



General Assembly

Distr.: General
30 December 2016

Original: English

Human Rights Council

Thirty-fourth session

27 February-24 March 2017

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 31/30, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, particularly the right to life, liberty and security of person, while paying particular attention to best practices and major challenges in this regard.

GE.16-23159(E)



* 1 6 2 3 1 5 9 *

Please recycle



I. Introduction

1. In its resolution 31/30, the Human Rights Council, inter alia, strongly condemned all terrorist acts as criminal and unjustifiable, and expressed concern at their detrimental effects on the enjoyment of human rights, including the right to life, liberty and security of person, as stipulated in article 3 of the Universal Declaration of Human Rights. In the same resolution, the Council reaffirmed that civil, political, economic, social and cultural rights were universal, indivisible, interdependent and interrelated, as enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Council also reaffirmed the primary responsibility of States in preventing and countering terrorism in all its forms and manifestations in the territory under their jurisdiction, in full compliance with their international law obligations. The Council urged States, while countering terrorism, to respect and protect all human rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of those rights.

2. In resolution 31/30, the Council requested the United Nations High Commissioner for Human Rights to submit to it, at its thirty-fourth session, a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, particularly the right to life, liberty and security of person, while paying particular attention to best practices and major challenges in this regard.

3. For the present report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sought inputs from Member States, through their Permanent Missions in Geneva and New York; international and regional organizations; national human rights institutions; and non-governmental organizations, through notes verbales sent on 25 July 2016. Contributions were received from 15 Member States, 8 national human rights institutions, 2 international and/or regional organizations and 15 non-governmental organizations. A dedicated web page¹ has been created in order to make the contributions available for public consultation. The report was also informed by the work of relevant United Nations treaty bodies and special procedure mandates, international and regional human rights mechanisms and OHCHR, bearing in mind the specific reference to these entities by the Council in paragraph 16 of resolution 31/30.

II. International human rights framework

4. International human rights law requires States to protect human rights with due diligence, which entails the obligation to prevent and sanction harm, including deprivation of life, caused not only by their own agents but also by acts of private persons or entities.² Referring to the positive obligations of States parties to ensure rights under the International Covenant on Civil and Political Rights, the Human Rights Committee specified that these obligations “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities”.³ For example, the

¹ www.ohchr.org/EN/Issues/RuleOfLaw/Pages/Terrorism.aspx.

² See European Court of Human Rights, *Osman v. the United Kingdom* (87/1997/871/1083), judgment of 28 October 1998, para. 116.

³ See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 8.

right not to have one's life taken arbitrarily implies "an obligation on the part of States Parties to take reasonable steps to prevent situations that could result in the violation" of the right to life.⁴ Accordingly, this right generates positive obligations to prevent killings by private individuals and non-State actors in certain situations.

5. The Committee stated that "there may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities".⁵ Under international human rights law, States thus have a due diligence obligation to protect individuals under their jurisdiction from acts of terrorism, to take effective counter-terrorism measures and to investigate and prosecute those responsible for carrying out such acts. The duty to protect life also implies that States should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying the right to life with dignity, such as high levels of criminal and gun violence.⁶

6. As emphasized in the Secretary-General's Plan of Action to Prevent Violent Extremism, countering terrorism and violent extremism requires a comprehensive approach that goes beyond "law enforcement, military or security measures to address development, good governance, human rights and humanitarian concerns".⁷ It includes addressing conditions conducive to violent extremism and terrorism and the human rights and gender dimensions of that issue. Respect for international human rights law contributes to ensuring that efforts to prevent and counter violent extremism are effective and sustainable. In other words, all legislation, policies and programmes to prevent and counter violent extremism must be designed and implemented in a manner that complies with human rights to avoid the vicious circle whereby measures taken would risk feeding the very phenomenon they are aimed at preventing.⁸

7. As part of their obligations under international human rights law, States must put in place effective domestic criminal legislation in line with the principle of legality as well as criminal justice and law enforcement systems, such as measures to deter the commission of offences, and investigate violations where they occur. Defining acts of terrorism in domestic criminal legislation in line with the principle of legality is an important step towards ensuring that those who commit such acts are brought to justice. In this regard, the General Assembly has repeatedly urged all Member States to ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.⁹ States must also ensure that those suspected of criminal acts are prosecuted. As emphasized by the Human Rights Committee in its general comment No. 31, failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.

8. Accountability for all gross violations of international human rights law and serious violations of international humanitarian law through effective investigation and prosecution of those responsible is essential to ensure justice, to provide redress to victims and to prevent further violations. In certain circumstances, where a State is unwilling or unable to

⁴ See Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, judgment of 29 July 1988, Series C, No. 4, para. 172.

⁵ See Human Rights Committee, general comment No. 31, para. 8; also E/CN.4/1995/42, para. 102.

⁶ See CCPR/C/USA/CO/4, para. 10.

⁷ See A/70/674, para. 41.

⁸ See A/HRC/33/29, para. 2.

⁹ General Assembly resolutions 63/185; 64/168; 65/221; 66/171; 68/178 and 70/148.

investigate or prosecute those responsible for serious violations of international human rights and international humanitarian law that are constitutive of international crimes, the jurisdiction of the International Criminal Court may be triggered.

9. In the context of terrorist acts and counter-terrorism measures, ensuring accountability and combatting impunity is key. The obligation of States to hold individuals to account for terrorist-related offences is set out in a range of multilateral and regional treaties, protocols, resolutions and declarations. As underscored by the Council in its resolution 31/30, all measures taken to combat terrorism must, themselves, also comply with States' obligations under international law, in particular international human rights, refugee and humanitarian laws. Ensuring that counter-terrorism legislation and policy are grounded in human rights helps to promote the prosecution and conviction of individuals engaged in acts of terrorism in accordance with legally established procedures. This also encourages legal consistency between national jurisdictions, thereby facilitating international cooperation.¹⁰

10. Conversely, failure to ensure respect for human rights has proven to be both corrosive to the rule of law and conducive to a climate of impunity and has undermined the effectiveness of counter-terrorism measures. In its 2016 review of the United Nations Global Counter-Terrorism Strategy, the General Assembly expressed serious concern at the occurrence of violations of human rights and fundamental freedoms committed in the context of countering terrorism and stressed that, when counter-terrorism efforts neglected the rule of law and violated international law, they not only betrayed the values they sought to uphold, but they might also further fuel violent extremism that could be conducive to terrorism.¹¹

11. State responses to terrorism and violent extremism have often resulted in excessive measures that infringe human rights, including through the enactment in national legislation of vague or overly-broad definitions of "terrorism" or "terrorist acts", the expansion of executive authority without effective procedural safeguards and oversight, and the exercise of excessive powers by law enforcement agencies.¹² As highlighted by the General Assembly, a national criminal justice system based on respect for human rights and the rule of law, due process and fair trial guarantees is one of the best means for effectively countering terrorism and ensuring accountability.¹³ World leaders committed, through the Sustainable Development Goals, to strengthen relevant national institutions, including through international cooperation, for building capacity at all levels to prevent violence and combat terrorism and crime.¹⁴

12. In its resolution 31/30, the Council underscored the importance of protecting the rights of victims of terrorism and their families and of providing them with proper support and assistance, while taking into account, when appropriate, considerations regarding remembrance, dignity, respect, justice and truth in such a way that promotes accountability and ends impunity, in accordance with international law.¹⁵ In this regard, international and regional standards relating to victims of crime and victims of gross violations of international human rights law and serious violations of international humanitarian law, as well as provisions of the universal treaties relating to specific aspects of terrorism, are instructive also in addressing the needs of victims of terrorism.

¹⁰ See, for example, A/HRC/28/28, paras. 18-53.

¹¹ See General Assembly resolution 70/291, para. 16.

¹² See, for example, A/HRC/28/28, paras. 21-30; also the contribution from Child Rights International Network.

¹³ General Assembly resolution 70/291.

¹⁴ See Transforming our world: the 2030 Agenda for Sustainable Development, Goal 16, target 16.a.

¹⁵ Human Rights Council resolution 31/30, para. 13.

13. The International Covenant on Civil and Political Rights requires States parties to ensure that victims of human rights violations have access to an effective remedy and specifically “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy”.¹⁶ States must ensure that the competent authorities enforce such remedies when granted and take all other necessary steps to prevent the recurrence of violations.

III. Human rights challenges in the context of terrorism and counter-terrorism

14. The Council addressed issues relating to the effects of terrorism on the enjoyment by all persons of human rights and fundamental freedoms at a panel discussion during its twenty-ninth session, held on 30 June 2015. In her opening remarks to the panel, the United Nations Deputy High Commissioner for Human Rights noted that terrorism destabilized Governments, undermined societies, jeopardized peace and security and threatened economic and social development, all of which had serious implications for the enjoyment of human rights by all. She stressed that terrorist attacks had devastating consequences for victims, often directly affecting their rights to life, liberty and security. Such acts also negatively affected relatives, and entire communities lived in fear and suffered long-standing trauma following attacks. Noting that measures taken by a number of States in the wake of recent security threats continued to raise serious human rights concerns, she emphasized the importance of regularly reviewing counter-terrorism laws and practices in order to ensure that they were human rights-compliant and, in particular, specific, necessary, effective and proportionate. In that context, she warned that broadly formulated counter-terrorism legislation that lacked sufficiently precise definitions of what constituted terrorist acts allowed for arbitrary or discriminatory enforcement by authorities.¹⁷

A. Negative effects of terrorism on the enjoyment of human rights and fundamental freedoms

15. Contributions received for the present report and observations by various international human rights mechanisms demonstrate the breadth and depth of the negative impact of both terrorism and counter-terrorism measures on the enjoyment of human rights and fundamental freedoms, as will be illustrated in a non-comprehensive way in the paragraphs below.

1. Impact on the rights to life, security, liberty and integrity of person

16. The right to life is basic to all human rights. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.¹⁸ In order to protect the right to life, States must enact a protective legal framework that involves effective criminal prohibitions on all forms of arbitrary deprivation of life by individuals, including terrorist attacks that may result in such deprivation of life.

¹⁶ International Covenant on Civil and Political Rights, art. 2 (3) (b).

¹⁷ See A/HRC/30/64, paras. 4-7.

¹⁸ International Covenant on Civil and Political Rights, art. 6; see also Human Rights Committee general comments No. 6 (1982) on the right to life, para. 1; and No. 14 (1984) on the right to life, para. 1.

17. Measuring the effects of terrorism on the enjoyment of the right to life is challenging, in part owing to the lack of an internationally agreed definition of what constitutes “terrorism”. In addition, recent actions taken by States have contributed to a “blurring of the lines between armed conflict and terrorism and their respective legal frameworks”,¹⁹ with implications also for the gathering of statistics on deaths that may have resulted from acts of terrorism. While reported data vary widely, the Global Terrorism Index 2016 suggests that 2015 was the second deadliest year on record, with 74 per cent of “terrorism deaths” being attributed to only four groups — Islamic State in Iraq and the Levant (ISIL), Boko Haram, the Taliban and Al-Qaida.²⁰ The same source reported that, in Afghanistan during the same period, there had been a significant increase in deaths as a result of terrorism and that the Taliban had been responsible for the majority of terrorist attacks in 2015. In one contribution to the present report, it was reported that 3,129 civilians had lost their lives in Afghanistan in 2015, with 34.7 per cent of them killed as a result of suicide bombings.²¹

18. Contributions to the present report also highlighted the deprivation of liberty of individuals by Boko Haram, ISIL and the Taliban, including serious injuries to the body and the mind.²² It should be recalled in this regard that, according to the Human Rights Committee, States parties to the International Covenant on Civil and Political Rights have the duty to take appropriate measures to protect the right to liberty of person against deprivation by third parties and against abduction or detention by terrorist groups operating within their territory.²³

19. In its 2016 report on crimes committed by ISIL against the Yazidis, the Independent International Commission of Inquiry on the Syrian Arab Republic found that ISIL’s conduct constituted serious abuses of international human rights, including the prohibition against slavery. It stated that female survivors of sexual slavery had been shattered, many experienced suicidal thoughts and some of the families had tremendous difficulty acknowledging the crimes committed against, in particular, the youngest female victims of sexual slavery.²⁴ Reports from several Special Rapporteurs and OHCHR on violations and abuses committed by Boko Haram and the impact on human rights in the countries affected stressed that, since 2009, Boko Haram has subjected women and girls to widespread and severe forms of abuse, including sexual slavery, which has resulted in many becoming pregnant.²⁵

20. The Commission of Inquiry on the Syrian Arab Republic stated that the sexual and physical violence, together with the severe mental trauma, that Yazidi women and girls over the age of 9 had experienced at the hands of ISIL had risen to the level of torture, causing them serious physical and psychological harm.²⁶ Furthermore, women and children living in Boko Haram-controlled areas had been subjected to repeated beatings when they

¹⁹ See Christine Beerli, Vice-President of the International Committee of the Red Cross, “Terrorism, counter-terrorism and international humanitarian law”, statement to the 17th edition of the Bruges Colloquium, 20-21 October 2016. Available at www.icrc.org/en/document/terrorism-counter-terrorism-and-international-humanitarian-law.

²⁰ See Institute for Economics and Peace, *Global Terrorism Index 2016*, pp. 2-3. Available at <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>. Details relating to the methodology of the Index are set out in pp. 98-100.

²¹ See contribution from the Afghanistan Independent Human Rights Commission.

²² See contributions from Alliance Defending Freedom International and Freemuse.

²³ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, paras. 3 and 7.

²⁴ See A/HRC/32/CRP.2, paras. 16, 174 and 177.

²⁵ See A/HRC/32/32/Add.2, para. 37; and A/HRC/30/67, para. 38.

²⁶ See A/HRC/32/CRP.2, para. 130.

were unable to recite the Koran or refused to adopt the group's beliefs. Boko Haram reportedly ill-treated those in captivity through deprivation of food and water or stoned abductees to death.²⁷

21. Measures adopted to counter real or perceived threats of terrorism have also had serious implications for the enjoyment of the rights to life, security, liberty and integrity of person. Some States enacted legislation containing a definition of terrorism that lacks precision and allows for arbitrary or discriminatory enforcement by authorities, for example, with particularly serious consequences in States that retain the death penalty for terrorism-related crimes.²⁸ In this regard, it should be recalled that article 6 (2) of the International Covenant on Civil and Political Rights provides that, in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the Covenant and of the Convention on the Prevention and Punishment of the Crime of Genocide.

22. In one contribution to the present report, it was noted that States often used definitions of terrorist acts that were very broad, vague and included non-violent acts or acts that did not constitute the “most serious crimes” pursuant to article 6 (2) of the International Covenant on Civil and Political Rights. The contributor expressed concern that the participation in “criminal gangs” or “terrorist groups” was often considered a terrorist act that was punishable by death in several States, in violation of international standards.²⁹ Special procedure mandate holders have also warned that imposing the death penalty was an ineffective — and most times also an unlawful — deterrent to terrorism and expressed concern “to see a small minority of States wildly disregarding the international standards for the imposition of the death penalty and the protection of the right to life in their quest to thwart a real or perceived threat posed by terrorism”.³⁰ The Secretary-General also stressed that capital punishment did not reduce terrorism and that the death penalty was a cruel and inhumane practice that had no place in the twenty-first century.³¹

23. In addressing the heightened risk of torture and ill-treatment in the context of counter-terrorism, the Committee against Torture reiterated that the prohibition against torture was absolute and non-derogable, and emphasized that *no exceptional circumstances whatsoever*, including the threat of terrorist acts, may be invoked by a State party to justify acts of torture in any territory under its jurisdiction.³² Furthermore, the Committee stated that States parties should ensure that their laws were applied to all persons regardless of the reason for which they were detained, including those accused of terrorist acts, and that redress was equally accessible.³³

24. Special procedures mandate holders have expressed concern that Governments have used vague and broad definitions of “terrorism” or “extremism” to punish those who do not

²⁷ See A/HRC/30/67, paras. 35-37; also contribution from Alliance Defending Freedom International.

²⁸ See A/HRC/28/28, paras. 21-30.

²⁹ See contribution from World Coalition against the Death Penalty.

³⁰ See joint press release of 7 October 2016 by the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20659&LangID=E.

³¹ See the message by the Secretary-General on the World Day against the Death Penalty, 10 October 2016. Available at www.un.org/press/en/2016/sgsm18185.doc.htm.

³² See Committee against Torture, general comment No. 2 (2008) on the implementation of article 2, para. 5.

³³ *Ibid.*, para. 21; and general comment No. 3 (2012) on the implementation of article 14, para. 32.

conform to traditional gender roles or who belong to a religious minority, and have called on States to ensure that no one is subjected to arbitrary arrest or detention.³⁴ In addition, several contributions to the present report referred to counter-terrorism laws that have granted authorities the power to criminalize freedom of expression, including for human rights defenders, which has led to an increase of arbitrary arrest or detention.³⁵ As stressed by the Human Rights Committee, the right to take proceedings for release from unlawful or arbitrary detention applies to all detention by official action or pursuant to official authorization, including counter-terrorism detention.³⁶

25. The Working Group on Arbitrary Detention voiced its concern at the continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism.³⁷

2. Impact on freedom of movement and on the right to a nationality

26. In response to growing concern about the threat of terrorism, some States have expanded the administrative powers that allow for deprivation of nationality for crimes related to national security, while others have considered amending their domestic laws, with implications, in some cases, for the right to freedom of movement and the right to a nationality.³⁸ For example, several States have taken a wide range of administrative and legislative measures to deter individuals who have or who are seeking to become foreign fighters, including blocking the validity of travel documents, revoking citizenship, freezing financial assets, imposing travel bans and introducing exclusion orders to prevent their own nationals or permanent residents from returning.³⁹

27. One contribution to the present report highlighted a draft legislative proposal under consideration to amend the nationality act. The contributor expressed concern that the proposal did not offer adequate legal protection, included terms that did not provide a sufficiently clear and precise legal basis for the withdrawal of nationality, and would have a discriminatory effect by distinguishing between citizens who had dual nationality from those who did not — a distinction that risked stigmatizing those with an immigrant background.⁴⁰ Another contribution referred to the revocation of citizenship on charges of terrorism against individuals, which reportedly included peaceful dissidents, human rights defenders, journalists, academics and religious scholars.⁴¹

28. The Human Rights Committee considers that the right to freedom of movement embraces, at the very least, an individual who, because of his or her special ties to or claims

³⁴ See A/64/211 and Corr.1, para. 27; A/HRC/28/66/Add.1, paras. 49 and 67; A/HRC/16/53/Add.1, para. 100; and E/CN.4/2005/61/Add.1, para. 152; also the contribution from the Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights.

³⁵ See contributions from Americans for Democracy and Human Rights in Bahrain; Fédération internationale de l'Action des chrétiens pour l'abolition de la torture; and the International Centre for Justice and Human Rights.

³⁶ See the Committee's general comment No. 35 (2014), para. 40.

³⁷ See A/HRC/7/4, para. 59.

³⁸ See A/HRC/25/28, para. 13; A/HRC/28/28, paras. 51-52; A/HRC/33/43/Add.2, paras. 16, 50 and 92; A/70/330, para. 70; and A/71/318, paras. 21-24.

³⁹ See A/HRC/28/28, para. 50; and A/70/330, paras. 68-69.

⁴⁰ See contribution from the Netherlands Institute for Human Rights.

⁴¹ See contribution from Americans for Democracy and Human Rights in Bahrain.

in relation to a given country, cannot be considered a mere alien, such as the national of a country who has been stripped of his or her nationality in violation of international law. The Committee also considers that there are few, if any, circumstances in which the deprivation of the right to enter one's own country could be considered reasonable.⁴² In that regard, one contribution to the present report suggested that counter-terrorism provisions that would have a profound impact on freedom of movement should always require prior judicial review and that new counter-terrorism laws should have a limited duration, for instance by including a sunset clause.⁴³

3. Impact on due process, including the right to a fair trial

29. Respect for due process rights of individuals accused of terrorist-related activities — including recognition of the right of an individual to know the reasons why he or she has been detained; the right of the family of a detainee to know where he or she is being held; and the right of a detainee to have access to a lawyer and to challenge the lawfulness of his or her detention — is critical for ensuring that counter-terrorism measures are effective and respect the rule of law. In many jurisdictions, however, respect for these rights is neither fully acknowledged nor respected in practice.

30. One contribution to the present report highlighted anti-terrorist legislation in one State that allowed an investigatory body to hold individuals incommunicado for up to 90 days and to detain them for up to one year without judicial review. The contributor expressed concern that a specialized counter-terrorism court in that State accepted confessions obtained by torture as admissible evidence to convict individuals, as well as testimony or evidence without the presence of the defendant or the defendant's lawyer.⁴⁴

31. Another contribution referred to the jurisprudence of the Human Rights Committee, which found that imposing a death sentence at a trial that failed to meet the legal standards of fairness breached not only article 14 of the International Covenant on Civil and Political Rights, but also article 6 on the right to life.⁴⁵ Special procedure mandate holders, also, have stressed that executions carried out without adherence to the strictest guarantees of fair trial and due processes are unlawful and tantamount to an arbitrary execution. They noted that many States in which the death penalty has been implemented for terrorism-related offences lack a system that guarantees the right to a fair trial for the accused.⁴⁶

4. Impact on the right to privacy

32. Digital communications technologies can be, and have been, used by individuals for criminal objectives, including recruitment for and the financing and commission of terrorist acts. As such, the lawful, targeted surveillance of digital communication by a State may constitute a necessary and effective measure for intelligence and/or law enforcement entities when conducted in compliance with international and domestic law, including respect for the right to privacy as reflected in international human rights instruments.⁴⁷

33. Governments frequently justify expansive digital communications surveillance programmes, however, on the grounds of the risks posed by terrorism. In this regard, the High Commissioner for Human Rights, special procedure mandate holders and treaty

⁴² See the Committee's general comment no. 27 (1999) on freedom of movement, paras. 20-21.

⁴³ See contribution from the Netherlands Institute for Human Rights.

⁴⁴ See contribution from Americans for Democracy and Human Rights in Bahrain.

⁴⁵ See contribution from World Coalition Against the Death Penalty; and communication No. 250/1987, *Reid v. Jamaica*, Views adopted on 20 July 1990.

⁴⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20659&LangID=E.

⁴⁷ See A/HRC/27/37, in particular, para. 24.

bodies have expressed serious concern about the potential for arbitrary or unlawful interference in the right to privacy that such programmes have raised.⁴⁸ One contribution to the present report noted that the use of information and communications technologies by terrorist organizations for recruitment purposes does not diminish the importance of States' obligations to respect the right to privacy as enshrined in international law.⁴⁹

34. With regard to draft legislation on intelligence and security services, one contribution to the present report criticized the fact that, in one jurisdiction, the necessity of extending the power of untargeted interception of telecommunications and other means of data transfer had not been sufficiently demonstrated; the draft legislation provided for prior authorization of interception and other surveillance measures by a Cabinet minister, not by an independent body or judge; and the supervisory body was not granted the power to take binding decisions on the legality and proportionality of ongoing surveillance and interception operations.⁵⁰ Concerning the bill on investigatory powers in another country, one contribution suggested that its safeguards be improved since the unlawful use of investigatory powers may not be subjected to sufficient scrutiny under the current draft because those subject to surveillance would often be unaware of it and thus not in a position to be able to make a complaint.⁵¹ In another contribution, concern was expressed at national legislation introduced in 2015 to combat the movement of foreign fighters, which authorizes the defence intelligence service to process information on residents of that country and allows for interference in private communications of individuals who have a lower suspicion threshold than what the security and intelligence service of the national police would need to meet within the criminal justice system.⁵²

5. Impact on freedom of opinion and expression, freedom of religion or belief and freedom of peaceful assembly and association

35. On 23 July 2016, a suicide attack against peaceful demonstrators in Kabul — for which ISIL claimed responsibility — resulted in the deaths of at least 85 civilians and injury to more than 400 others, mainly Shia Muslims of Hazara ethnicity. In a special report, the United Nations Assistance Mission in Afghanistan concluded that the attack appeared to have deliberately targeted persons belonging to a specific ethnic and religious community and had a serious negative impact on demonstrators' rights to freedom of opinion and expression and peaceful assembly.⁵³

36. Reports indicate that ISIL deliberately prevents members of religious minorities from practising their faith and specifically targets them because they belong to a religious minority. In Nigeria, Boko Haram has engaged in forced religious conversions and targeted civilian objects protected under international law, including bomb attacks against churches and mosques.⁵⁴

37. Security-related measures taken by States, including the adoption of national counter-terrorism legislation, have resulted in violations of the right to freedom of opinion and expression and have directly affected the work of media professionals, human rights

⁴⁸ See A/HRC/27/37; and A/HRC/28/28, para. 25.

⁴⁹ See contribution from Brazil; also General Assembly resolutions 68/167 and 69/166.

⁵⁰ See contribution from the Netherlands Institute for Human Rights.

⁵¹ See contribution from the Equality and Human Rights Commission, Great Britain.

⁵² See contribution from the Danish Institute for Human Rights.

⁵³ See United Nations Assistance Mission in Afghanistan, "Attack on a peaceful demonstration in Kabul, 23 July 2016", special report (October 2016), para. 39. Available at https://unama.unmissions.org/sites/default/files/23_july_suicide_attack_against_peaceful_demonstration_-_18_oct_2016.pdf.

⁵⁴ See A/HRC/30/67, paras. 29 and 47-48; also contribution from Alliance Defending Freedom International.

defenders, political groups and civil society more broadly.⁵⁵ The Special Rapporteur on the rights to freedom of peaceful assembly and of association noted that the fight against terrorism had, in many instances, been used as a justification for the adoption of state of emergency regulations to void the rights to freedom of peaceful assembly and of association and to clamp down on those freedoms.⁵⁶

38. The Human Rights Committee has emphasized that States parties should ensure that counter-terrorism measures are compatible with article 19 (3) of the International Covenant on Civil and Political Rights. It also emphasized that offences such as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression and that journalists should not be penalized for carrying out their legitimate activities.⁵⁷ Article 20 of the Covenant states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. One contribution to the present report suggested that States be reminded to put in place measures to implement the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which provides guidance, through a six-part threshold test (taking into account the context, speaker, intent, content and form, extent of speech act and likelihood of incitement), on how to establish whether expressions should be considered as criminal offences.⁵⁸

39. Counter-terrorism measures taken by States must be coherent with international human rights standards relating to freedom of religion or belief, such as choice of clothing, which may be limited only in specific circumstances to protect public safety, public order, and public health or morals. In this context, one contribution to the present report⁵⁹ noted as a positive example the decision taken by the highest administrative court in France on 26 August 2016 to suspend the ban on supposedly inappropriate beachwear, which had been widely interpreted as targeting the burkini and other forms of dress worn by Muslim women. Such clothing bans do not improve the security situation, but rather fuel religious intolerance and stigmatization of Muslims, especially women, and may, as a result, actually undermine the efforts to counter terrorism and prevent violent extremism.⁶⁰

40. One contribution to the present report from an academic source noted that the practice of racial or religious profiling in some States had led to the perception of imaginary “crimes” shaped by racial or religious prejudice in expressions such as “driving while Black”, “flying while Arab” or “perambulating while Muslim”. The number of attacks against Muslims in Europe increased following the terrorist attacks in Paris in November 2015. One report on anti-Muslim hatred showed a 300 per cent rise in hate crime incidents in the United Kingdom of Great Britain and Northern Ireland in the week following the Paris attacks, particularly affecting Muslim women and girls aged between 14 years and 45 years wearing hijabs. Many of those attacked indicated that no one had come to their assistance and that they felt victimized, embarrassed and alone following the incidents.⁶¹

⁵⁵ See A/HRC/7/14, para. 47.

⁵⁶ See A/HRC/20/27, para. 21.

⁵⁷ See the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression, para. 46.

⁵⁸ See contribution from Child Rights International Network; and A/HRC/22/17/Add.4, appendix, in particular, para. 29.

⁵⁹ See contribution from Libya.

⁶⁰ See OHCHR press briefing note on France of 30 August 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20430&LangID=E.

⁶¹ See contribution from Child Rights International Network.

41. The Committee on the Elimination of Racial Discrimination emphasized that States should ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.⁶² Moreover, it has been emphasized in several contributions to the present report that religious leaders can play a particularly important role in the context of interreligious dialogue and tolerance⁶³ as well as in countering terrorism and violent extremism by presenting religious messages that promote human civilizational values and spread the concepts of love and mercy for everyone.⁶⁴

6. Impact on the right to work and the right to health

42. Acts of terrorism have had a significant impact on the enjoyment of the right to health for direct and indirect victims. Attacks by Boko Haram in September 2013 on 21 health districts in Cameroon, for example, lead to the shutdown of 47 health centres in Fotokol, Guzdal and Koza. These centres reportedly hosted internally displaced persons before they fled for fear of further attacks by Boko Haram.⁶⁵ In addition, attacks on girls' education have a negative impact on the right to health for girls, their families and communities because girls who are prevented from accessing education are less exposed to basic information and less empowered to make decisions about health issues, including nutrition, sexual and reproductive health, hygiene and preventive health care.⁶⁶ One contribution to the present report highlighted the long-term impairments that may result from acts of terrorism, such as loss of limbs or of the senses, causing the victims to live with incapacity and pain for their entire lives and to require someone to care for them and their family.⁶⁷ Furthermore, public spending on counter-terrorism often focuses on investment in the military, on policing and on intelligence gathering and analysis, which may adversely affect financial allocations to basic social services, including the health sector.⁶⁸

43. Another contribution to the present report highlighted the impact of terrorist attacks — such as the bombing of an aeroplane over the Sinai Peninsula in October 2015 — on the tourism industry, with negative implications for employment, tourism facilities and the national economy.⁶⁹ More broadly, terrorism may have both a direct impact on the tourism sector — through decreased tourist numbers, leading to decreased spending — and an indirect impact, owing to decreased employment and reduced flow-on effects to other industries, such as food services, cleaning and maintenance businesses.⁷⁰ In the context of counter-terrorism measures, the right to work may also be negatively impacted by the freezing of assets or the inclusion of individuals on a sanctions list, which could prevent them from travelling freely and accepting offers of employment in another country.⁷¹

⁶² See the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens, para. 10.

⁶³ See, for example, the contributions from Mexico and Togo.

⁶⁴ See contribution from Association pour la défense des droits de la femme en Mauritanie.

⁶⁵ See A/HRC/30/67, para. 49.

⁶⁶ See www.ohchr.org/Documents/HRBodies/CEDAW/Report_attacks_on_girls_Feb2015.pdf.

⁶⁷ See contribution from Egypt.

⁶⁸ See A/HRC/12/22, para. 24.

⁶⁹ See contribution from Egypt.

⁷⁰ See Institute for Economics and Peace, *Global Terrorism Index 2016*, p. 67. Available at <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>.

⁷¹ See A/HRC/12/22, para. 41; and communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, Views adopted on 22 October 2008.

7. Impact on the right to education and the right to participate in cultural life

44. The enjoyment of the right to education in Nigeria has been impacted significantly by internal displacement resulting from attacks by Boko Haram. Displaced children have been unable to access education, while those who have remained in their communities often receive poor quality education owing to insecurity, the lack of teachers — as many have fled — and the destruction of schools.⁷² Several cases of attacks against girls accessing education have highlighted the fragile nature of achievements in increasing the accessibility, availability, adaptability, acceptability and quality of education for all. These events include the abduction of nearly 300 schoolgirls by Boko Haram in northeast Nigeria; the killing of more than 100 children in an attack by the Taliban at an army school in Peshawar, Pakistan; the shooting of education activist, Malala Yousafzai, by members of the Taliban in Pakistan; the reported forced removal of girls from schools in Somalia to become “wives” of Al-Shabaab fighters; the abduction and rape of girls at a Christian school in India; as well as several incidents of poisoning and acid attacks against schoolgirls in Afghanistan.⁷³ One contribution to the report noted that, in Afghanistan, the Taliban had closed or burned some 245 schools in two Afghan provinces in 2015 and that 25 schoolteachers and students had been killed by anti-government elements.⁷⁴

45. The negative impact of terrorism on cultural life is evident from the attacks carried out by Al-Shabaab, Al-Qaida, Ansar Eddine, ISIL and the Taliban against artists and citizens attending cultural events, cinemas, concerts or theatres. One contribution to the report noted that artists and citizens in Afghanistan, Iraq, Libya, Mali, Pakistan, Somalia and Syrian Arab Republic have been particularly severely affected by attacks committed in the name of religion, while the attacks in Belgium, Denmark, France, Germany and Sweden have led to fear, self-censorship and financial loss for artists and cultural industries.⁷⁵

46. With regard to censorship by States, the Special Rapporteur in the field of cultural rights noted that, in some countries, artistic expressions criticizing the Government had been labelled as “terrorism”. She expressed concern that many artists had been disproportionately sentenced under charges of criminal offences such as “terrorism”, “extremism” or “hooliganism”.⁷⁶

47. At a more general level, the reallocation of State resources towards counter-terrorism measures can also have negative consequences on the right to education, for example, when allocations are drawn away from programmes in the education sector.⁷⁷

B. Ensuring respect for the human rights of victims

48. In its 2016 review of the United Nations Global Counter-Terrorism Strategy, the General Assembly deeply deplored the suffering caused by terrorism in all its forms and manifestations to the victims and to their families. It expressed its profound solidarity with them and encouraged Member States to provide them with proper support and assistance while taking into account, *inter alia*, when appropriate, considerations regarding remembrance, dignity, respect, justice and truth, in accordance with international law.⁷⁸ In their contributions to the present report, several States referred to the human rights of

⁷² See A/HRC/30/67, para. 9.

⁷³ See http://www.ohchr.org/Documents/HRBodies/CEDAW/Report_attacks_on_girls_Feb2015.pdf.

⁷⁴ See contribution from the Afghanistan Independent Human Rights Commission.

⁷⁵ See contribution from Freemuse.

⁷⁶ See A/HRC/23/34, paras. 31 and 46.

⁷⁷ See A/HRC/12/22, para. 45.

⁷⁸ See General Assembly resolution 70/291, para. 24.

victims, including the importance of victim support and protection as provided for in Constitutions, national laws and regional directives.

49. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines “victims” as:

“persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”⁷⁹

A person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim”. The term “victim” may also include “the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.⁸⁰

50. The Declaration outlines the minimum standards for the fair treatment of victims according to the basic principles of justice. Victims should be treated with compassion and respect for their dignity; be informed of their rights in seeking redress; have their views and concerns presented in legal proceedings; receive proper assistance throughout the legal process; be protected against intimidation and retaliation; have their privacy protected; be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation; enjoy restitution and compensation, as appropriate; and receive the necessary material, medical, psychological and social assistance.

51. Furthermore, 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 underscore the need for victims to be treated with humanity and respect for their dignity and their human rights, and emphasize that appropriate measures should be taken to protect their safety, physical and psychological well-being and privacy, as well as those of their families. The remedies to be made available to victims of violations of international human rights and humanitarian law are also outlined. These include the victim’s right to equal and effective access to justice, effective and prompt reparation for harm suffered, and access to relevant information concerning the violations and reparation mechanisms. More specifically, the Basic Principles and Guidelines outline States’ obligations to provide reparation to victims for acts or omissions that may be attributed to the State and that constitute gross violations of international human rights law or serious violations of international humanitarian law. Furthermore, States should endeavour to establish national programmes for reparation and other assistance to victims, if the parties liable for the harm suffered are unable or unwilling to meet their obligations.⁸¹

52. In her opening statement to a Human Rights Council panel discussion, held on 1 June 2011, the former High Commissioner for Human Rights highlighted that victims of terrorist acts required immediate assistance and long-term medical and psychosocial support, as well as financial aid. She emphasized that victims of terrorist acts should be provided with information, in a timely, truthful and transparent manner, about the facts and circumstances of the terrorist act and any ensuing investigations and judicial proceedings. Victims should be given the opportunity to effectively participate in judicial proceedings

⁷⁹ See General Assembly resolution 40/34, annex, para. 1.

⁸⁰ *Ibid.*, para. 2.

⁸¹ General Assembly resolution 60/147, annex, para. 16.

and other mechanisms with the appropriate protection against intimidation, retaliation and arbitrary interference with their right to privacy. Victims should also be provided with equal access to justice and appropriate assistance throughout the legal proceedings.⁸²

53. Wherever there is credible evidence to suggest that there have been violations of human rights in the context of counter-terrorism, States must conduct prompt, independent, impartial and thorough investigations. Where these investigations result in establishing that a violation has occurred, victims must be afforded effective redress, including payment of compensation to individuals who have been denied due process, particularly in cases of excessive pretrial detention, which would also prevent the fostering of resentment among aggrieved individuals and their families as a result of unfair or even illegal practices. In addition to providing a concrete form of remedy, payment of compensation could also serve as an investment in future stability by recognizing State fault.

54. Alongside such payments, care should also be taken to ensure that necessary legal reforms to avoid repeat cases of breaches of due process are also implemented in a timely fashion and seen as an essential element of the guarantee of non-recurrence. Oversight processes, adequate checks and balances, and effective complaints mechanisms are essential to ensuring that the use of counter-terrorism powers is narrowly and appropriately tailored to achieve specific ends and is not deployed in an over-broad or oppressive fashion. While non-judicial mechanisms may have potential value, there should always be the possibility for victims to have recourse to judicial remedies.⁸³

IV. Conclusions and recommendations

55. Acts of terrorism that have been committed in countries worldwide are stark reminders of their negative effects on the enjoyment of human rights and fundamental freedoms by all, with devastating consequences for victims. Each State has the duty to take measures to protect all individuals within its territory and those subject to its jurisdiction from terrorist acts. At the same time, States must ensure that any measures taken to counter terrorism are fully compliant with their obligations under international law, including international human rights law.

56. Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives, which must be pursued together as part of States' duty to protect individuals within their jurisdiction. Experiences in countries around the world have demonstrated that protecting human rights and ensuring respect for the rule of law itself contribute to countering terrorism, notably by creating a climate of trust between the State and those under their jurisdiction.

57. In the context of terrorist acts and counter-terrorism measures, ensuring accountability and combating impunity is key. The contributions received for the present report and the above-mentioned observations by various international human rights mechanisms illustrate the wide range of negative effects that terrorist acts and counter-terrorism measures have on the enjoyment of human rights and fundamental freedoms. Criminal justice systems that function in line with international human rights standards are the best means for ensuring accountability for acts of terrorism. Strengthening the rule of law, including through the implementation of appropriate checks and balances, is essential to ensuring the legality and legitimacy of counter-terrorism measures. Constant monitoring and regular review will help to ensure that

⁸² See A/HRC/19/38, para. 4.

⁸³ See A/HRC/22/26, paras. 47-49.

counter-terrorism laws, policies and practices achieve their goals and that any negative impact on human rights is promptly addressed.

58. The human rights of victims of terrorism need to be respected, including their rights to reparation, truth and justice as well as their right to live free from fear and be provided with the support they require. Victims need immediate assistance but also long-term medical and psychosocial support, as well as financial support to compensate the destruction of their property or loss of their livelihood and jobs. Victims should be provided with equal access to justice and an effective remedy, through which they can benefit from adequate and prompt reparation for the harm suffered. With regard to alleged human rights violations in the counter-terrorism context, States must conduct prompt, independent, impartial and thorough investigations. If it is established that a violation has occurred, victims must be afforded effective redress, including payment of compensation to individuals who have been denied due process.
