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Human Rights, Terrorism and Counter-Terrorism

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Human Rights, Terrorism and Counter-Terrorism

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I. Introduction

A. Objectives and structure

Terrorism has been at the forefront of global attention for many years, constituting one of the most serious threats to international peace and security. Acts of terrorism are criminal and unjustifiable regardless of who commits them or why.¹ Among its many impacts, terrorism has grave effects on the enjoyment of human rights, most notably the rights to life, liberty and security of person, but also on other rights. In this context, international human rights law lays down obligations on States, including the obligation to protect the life and security of individuals against the threat of terrorist acts.

State responses to terrorism, in turn, continue to raise human rights concerns. These concerns range from the extrajudicial killing, arbitrary detention, torture and ill-treatment of individuals suspected of terrorism-related offences to discrimination and infringements of privacy. At times, counter-terrorism measures have the intention or effect of circumventing human rights protections, posing undue restrictions on fundamental freedoms and civic space. Furthermore, the consequences of some counter-terrorism measures can have far-reaching effects on both individuals and communities, including negatively affecting their economic, social and cultural rights.

In this context, the Security Council and the General Assembly have noted that countering terrorism requires action based on respect for international law, including international human rights law. Specifically, they have affirmed that the promotion and protection of human rights for all and the rule of law are essential components of countering terrorism and that effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing, rather than conflicting.²

The present revised fact sheet aims to raise awareness about the complex relationship between international human rights law, terrorism and measures to counter terrorism with a broad readership, including

¹ See, for example, Security Council resolutions 2199 (2015), 2309 (2016), 2370 (2017), 2462 (2019) and 2482 (2019).

² See, for example, Security Council resolutions 2395 (2017), 2396 (2017) and 2482 (2019); see also General Assembly resolutions 77/298 and 78/210.

policymakers, members of civil society, students and the general public. Sections B and C below provide background information relevant to chapters II and III, investigating what terrorism is and setting out key aspects of international human rights law.

Chapter II examines the effects of terrorism on the enjoyment of human rights, the human rights obligations of States related to terrorism and the rights of victims of terrorism.

Chapter III examines the obligations of States under international human rights law with regard to countering terrorism, analysing the use of counter-terrorism measures that circumvent human rights obligations in a range of areas. Topics examined include the impact of counter-terrorism measures on civic space and on the rights of individuals suspected of terrorist acts; the human rights implications of the use of new technologies, surveillance and data; and the use of deprivation of nationality as a counter-terrorism measure. It also explores the disproportionate effect of counter-terrorism measures on certain individuals and groups.

B. What is terrorism?

There is no global comprehensive definition of terrorism in international law. For nearly a century, States have attempted to codify a legal definition of terrorism, however reaching a consensus has so far proven unsuccessful. In 1996, in the adoption of resolution 51/210, the General Assembly established an Ad Hoc Committee to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism. This marked the beginning of the work of the United Nations towards the adoption of a comprehensive convention on international terrorism, the negotiations on which stalled due to a lack of consensus on the question of a definition.

Instead, States have adopted a number of sectoral treaties addressing specific terrorism-related offences.³ These treaties, however, fall short of defining terrorism as such. States have also adopted regional treaties, some of which include definitions of terrorism. Nonetheless, the variation in these definitions militates against the emergence of any shared international definition of terrorism. In addition, many States have adopted their own

³ The list of treaties is available on the website of the [United Nations Treaty Series](#).

national definitions of terrorism, which have introduced even greater variations than those established under regional treaties.⁴

Despite the lack of an international treaty-based definition of terrorism, the Security Council, through the adoption of its resolution 1566 (2004), has identified certain commonly accepted elements of terrorism, calling upon States to cooperate fully in the fight against terrorism and, in doing so, to prevent and punish acts that have the following three cumulative characteristics:

1. Acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages;
2. Acts committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act;
3. Acts which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.⁵

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has urged that definitions of terrorism be confined to acts of a “genuinely terrorist nature”, noting that Security Council resolution 1566 (2004) contains agreed-upon offences concerning aspects of terrorism.⁶

In 2010, the Special Rapporteur proposed the following model definition of terrorism:

“Terrorism means an action or attempted action where:

1. The action:
 - (a) Constituted the intentional taking of hostages; or
 - (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or

⁴ Saul, Ben, *Defining Terrorism in International Law* (Oxford University Press, 2008), p. 190; see also Di Filippo, Marcello, “The definition(s) of terrorism in international law” in Saul, Ben (ed.), *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2020).

⁵ See Security Council resolution 1566 (2004), para. 3.

⁶ E/CN.4/2006/98, para. 42.

- (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and
2. The action is done or attempted with the intention of:
 - (a) Provoking a state of terror in the general public or a segment of it; or
 - (b) Compelling a government or international organization to do or abstain from doing something; and
 3. The action corresponds to:
 - (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
 - (b) All elements of a serious crime defined by national law.”⁷

Pending an internationally agreed-upon definition of terrorism in a treaty, Security Council resolution 1566 (2004) and the model definition proposed by the Special Rapporteur provide authoritative guidance for States on the prerequisite components of acts of terrorism, which should be reflected in domestic legislation.⁸ Building on this international guidance and best practices, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has issued a practical guidance note⁹ that sets out the prerequisite components of acts of terrorism and raises awareness about recurrent human rights issues that emerge in the context of adopting or amending counter-terrorism legislation.

C. International human rights law

International human rights law grants rights to individuals and imposes corresponding obligations on States. States have both negative and positive obligations.¹⁰ In line with such obligations, States must not only refrain from

⁷ A/HRC/16/51, practice 7, Model definition of terrorism.

⁸ A/HRC/45/27, para. 14.

⁹ OHCHR, “Defining ‘terrorism’ in national criminal legislation”.

¹⁰ See, for example, Human Rights Committee, *general comment No. 31 (2004)*, para. 6. See, for example, International Covenant on Civil and Political Rights, art. 2 (1); Convention

violating human rights but also take active measures to give effect to human rights in their domestic legal systems. When a State fails to comply with its human rights obligations, it must grant effective remedies to the victims.¹¹

International human rights law applies in all contexts – including in terrorism and counter-terrorism contexts – where States exercise jurisdiction.¹² This includes situations of armed conflict. In such circumstances, international humanitarian law and international human rights law regulate the obligations of States. The two bodies of law are complementary, not mutually exclusive.¹³

In some contexts, including the context of countering terrorism, human rights may be subject to limitations and restrictions in certain limited circumstances, including for reasons of national security or to safeguard the rights of others. However, international human rights law regulates the extent to which this is permitted.

Importantly, restrictions are not permitted for absolute rights, such as the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the right not to be subjected to enforced disappearances, the principle of legality in criminal law and the rights to freedoms of thought, conscience, belief and opinion.¹⁴

Some rights are not absolute and may be subject to limitations based on specific threshold requirements. For example, the right to life imposes a prohibition of arbitrary deprivations of life. Similarly, the right to liberty prohibits arbitrary or unlawful deprivations of liberty. United Nations human rights mechanisms have clarified the narrow circumstances in which

on the Rights of the Child, art. 2(1); International Convention on the Protection of the Rights of Migrant Workers, art. 7; Convention on the Rights of Persons with Disabilities, arts. 1 and 4 (1); E/CN.4/Sub.2/1987/23, paras. 112–114; and Committee on Economic, Social and Cultural Rights, *general comments No.12* (1999), para. 15, and *No. 14* (2000), para. 20 and following.

¹¹ See, for example, International Covenant on Civil and Political Rights, art. 2 (3).

¹² See Human Rights Committee, *general comment No. 31* (2004), para. 10. See also European Court of Human Rights, *Al-Skeini and others v. the UK*, Application No. 55721/07, Judgment of 7 July 2011, para. 131.

¹³ See, for example, advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (*A/ES-10/273* and *Corr.1*), para. 106. See also Human Rights Committee, *general comments No. 31* (2004), para. 11; *No. 35* (2014), paras. 64 and following; and *No. 36* (2018), para. 64.

¹⁴ See, respectively, International Covenant on Civil and Political Rights, art. 7; Convention against Torture; International Convention for the Protection of All Persons from Enforced Disappearance, art. 1 (2); and International Covenant on Civil and Political Rights, arts. 15, 18 (1) and 19 (1).

a deprivation of life or liberty would be permissible.¹⁵ For example, the use of disproportionate force by security forces resulting in death amounts to arbitrary deprivation of life, whereas the use of lethal force to protect someone against an imminent threat of death does not.

Other rights, such as the right to freedom of expression, are qualified and permit restrictions in exceptional circumstances, subject to strict requirements. To be permissible, restrictions must not be discriminatory and must comply with the following three conditions:

- The restriction must pursue a legitimate aim. For the majority of rights, the aims that can justify restrictions are exhaustively listed in relevant human rights treaties. This means that restricting rights for reasons that are not recognized as legitimate or for a purpose that is different from that proclaimed by the State would be unlawful.¹⁶
- The restriction must be provided by law. Moreover, the legal basis for restriction must be made accessible to the public and formulated with sufficient precision to enable individuals to regulate their conduct accordingly. A law cannot grant unfettered discretion to those charged with its implementation.¹⁷
- The restriction must be necessary and proportionate.¹⁸ The requirement of necessity means that the restrictions must be necessary, not simply reasonable or expedient. The requirement of proportionality means that restrictions cannot be overbroad: (a) the restriction must be suitable to protect the legitimate aim at stake; (b) it must be the least restrictive measure among the alternatives that can protect the legitimate aim at stake; (c) the restriction must, more generally, be proportionate to the protected interest. The principle of proportionality has to be respected in the law that frames the human rights restriction and by the administrative and judicial authorities that apply the law.

¹⁵ See, for example, Human Rights Committee, [general comments No. 36 \(2018\)](#) and [No. 35 \(2014\)](#).

¹⁶ See, for example, [E/CN.4/1985/4](#), annex (Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights); and Human Rights Committee, [general comment No. 34 \(2011\)](#), para. 22.

¹⁷ Human Rights Committee, [general comments No. 34 \(2011\)](#), para. 25, and [No. 37 \(2020\)](#), para. 39.

¹⁸ See, for example, Human Rights Committee, [general comments No. 34 \(2011\)](#), paras. 34–35, and [No. 37 \(2020\)](#), para. 40.

In no case may the restrictions be applied in a manner that would impair the essence of a right.¹⁹

In order for a restriction to be permissible, the State must be capable of demonstrating, in a specific and individualized way, the precise nature of the threat to the legitimate aim and the necessity and proportionality of the specific restriction on human rights.

Some human rights treaties permit derogations,²⁰ the temporary suspension of certain human rights obligations of States, in times of emergency, subject to a specific regime of safeguards. Treaties that permit derogations create strict conditions regarding when such measures are permitted. Crucially, not every disturbance or catastrophe allows a State to derogate.²¹ Thus, under the International Covenant on Civil and Political Rights, there must be a public emergency that “threatens the life of the nation”.

In addition, the derogation must be strictly necessary, temporary and geographically limited to the emergency area and must not discriminate based on race, colour, sex, language, religion or social origin.

Where the State is responsible for a human rights violation, including in terrorism and counter-terrorism contexts, the victim of the violation has a right to an effective remedy. This requires States to establish accessible judicial and administrative mechanisms for individuals to claim their rights,²² as well as to make reparations to individuals whose rights have been violated.²³

¹⁹ Human Rights Committee, [general comment No. 31 \(2004\)](#), para. 6.

²⁰ See, for example, the International Covenant on Civil and Political Rights, art. 4, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention of the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (art. 2) and the International Convention for the Protection of All Persons from Enforced Disappearance (art.1 (2)), all of which include specific prohibitions on derogations.

²¹ Human Rights Committee, [general comment No. 29 \(2001\)](#), paras. 1 and 3.

²² General Assembly resolution [60/147](#), annex, principle 3 (c); and International Covenant on Civil and Political Rights, art. 2 (3)(b).

²³ Generally, this refers to the provision of restitution, compensation, rehabilitation, satisfaction or guarantees of non-repetition. See report of the International Law Commission, [A/56/10 and Corr. 1](#), chap. IV.E, arts. 29–30; General Assembly resolution [60/147](#), annex, para. 18; International Covenant on Civil and Political Rights, art. 9 (5) and art. 14 (6); and Human Rights Committee, [general comment No. 31 \(2004\)](#), para. 16.

II. Terrorism and human rights obligations

A. Impact of terrorism on the enjoyment of human rights

Acts of terrorism have enormous consequences on individuals and societies and a detrimental effect on the enjoyment of human rights. The killing and harm resulting from terrorism impact the enjoyment of the rights to life and integrity of person, as well as the right to health for those directly and indirectly affected by terrorist acts. It also impacts the right to education, for example through the displacement of children or attacks on schools. Other rights affected include the right to work, owing to the impact of terrorist attacks on the economy; the right to culture, through the targeting of artists and cultural spaces; and the right to freedom of religion as attacks sometimes target persons belonging to specific ethnic or religious communities.

The strategic use of sexual and gender-based violence as a tactic of certain terrorist groups has serious consequences for many human rights, as do the recruitment of children to perpetrate acts of terrorism, the trafficking in persons, kidnapping and the taking of hostages. Moreover, terrorists and terrorist groups have targeted population segments and regions, exacerbating inequalities and discrimination. Terrorism has also had a devastating humanitarian impact on civilian populations, causing the displacement of millions of people.²⁴

International human rights law sets out obligations on States to take measures to prevent, protect against and counter acts of terrorism. The main obligations are set out in section B below.

B. States' human rights obligations related to terrorism

Refraining from direct or indirect involvement in terrorism

The direct and indirect State involvement in acts of terrorism has long been a concern of the international community. The Security Council has expressed its deep concern about the worldwide persistence of acts of international terrorism, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a

²⁴ To read more on the negative impacts of terrorism on human rights, see, for example, [A/HRC/34/30](#) and [A/HRC/48/66](#).

deleterious effect on international relations and jeopardize the security of States.²⁵

States must always refrain from any direct or indirect involvement in terrorism and respect human rights. A State would be in violation of its international human rights obligations where it aids, assists, acquiesces or connives in the commission of acts of terrorism affecting the enjoyment of human rights²⁶ or where it instructs, directs or controls non-State actors committing acts of terrorism.

The General Assembly has affirmed that States must abstain from organizing, instigating, assisting or participating in terrorist acts in territories of other States and from acquiescing in or encouraging activities within their territories directed towards the commission of such acts. The General Assembly has further stated that no State shall organize, assist, foment, finance, incite or tolerate terrorist activities directed towards the violent overthrow of the regime of another State. The General Assembly and the Human Rights Council have both called upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities.²⁷

Complementing the human rights obligations of States, international humanitarian law explicitly prohibits parties to an armed conflict from committing acts of terrorism and, more generally, acts aimed at spreading terror among the civilian population.²⁸

Prevention and protection

States must prevent and protect people from human rights abuses, including as a result of acts of terrorism. This means that States must exercise due

²⁵ See Security Council resolutions 731 (1992), 748 (1992) and 883 (1993). See also General Assembly resolution 49/60, annex, para. 5 (a).

²⁶ Human Rights Committee, general comment No. 36 (2018), para. 63.

²⁷ See, for example, General Assembly resolutions 70/120, para. 7, and 75/291, para. 27; see also Human Rights Council resolution 31/30, preamble.

²⁸ See, respectively, Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 33; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 51 (2); Protocol II, art. 13 (2); and International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol. I, rule 2.

diligence in preventing, punishing, investigating and or redressing harm, including harm caused by private persons or entities. This obligation also applies in the context of armed conflicts and in situations where the State has lost effective control over parts of its territory. It also applies extraterritorially, for example, in instances when a State exercises effective control over places not situated within its territory.

Generally, due diligence obligations to prevent harm translate into two requirements.

First, States must react to immediate threats to the enjoyment of human rights caused by both State agents and by private individuals or entities.²⁹ This duty derives from the positive obligations under core human rights treaties, including the International Covenant on Civil and Political Rights. In carrying out this duty, States must take proactive measures to prevent foreseeable terrorist threats, including through effective law enforcement, intelligence gathering and safeguarding at-risk populations.

For example, with respect to the right to life, States must take adequate preventive measures to protect individuals from threats of death by criminals and organized crime or militia groups, including armed or terrorist groups. These obligations apply also with respect to activities by non-State actors taking place within the territory of a State but which may have a harmful effect on human rights outside its territory.³⁰

Situations of vulnerability can increase the requirements for States to protect individuals from harm. For example, in Iraq, the enactment of the Yazidi Female Survivors Law by the Federal Parliament of Iraq on 1 March 2021 was a significant step towards addressing the specific needs of survivors of conflict-related sexual violence committed by terrorist groups. The passing of this law could pave the way for such victims to access justice, discover the truth behind their sufferings and have their day in court.

Second, States must take appropriate measures to address the conditions in society that may give rise to direct threats to life or that may prevent individuals from enjoying their right to life with dignity. As with the first

²⁹ Human Rights Committee, *general comment No. 31 (2004)*, para. 8. This applies to the extent that such rights can be applied in relations between private parties.

³⁰ Human Rights Committee, *general comment No. 36 (2018)*, paras. 21–23. See also European Court of Human Rights, *Tagayeva and others v. Russia*, Application No. 26562/07 and six other applications, Judgment of 13 April 2017.

requirement, this duty derives from the positive obligations under core human rights treaties, in particular the International Covenant on Civil and Political Rights, read in conjunction with the International Covenant on Economic, Social and Cultural Rights.

Research and evidence have shown that conditions in society that give rise to the threat of terrorism – and consequently to the right to life – include a lack of socioeconomic opportunities, marginalization and discrimination, poor governance, violations of human rights and the rule of law and prolonged unresolved conflicts.³¹ These conditions need to be addressed, notably through education, poverty eradication, sustained economic growth, sustainable development, good governance, promotion of human rights and the rule of law and improved intercultural understanding.³²

Similarly, States should take measures to address the conditions in society that lead to the availability, acquisition and use of weapons.³³ This includes stopping the flow of weapons, including small arms and light weapons, military equipment, unmanned aircraft systems and their components and improvised explosive device components to and between terrorists.³⁴ In particular, States should address the link between transnational organized crime and terrorism, including by: taking legal action against those providing terrorists with weapons; ensuring adequate physical management of stockpiles; improving marking and tracing procedures of small arms and light weapons; and reinforcing judicial, law enforcement and border-control and investigation capabilities of arms trafficking networks.³⁵

In addition, States have obligations to prevent and protect people from human rights abuse in situations of armed conflict, including from acts that can amount to terrorism. In this regard, international humanitarian law contains specific rules that complement the rules under international human rights law. States have a general duty to ensure respect for international humanitarian law. This obligation entails an obligation to prevent violations

³¹ As emphasized in the United Nations Global Counter-Terrorism Strategy Review (General Assembly resolution 60/288, and subsequent reviews). See, for example, A/70/674 and A/HRC/33/28.

³² See General Assembly resolutions 72/246 and 73/174 and Human Rights Council resolution 37/27.

³³ See, for example, Human Rights Committee, *general comment No. 35* (2014), para. 9, and *general comment No. 36* (2018), para. 21. Among treaties addressing this subject, see the International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

³⁴ General Assembly resolution 75/291, preamble.

³⁵ Security Council resolution 2370 (2017), para. 6.

of international humanitarian law, including war crimes, by State and non-State actors. How much this requires on the part of a State depends on the gravity of the breach, the means reasonably available to the State and the degree of influence it exercises over those responsible for the breach.³⁶

States also have duties to prevent acts of genocide, ethnic cleansing and crimes against humanity, including when committed through acts of terrorism.³⁷ The International Court of Justice has clarified that the duty to prevent genocide means that a State will be held responsible if genocide is proven to have been committed and that it manifestly failed to take all measures within its power to prevent it.³⁸

Criminalization, investigation and prosecution

States have duties to criminalize, investigate and prosecute certain forms of conduct, including terrorist acts. The duty to criminalize certain conduct, such as torture or enforced disappearance, is explicitly codified in human rights treaties.³⁹ More broadly, States must prohibit certain conduct as part of the general duty to protect individuals from harm and human rights abuse, to combat impunity and ensure accountability.

With respect to the right to life, the Human Rights Committee has highlighted that “States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life”, including “against terrorist attacks”.⁴⁰

Several of the sectoral treaties related to terrorism include obligations to prohibit, criminalize or establish jurisdiction over certain conduct commonly associated with terrorism, such as hijacking, hostage-taking,

³⁶ See, for example, ICRC, *Commentary to the third Geneva Convention, Convention III relative to the Treatment of Prisoners of War* (Cambridge, United Kingdom, Cambridge University Press, 2021), para. 198.

³⁷ See General Assembly resolution 60/1, paras. 138–139; and [report of the Commission of Inquiry on the Syrian Arab Republic on crimes against the Yazidis in the Syrian Arab Republic \(2016\)](#).

³⁸ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, decision of 26 February 2007, para. 431.

³⁹ See, in particular, Convention against Torture, art. 4, International Convention for the Protection of All Persons from Enforced Disappearance, art. 4; and International Convention on the Elimination of All Forms of Racial Discrimination, art. 4 (a).

⁴⁰ Human Rights Committee, [general comment No. 36 \(2018\)](#), para. 20.

bombings and attacks against certain critical infrastructure.⁴¹ Furthermore, relevant Security Council resolutions impose an obligation on all Member States to criminalize terrorist acts. Specifically, in its resolution 1373 (2001), the Security Council: “Decides ... that all States shall ... ensure that ... terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts”.

States must also investigate possible human rights violations perpetrated by States as well as harm committed by non-State actors. Duties to investigate also exist under international criminal law, including for the international crimes of genocide, crimes against humanity and war crimes.⁴²

The duty to initiate investigations under international human rights law arises if a State knew or should have known of the commitment of human rights violations or abuse. In such cases, the State is required to commence investigations, irrespective of whether victims or others make a request to that effect. International human rights law establishes a series of requirements on the way such investigations must be carried out, often summed up as a requirement of effectiveness. Effective investigations should be: (a) prompt, (b) thorough, (c) effective, (d) credible, (e) independent, (f) impartial and (g) transparent.⁴³

Finally, States must hold perpetrators of human rights violations and abuses accountable through prosecution. With respect to certain acts, such as unlawful killing, torture or enforced disappearance, which often take place in terrorism contexts, the State must hold the perpetrators criminally accountable.⁴⁴ Failure to bring perpetrators of such offences to justice could, in itself, give rise to a separate breach of the State’s human rights obligations. States should also remove legal impediments to holding the perpetrators

⁴¹ See, for example, Convention on Offences and Certain Other Acts Committed on Board Aircraft, (1963), art. 3; Convention for the Suppression of Unlawful Seizure of Aircraft (1970), art. 4; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), art. 3; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), art. 3; and International Convention for the Suppression of Acts of Nuclear Terrorism (2005), art. 5.

⁴² Convention on the Prevention and Punishment of the Crime of Genocide, arts. I and IV; also ICRC, *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol. I, rule 158.

⁴³ Human Rights Committee, *general comment No. 36* (2018), paras. 27–28; Convention against Torture, art. 12; and International Convention for the Protection of All Persons from Enforced Disappearance, arts. 3 and 12.

⁴⁴ See, for example, Human Rights Committee, *general comment No. 31* (2004), para. 18.

of human rights abuses responsible, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation.⁴⁵ Human rights law further restricts the permissibility of granting amnesties for certain types of human rights abuse, such as intentional killing.⁴⁶

Some human rights treaties include obligations to make certain violations, including torture and enforced disappearance, extraditable offences.⁴⁷ Similarly, sectoral treaties on terrorism impose obligations on States to make certain offences extraditable and impose obligations to prosecute or extradite perpetrators.

C. The rights of victims of terrorism

Terrorism takes a heavy toll on human life and well-being. States must take measures to ensure that victims receive assistance, reparation, truth, protection, information and access to justice. States should also promote the participation of victims of terrorism in judicial proceedings and other mechanisms.⁴⁸

While there is no agreed international definition of the term “victim of terrorism”, the following working definition has been suggested by the United Nations Office of Counter-Terrorism, the Inter-Parliamentary Union and the United Nations Office on Drugs and Crime:⁴⁹

“‘Victims of terrorism’ may have the following characteristics: a natural person who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, as a result of an act of terrorism. It also includes the immediate family or dependents of the victim who are affected by the harm to the victim, as well as

⁴⁵ Ibid.

⁴⁶ See, for example, Human Rights Committee, *general comment No. 36* (2018), paras. 18 and 27. See also ICRC, *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol. I, rules 159 and 160.

⁴⁷ Convention against Torture, art. 8; and International Convention for the Protection of All Persons from Enforced Disappearance, art. 13.

⁴⁸ See, for example, A/HRC/45/27, para. 57.

⁴⁹ United Nations Office of Counter-Terrorism, the Inter-Parliamentary Union and the United Nations Office on Drugs and Crime (UNODC), *Model Legislative Provisions to support the needs and protect the rights of victims of terrorism* (2022), p. 23.

persons who have suffered harm in intervening to assist victims or to prevent their victimization.”

The context, vulnerabilities and needs of certain groups of victims may require States to implement specific measures.⁵⁰ For example, child victims and witnesses should have access, as early as possible, to any necessary rehabilitative healthcare based on their individual needs, including psychosocial and sexual and reproductive healthcare services. As a result of the different ways in which girls and boys are socialized, the effects of trauma may manifest differently. States should therefore take age and gender dimensions into account when designing interventions and allocating budgets.

Similarly, reparation programmes should ensure that affected children have access to specific educational programmes and skills training, considering the fact that the impact of terrorism on child victims and witnesses might include lost educational and training opportunities. Due consideration should be given to allow girls, who previously lived in territories under the effective control of designated groups and were denied access to education, to complete their education, even after they have reached the age of majority. Furthermore, caregivers of child victims and witnesses should also have access to appropriate support.⁵¹

Terrorism significantly undermines the protection of women’s rights, posing unique challenges for women who become victims of terrorism. Of particular concern is the deliberate targeting of women and girls by terrorist designated groups, often using sexual violence, rape and sexual slavery to inflict harm.⁵² It should be noted, however, that sexual violence against men and boys is underreported in terrorism contexts.⁵³

Moreover, reparation for women affected by terrorism must address the underlying gender disparities that often leave women at a disadvantage in their recovery from harm or in receiving fair treatment within legal and administrative procedures.⁵⁴ It is imperative that efforts to prosecute sexual

⁵⁰ See, for example, A/HRC/40/28, paras. 6–13. With respect to access to health, see Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000).

⁵¹ A/HRC/40/28, paras. 10, 27 and 70.

⁵² A/HRC/45/27, para. 41; A/HRC/46/36, para. 8; and S/2023/413, paras. 2, 11 and 15.

⁵³ See S/2016/361/Rev.1 and S/2018/250; see also A/HRC/40/28, para. 25.

⁵⁴ A/HRC/46/36, para. 31.

violence in the context of terrorism be intensified and that initiatives that prioritize survivor-centred responses and prosecutions, in alignment with international law standards, be promoted.⁵⁵

Where acts of terrorism lead to loss of life, the next of kin of the victim have specific rights. For example, States should provide next of kin with information about the investigation, allow them to present evidence to investigators, grant them legal standing in the investigation and publish information about the investigation, findings, conclusions and recommendations, subject to absolutely necessary redactions, which must be justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals. Moreover, a failure to provide such information may cause the next of kin suffering that could amount to a violation of their rights.⁵⁶

Victims of terrorism are also entitled to seek and obtain all relevant information concerning the commission of the alleged violation, including the identity of the perpetrator(s) and the fate and whereabouts of the victim, especially in cases of enforced disappearances. The right to truth also includes the right of the victim to adequate reparation – for which the establishment of the truth is an indispensable part.

The victim's right to truth has been recognized in a number of United Nations instruments, including in article 24 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance, which provides that each victim “has the right to know the truth regarding the circumstances of the disappearance, the progress and results of the investigation and the fate of the disappeared person”. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law also provide that victims should be entitled to “seek and obtain information” on the “causes and conditions pertaining to gross violations of international human rights law” and to “learn the truth in regard to these violations”. The Human Rights Council, in its resolution 9/11, has similarly recognized “the importance of respecting and ensuring the right to truth to contribute to ending impunity”.

⁵⁵ A/78/269, paras. 31 and 56 (e).

⁵⁶ Human Rights Committee, *general comment No. 36* [2018], paras. 28 and 56.

Importantly, victims of terrorism have a right to effective remedies in circumstances where their human rights have been violated. This may be the case where, for example, the State is responsible for perpetrating or supporting the act of terrorism, where the State failed to take required measures to prevent the terrorist act, to mitigate the harm caused by it or to take measures to investigate, prosecute and punish terrorist acts.

III. Counter-terrorism and human rights

A. Introduction

States have adopted a multitude of measures with national security and counter-terrorism justifications, affecting the enjoyment of a wide range of human rights. While States must take measures to protect people from terrorism, as explained in chapter II above, these must nonetheless be applied in a way that respects human rights. This is not only a question of legal obligation, it is also beneficial.

It is widely documented that counter-terrorism measures that fail to comply with human rights – for example, resorting to lengthy pretrial detention or torture or excessive security measures – create risk, exacerbate pre-existing grievances and may even be counterproductive in the long run.⁵⁷

In some instances, such grievances can be instrumentalized by terrorist groups for recruitment or violent indoctrination purposes, as was the case where ISIL (Da'esh), along with other designated terrorist groups, preyed on individuals in vulnerable situations in their recruitment practices. Similarly, the Truth, Justice and Reconciliation Commission in Kenya acknowledged that abuses by the country's security sector, mainly the military and police, were a major cause of grievance among returning defectors, many of whom identified the actions by the sector as a primary reason for joining al-Shabaab and other groups.

The principal concerns with respect to the compliance of major counter-terrorism measures with international human rights law are discussed in section B below.

B. General concerns

Misuse of the term “terrorism” and “terrorist” to circumvent human rights obligations

States have often misused the label “terrorism” to legitimize a range of State actions that might otherwise be contrary to their legal obligations. In this context, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism observed that:

⁵⁷ A/76/273, para. 7.

“The qualifier ‘terrorism’, which should be applied to the most serious and violent acts defined by international law, has regrettably been embraced with enthusiasm to legitimize a range of State action, in some contexts precisely, it would appear, to justify the exclusion of the protective norms of both international humanitarian law and international human rights law.”⁵⁸

These practices have manifested in several ways. For example, national security and counter-terrorism justifications have been used in attempts to create exceptions to rights that do not permit exceptions, such as the prohibitions of enforced disappearances and torture.⁵⁹

Similarly, States have referred to terrorism or national security considerations in laws and policies to restrict rights in ways that go beyond the permitted restrictions on certain rights. This has been done without establishing a direct and immediate connection between the threat to national security and the restriction placed on the right or rights, for example, the use of mass surveillance, which a State might justify on the basis of national security, but which restricts the right to privacy far beyond what might be necessary to protect national security.

Furthermore, laws adopted to counter terrorism have been misused to target human rights defenders, journalists and others on the basis of their political opinions and racial and religious affiliations rather than to address legitimate terrorism threats.⁶⁰

In situations of armed conflict, particularly in non-international armed conflicts, the categorization of acts as “terrorism” or the use of the label “terrorists” have been used to impede the application of international human rights and humanitarian law.⁶¹ For example, in the aftermath of the terrorist attacks of 11 September 2001 in the United States of America, States have argued that terrorism presents an exceptional situation justifying acts that contravene international law. This has been done using the argument that existing international law would not allow them to

⁵⁸ A/75/337, para. 13.

⁵⁹ With respect to the prohibition on enforced or involuntary disappearances, see Human Rights Committee, *Guezout v. Algeria*, CCPR/C/105/D/1753/2008, para. 8.2. For the prohibition on torture, see, for example, CAT/C/USA/CO/3-5 and Corr.1, para. 11.

⁶⁰ CCPR/C/SWZ/CO/1, para. 36; and A/HRC/50/49, paras. 16, 27 and 32.

⁶¹ A/75/337, para. 16. See also ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, pp. 58–59.

address terrorism adequately.⁶² However, international law does not permit such blanket exceptions.

Moreover, States have also attempted to use “terrorism” to justify the targeting of individuals that are not directly participating in hostilities, in turn justifying the carrying out of attacks causing excessive incidental loss of civilian life, injury to civilians and damage to civilian objects. Such broad interpretations of who may be lawfully targeted may lead to undermining the basic protection afforded under international humanitarian law to victims of armed conflict, including persons hors de combat, who remain protected even if they have been designated as “terrorists”.⁶³

Broad and vague terrorism-related offences

National legislation too often includes broadly defined acts as terrorist acts, for example, the inclusion of non-violent acts – such as “intimidating the public”, “disrupting public order” or “undermining societal security and State stability” – as terrorist acts.

Broad and vague definitions create confusion as to which actions are considered criminal or terrorist. Such definitions lead to an overextension of the understanding of terrorist conduct to encompass crimes and other acts that are not genuinely terrorist in nature; inconsistency in the application of the law; and unlawful restrictions on rights, such as liberty and security, and freedoms of expression, peaceful assembly and association.

Broad and vague definitions of terrorism-related offences infringe upon the principles of legality, proportionality and necessity,⁶⁴ resulting in undue restrictions on human rights.⁶⁵

⁶² Scheinin, Martin, and Vermeulen, Mathia, *Unilateral Exceptions to International Law: Systematic legal Analysis and Critique of Doctrines that seek to Deny or Reduce the Applicability of Human Rights Norms in the Fight against Terrorism*, European University Institute, Florence, Italy (2010).

⁶³ ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, p. 59.

⁶⁴ See, for example, [A/HRC/16/51](#), para. 26; [A/HRC/50/49](#), paras. 17 and 28; and [A/76/273](#), paras. 15–17 and 56.

⁶⁵ Human Rights Committee, *general comment No. 34* (2011), para. 46.

The principle of legality requires that provisions in criminal law do not apply retroactively and are legally clear.⁶⁶ This means laws must be reasonably clear and precise and their applicability must be foreseeable. The clarity of the law allows individuals to understand the prohibited conduct and to organize their behaviour accordingly. The element of foreseeability is crucial to prevent discriminatory or arbitrary enforcement of the law.

Moreover, as explained in chapter I above, there is a requirement that restrictions to rights must be provided by law. This requirement applies beyond criminal law provisions and is applicable to any restriction on human rights. Accordingly, the General Assembly has urged States to ensure that laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including international human rights law.⁶⁷

In the absence of a universal definition of terrorism, the international community has suggested prerequisite components that should be included in any domestic definition of terrorism. This includes violent acts that result in or are intended to result in death, serious bodily injury or the taking of hostages. Additional elements include the intention to commit a terrorist crime and the terrorist purpose. Following such guidance can help achieve the legal certainty and foreseeability required to comply with international human rights law.

Misuse or overuse of states of emergency

States have frequently used the threat of terrorism to justify states of emergency and the use of emergency powers in the interests of national security. In doing so, States either publicly proclaim a state of emergency and derogate from their human rights obligations; or restrict rights through emergency powers without explicitly derogating from human rights treaties. These two approaches may fail to meet the stringent rules for derogation in human rights law.

⁶⁶ See International Covenant on Civil and Political Rights, art. 15; Convention on the Rights of the Child, art. 40 (2)(a); European Convention on Human Rights, art. 7; American Convention on Human Rights, art. 9; African Charter on Human and Peoples' Rights, art. 7 (2); and Universal Declaration of Human Rights, art. 11 (2).

⁶⁷ General Assembly resolution 68/178, para. 6 (j); and Counter-Terrorism Implementation Task Force, *Conformity of National Counter-Terrorism Legislation with International Human Rights Law* (New York, 2014).

In relation to the proclamation of states of emergency, there are certain recurrent situations in which derogation with counter-terrorism justifications do not meet international standards, including the following:

- Temporal limitation: States of emergency become permanent either because of a lack of a time limit for the expiration of the state of emergency, the absence of any decision to lift it or through its continuous extension.⁶⁸
- Subject-matter limitation: States of emergency do not adequately specify which rights are subject to derogation, creating a risk of overbroad – and thus unlawful – suspensions of human rights.⁶⁹
- Use of emergency powers for other purposes than what they were implemented for: States of emergency are used to address purposes other than the ones they were intended to address.⁷⁰

To avoid such problems, States parties to the International Covenant on Civil and Political Rights must ensure that declarations of states of emergency comply with the requirements of international law. In this regard, derogations must be strictly limited in terms of their subject matter, must not be extended for longer than required by the situation and must be limited to the area where the public emergency takes place.

Furthermore, derogations must not be discriminatory, they must not apply to rights such as the prohibition on torture, which do not allow for derogations, and derogations must be consistent with the States' other international legal obligations. Finally, the concerned States must immediately notify other States parties to the treaty whenever a derogation is made, the rights from which the State has derogated and the reasons for making the derogation.⁷¹

⁶⁸ A/HRC/13/37/Add.2, para. 5, and A/HRC/40/52/Add.1, paras. 14, 40 and 49.

⁶⁹ See, for example, CCPR/C/NGA/CO/2, para. 14; CCPR/C/TUN/CO/6, para. 29; and CCPR/C/NER/CO/2, para. 16.

⁷⁰ See, for example, CCPR/C/TJK/CO/3, para. 21.

⁷¹ See, for example, International Covenant on Civil and Political Rights, art. 4 (3), and Human Rights Committee, *general comment No. 29* (2001), para. 17.

In relation to the restriction of rights through emergency powers without explicit derogation, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the following principal examples:⁷²

- Translation of emergency powers into ordinary legislation after a state of emergency has passed.
- Passing ordinary legislation that grants exceptional powers without a declaration of state of emergency.
- Passing of counter-terrorism or other legislation that grant so-called “reserve powers”, providing the executive branch with exceptional powers without the need for a declaration of a state of emergency.
- Use of executive powers to regulate terrorism without any involvement of parliament and limited judicial oversight.⁷³
- Undue reliance on or deference to the executive by parliament and the judiciary in matters relating to national security and counter-terrorism without questioning executive decisions or powers.

In addition, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has cautioned against what has been termed complex emergencies. Complex emergencies evolve from the piling up of multiple forms of legislation and administrative practice, including constitutional exercises of emergency powers, combined with legislative counter-terrorism measures, mingled with devolved uses of emergency powers in federal systems (regional, state and local governments), which create a complex and overlapping mosaic of legal regulation.⁷⁴

In situations of complex emergencies, ensuring the protection of human rights becomes extremely difficult. Non-derogable rights become more vulnerable to erosion; serious, sustained human rights violations occur; exceptional measures in counter-terrorism legislation and administrative insidiously creep into ordinary law; and accountability and oversight of emergency powers becomes more difficult.⁷⁵

⁷² A/HRC/37/52, paras. 30–35.

⁷³ A/HRC/57/29, para. 14.

⁷⁴ A/HRC/37/52, para. 37.

⁷⁵ *Ibid.*, paras. 57–62.

Administrative measures

States have increasingly resorted to counter-terrorism administrative measures, which impose severe restrictions on human rights, resulting in the bypassing of obligations established by international law. This includes practices such as detention without trial, watch-listing, travel bans surveillance, and deprivation of nationality.

Despite the similarity to criminal sanctions, such administrative measures are often not accompanied by robust procedural guarantees that apply in criminal proceedings, such as more stringent standards for evidence and protection of the procedural rights of those brought to court in criminal proceedings. The resort to such shortcut processes raises concern about attempts by States to circumvent the application of criminal protections and to use administrative measures with potentially punitive effects as alternatives to criminal law responses.⁷⁶

Discrimination

Many counter-terrorism measures involve differential treatments, either by design or in their effects on individuals. This may amount to unlawful discrimination, particularly on the basis of race, ethnicity, religion or political opinion. Differential treatment is lawful, in other words, it is not considered discriminatory, but only if it is based on reasonable and objective criteria in pursuit of an aim that is legitimate under a relevant human rights treaty. The requirement of reasonable and objective criteria means that the treatment must be necessary and proportionate to the legitimate aim pursued.

Potentially discriminatory measures and practices can span law enforcement and criminal justice practices, proscription and listing of individuals and organizations as terrorists, surveillance, watch-listing, content moderation and the deprivation of nationality.

For example, in some contexts the practice of watch-listing may entail discrimination on the grounds of race, ethnicity, religion or political opinion. Some risks of differential treatment arise from the very design of the watch-list regime, such as the inclusion of ethnic or religious affiliations as a basis for nominating individuals for inclusion in the watch list.⁷⁷

⁷⁶ See A/HRC/57/29.

⁷⁷ A/HRC/50/49, para. 20.

Another example concerns the focus in some countries on countering exclusively, so-called, “Islamist” terrorism or violent extremism, which has led to the stigmatization of Muslim communities. Furthermore, it has obscured other forms of violent extremism, such as “far right-wing” violent extremism. In some contexts, strong anti-terrorism rhetoric has led to incitement against Muslims by politicians, fuelling even more societal fear and discrimination against that community.⁷⁸

Similarly, counter-terrorism policies and practices in multiple countries have affected men and women differently. At times, such measures have deliberately targeted women human rights defenders and those advocating for gender equality, women’s empowerment and sexual and reproductive health under the guise of countering terrorism.⁷⁹ Furthermore, recurrent counter-terrorism practices, such as surveillance and sanctions, can have specific impacts on women and girls. For example, women are immediately presumed to be suspects by virtue of familial or communal association with specific men who are under surveillance. In addition, women whose family members or spouses are included in sanctions lists face significant challenges due to patriarchal family structures and legal systems that limit their access to work, funds and property. In some countries, women cannot own property independently, further complicating their situation.⁸⁰

In addition, there are numerous cases where counter-terrorism laws have been used against Indigenous Peoples and land defenders, including for opposing large-scale agribusinesses and extractive development projects and protesting loss of cultural heritage and identity that have nothing to do with terrorism.⁸¹ In this restrictive context, women land- and environmental-defenders face additional gender-specific risks; they are at particular risk of threats, violence and even femicide as they take action to protect their territories and communities from the impacts of human-led habitat loss, degradation and climate change, as pointed out,

⁷⁸ See, for example, [A/HRC/35/4](#), [A/HRC/35/41](#), paras. 52 and 55, and [A/HRC/43/46](#), para. 28.

⁷⁹ See Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space* (2023); see also [A/HRC/46/36](#), para. 13.

⁸⁰ [A/HRC/46/36](#), paras. 11 and 16.

⁸¹ [A/HRC/35/41](#), para. 71; and OHCHR, *Land and Human Rights, Annotated Compilation of Case Law* (2015).

inter alia, by the Commission on the Status of Women.⁸² Other risks include rape and other forms of sexual violence and targeted psychological and online violence to undermine women's and defenders' credibility and to intimidate them.

The impact of such differential treatment goes beyond the individual victims of discrimination. In some contexts, discriminatory counter-terrorism measures contribute to the stigmatization of communities, including migrant communities and minority groups, and may serve to perpetuate discrimination, hostility and violence against racial, ethnic and religious minority groups.⁸³ Such measures can also hamper the work of civil society organizations, particularly those working with stigmatized groups.

In order to avoid discrimination in the context of counter-terrorism measures, it is important that counter-terrorism laws and policies include a gender equality and non-discrimination perspective.

C. Civil society and civic space

Introduction

In practice, counter-terrorism measures can have the effect of narrowing civic space – the very environment that enables civil society to play a role in the political, economic and social life of societies. This has negative implications for the activities of civil society actors, including human rights defenders, children and youth, members of minorities and Indigenous Peoples, trade unionists and journalists.⁸⁴

At times, States have invoked the need to counter terrorism and to protect national security with a view to shrinking civic space. This narrowing of civic space has sometimes extended to the instrumentalization and demonization of civil society to pursue security, counter-terrorism and other agendas. In such cases, counter-terrorism measures have a chilling effect on

⁸² Commission on the Status of Women, International Union for the Conservation of Nature, Generation Equality and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Tackling violence against women and girls in the context of climate change" (2022).

⁸³ See, for example, A/HRC/44/42, para. 65, and A/HRC/57/29, para. 32.

⁸⁴ See United Nations Guidance Note, "Protection and promotion of civic space", September 2020.

civil society and can contribute to the stigmatization of civil society actors, their financial marginalization and their exclusion from important forums.⁸⁵

Creating an enabling environment for civil society actors to participate in decision-making processes is central to human rights, democracy and accountability. In the context of counter-terrorism, States should involve affected communities, women and youth, grassroots organizations and diverse civil society in the development and implementation of counter-terrorism responses.

In this regard, civil society should have the opportunity to offer views, assess strategy and provide information on the possible adverse impact of proposed measures, particularly as civil society organizations often have a unique ability to understand the needs and interests of victims and to raise their concerns. The inclusion of civil society, in turn, can contribute to more effective counter-terrorism responses.⁸⁶ This section discusses some of the impacts of counter-terrorism measures on human rights and civic space.

Restrictions on freedoms of expression, peaceful assembly and association and the right to participation

Counter-terrorism measures in many States have placed restrictions on the freedoms of expression, peaceful assembly, association and the right to participation. While such restrictions might be permissible, as explained in chapter I above, if they comply with the requirements under international law, they have often been introduced and employed for ulterior and unjustifiable purposes, in particular the shrinking of civic space.⁸⁷

Examples include the use of charges of terrorism to prevent the political participation of individuals in national elections, as well as the misuse of counter-terrorism measures to restrict critical commentary and reporting by journalists, to curtail access of associations to funding, to paint those providing services to migrants as being responsible for inciting or

⁸⁵ [A/HRC/40/52](#), paras. 60–65 and 71; see also [A/HRC/50/49](#), para. 44.

⁸⁶ For more on the role of civil society, see, for example, [A/HRC/40/52](#); [A/HRC/45/27](#), para. 59, and [A/HRC/50/49](#), para. 47 (d).

⁸⁷ See International Covenant on Civil and Political Rights, art. 25, and Human Rights Committee, [general comment No. 25](#) (2021).

supporting terrorism and to restrict Indigenous Peoples from protesting for the protection of their land rights.⁸⁸

In several States, protesters, including those promoting environmental justice and participating in solidarity protests, face heightened risks under counter-terrorism justifications, including vilification and being labelled as supporters of terrorism.⁸⁹ Counter-terrorism laws have also been used against civil society organizations and individuals for their humanitarian and human rights work and for cooperation with the United Nations.⁹⁰

States must ensure that counter-terrorism measures do not undermine democratic and civic space and are not used as a pretext to silence dissent or opposition. Furthermore, States must ensure that civil society actors are able to function effectively without fear of intimidation or reprisals.⁹¹ While acts of terrorism must be criminalized in conformity with international law, the definition of terrorist crimes must not be overbroad or discriminatory, restrictions on rights and freedoms must comply with international law and counter-terrorism measures must not be applied in order to curtail or discourage the exercise of the rights of freedom of expression, peaceful assembly and association.⁹²

Prohibitions of incitement to terrorism

Criminal offences in national legislation prohibiting incitement to terrorism often lack precision and the element of intent and/or of danger that the act will lead to the actual commission of violence.⁹³ For example, many States have adopted imprecisely worded prohibitions using terms such as the glorification, justification, advocacy, praising or encouragement of terrorism, as well as acts relating to “propaganda” for terrorism,

⁸⁸ See, respectively, [CCPR/C/122/D/2851/2016](#); [A/76/285](#), para. 15; [A/HRC/44/42](#), paras. 22, 66 and 69; and [CCPR/C/CHL/CO/5](#), para. 7.

⁸⁹ See [A/79/263](#) and [A/79/319](#); see also Forst, Michael, *State repression of environmental protest and civil disobedience: a major threat to human rights and democracy Position Paper* (Office of the Special Rapporteur on Environmental Defenders under the Aarhus Convention, 2024); and OHCHR, *Human Rights Violations and Abuses related to the Protests of July and August 2024 in Bangladesh* (2025), p. 33.

⁹⁰ [A/HRC/51/47](#), para. 119.

⁹¹ [A/76/273](#), para. 55.

⁹² See, for example, Human Rights Council, [general comments No. 34](#) (2011), paras. 23 and 46, and [No. 37](#) (2020), para. 68.

⁹³ See, for example, [S/2016/50](#), paras. 11 and 16.

“extremism” and “violent extremism”.⁹⁴ Moreover, some States have passed legislation effectively qualifying criticism of the State or State organs as acts of terrorism. Such legislation not only fails to meet the threshold of incitement but actively seeks to repress freedom of expression.

When implementing legislation, States have sometimes misused provisions on incitement to terrorism to prosecute individuals for legitimately exercising their right to freedom of expression and to silence critics, leading to unnecessary or disproportionate interference with the freedoms of expression, peaceful assembly and association and the narrowing of civic space. For example, the Human Rights Committee has expressed concern about the broad formulation of the concepts of “extremism”, “inciting social or class hatred” and “religious hatred or enmity” in domestic criminal legislation and the use of such legislation to unduly restrict freedoms of religion, expression, assembly and association.⁹⁵

While States are required under international human rights law to prohibit the advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, this requirement is strictly limited, and incitement to terrorism must meet a particularly high threshold.⁹⁶ Other expressions that do not constitute incitement can be restricted only exceptionally. Even expressions that shock, offend or disturb may be protected.⁹⁷ As explained above, in order to be lawful, both prohibitions of incitement and other restrictions to free expression must pursue a legitimate aim, be provided by law and be necessary and proportionate.

The Rabat Plan of Action,⁹⁸ endorsed by the Human Rights Council and by human rights mechanisms, provides guidance on the criminalization of

⁹⁴ [A/74/486](#), para. 31; and [A/HRC/40/52](#), paras. 37, 39 and 75 (e).

⁹⁵ See, for example, [CCPR/C/KAZ/CO/2](#), para. 49. See also Human Rights Committee, [general comment No. 34](#) (2011), para. 46; [A/HRC/28/28](#), para. 22; and [A/HRC/31/65](#), para. 39.

⁹⁶ By virtue of the application of art. 20 of the International Covenant on Civil and Political Rights. In addition, the Security Council, in its resolution [1624 \(2005\)](#) (para. 1), called on States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to prohibit by law incitement to commit a terrorist act or acts.

⁹⁷ International Covenant on Civil and Political Rights, art. 20, International Convention on the Elimination of All Forms of Racial Discrimination, art. 4; and Human Rights Committee [general comment No. 34](#) (2011), paras. 11 and 21.

⁹⁸ [A/HRC/22/17/Add. 4](#), annex, appendix.

expressions that constitute incitement to violence, as well as discrimination or hostility. Expressions considered to be criminal offences must be reserved for the most severe and deeply felt opprobrium.

Factors to take into account when assessing speech considered to contain incitement to violence include: (a) the context, including the prevailing social and political context when the speech was made and disseminated; (b) the speaker's position or status in society; (c) the intent of the speaker; (d) the content and form, including style and nature, of the arguments presented; (e) the range of the speech, including its reach, public nature, means of dissemination, the frequency, quantity and extent of the communication and whether the audience had the means to act on the incitement; and (f) the likelihood, including the imminence of harm.⁹⁹

Civic space online

With the increased digitalization of modern societies, the online sphere has become fundamental for the operation of civil society and the enjoyment of human rights. However, over recent years there has been a gradual restriction of online civic space, often achieved through reliance on counter-terrorism justifications. For example, Internet shutdowns, including the disruption of Internet connectivity, are frequently justified by reference to national security and counter-terrorism objectives. The adverse impacts of Internet shutdowns and disruptions on rights often extend beyond the areas or periods of their implementation, rendering them disproportionate, even when they are meant to respond to genuine threats.

Human rights apply both online and offline.¹⁰⁰ Consequently, the permissibility of restricting rights in the online sphere for the purposes of countering terrorism depend on the extent to which those restrictions are permissible under international human rights law. Even when provided by law, given their indiscriminate reach and broad impacts, Internet shutdowns and other online measures rarely meet the conditions of necessity and proportionality required for the imposition of restrictions on freedom of expression and other rights related to online activity. In this regard, the

⁹⁹ *Ibid.*, para. 29; see also [Committee on the Elimination of Racial Discrimination, general comment No. 35 \(2013\)](#); and [A/74/486](#), paras. 14, 15 and 18.

¹⁰⁰ See, for example, Human Rights Council resolution 20/8.

United Nations High Commissioner for Human Rights has recommended that States refrain from imposing Internet shutdowns.¹⁰¹

Another example is State surveillance of online activity and, increasingly, the regulation of online content. In doing so, some States have either proposed or placed obligations on private actors in order to gain access to private data and to remove and block content online, including for the purposes of combating terrorism. A number of States have also imposed obligations on private actors to moderate content online, which can create risks of so-called “overcompliance” on the part of companies, resulting in undue restrictions on online content and access to information.¹⁰² Beyond formal regulation, informal State pressure on private actors to release data or to moderate content can have devastating effects on civil space as well as on the right to privacy.¹⁰³

The risks associated with imposing obligations on private actors to moderate content are particularly critical when the obligations to restrict content have strict deadlines, are based on vague or broad definitions of terrorism and related terms and lack independent oversight.¹⁰⁴ In addition, in order to cope with the vast amount of online content, platforms rely heavily on automation and artificial intelligence (AI) for content moderation. The use of AI is not always accurate in detecting harmful content, which can result in the imposition of restrictions on protected speech through the use of counter-terrorism justifications. The issue worsens when online platforms apply vague or overly broad definitions of terms like “terrorism” or “extremism”.

In this context, the Secretary-General has called on corporate entities to adhere to the Guiding Principles on Business and Human Rights,¹⁰⁵ including in their content moderation practices.¹⁰⁶ In doing so, companies should clearly indicate where and how AI technologies and automated

¹⁰¹ A/HRC/50/55, paras. 31–32 and 66; A/HRC/35/22, paras. 12–15 and 66; see also A/78/269, paras. 38–39.

¹⁰² See A/HRC/38/35; and A/78/269, para. 22.

¹⁰³ A/79/363, para. 15; and A/HRC/38/35, para. 20.

¹⁰⁴ CCPR/C/DEU/CO/7, para. 46; and OHCHR, “Moderating online content: fighting harm or silencing dissent?” (July 2021).

¹⁰⁵ OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (United Nations publication, 2011).

¹⁰⁶ See, respectively, A/78/269, para. 57; see also A/HRC/50/49, para. 48, and A/HRC/38/35.

techniques are being used in their platforms, services and applications. Companies should notify individuals when AI is involved in decision-making and content moderation and when their individual data is used in AI systems, thus helping users to understand its impact on their rights. Companies should also provide data on content removals, including how often they are contested and upheld, as well as trends in content display, case studies and education on commercial and political profiling.¹⁰⁷

D. Designation of individuals or entities as “terrorists”

The designation of individuals as terrorists and organizations as terrorist entities (known as proscription) is a measure carried out by the Security Council, regional organizations and national authorities and designed to prevent terrorism. Proscription is also widely used for the purpose of preventing the financing of terrorism.¹⁰⁸

The designation of individuals or organizations as terrorists can entail sanctions, such as asset freezes, travel bans and seizure of property.¹⁰⁹ While these measures can be useful to address the threat of terrorism, and especially terrorism financing, they can also have a considerable impact on the rights of individuals to movement, property, family, privacy and reputation and severely hamper the work of certain actors, including humanitarian and civil society organizations.

As a result of the implementation of such measures, women have experienced wide-ranging challenges to the enjoyment of their human rights, including difficulty in securing work, renting or purchasing homes and travelling. Women with listed family members or spouses face significant impacts, largely due to legal systems and patriarchal financial structures that limit their independent access to work, funds, bank accounts and other sources of income. In some States women cannot own property, rendering them unable to manage property held by listed relatives. In addition, the lack of legal aid for those challenging their listing, particularly affecting women and families with limited resources, makes the process of contesting the listing hard.¹¹⁰

¹⁰⁷ A/73/348, para. 66.

¹⁰⁸ A/HRC/50/49, paras. 14–15.

¹⁰⁹ CCPR/C/94/D/1472/2006, paras. 10.11–10.13.

¹¹⁰ A/HRC/46/36, paras. 14–17.

The designation of organizations as terrorist entities has also given rise to the arbitrary banning of organizations, sometimes with the objective of silencing political dissent or peaceful means of expression and association. In some contexts, terrorist designations have predominantly affected certain ethnic and religious groups or Indigenous Peoples, including those who defend the rights of such groups.¹¹¹

In addition, humanitarian actors, their suppliers and service providers can be impeded from providing humanitarian assistance to populations present in areas controlled, or formerly controlled, by groups designated as terrorist.¹¹² Furthermore, humanitarian actors may be prohibited access to a region or territory under sanctions. Even when access is allowed, humanitarian actors may still need to go through bureaucratic hurdles, such as lengthy approval processes imposed by the host State, as well as screening requirements for individuals prior to receiving assistance.¹¹³ In addition, some States have criminalized travel to areas in which designated terrorist groups are present, resulting in legal risks for humanitarian workers who need to access these areas to deliver aid.¹¹⁴

At times, sanctions can not only impede humanitarian work but have also been used to target humanitarian actors directly or indirectly, for example as the result of the broad application of the offence of “material support to terrorism”. In some cases, humanitarian actors may be wrongly associated with designated terrorist groups as a result of delivering humanitarian assistance to populations living under the control of such groups, in certain cases leading to criminal charges or legal actions against them. In some situations, humanitarian actors, civil society organizations and human rights defenders have themselves been inappropriately designated or labelled by the authorities as

¹¹¹ A/HRC/50/49, para. 16.

¹¹² See, for example, A/HRC/40/52, para. 20; see also A/76/273, para. 37.

¹¹³ See, for example, ICRC, “Guilt by association: Restricting humanitarian assistance in the name of counter-terrorism”, *International Review of the Red Cross* (2021), p. 916.

¹¹⁴ For examples on the negative impacts on humanitarian actors, see Inter-Agency Standing Committee, “Impact of sanctions and counter-terrorism measures on humanitarian operations” (September 2021), and policy paper, “Considerations on screening/vetting persons in need of humanitarian assistance in counter-terrorism/sanctions contexts” (August 2023). See also Diakonia International Humanitarian Law Centre, Fact Sheet Series, “Humanitarian action, counter-terrorism measures and sanctions in Syria” (August 2021).

terrorists, seemingly to prevent freedom of expression or as reprisals for criticism or dissent.¹¹⁵

All of the above consequences of proscription-related sanctions can have a severe impact on human rights, in particular economic, social and cultural rights. In conflict or disaster-affected areas, populations rely on humanitarian assistance, including food, water and housing. Obstacles to humanitarian assistance translate into questions of survival for many, with people in marginalized situations, as well as women and children, often suffering disproportionately.

Acknowledging the impact of sanctions on humanitarian aid, the Security Council has issued several resolutions to mitigate the unintended consequences of counter-terrorism sanctions on humanitarian activities.¹¹⁶ Importantly, in December 2022, the Security Council established a permanent and standardized humanitarian exemption to existing – and future – United Nations financial sanctions.¹¹⁷ The exemption was limited to two years in the case of the counter-terrorism sanctions imposed by the Security Council against ISIL (Da'esh), Al-Qaida and their affiliates. In a welcome development, the Security Council decided unanimously, in December 2024, to renew indefinitely the humanitarian exemption to its counter-terrorism sanctions.¹¹⁸

To make a real change on the ground and ensure that humanitarian aid is not hindered in all counter-terrorism contexts, States need to give effect to such exemptions in domestic law and, moreover, to introduce similar exemptions within regional and national terrorism sanctions regimes. In addition, States should narrow definitions of terms like “material support to terrorism” to ensure they do not hinder humanitarian organizations from delivering essential aid to those in need.

¹¹⁵ See, for example, [A/HRC/51/58](#), para. 48; see also remarks of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (15 January 2025).

¹¹⁶ See, for example, Security Council resolution [2462 \(2019\)](#), para. 24.

¹¹⁷ See Security Council resolution [2664 \(2022\)](#).

¹¹⁸ See Security Council resolution [2761 \(2024\)](#).

Finally, concerns have been raised that the Security Council, as well as regional and national procedures for the designation of individuals fail to respect basic procedural guarantees. Designation procedures may contravene international standards on the right to fair hearing as they often provide limited opportunity to challenge designation decisions and are often based on secret information. Moreover, despite strong political promises, neither the United Nations nor national processes offer comprehensive remedies for individuals affected by arbitrary designations.¹¹⁹

Furthermore, while the criteria for proscription at the national level vary greatly from context to context, the underpinning definitions provided in domestic criminal law of “terrorism” and “material support” to terrorism often remain overly broad or vague, allowing for the overinclusion of groups and individuals in such lists.

It is therefore crucial that States, when designating individuals or groups as terrorists, follow clear and fair processes accompanied by adequate safeguards, as afforded in the criminal justice system, ensuring that those erroneously or unlawfully designated as terrorists are delisted and granted effective remedies.¹²⁰

E. Countering the financing of terrorism

One crucial component affecting terrorism is its financing. For the purpose of addressing such financing, States have adopted the International Convention for the Suppression of the Financing of Terrorism and the Security Council has called for the suppression of terrorist financing.¹²¹ In addition, a range of entities have issued soft law recommendations, some of which have been influential in shaping the conduct of States to counter the financing of terrorism.¹²²

¹¹⁹ See, for example, A/46/273, paras. 30–38; and A/HRC/46/36, paras. 14–15.

¹²⁰ A/76/273, para. 55, and A/HRC/57/29, paras. 38 (d) and (e). See also, for example, A/76/273, para. 33; CCPR/C/94/D/1472/2006, paras. 10.12 and 10.13; United Nations Global Counter-Terrorism Coordination Compact, Working Group on Protecting and Promoting Human Rights and the Rule of Law and Supporting Victims of Terrorism, “Basic Human Rights Reference Guide: Proscription of Organizations in the Context of Countering Terrorism” (New York, 2021); and A/HRC/57/29, para. 38 (b).

¹²¹ See, for example, Security Council resolutions 1373 (2001), 2133 (2014), 2178 (2014), 2195 (2014), 2347 (2017) and 2462 (2019).

¹²² See, notably, Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (2023).

In practice, measures to counter the financing of terrorism have led to negative effects on the enjoyment of rights.¹²³ Concerns include:

- Criminalization of terrorism financing based on broad and vague definitions of terrorist financing or support, leading to financing measures affecting individuals and entities that are not terrorist in nature.
- Adoption of onerous registration and reporting requirements for organizations, supplementary requests for disclosure, restrictions or banning of funding and lack of humanitarian exemptions in legislation, increasing the burden on organizations and often targeting organizations not terrorist in nature, including by labelling them as “foreign agents”. These measures in turn can affect the right to privacy of individuals and freedom of association.
- Overuse of surveillance to investigate and uncover offences related to the financing of terrorism, negatively affecting human rights, particularly the right to privacy.
- Misuse of criminal, civil and administrative proceedings, such as travel bans, asset freezes and funding prohibitions against civil society organizations and individuals.
- Use of bans on grants and donations to organizations on the basis of protection against terrorism and prevention of money-laundering, leading to the withdrawal of funding from non-terrorist organizations, undermining valuable human rights work, including work against terrorism and violent extremism.¹²⁴
- Increased risk aversion and risk avoidance practices by the financial sector in response to practices to counter the financing of terrorism, particularly where such measures lack empirical evidence and transparency and are not based on risk assessment or consultations with civil society, with a disproportionate impact on civil society funding and the ability of organizations to operate.

¹²³ See, for example, *The human rights and rule of law implications of countering the financing of terrorism measures* (June 2022); and A/HRC/23/39, paras. 20 and 22–26.

¹²⁴ A/HRC/23/39, paras. 22–26. See also Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, position paper, *The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures* (June 2022), para. 26.

As a general principle, measures to counter the financing of terrorism should adhere to the strict requirements of legality, proportionality, necessity and non-discrimination. In order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective.

States should periodically assess measures to counter the financing of terrorism and their impact on civil society organizations. Any limitation on the freedom of association of such organizations must be prescribed by law, in pursuance of one or more specific legitimate purposes, and be necessary in a democratic society. Furthermore, States should assess the potential risk of such measures and monitor overregulation and overcompliance by financial institutions.

F. Impact of law enforcement and military operations

Use of force

At times, States may use force to prevent and protect against terrorism. However, the use of force has implications for the enjoyment of human rights, including the rights to life and security of person and the prohibition of torture and ill-treatment. Consequently, the use of force must be compatible with the requirements of international law.

To give the example of the right to life, the use of lethal force, including in the context of countering terrorism, is an extreme measure and should not be resorted to unless strictly necessary to protect life or prevent serious injury from an imminent threat.¹²⁵ Importantly, any deprivation of the right to life cannot be arbitrary. The notion of “arbitrariness” includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of a lack of reasonableness, necessity and proportionality.

States are responsible for unnecessary or disproportionate use of force by law enforcement and security forces. In order to prevent human rights violations when using force, States must ensure the proper training and selection of members of law enforcement and security forces engaged in

¹²⁵ International Covenant on Civil and Political Rights, art. 6; and Human Rights Committee, *general comment No. 36* (2018), para. 12. See also *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990); and OHCHR and UNODC, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017).

counter-terrorism operations; must plan and organize counter-terrorism operations in order to avoid injury and the loss of life; and, in the execution of operations, must take due precautions to ensure adequate control.¹²⁶

Where a State is party to an armed conflict, questions may arise as to whether situations involving the use of force against persons suspected of acts of terrorism are assessed solely under the rules of international human rights law or whether international humanitarian law is also applicable. International humanitarian law contains a series of rules governing the conduct of hostilities, which limit the means of methods of warfare that parties to armed conflicts are permitted to use.

These rules aim to strike a balance between legitimate military objectives and the humanitarian objective of reducing suffering, particularly among civilians. The Human Rights Committee has noted that the use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary under international human rights law.¹²⁷

In practice, States have sought to justify serious violations of international humanitarian law in situations of armed conflict as counter-terrorism operations.¹²⁸ Three important principles regulating the conduct of hostilities in international humanitarian law are relevant: first, the principle of distinction, which prohibits parties to armed conflict from directing attacks against civilians or civilian objects; second, the principle of proportionality, which prohibits the launching of an attack that causes incidental loss of civilian life, injury to civilians or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage the attack anticipated; and, third, precautions in attack, which requires parties to armed conflict to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.¹²⁹

¹²⁶ European Court of Human Rights, *McCann and Others v the United Kingdom*, Application No. 18984/91, Judgment of 27 September 1995, para. 149. See, for example, Human Rights Committee, *general comment No. 36* (2018), paras. 13–15; and OHCHR and UNODC, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017).

¹²⁷ Human Rights Committee, *general comment No. 36* (2018), para. 64.

¹²⁸ See, for example, OHCHR, “Rapport sur les événements de Moura du 27 au 31 mars 2022” (May 2023); see also A/HRC/29/51.

¹²⁹ See, respectively, ICRC, *Customary International Humanitarian Law Databases*, rules 1, 5–9, 12, 14, 16 and 21.

Particular questions arise when use of force by a State occurs outside the territory of that State, for example, through the extraterritorial killing of individuals suspected of terrorism during special or covert military operations or by missile or drone strikes. States must respect the right to life of “persons located outside any territory effectively controlled by the State, whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner”.¹³⁰ This means that attacks, such as missile strikes, that impact the right to life of individuals outside the territory of a State will fall within the jurisdiction of that State. Thus, in addition to other applicable rules of international law, the State is under an obligation to ensure that such use of force complies with international human rights law.

The Human Rights Committee has called on States to ensure that any use of armed drones complies fully with the obligations related to the right to life, including, in particular, with respect to the principles of distinction and proportionality and precautions in attack in the context of armed conflicts. The Committee has also called on States to end practices of extrajudicial executions and targeted killings of individuals suspected of involvement in terrorist activities.¹³¹

Deprivation of liberty

The deprivation of liberty must never be arbitrary and must be carried out with respect for the rule of law.¹³² Arbitrary detention, which is a human rights violation in itself, increases the risk of further violations, including torture or other cruel, inhuman and degrading treatment; enforced disappearance; and arbitrary deprivation of life as a result of extrajudicial execution.

Concerns of arbitrary deprivation of liberty in the context of countering terrorism arise at several levels. The first concerns the use of lengthy pretrial detention. For example, the period of pretrial detention for counter-terrorism is often longer than for other crimes. In some countries, domestic legislation empowers the police to request that individuals suspected of

¹³⁰ Human Rights Committee, *general comment No. 36* [2018], para. 63; see also *A/68/389*; *A/HRC/25/59*; and *A/HRC/26/36*.

¹³¹ See, for example, *CCPR/C/ISR/CO/3*, para. 10; *CCPR/CO/78/ISR*, para. 15; and *CCPR/C/USA/CO/4*, para. 9.

¹³² International Covenant on Civil and Political Rights, art. 9 (1).

terrorism be detained without charge for up to 28 days, with a maximum extension of four months, pending investigation. Others allow 90 days of pretrial detention or mandatory pretrial detention in cases involving terrorism. In practice, pretrial detention has been used in some countries as a tool to impose prolonged, often indefinite, detention, sometimes due in part to lack of resources and capacity within the judicial system.

Under international human rights law, the use of pretrial detention must be the exception, rather than the norm. Individuals who are held in pretrial detention are entitled to a trial within a reasonable time or to release. The reasonableness of any delay in bringing a case to trial must be assessed based on specific circumstances, taking into account the complexity of the case, the conduct of the accused during the proceedings and how the matter was dealt with by the executive and judicial authorities. The widespread use of pretrial detention, including for extremely prolonged periods of time, may not only constitute arbitrary deprivation of liberty but could also conflict with the presumption of innocence.¹³³

A second concern has been the increasing expansion of counter-terrorism powers by the police in recent decades, including the emergence of detention regimes outside the context of criminal proceedings. Forms of administrative or security detention present severe risks of arbitrary deprivation of liberty. The burden of proof lies on the State to show that individuals pose a threat that cannot be addressed by alternative measures. Furthermore, States must show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that those detained are afforded all applicable judicial guarantees.¹³⁴

These standards are equally applicable to immigration detention, yet evidence suggests they are often disregarded in the case of migrants and asylum-seekers under the pretext of fighting terrorism. Immigration detention must be: an exceptional measure of last resort; be limited to such time as is reasonably necessary in each particular case; be periodically reviewed; and comply with all safeguards applicable to all other forms of detention. The detention of

¹³³ See, for example, International Covenant on Civil and Political Rights, art. 9 (3) and art. 14 (2); see also Human Rights Committee, *general comment No. 35* (2014), para. 37.

¹³⁴ A/HRC/57/29, paras. 21–23; see also United Nations Counter-Terrorism Implementation Task Force, Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism* (New York, 2014) para. 14; and Human Rights Committee, *general comment No. 35* (2014), para. 15.

children on grounds related to their own or their parents' migration status is strictly prohibited under international human rights law.¹³⁵

A third concern is the use of incommunicado detention in counter-terrorism cases, which creates risks of torture and ill-treatment, in particular where there is no judicial oversight to ensure the lawfulness of such detention. International human rights law stipulates that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. Incommunicado detention without judicial control is contrary to the right to liberty.¹³⁶

A fourth concern is that in some contexts detainees suspected of terrorism do not have access to an effective mechanism to challenge the lawfulness of their pretrial detention and do not always, in law or in practice, have prompt access to a lawyer.¹³⁷ In some contexts, individuals, including children, are detained for years for alleged association with a terrorist group, without being able to challenge the legality of their detention.¹³⁸ Lack of access to a lawyer deprives detainees of a fundamental safeguard against torture and ill-treatment, arbitrary detention and other breaches of fundamental freedoms and human rights.¹³⁹

Secret detention is a risk that can result from a lack of respect for procedural guarantees; in the context of countering terrorism this is of particular concern. Secret detention itself constitutes arbitrary deprivation of liberty and may constitute enforced disappearance. It may also constitute or facilitate torture or cruel, inhuman and degrading treatment.¹⁴⁰

¹³⁵ United Nations Counter-Terrorism Implementation Task Force, Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism* (New York, 2014) p. 26; A/63/223, para. 45 (a); and A/62/263, para. 48. See also OHCHR and Global Migration Group, *Principles and Guidelines supported by practical guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (2018).

¹³⁶ International Covenant on Civil and Political Rights, art. 9, and Human Rights Committee, *general comment No. 35* (2014), paras. 35 and 56. See also CCPR/C/128/D/2819/2016, para. 8.6.

¹³⁷ CCPR/C/TUR/CO/1, para. 17; see also A/HRC/45/27, para. 22.

¹³⁸ A/78/269, para. 44.

¹³⁹ See Human Rights Committee, *general comment No. 20* (1992), para. 11; and Committee against Torture, *general comment No. 2* (2007), para. 13.

¹⁴⁰ See, for example, A/HRC/13/42, para. 18 and following paras.; para. 28 and following paras.; and paras. 34 and 289.

In 2010, United Nations special procedures released a joint study on global practices in relation to secret detention in the context of countering terrorism,¹⁴¹ which found that, in reference to concerns relating to national security, many States resorted to secret detention, facilitating and covering up torture and inhuman and degrading treatment carried out to obtain information or to silence individuals. In 2022, in a follow-up study,¹⁴² it was concluded that the failure to reckon with responsibility for these gross violations has created an enabling environment in which States appear to be empowered to engage in or support mass secret detention with few consequences.

A final concern relates to the arbitrary detention of children. States and de facto authorities have held children, either unaccompanied or with their caregiver,¹⁴³ in places of detention for alleged association with or membership in a designated terrorist group, without being able to challenge the lawfulness of detention. Especially in conflicts involving non-State armed groups, including those designated as terrorist, States are more likely to detain children than to provide rehabilitation and reintegration.

Even outside conflict situations, States have invoked national security and counter-terrorism grounds to detain children, undermining established standards, including obligations to use detention as a measure only of last resort and to provide rehabilitation and reintegration assistance for children illegally recruited by armed groups designated as terrorist or violent extremist. The expansion of counter-terrorism laws, which often fail to distinguish between adults and children and provide for fewer procedural guarantees, place children at heightened risk of detention for alleged national security and terrorism offences.¹⁴⁴

Torture and ill-treatment and non-refoulement

Any use of torture or ill-treatment is unlawful and cannot be subject to exception or derogation.¹⁴⁵ Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment states

¹⁴¹ See *A/HRC/13/42*.

¹⁴² See *A/HRC/49/45*.

¹⁴³ See, respectively, *A/78/269*, para. 47, and OHCHR, End of mission statement of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her *Technical Visit to the Northeast of the Syrian Arab Republic* (2023).

¹⁴⁴ *A/74/136*, paras. 68 and 74–75.

¹⁴⁵ Convention against Torture, art. 1 (1); and Human Rights Committee, *general comment No. 20* (1992), para. 7. On the customary nature, see International Court of Justice, *Questions relating to*

that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. Similarly, the Human Rights Committee has highlighted the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which also extends to threats of terrorism. Hence, terrorism threats cannot be invoked to justify the use of torture to extract information from suspected terrorists.¹⁴⁶

In the context of countering terrorism, several States have resorted to torture or cruel, inhuman or degrading treatment or punishment, including during counter-terrorism operations and interrogations.¹⁴⁷ Allegations of torture or ill-treatment have been disregarded or unaddressed, even if raised during judicial proceedings, and convictions have been based on torture-extracted confessions. Limited steps to ensure accountability for such practices may undermine trust in the authorities and in the usefulness or effectiveness of the entire approach to addressing terrorism.

Countering terrorism has also been used to justify extradition contrary to the principle of non-refoulement.¹⁴⁸ The principle of non-refoulement reflects customary international law and has been given expression in international human rights treaties and in treaties regulating refugee law.¹⁴⁹ It places limits on the extent to which a State can extradite, deport or transfer an individual to a third-State, where there is a real risk that the extradition, removal or transfer would result in a threat of torture, persecution or to life, physical integrity or liberty.¹⁵⁰

the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment of 29 July 2012, para. 99; and, ICRC, Customary International Humanitarian Law Databases (online), rule 90.

¹⁴⁶ See, respectively, Convention against Torture, art. 2 (2), and [CCPR/C/125/D/2657/2015](#), para. 9.3.

¹⁴⁷ [CAT/C/USA/CO/3-5](#) and [Corr.1](#), para. 11; [A/HRC/8/13](#), para. 26; United Nations Counter-Terrorism Implementation Task Force, Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism* (New York, 2014), para. 16; and OHCHR, *Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism* (2023).

¹⁴⁸ See, for example, [CAT/C/54/D/538/2013](#), para. 9.7, and [CAT/C/48/D/444/2010](#), para. 13.7. See also Human Rights Committee, [general comments No. 20 \(1992\)](#), para. 9, [No. 31 \(2004\)](#), para. 12, [No. 36 \(2019\)](#), paras. 30–31, and [No. 6 \(2005\)](#), para. 27.

¹⁴⁹ See, for example, Convention Relating to the Status of Refugees, art. 33 (1).

¹⁵⁰ See, for example, Office of the United Nations High Commissioner for Refugees (UNHCR), “[Note on the principle of non-refoulement](#)”; and UNHCR, [Opinion on the scope and content of the principle of non-refoulement](#), para. 253.

Further, States have implemented programmes, including in countering terrorism, for the abduction of individuals from one country, with or without the cooperation of the government of that country, and the secret transfer of individuals outside any lawful process of extradition or expulsion to another country (extraordinary rendition).

State cooperation in such programmes, such as through permitting the use of airports and airspace for so-called rendition flights,¹⁵¹ may be contrary to the principle of non-refoulement and therefore may entail State responsibility for aiding or assisting in the commission of torture or ill-treatment by foreign agents operating within their territory. In cases concerning terrorist suspects, the Human Rights Committee has noted that, at a minimum, a State party is responsible for acts of foreign officials exercising acts of sovereign authority on its territory if such acts are performed with the consent or acquiescence of the State party.¹⁵² Additionally some individuals have been subjected to torture upon rendition.¹⁵³

G. Violations of the right to a fair trial

In spite of their importance, fair trial guarantees are not always respected in cases concerning terrorism-related offences. While sometimes reflecting more generalized challenges in law enforcement and the administration of justice, the impact of fair trial-related deficiencies is particularly acute in the context of the prosecution of terrorist acts.

Concerns include lengthy pretrial detention, the use of coerced confessions as evidence in courts, restrictions on access to legal counsel, insufficient time to prepare the defence and the absence of judicial independence.¹⁵⁴ In some terrorism-related cases, trials have taken place in the absence of the accused, affecting the accused's ability to hear and challenge the prosecution case and present a defence to the charges. While an accused may choose not to attend a trial after being informed in advance of relevant rights, trials in absentia have been conducted beyond the scope of these exceptions in some counter-terrorism cases.

¹⁵¹ CAT/C/ IRL/ CO/1, para. 9; CAT/C/PRT/CO/5-6, para. 13; CAT/C/MAR/CO/4, para. 11; and CAT/C/USA/CO/3-5 and Corr.1, para. 11.

¹⁵² CCPR/C/88/D/1416/2005, para. 11.6.

¹⁵³ See, for example, A/HRC/22/52 and Corr. 1, para. 20.

¹⁵⁴ See A/HRC/45/27.

Other fair trial guarantees not always respected in terrorism-related proceedings include the lack of opportunity to cross-examine witnesses, especially anonymous witnesses, excessive reliance on secret information and the use of government-appointed experts, which in practice are nearly impossible for the defence to challenge. Another issue has been non-compliance with the presumption of innocence in terrorism proceedings, including through excessively long pretrial detention, reversal of the burden of proof, statements by judicial or other authorities, absent a final conviction, declaring that an individual has committed a crime, as well as limited, restricted or ineffective access to independent legal representation.¹⁵⁵

Other fair trial concerns include the lowering of the evidentiary standard necessary for conviction and the use of secret evidence and so-called “battlefield” or military-produced evidence in terrorism cases.¹⁵⁶ Similarly, authorities have applied pressure, including threats against family members, with a view to obtaining confessions of guilt.¹⁵⁷ Moreover, the practice of some States to establish special tribunals with jurisdiction over terrorism-related offences or to prosecute such cases before military tribunals have raised concerns with respect to the equitable, impartial and independent administration of justice.¹⁵⁸ In the case of juvenile persons charged with terrorism-related offences, laws and procedures designed to apply to adults have been extended to children, including having them tried by special or military courts rather than by the regular juvenile justice system.¹⁵⁹

Article 14 of the International Covenant on Civil and Political Rights sets out fair trial guarantees. Among these guarantees, article 14 includes a general guarantee of equality before courts, which entitles individuals to a fair and public hearing by a competent, independent

¹⁵⁵ See, for example, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space* (2023), p. 56; A/HRC/49/45/Add.1, paras. 42 and 45; A/HRC/43/46/Add.1, paras. 39–40; and Human Rights Committee, *general comment No. 32* [2007], para. 30.

¹⁵⁶ See A/HRC/45/27, para. 18, and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Position on the use of ‘Battlefield’ or military produced evidence in the context of investigations or trials involving terrorism offences” (April 2021).

¹⁵⁷ See A/HRC/43/46/Add.1, paras. 38–40.

¹⁵⁸ On “faceless judges” or military tribunals, see Human Rights Committee, *general comment No. 32* [2007], paras. 22–23. See also A/HRC/45/27.

¹⁵⁹ A/HRC/40/28, para. 52.

and impartial tribunal established by law. Article 14 also provides for a series of minimum guarantees in the determination of a criminal charges, such as: to be informed promptly and in detail of the nature and cause of the charge; to be tried without undue delay; to have adequate time and facilities for the preparation of defence and to communicate with a counsel of one's own choosing; to defend oneself in person or through legal assistance of one's own choosing, or to have free legal assistance assigned where the interests of justice so require; and not to be compelled to testify against himself or to confess guilt. The presumption of innocence must always be respected, and individuals shall have the right to have their case promptly reviewed by a court to determine the lawfulness of their detention.¹⁶⁰ These rights must not be weakened or diminished by any derogation from the Covenant.¹⁶¹

H. Use of new technologies, surveillance and data

Digital surveillance

While surveillance is not a new phenomenon, rapid advancements in the development of new technologies have contributed to broader availability and access to various forms of surveillance technologies, their methods and use. Many States have incorporated surveillance measures, both extraterritorial and domestic, as a central part of their terrorism responses and have significantly expanded the powers of law enforcement and security agencies to conduct surveillance.¹⁶² These developments have contributed to a blurring of lines between surveillance conducted for law enforcement purposes, such as in the investigation of crimes under certain conditions, and intelligence gathering.¹⁶³

¹⁶⁰ Human Rights Committee, *general comment No. 32 (2007)*, para. 6, and OHCHR, *Digest of jurisprudence of the UN and regional organizations on the protection of human rights while countering terrorism*, pp. 5 and 39.

¹⁶¹ OHCHR has published a practical guide on the right to fair trial and due process in the context of countering terrorism (United Nations Counter-Terrorism Implementation Task Force, Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide*). The guide outlines 12 guiding principles and guidelines, including access to justice, impartial tribunals, presumption of innocence, prohibition of coerced confessions, access to a lawyer of own choice, access to prosecutorial materials, the right to call and examine witnesses, the right to appeal and the right to an effective remedy.

¹⁶² A/HRC/39/29, para. 17.

¹⁶³ Chesterman, Simon, "Terrorism, surveillance and privacy" in Saul, Ben (ed.), *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2020). See also A/HRC/57/29, paras. 24–25.

While international human rights law guarantees the right to privacy, all forms of surveillance constitute an interference in the right to privacy of the individuals affected. In some cases, violations of the right to privacy could entail additional violations of other rights. For example, the surveillance of a journalist without adequate safeguards to prevent the disclosure of journalistic sources could constitute a concurrent violation of the right to freedom of expression.¹⁶⁴ To be lawful and not arbitrary, any interference with the right to privacy must pursue a legitimate aim, be provided by law and be necessary and proportionate.¹⁶⁵

States have obligations to introduce specific safeguards through law with respect to the scope of the interference with the rights to privacy and correspondence. These safeguards must address the authorization, storage, access, use, the sharing and destruction of intercepted data, the effective independent oversight to prevent abuse and effective remedies to repair violations.¹⁶⁶ In all cases, the restriction to privacy must be limited to what is strictly necessary in light of the circumstances of the particular case.

While national security is a legitimate objective for conducting surveillance, it is imperative that surveillance is taking place on the basis of laws that: (a) are publicly available; (b) contain provisions that ensure that the collection of, access to and use of communications data are tailored to the protection of national security; (c) are sufficiently precise, specifying in detail the precise circumstances in which any such interference may be permitted, the procedures for authorizing, the categories of persons who may be placed under surveillance, and procedures for the use and storage of the data collected; and (d) provide for effective safeguards against abuse.

In surveillance programmes, States have taken advantage of new technologies, including automation, to facilitate data gathering and processing. Due to the growing power of data-driven technology and the sophistication of machine learning, such use is likely to exacerbate the

¹⁶⁴ In that regard, see, for example, European Court of Human Rights, *Big Brother Watch and Others v. United Kingdom*, Applications Nos. 58170/13, 62322/14 and 24960/15, Judgment of 25 May 2021. See also [A/HRC/52/39](#), para. 45.

¹⁶⁵ See, for example, [CCPR/C/50/D/488/1992](#), para. 8.3; see also Committee on the Rights of the Child, [general comment No. 25 \(2021\)](#), para. 69.

¹⁶⁶ See, for example, Court of Justice of the European Union, [Case-Law database](#), Joined Cases C-511/18, C-512/18 and C-520/18, Judgment of 6 October 2020.

effects of surveillance on the enjoyment of the right to privacy if their use is not subject to strict data protection, due process safeguards and oversight.

The impact of public surveillance on human rights is further aggravated because data sources are increasingly being merged, for example by combining facial recognition-equipped video surveillance feeds with social media data and government databases, including information on social security, migration, terrorism suspects, arrests and even lists of individuals flagged for political reasons. These effects highlight the necessity of introducing specific safeguards to address the risks and adverse effects associated with the use of such technologies.¹⁶⁷

Several States distinguish between obligations owed to nationals or those within their territories, and non-nationals and those outside, offering the latter lower levels of protection. In some cases, privacy protections for foreigners and non-citizens are almost non-existent. For example, some States have adopted laws conditioning surveillance on the nationality of the individual surveyed, as well as on the individual's location outside the territory of the State. Such laws significantly lower the standard of privacy protection for non-citizens outside the territory of the State conducting the surveillance.¹⁶⁸

The last decades have seen the emergence of sophisticated methods to conduct mass surveillance, which are often justified as a general measure to identify potential threats to national security. The capacity of mass surveillance as the default tool for investigation has been dramatically increased by the decline in the cost of technology and data storage, the ubiquity of digital devices and connectivity and the exponential increase in the processing power of computers.¹⁶⁹

Mass surveillance raises particular concerns under international human rights law, notably with respect to the rights to privacy and non-discrimination, particularly as surveillance operations tend to

¹⁶⁷ A/HRC/19/29, para. 15; and A/HRC/51/17, para. 40.

¹⁶⁸ A/HRC/27/37, para. 35; Rojszczak, Marcin, *Extraterritorial Bulk Surveillance after the German BND Act Judgment* (2021), *European Constitutional Law Review*, vol. 17, Issue 1 (March 2021), pp. 53–77; and A/HRC/50/49, para. 26.

¹⁶⁹ A/HRC/52/39, para. 42.

disproportionately target, or be applied discriminately to, minorities and marginalized communities, especially Muslim communities.¹⁷⁰

Consequently, the requirements of legality, necessity and proportionality preclude broad and ambiguous references to national security or terrorism prevention as blanket justifications for surveillance, including mass surveillance. They also prohibit mass surveillance regimes consisting of the general and indiscriminate collection and processing of information, which prevent any individualized assessment of the necessity and proportionality of interferences to the privacy of the individuals concerned.¹⁷¹

As part of digital surveillance regimes, States have increasingly imposed obligations on private companies, including Internet and communication service providers, search engine providers and social media companies to facilitate data collection.¹⁷² Imposing obligations on private actors to collect and retain data does not remove the responsibility of the State to respect human rights standards related to the right to privacy and correspondence, as well as due process and the positive obligation of the State to ensure such compliance by private actors.

A large number of surveillance tools used by State agencies are obtained from the private sector. Governments and the private sector are increasingly close collaborators in the market for digital surveillance tools. Such technologies span a wide range and include computer interference, mobile device hacking, International Mobile Subscriber Identity number catchers (“Stingray”) and so-called deep packet inspection and facial recognition technologies. In addition, States increasingly rely on surveillance services offered by business enterprises, for example by acquiring data from data brokers and other companies collecting and selling personal data.¹⁷³ The High Commissioner for Human Rights has called on States to ensure that, in the provision and

¹⁷⁰ A/78/269, para. 35; see also A/HRC/35/41, paras 72–75; A/HRC/46/36, para. 11; A/HRC/50/49, para. 23; A/HRC/51/17, para. 46; and communication CHN 12/2022 (available from the OHCHR Communication report and search database).

¹⁷¹ See, for example, Court of Justice of the European Union, *Case-law database*, Joined Cases C-511/18, C-512/18 and C-520/18, Judgment of 6 October 2020, para. 168; A/HRC/50/49, para. 23; and A/HRC/39/29, para. 17.

¹⁷² A/HRC/51/17, para. 41; see also A/HRC/27/37, paras. 42–46, A/HRC/39/29, para. 17, and A/HRC/50/49, para. 23.

¹⁷³ A/HRC/41/35, paras. 8–15; and A/HRC/51/17, para. 42.

use of surveillance technologies, public-private partnerships uphold and expressly incorporate human rights standards and do not lead to an abdication of governmental accountability for human rights.

Many such technologies are developed and marketed for use to combat terrorism and serious crime where their use may be considered legitimate and proportionate. Nevertheless, in practice, such tools have often been seen used beyond those purposes, including in sectors where the use would be considered unnecessary and disproportionate, and have been used to target people of minority backgrounds, journalists, human rights defenders, political opponents and dissidents. This situation has led the High Commissioner for Human Rights and special procedures mandate holders to call on States to implement a moratorium on the sale and transfer of such surveillance tools until compliance with human rights standards can be guaranteed.¹⁷⁴

Collection, storage and use of biometric data

The Security Council has required States to “develop and implement systems to collect biometric data” in order to “responsibly and properly identify terrorists, including foreign terrorist fighters” and to do so “in compliance with domestic and international law, including human rights law”. The collection, storage, processing, use and sharing of biometric data can affect the enjoyment of a range of civil, political, economic, social and cultural rights.¹⁷⁵

The use of such technologies is often not accompanied by sufficient adoption and implementation of privacy and data protection regulation, nor of sufficient conditions of due process, including respect for the principles of legality, necessity and proportionality, and independent oversight. In particular, remote real-time facial recognition, which constitutes a form of surveillance, is increasingly deployed by authorities across the globe for purposes unrelated to the investigation of a specific serious criminal offence or without the necessary due process safeguards such as prior judicial authorization and oversight. Certain uses of biometric data, such as in facial recognition or predictive tools, can pose

¹⁷⁴ A/HRC/50/49, para. 27; A/HRC/52/39, paras. 47–48; see also A/78/269, para. 56 (g).

¹⁷⁵ Security Council resolution 2396 (2017), para. 15; Huszti-Orbán, Krisztina, and Ni Aoláin, Fionnuala, “Use of biometric data to identify terrorists: best practice or risky business?” (Human Rights Center, University of Minnesota (2020)), pp. 17–22.

additional threats to the enjoyment of a range of human rights, including the right to privacy and right to non-discrimination.¹⁷⁶

Predictive tools using AI systems have also been shown to have insufficient levels of accuracy, as the relevance and accuracy of data used are often questionable. Outputs from AI systems relying on faulty data can contribute to human rights violations in a multitude of ways, for example, by erroneously flagging an individual as a likely terrorist. In addition, such tools have also been shown to reinforce discrimination, particularly when relying on biased data sets – such as the disproportionate focus of policing of certain minorities, and to undermine rights, including the presumption of innocence. Facial recognition in particular entails significant risks of profiling individuals on the basis of race, ethnicity and religion. It can be used for illegitimate purposes under the justification of countering terrorism, such as identifying participants in assemblies. Because of these risks, the High Commissioner for Human Rights has called for a moratorium on the use of facial recognition technologies in public spaces.¹⁷⁷

Data and intelligence sharing

States widely share information in a broad context of circumstances, including through mutual legal assistance in criminal cases. In the context of countering terrorism, including to counter the financing of terrorism, States have adopted numerous practices for the sharing of intelligence, often through confidential arrangements. However, data and intelligence sharing can create or exacerbate human rights concerns, particularly due process, privacy and data protection related concerns at various stages of collection, storage and sharing.¹⁷⁸

In particular, data and intelligence can create risks that recipient States use such information in the commission of human rights violations in a manner outside the control of the collecting State,¹⁷⁹ raising concerns with respect to its compliance with its responsibility to guarantee that information is

¹⁷⁶ A/HRC/48/31, para. 25; and Huszti-Orbán and Ní Aoláin, “Use of Biometric Data”, pp. 24–27.

¹⁷⁷ A/HRC/48/31, paras. 24 and 59; see also A/78/269, para. 36.

¹⁷⁸ See *Privacy International, Secret Global Surveillance Networks: Intelligence Sharing Between Governments and the Need for Safeguards*, p. 18; *CCPR/C/GBR/CO/7*; and European Court of Human Rights, *Centrum för Rättvisa v. Sweden*, Application No. 35252/08, Judgment of 25 May 2021, para. 369.

¹⁷⁹ A/HRC/27/37, para. 27.

used in a manner compatible with international human rights law. The reverse is also true. Where the recipient State relies on intelligence gathered abroad through relaxed standards of data collection in the sending State, this could allow for the de facto outsourcing of surveillance measures from the recipient to the sending State, with the effect of circumventing human rights guarantees at home.¹⁸⁰

Intelligence must be collected in accordance with international human rights law and should be screened for accuracy and relevance before it is shared with foreign entities. Before handing over information, intelligence services must make sure that any shared intelligence is relevant to the recipient's mandate, will be used in accordance with the conditions attached and will not be used for purposes that violate human rights.¹⁸¹

Watch-listing

Many States have developed or expanded so-called watch-lists, which are databases of known and suspected terrorists. The purpose of such databases is to assist law enforcement, border security, customs, military and intelligence agencies to screen travellers and conduct risk assessments and investigations.¹⁸² In some cases, inclusion on a watch-list risks exposure to surveillance, enhanced police and border control checks, travel bans, asset freezes and restrictions on the right to liberty.¹⁸³

The consequences of such measures can be significant, including on economic, social and cultural rights. For example, asset freezing, travel bans and other restrictions not only affect freedom of movement but can have negative consequences in areas such as access to education and employment.

Watch-listing regimes often lack sufficient procedural safeguards to prevent abuse. In some contexts, affected individuals are not duly informed about their listing status nor provided with the evidence used to justify their inclusion. Other concerns include lack of transparency

¹⁸⁰ OHCHR, *Intervention of the Special Rapporteur on the promotion of the right to freedom of opinion and expression in the case of Big Brother Watch and Others v. the United Kingdom* (3 June 2019).

¹⁸¹ A/HRC/14/46, para. 47.

¹⁸² See Security Council resolution 2396 (2017).

¹⁸³ A/HRC/50/49, para. 19.

and information on the effectiveness of oversight and the low standard of proof used for inclusion on watch-lists.¹⁸⁴

There are also concerns with respect to the remedies in place for the affected individual. Where the inclusion on a watch-list is challenged, some States operate using a reversal of the burden of proof, meaning that the burden is on the individual to prove their wrongful listing. This places an unreasonable burden on the individual, given the low standard of proof required for listing to be permissible. Where the listing is challenged before judicial bodies, the practice of deference to the executive branch in cases involving national security adopted in many domestic systems could hamper the effectiveness of the review.¹⁸⁵

¹⁸⁴ See, for example, [A/HRC/57/29](#), paras. 19–20.

¹⁸⁵ *Ibid.*

I. Deprivation of nationality

Several States have expanded the grounds and procedures for the deprivation of nationality, including with counter-terrorism justifications. Some States accentuate the symbolic function of nationality and operate with a presumption that acts of terrorism permanently sever the ties of loyalty with the State.¹⁸⁶ Others argue that the threat of nationality deprivation serves as a deterrent against terrorist acts.

The use of the deprivation of nationality has been used to prevent suspected foreign fighters as well as individuals with suspected family ties to foreign fighters from re-entering the territory of their State of origin. In Europe, the practice of deprivation of nationality has increased, particularly with a view to targeting so-called “Islamic terrorism” and the phenomenon of “foreign terrorist fighters”.

Evidence to support the use of such measures as being an effective means of protecting national security seems absent and could, in fact, be counterproductive.¹⁸⁷ Deprivation of nationality, especially in the case of “foreign fighters” and their families, may cause further violent indoctrination, play into the hands of terrorist groups and effectively export the risks and responsibilities associated with terrorism to other States.¹⁸⁸

Furthermore, laws adopted to facilitate deprivation of nationality as counter-terrorism measures often lack procedural safeguards and meaningful oversight to prevent misuse or overuse. In some States, the deprivation of nationality decision is taken by the executive, rather than a judicial authority, often with no judicial involvement in the decision and without a prior conviction of terrorism. Given that the nature of the procedures before the executive involves matters of national security, there is often a lack of transparency around decision-making, including

¹⁸⁶ Institute on Statelessness and Inclusion, “Instrumentalising Citizenship in the Fight against Terrorism”, pp. 9–10 and 26–28; and A/HRC/35/41, paras. 62–63.

¹⁸⁷ See A/73/205, para. 37 (g); “Principles on deprivation of nationality as a national security measure”, p. 2; and A/HRC/55/48, para. 35.

¹⁸⁸ Parliamentary Assembly of the Council of Europe, resolution 2263 (2019), para. 8; see also Institute on Statelessness and Inclusion, *The Word’s Stateless: Deprivation of Nationality*, pp. 227–230; and A/HRC/50/49, sect. F.

through the use of secret evidence, placing individuals in a disadvantaged position.¹⁸⁹

Where the measure of depriving an individual of nationality is not classified as a criminal sanction under domestic law, impacted individuals may be denied the procedural safeguards afforded in criminal procedures.¹⁹⁰ Moreover, some States allow for the deprivation of nationality in absentia, exacerbating due process concerns for the individuals affected.

In situations where individuals are deprived of their nationality while abroad, their vulnerability can significantly increase, especially if they are in a conflict zone.¹⁹¹

In practical terms, procedural safeguards against the arbitrary deprivation of nationality mean that decisions must be considered and communicated on the basis of the individual facts of each case, must be subject to independent review and, in the case of affected children, the best interests of the child must be specifically considered.

Insufficient protections and oversight heighten the risk of discriminatory application of nationality deprivation; individuals from migrant or minority backgrounds are disproportionately affected by such measures.¹⁹² In addition, in some contexts, deprivation of nationality under counter-terrorism and national security justifications has contributed to the occurrence of statelessness, with far reaching consequences for affected individuals, who can be prevented from accessing many rights, including social and economic rights, which are often necessary for their survival.

The right to a nationality is enshrined in article 15 of the Universal Declaration of Human Rights and is recognized in many international and regional human rights instruments. It is often a necessary prerequisite for the enjoyment of other human rights. Statelessness, on the other hand, can limit access to birth registration, identity documentation and basic rights, including education, healthcare, legal employment, property ownership,

¹⁸⁹ See, for example, CCPR/C/NLD/CO/5, para. 50; Amnesty International, [Dangerously Disproportionate: The Ever-Expanding national Security State in Europe](#) (2017), p. 59; see also A/HRC/57/29, para. 26.

¹⁹⁰ See, for example, European Court of Human Rights, *Ghoulid and others v. France*, Application No. 52273/16 and 4 others, Judgment of 25 June 2020, para. 16.

¹⁹¹ A/HRC/49/31, para. 77.

¹⁹² A/HRC/50/49, para. 39; see also "Principles on deprivation of nationality as a national security measure", p. 2.

political participation and freedom of movement. Under international human rights law, the deprivation of nationality is unlawful if, *inter alia*, it is arbitrary or discriminatory. The lack of sufficient safeguards can render the deprivation of nationality arbitrary and hence prohibited under international human rights law.

More concretely, measures leading to the deprivation of nationality must serve a legitimate purpose, must be the least intrusive instrument among those that might achieve the desired result and must be proportional to the interest to be protected.¹⁹³ The deprivation of nationality resulting in statelessness is considered arbitrary unless it pursues a legitimate aim and adheres to the principle of proportionality: it may be implemented only as an exceptional measure.

Accordingly, international standards set out in the Convention on the Reduction of Statelessness impose obligations on States to prevent statelessness, particularly if it would result from the withdrawal of nationality from individuals who would otherwise lack the protection of any State.¹⁹⁴ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concern, however, about the increasing number of individuals who are deprived of their nationality as a counter-terrorism means outside the limited exceptions provided under international law.¹⁹⁵

The High Commissioner for Human Rights has therefore recommended that deprivation of nationality should not be employed as a general policy to prevent or to counter terrorism. If used, it should be reserved for the most exceptional circumstances, not be applied arbitrarily, be subject to stringent safeguards and never lead to statelessness.¹⁹⁶

¹⁹³ See *A/HRC/10/34*, para. 49, *A/HRC/25/28*, para. 4, and *A/HRC/31/29*.

¹⁹⁴ Convention on the Reduction of Statelessness, arts. 8 (1)–(3).

¹⁹⁵ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “The Human Rights Consequences of Citizenship Stripping in the Context of Counter-Terrorism with a Particular Application to North-East Syria” (2022), p. 5.

¹⁹⁶ *A/HRC/57/29*, para. 38 (f).

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