamhouse.org/sites/default/files/publications/research/2017-02-17-humanitarian-action-non-state-armed-groups-uk-jones.pdf>. Accessed May 30, 2018.

426. *Ibid.*

427. *Ibid.*

428. Smith O. ISIS terror doctors recruited from UK will return to work in NHS. *Express UK News*. (January 4, 2016). <https://www.express.co.uk/news/uk/631054/ISIS-terror-doctors-recruited-UK-return-to-NHS>. Accessed June 8, 2018.

United States

Medical care and counterterrorism law

US counterterrorism law under 18 United States Code has been employed in the prosecution of medical workers who provided or prepared to provide health services for groups designated as terrorist organizations.⁴²⁹ Chapter 113B of 18 United States Code addresses crimes of terrorism, including two sections regarding support, relevant to health providers. Section 2339A, "Providing material support to terrorists," was introduced by the 1994 Violent Crime Control and Law Enforcement Act.⁴³⁰ To commit an offense under Section 2339A, a person must have knowledge that the support or resources will be used in relation to a terrorist act, including preparation, escape from, or concealment of such an act.⁴³¹ Section 2339B, "Providing material support or resources to designated foreign terrorist organizations," was added by the 1996 Antiterrorism and Effective Death Penalty Act.⁴³² Prosecution under Section 2339B does not require knowledge of how the support will be used but rather knowledge that the group receiving the support is a terrorist organization or has engaged in "terrorism" or "terrorist activities."⁴³³ Section 2339B has been employed in cases against medical providers.⁴³⁴

Section 2339B states that "material support or resources" has the same meaning as defined in Section 2339A.⁴³⁵ In its current form, the definition includes monetary resources and services, as well as "lodging, training, expert advice or assistance, safehouses... personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials."⁴³⁶ The definition has undergone multiple amendments, including a change from an exception for "humanitarian assistance" to one for "medicine" in 1996, the addition of "expert advice and assistance" in 2001, and definitions of the terms "training" and "expert advice and assistance" in 2004.⁴³⁷ The interpretation of "medicine," "training," "personnel," and "expert advice and assistance" have been key elements in cases of medical providers charged with support to terrorist organizations.⁴³⁸

Section 2339B also contains some limitations in the applications in the applications of these key terms. Under Section 2339B(h), the provision of "personnel" to a foreign terrorist organization is only punishable if the person is acting "under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization."⁴³⁹

Thus, a person who acts "entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control" and may not be prosecuted for provision of "personnel."⁴⁴⁰ Section 2339B(j) also includes an exception that "[n]o person may be prosecuted under this section in connection with the term 'personnel', 'training', or 'expert advice or assistance' if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General."⁴⁴¹

429. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015). <https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

430. 18 U.S. Code § 2339A - Providing material support to terrorists. United States. (2009). <https://www.law.cornell.edu/uscode/text/18/2339A>. Accessed May 25, 2018.

431. *Ibid.*

432. Doyle C. Terrorist Material Support: An Overview of 18 U.S.C. §2339A and §2339B. Congressional Research Service. (December 8, 2016). <https://fas.org/sgp/crs/natsec/R41333.pdf>. Accessed May 30, 2018.

433. 18 U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organizations. United States. (2009). <https://www.law.cornell.edu/uscode/text/18/2339B>. Accessed May 26, 2018.

434. *United States v. Farhane*, 634 F.3d 127. US Court of Appeals, Second Circuit. (February 4, 2011). <https://www.courtlistener.com/opinion/2427524/united-states-v-farhane/>. Accessed May 26, 2018.

United States v. Warsame, 537 F. supp. 2d 1005. US District Court, D. Minnesota. (March 12, 2008). <https://www.courtlistener.com/opinion/2348991/united-states-v-warsame/>. Accessed May 27, 2018.

435. 18 U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organizations. United States. (2009). <https://www.law.cornell.edu/uscode/text/18/2339B>. Accessed May 26, 2018.

436. 18 U.S. Code § 2339A - Providing material support to terrorists. United States. (2009). <https://www.law.cornell.edu/uscode/text/18/2339A>. Accessed May 25, 2018.

437. *Ibid.*

438. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

United States v. Warsame, 537 F. supp. 2d 1005. United States District Court, D. Minnesota. (March 12, 2008). <https://www.courtlistener.com/opinion/2348991/united-states-v-warsame/>. Accessed May 27, 2018.

United States v. Shah, 474 F. supp. 2d 492. United States District Court. S. D. New York. (January 30, 2007). <https://www.courtlistener.com/opinion/2579725/united-states-v-shah/>. Accessed May 24, 2018.

439. 18 U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organizations. United States. (2009). <https://www.law.cornell.edu/uscode/text/18/2339B>. Accessed May 26, 2018.

440. *Ibid.*

441. *Ibid.*

Doctors prosecuted for medical care

In May 2005, federal agents prosecuted Dr. Rafiq Sabir, a New York trained emergency physician, under 18 United States Code Section 2339B.⁴⁴² The indictment accused him of conspiring to provide material support or resources to Al Qaeda, based in part on his pledge to provide “medical support to wounded jihadists” in Saudi Arabia while “knowing that al Qaeda had engaged and continues to engage in terrorist activity.”⁴⁴³ The court held that the alleged medical support Sabir was prepared to provide fell under the prohibitions on “expert advice and assistance” and “personnel,” and that Sabir was not prosecuted “merely for being a doctor or for performing medical activities,” but because he had essentially “volunteered as a medic for the al Qaeda military” acting under its direction and control.⁴⁴⁴ The court also rejected Sabir’s argument that his activities fell within the statutory exception for “medicine,” stating that “Congress intended the term ‘medicine’ to be understood to be limited to the medicine itself” and “did not exclude from prosecution persons who provide ‘medical support’ to such organizations.”⁴⁴⁵ Dr. Sabir was convicted and sentenced to 300 months in prison.⁴⁴⁶

Dr. Sabir’s defense posed two hypothetical situations to challenge the government’s view that Section 2339B covered his conduct. The defense argued that the government’s interpretation would apply both to a doctor who treated a patient later discovered to be a jihad fighter and to a health worker with an NGO, such as Doctors Without Borders, who treated a jihadist wounded in conflict.⁴⁴⁷ The court rejected the claims because in both, “a reasonable doctor would understand that he could not be subject to prosecution under 2339B,” and because neither practitioner in these hypothetical situations “is acting under the ‘direction or control’ of a designated foreign terrorist organization knowing that said organization engages in terrorism.”⁴⁴⁸

In 2011, an appeals court upheld Dr. Sabir’s conviction.⁴⁴⁹ It rejected his claim that there is any right to provide medical care to terrorists “that is not subordinate to . . . the power of Congress to make laws ‘necessary and proper to the nation’s defense.’”⁴⁵⁰ It also rejected his claim that he was acting in accordance with his ethical duties, stating that he was not prosecuted for providing care for people, some of whom happened to be members of Al Qaeda, but for offering to be an on-call doctor for the organization. Rather than honoring his Hippocratic Oath, the court stated, he was swearing an oath as a soldier of Islam.⁴⁵¹

In upholding Dr. Sabir’s conviction, the appeals court relied in part on the 2010 Supreme Court ruling in *Holder v. Humanitarian Law Project*, in which plaintiffs challenged the constitutionality of the material support statute in Section 2339B.⁴⁵² The plaintiffs wished to provide support for political and humanitarian activities to groups labeled as Foreign Terrorist Organizations, but could not for fear of prosecution. The Supreme Court rejected the plaintiffs’ claims that Section 2339B was overly vague in terms of “training,” “personnel,” and “expert advice or assistance,” and that it violated rights of free speech and association.⁴⁵³ The court opined that “[m]aterial support meant to ‘promot[e] peaceable, lawful conduct,’ can further terrorism by foreign groups in multiple ways. ‘Material support’ is a valuable resource by definition. Such

442. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

United States v. Farhane, 634 F.3d 127. United States Court of Appeals, Second Circuit. (February 4, 2011). <https://www.courtlistener.com/opinion/2427524/united-states-v-farhane/>. Accessed May 26, 2018.

443. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

444. *United States v. Shah*, 474 F. supp. 2d 492. United States District Court. S. D. New York. (January 30, 2007). <https://www.courtlistener.com/opinion/2579725/united-states-v-shah/>. Accessed May 24, 2018.

445. *Ibid.*

446. *United States v. Farhane*, 634 F.3d 127. United States Court of Appeals, Second Circuit. (February 4, 2011). <https://www.courtlistener.com/opinion/2427524/united-states-v-farhane/>. Accessed May 26, 2018.

447. *United States v. Shah*, 474 F. supp. 2d 492. United States District Court. S. D. New York. (January 30, 2007). <https://www.courtlistener.com/opinion/2579725/united-states-v-shah/>. Accessed May 24, 2018.

448. *Ibid.*

449. *United States v. Farhane*, 634 F.3d 127. United States Court of Appeals, Second Circuit. (February 4, 2011). <https://www.courtlistener.com/opinion/2427524/united-states-v-farhane/>. Accessed May 26, 2018.

450. *Ibid.*

451. *Ibid.*

452. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

United States v. Farhane, 634 F.3d 127. United States Court of Appeals, Second Circuit. (February 4, 2011). <https://www.courtlistener.com/opinion/2427524/united-states-v-farhane/>. Accessed May 26, 2018.

453. *Holder v. Humanitarian Law Project*, 561 U.S. 1 Supreme Court of the United States. (June 21, 2010). <https://supreme.justia.com/cases/federal/us/561/1/opinion.html>. Accessed May 28, 2018.

support frees up other resources within the organization that may be put to violent ends.”⁴⁵⁴

With respect to the prosecution of Dr. Sabir, Dustin Lewis and colleagues of the Harvard Law School Program on International Law and Armed Conflict, found the decisions “troubling” in that, as a physician, Sabir was “precluded from providing medical care to wounded fighters in an armed conflict, yet the laws of armed conflict never factored into the legal analysis.”⁴⁵⁵

In a second case, Canadian citizen Mohamed Abdullah Warsame was indicted under Section 2339B in June 2005 on charges of providing material support and resources to a Foreign Terrorist Organization.⁴⁵⁶ The charges were based in part on Warsame having allegedly provided English language lessons to nurses in an Al Qaeda clinic in Afghanistan, aiding the nurses in their ability to read medicine labels.⁴⁵⁷ The prosecution stated that Warsame provided “currency,” “personnel”(himself), and “training” as resources in support of Al Qaeda.⁴⁵⁸

The court convicted Warsame, finding that he “provided English lessons in an Al Qaeda clinic in Kandahar, Afghanistan, in part to assist nurses in reading English-language medicine labels,” and that these nurses “attended to Al Qaeda members who were participating in nearby terrorist training camps. The alleged English-language training in this case has direct application to a [foreign terrorist organization’s] terrorist activities, as it would likely speed the healing and eventual return of terrorist militants to Al Qaeda training camps.”⁴⁵⁹ The court further found that “the provision of English language lessons to nurses to assist in the medical treatment of injured Al Qaeda militants does not fall within the statutory exception for ‘medicine.’”⁴⁶⁰ Warsame ultimately pleaded guilty and was sentenced to 92 months in prison.⁴⁶¹

454. *Ibid.*

Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

455. Lewis DA, Modirzadeh NK, Blum G. Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism. *Harvard Law School Program on International Law and Armed Conflict*. (September 8, 2015).

<https://papers.ssrn.com/abstract=2657036>. Accessed May 24, 2018.

456. *Ibid.*

457. *Ibid.*

458. *Ibid.*

459. *United States v. Warsame*, 537 F. supp. 2d 1005. United States District Court, D. Minnesota. (March 12, 2008). <https://www.courtlistener.com/opinion/2348991/united-states-v-warsame/>. Accessed May 27, 2018.

460. *Ibid.*

461. *Ibid.*