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

Terrorism and human rights

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report focuses on measures taken by States to ensure criminal accountability for human rights abuses committed by terrorist groups¹ and human rights violations committed in the context of countering terrorism. It also sets out the main requirements under international human rights law to ensure the rights of victims to an effective remedy and reparation. The final section offers some guidance to States on how to strengthen efforts towards ensuring accountability and upholding the rights of victims in accordance with international human rights law.

* The present report was submitted after the deadline so as to include the most recent information.

¹ The term “terrorist group” is used in the present report in accordance with Human Rights Council resolutions 37/27 and 42/18 and does not represent an acknowledgement or recognition on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR) of any designation of a group as terrorist by a State or a regional or international organization.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 37/27 and 42/18, in which the Council invited the United Nations High Commissioner for Human Rights to pay due attention to the negative impact of terrorism on the enjoyment of all human rights and fundamental freedoms and on alleged violations of human rights and fundamental freedoms while countering terrorism and violent extremism conducive to terrorism, and to report regularly to the Council.

2. In those two resolutions, the Council reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism and the financial support of terrorism as unjustifiable, and strongly condemned all terrorist acts as criminal and unjustifiable. It expressed serious concern at violations of human rights and fundamental freedoms and of international refugee law and international humanitarian law in the context of countering terrorism. It reaffirmed that States must ensure that any measure taken to counter terrorism complies with international law, in particular international human rights law, international refugee law and international humanitarian law. Furthermore, recognizing that countering terrorism requires a comprehensive approach and a multidimensional strategy to tackle the factors underlying and conditions conducive to terrorism, the Council urged States to effectively address the conditions conducive to the spread of terrorism and violent extremism conducive to terrorism.

3. Also in those resolutions, the Council deplored the suffering caused by terrorism and violent extremism conducive to terrorism to the victims and their families. It called upon States to ensure that any person who alleges that their human rights or fundamental freedoms have been violated by measures taken or means employed to counter terrorism or violent extremism conducive to terrorism has access to justice, due process and an effective remedy. The Council also stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems, in accordance with States' obligations under international law.

4. While the total number and rate of terrorism-related incidents and casualties has continued to decline since peaking in 2014, terrorist acts remain a real threat to international peace and security. Combating terrorism remains a key priority for many States and consequently, more efforts have been geared towards investigating and prosecuting alleged perpetrators of terrorism-related offences. In keeping with that trend and with Council resolutions 37/27 and 42/18, the present report focuses on measures taken by States to ensure criminal accountability for human rights abuses committed through terrorist acts and human rights violations committed in the context of countering terrorism. It also sets out the main requirements enshrined in international human rights law to ensure the rights of victims to an effective remedy and reparation. The final section provides some guidance for States on how to strengthen efforts to ensure accountability and uphold the rights of victims in accordance with international human rights law.

5. The report was submitted while coronavirus disease (COVID-19) was ravaging many States and communities and taking many lives. The consequences of the pandemic and of certain responses to it were also exacerbating already existing human rights protection gaps. As the High Commissioner has noted, the responses to that global health emergency must comply with human rights.² While some human rights may legitimately be limited on the grounds of public health, such limitations must be provided by law, necessary, proportionate, non-discriminatory and imposed with procedural safeguards, so that the rule of law and core enjoyment of human rights do not also fall victim to the response to the pandemic.

6. Nevertheless, in implementing exceptional or emergency measures in response to COVID-19, some States have resorted to counter-terrorism measures and tools. The convergence of counter-terrorism approaches and public health measures has led to

² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25915&LangID=E.

concerns, particularly in terms of excessive security measures and disproportionate impacts on individuals and groups. Moreover, as the High Commissioner has also noted, the global pandemic has brought to the surface structural inequalities, discrimination and the root causes of violence and conflict.³ The situation has provided additional opportunities for terrorist actors to exploit vulnerabilities among local communities. The United Nations Global Counter-Terrorism Strategy is particularly relevant in that context as it emphasizes that marginalization, discrimination and other violations of human rights are among the key drivers conducive to terrorism and violent extremism. As such, States should increase efforts to tackle conditions conducive to terrorism and violent extremism, including and particularly during times of crisis, such as the current one.

II. Issues of human rights concern: accountability and the rights of victims

A. Human rights and accountability

7. Accountability for serious violations of international humanitarian law and gross violations of international human rights law is fundamental to the promotion of respect for the rule of law. It serves as a deterrent against future violations, and provides a measure of redress and justice for victims of the most serious crimes. It also strengthens efforts to secure and sustain peace. Under international human rights law, States must investigate, prosecute and punish violations of human rights, and, if there is sufficient evidence, prosecute the alleged perpetrators and punish them if convicted.

8. States are obliged to investigate and prosecute terrorist crimes.⁴ They must also ensure that their counter-terrorism policies and practices fully comply with international humanitarian law, international human rights law and international refugee law. Those two interlinked dimensions have been stressed in the United Nations Global Counter-Terrorism Strategy and numerous resolutions of the Security Council and the General Assembly. In resolutions 37/27 and 42/18, the Human Rights Council also stressed the importance of ensuring access to justice and accountability, and called on States to ensure that any person who alleges that their human rights or fundamental freedoms have been violated by measures taken or means employed to counter terrorism or violent extremism conducive to terrorism has access to justice, due process and an effective remedy, and that victims of human rights violations and abuses receive adequate, effective and prompt remedy and reparations, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees of non-repetition as a fundamental basis of any strategy to counter terrorism and violent extremism conducive to terrorism.

9. Some States have taken steps to investigate certain violations of international humanitarian law and international human rights law committed in the context of countering terrorism. Nevertheless, the outcomes of investigations and related judicial proceedings often remain inaccessible.⁵ There is particular concern regarding the opaque accountability of the personnel of intelligence agencies, particularly for torture or ill-treatment of those suspected of committing terrorist acts.⁶ Another concern is the broad immunity sometimes provided in national legislation for law enforcement or other State

³ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916 and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26195&LangID=E.

⁴ Security Council resolution 1373 (2001).

⁵ For example, UNAMI and OHCHR, "Report on the protection of civilians in the context of the Ninewa Operations and the retaking of Mosul City, 17 October 2016–10 July 2017" (2017), pp. 29 and 39–40; United Nations University (UNU) and Institute for Integrated Transitions, *The Limits of Punishment: Transitional Justice and Violent Extremism* (UNU, 2018), p. 111; and CCPR/C/NGA/CO/2, paras. 30–31.

⁶ See A/HRC/22/52 and Corr.1.

officials, which can partially or entirely shield them from accountability for serious violations of human rights.⁷

10. Many of the allegations regarding violations of human rights and international humanitarian law in the context of counter-terrorism operations relate to torture and ill-treatment. The Committee against Torture has repeatedly stressed that torture cannot be justified under any circumstances.⁸ The Human Rights Committee has also highlighted the fact that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment also extends to threats of terrorism, which therefore cannot be invoked to justify the use of torture to extract information from suspected terrorists.⁹ It has recalled that complaints of ill-treatment must be investigated promptly, thoroughly and impartially by the competent authorities and appropriate action must be taken against those found guilty.¹⁰

11. Credible judicial accountability for human rights violations committed in the context of countering terrorism remains partial and piecemeal.¹¹ Inadequate responses to violations of human rights occurring in the context of countering terrorism undermine the effectiveness of the entire approach and fail to deliver a coherent deterrent against serious human rights violations committed in the future by State officials and agents. Especially in conflict and post-conflict settings, such practices are also detrimental to achieving sustainable peace and security.

B. Impediments to criminal accountability

12. Accountability for terrorism-related crimes and violations of human rights can and should be ensured through a variety of complementary forms. Many States have prioritized criminal accountability as the main, and sometimes only, accountability path for terrorism-related offences. While criminal prosecution represents an important form of legal protection, it should be complemented by other mechanisms that address additional imperatives and more fully address the rights of victims.

13. The Security Council has called on Member States to assess and investigate suspected individuals whom they have reasonable grounds to believe are terrorists, including suspected foreign terrorist fighters and their accompanying family members, including spouses and children, entering those Member States' territories, to develop and implement comprehensive risk assessments for those individuals, and to take appropriate action, including by considering appropriate prosecution, rehabilitation and reintegration measures, and has emphasized that Member States should ensure that they take all such action in compliance with domestic and international law.¹² A variety of accountability measures have proven significant in a few country contexts to redress and prevent violations of human rights.¹³

⁷ For example, A/HRC/43/46/Add.1, paras. 45–47; Cecilia Polizzi, “The crime of terrorism: an analysis of criminal justice processes and accountability of minors recruited by the Islamic State of Iraq and Al-Sham”, *UC Davis Journal of International Law and Policy*, vol. 24, No. 1 (2018), pp. 26–27; www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf, pp. 9–12; and A/HRC/38/44/Add.1, paras. 56–58.

⁸ Committee against Torture, general comment No. 2 (2007) on the implementation of article 2, paras. 3, 6, 19 and 25.

⁹ *Lupiañez Mintegi v. Spain* (CCPR/C/125/D/2657/2015), para. 9.3.

¹⁰ *Ibid.*, paras. 9.8 and 11.

¹¹ For example, Human Rights Watch, *World Report 2015: Events of 2014* (2015), p. 483; Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (London, 2015), pp. 10 and 42; CCPR/C/CMR/CO/5, para. 25; CCPR/C/ROU/CO/5, paras. 33–34; S/2019/454, para. 49; <https://issafrica.s3.amazonaws.com/site/uploads/war-24.pdf>; and A/HRC/43/76, paras. 31–33.

¹² Security Council resolution 2396 (2017), para. 29. See also Security Council resolution 2178 (2014), para. 4.

¹³ For example, A/HRC/36/50/Add.1, paras. 7, 14 and 22.

1. Counter-terrorism legislation

14. A comprehensive definition of terrorism has not yet been adopted in universal legal instruments aimed at preventing terrorist acts or in resolutions of the various United Nations bodies. Short of an internationally agreed definition, human rights law and the fundamental principles of the rule of law impose certain parameters on the development of national definitions of acts of terrorism, in particular the principles of legal certainty, clarity of definition and legality. Article 15 (1) of the International Covenant on Civil and Political Rights, which covers a non-derogable right under the Covenant, is particularly instructive in that regard. Moreover, Security Council resolution 1566 (2004), together with the model definition proposed in 2005 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, provide guidance on the cumulative characteristics of acts of terrorism.¹⁴

15. Human rights law requires that legislation criminalizing acts of terrorism be made accessible to the public, formulated with precision, applicable to counter-terrorism alone, non-discriminatory and non-retroactive.¹⁵ The absence of the necessary precision creates conditions under which counter-terrorism policies can be overextended and abusively interpreted and implemented, undermining human rights protections for individuals and groups and affecting legitimate speech and conduct.

16. Some States have developed and implemented broad and vague counter-terrorism legislation, which often does not require violent conduct. Such laws sometimes expressly cover conduct that is protected by international human rights law, for instance the legitimate exercise of the freedoms of expression, peaceful assembly or association. In some legislation, definitions of terrorism include conduct such as “insulting the reputation of the State”, which could result in the criminalization of any discourse critical of the Government or its policies. Other broadly formulated legislation creates new offences such as “advocating”, “encouraging”, “glorifying” or providing support to terrorism, which could lead to unnecessary or disproportionate interference with the freedoms of expression, peaceful assembly and association.¹⁶ As the United Nations human rights mechanisms have asserted, overly broad definitions of concepts or specific acts of terrorism or associated conduct facilitate the infringement of human rights and fundamental freedoms.¹⁷ Civil society organizations, human rights defenders, journalists, members of religious or ethnic minority groups¹⁸ and others may be affected by abusive or discriminatory application of unduly broad counter-terrorism legislation.¹⁹

17. The frequent inclusion in national counter-terrorism legislation of a vague offence of membership of or association with a terrorist group may pose practical challenges in implementation. In 2014, the High Commissioner noted that national legislation that failed to define “membership” or to require a link between the membership and the prohibited status or activity would be contrary to the principle of legality, in particular where such membership led to targeted sanctions or criminal penalties, such as imprisonment.²⁰

18. Vague or non-existent definitions of the offences of membership of or association with a terrorist group allow for broad interpretation by law enforcement officers and courts, resulting in the conviction of persons who may not have engaged in any illegal conduct or other behaviour that implies criminal responsibility. Conviction for such an offence often

¹⁴ E/CN.4/2006/98, paras. 35–41.

¹⁵ A/HRC/28/28, para. 28; General Assembly resolution 72/180, para. 5 (o); and A/HRC/8/13, paras. 19–23.

¹⁶ A/HRC/28/28, para. 22; and A/HRC/31/65, para. 39.

¹⁷ See KGZ 3/2020, ETH 3/2019, PHL 4/2020, p. 4, and CHN 13/2020, pp. 4–5, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>; CCPR/C/BEL/CO/6, paras. 11–12; CCPR/C/BGR/CO/4, paras. 33–34; A/HRC/8/13, paras. 20–22; A/HRC/44/49/Add.1, paras. 26–27; and CCPR/C/TJK/CO/3, paras. 23–24.

¹⁸ For example, A/HRC/40/52/Add.3, para. 8.

¹⁹ OHCHR, Report on the human rights situation in Ukraine: 16 August to 15 November 2019, paras. 74–75; CERD/C/SWE/CO/22-2, para. 20; and CAT/C/NER/CO/1, para. 31.

²⁰ A/HRC/28/28, para. 26.

hinges on scant evidence to prove membership of or association with a terrorist group. For example, in Nigeria, mere membership of a terrorist group is criminalized without further specification as to the scope of the notion of “membership”.²¹ Similarly, in court hearings of cases tried under the terrorism law and attended by the United Nations Assistance Mission for Iraq (UNAMI), judges generally did not determine any specific terrorist act and required simple proof of broadly interpreted “membership” of or “association” with a terrorist group for conviction of Islamic State in Iraq and the Levant defendants, often without any assessment of the evidence on which they relied.²²

19. In September 2014, the Security Council adopted resolution 2178 (2014) to counter the threat posed by foreign terrorist fighters. In December 2017, it adopted resolution 2396 (2017), building on resolution 2178 (2014) and providing greater focus on measures to address returning and relocating foreign terrorist fighters and their families, and requiring States to strengthen their efforts in border security, information-sharing and criminal justice. In response, many States enacted new legislation, or toughened pre-existing counter-terrorism legislation,²³ with some definitional variations that criminalized membership of or association with a terrorist group.²⁴ Those provisions have a direct impact on prosecutorial strategies, as discussed below.

20. Another concern relating to the expansion of counter-terrorism legislation is that children are being subjected to laws and procedures that were designed to apply to adults. Broad counter-terrorism legislation often fails to appropriately distinguish between children and adults, thereby undermining the special status of children and the safeguards they should enjoy under international juvenile justice standards.²⁵ The global study on children deprived of liberty, published in 2019, found that States increasingly invoke national security grounds against children, undermining established child rights standards, including the use of detention only as a measure of last resort and the obligation to provide rehabilitation and reintegration assistance for children illegally recruited by armed groups designated as terrorist or violent extremist.²⁶

2. Due process and fair trial guarantees

21. Article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights, which both aim at ensuring the proper administration of justice, guarantee a series of specific rights in judicial proceedings,²⁷ including those of a criminal nature. States should ensure that all guarantees of due process are respected when arresting, charging and prosecuting a suspect of terrorism-related offences. The General Assembly has stressed the importance of developing and maintaining effective criminal justice systems,²⁸ and has urged States to ensure due process guarantees as enshrined in international human rights law and international humanitarian law, as applicable, while countering terrorism.²⁹

22. The United Nations human rights bodies have recorded a number of due process concerns during the different phases of criminal proceedings initiated against those

²¹ UNU and Institute for Integrated Transitions, *The Limits of Punishment*, p. 102.

²² UNAMI and OHCHR, “Human rights in the administration of justice in Iraq: trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL” (Baghdad, January 2020), p. 15.

²³ Human Rights Watch, *World Report 2017: Events of 2016* (2017), pp. 27–38; A/HRC/40/52, para. 3; A/73/361, para. 43; and A/HRC/28/28, paras. 21, 26 and 49–50.

²⁴ Anthony Dworkin, “Beyond good and evil: why Europe should bring ISIS foreign fighters home”, European Council on Foreign Relations, policy brief, October 2019, p. 7.

²⁵ For example, A/HRC/39/72, para. 56; CAT/C/NER/CO/1, paras. 29–30; and Committee on the Rights of the Child, general comment No. 24 (2019) on children’s rights in the child justice system, paras. 97–101.

²⁶ A/74/136, paras. 73–78.

²⁷ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 2.

²⁸ General Assembly resolution 73/174, para. 9.

²⁹ General Assembly resolution 72/180, para. 5 (s).

suspected of terrorism-related offences.³⁰ Those concerns include lengthy pretrial detention,³¹ torture and ill-treatment while in custody,³² the use of coerced confessions as evidence in courts,³³ restrictions to legal counsel, and the absence of judicial independence.³⁴ While sometimes reflecting more generalized challenges in law enforcement and the administration of justice, the impact of those deficiencies is particularly acute in the context of the prosecution of terrorist acts.

23. Some States seek to try suspects of terrorism-related offences in special, military or security courts. United Nations human rights mechanisms have raised concerns in relation to the compatibility of trials in such courts with the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.³⁵ According to the Human Rights Committee, trials of civilians by military or special courts should be exceptional, that is, limited to cases where the State can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials. The Committee also considers that, as a rule, civilians must not be tried for capital crimes before military tribunals.³⁶

24. Another potential impediment to fairness is the invocation of State privilege or secrecy doctrines in court proceedings, when those doctrines operate to exclude relevant evidence on grounds such as endangering national security, therefore impeding comprehensive accountability for violations of international humanitarian and human rights law.³⁷ Reliance on anonymous witnesses and classified information based on security or intelligence reports may also violate the right to an adequate defence when they are not independently corroborated or the evidence is made available only in essential substance to the accused.³⁸ Pretrial investigations are also sometimes based on testimonies from secret informants whose reliability cannot be sufficiently assessed. In some countries, the results of such investigations are used in judicial proceedings as evidence. For example, in court hearings under the counter-terrorism framework in Iraq, judges frequently rely on statements by anonymous witnesses. Observations of such trials revealed no instances in which the defence counsel had the opportunity to challenge or refute such reports by cross-examining the anonymous witness or witnesses, or in which the judge took other measures to minimize the adverse impact of such anonymous statements on the right to a fair trial.³⁹ While witness protection is an important component of the proper administration of justice, equality of arms between the prosecution and the defence must also be appropriately maintained.

25. There are particular concerns when flawed procedures result in the imposition of the death penalty. The safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council in its resolution 1984/50, continue to constitute minimum standards to be applied in States that still impose capital

³⁰ For example, CCPR/C/NER/CO/2, para. 14.

³¹ Several States, including Chad, France, Saudi Arabia, Tunisia and the United Kingdom of Great Britain and Northern Ireland, have extended pretrial detention periods for terror suspects. See Human Rights Watch, *World Report 2017*. See also CAT/C/NER/CO/1, paras. 9 and 15.

³² A/HRC/43/46/Add.1, paras. 30–32; and CCPR/C/MRT/CO/2, para. 26.

³³ For example, A/HRC/28/69 and Corr.1, paras. 104–105.

³⁴ A/HRC/44/49/Add.1, para. 26. See also CCPR/C/MUS/CO/5, para. 27; and <https://issafrica.s3.amazonaws.com/site/uploads/war-24.pdf>.

³⁵ CCPR/C/PAK/CO/1, paras. 21–24; CCPR/C/JOR/CO/5, para. 26; CCPR/C/CMR/CO/5, para. 11; A/73/362, paras. 47 and 50; A/HRC/40/52/Add.2, paras. 30–31; and EGY 2/2018, pp. 4–5, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

³⁶ Human Rights Committee, general comments No. 36 (2018) on the right to life, para. 45, and No. 32, para. 22.

³⁷ Elizabeth Stubbins Bates, *Terrorism and International Law: Accountability, Remedies, and Reform – A Report of the IBA Task Force on Terrorism* (Oxford, Oxford University Press, 2011), pp. 185–188.

³⁸ A/HRC/43/46/Add.1, para. 38; and A/HRC/40/52/Add.2, para. 46.

³⁹ UNAMI and OHCHR, “Human rights in the administration of justice in Iraq”, p. 8. See also A/HRC/43/46/Add.1, para. 38.

punishment.⁴⁰ They provide that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights. According to the Human Rights Committee, in cases of trial leading to the imposition of the death penalty, scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial in which the provisions of article 14 of the Covenant have not been respected constitutes a violation of the right to life.⁴¹

26. According to article 6 of the International Covenant on Civil and Political Rights, in countries that have not abolished the death penalty, sentence of death may be imposed only for “the most serious crimes”. The Human Rights Committee has indicated that the term “the most serious crimes” must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing. A limited degree of involvement or of complicity in the commission of even the most serious crimes cannot justify the imposition of the death penalty.⁴² Nevertheless, research indicates that since July 2018, several States have adopted laws providing for the death penalty or extending its use to include terrorism-related offences, including against juvenile offenders.⁴³ That is despite the prohibition of the use of the death penalty for offences committed by persons aged under 18.⁴⁴ In other States, the death penalty was retained for crimes that do not meet the threshold of “the most serious crimes”.⁴⁵

27. The United Nations human rights mechanisms have continued to express concern about the lack of due process in terrorism-related trials involving the imposition of the death penalty,⁴⁶ including for offences that do not meet the threshold of “the most serious crimes”.⁴⁷ For example, in the Syrian Arab Republic, the death penalty can be imposed for any act that results in the partial destruction of a public building, an industrial establishment, a ship or another installation, in the disruption of means of transport or communications or in the death of a person.⁴⁸ Moreover, that punishment is imposed following court proceedings that do not offer fair trial guarantees.⁴⁹ In Somalia, despite indications that the Government may be considering instituting a moratorium, the use of the death penalty continues. The military courts tend to sentence most Al-Shabaab members to death on the basis of the Criminal Code of 1962, in trials that reportedly do not meet fair trial guarantees.⁵⁰

28. Some States have taken initiatives to remove the death penalty for terrorism-related offences. For example, in Uganda, the Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019 provided for the removal of the mandatory death penalty from the Penal Code Act and the Anti-Terrorism Act, 2002 and other laws. Chad

⁴⁰ E/2015/49, para. 60.

⁴¹ Human Rights Committee, general comment No. 32, para. 59.

⁴² Human Rights Committee, general comment No. 36, para. 35.

⁴³ For example, PAK 6/2018, p. 5, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁴⁴ The International Covenant on Civil and Political Rights (art. 6) and the Convention on the Rights of the Child (art. 37 (a)) provide that the death penalty cannot be imposed for offences committed by persons below 18 years of age.

⁴⁵ For example, in Egypt, the updated anti-terrorism law provides for the death penalty for financing terrorism. See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787&LangID=E; and in Ethiopia, under the 2020 proclamation to prevent and control terrorism, the death penalty was retained for certain terrorist offences. See A/HRC/44/49/Add.1, paras. 26–27.

⁴⁶ A/HRC/40/52/Add.2, para. 48; and CCPR/C/BHR/CO/1, para. 31.

⁴⁷ E/C.12/CMR/CO/4, paras. 38–39; and ARM 3/2018, BEL 4/2019, KGZ 2/2018, RUS 18/2018 and USA 18/2019, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁴⁸ Syrian Arab Republic, Criminal Code, art. 305 (3).

⁴⁹ See www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_31_crp_1.pdf, paras. 16 and 35; and Cecilia Polizzi, “The crime of terrorism”, p. 24.

⁵⁰ UNU and Institute for Integrated Transitions, *The Limits of Punishment*, p. 143.

became an abolitionist State after amending its counter-terrorism legislation, which had previously provided for the death penalty for certain terrorism-related offences.

3. Implementation of counter-terrorism legislation

29. A main concern in the application of terrorism-related legislation is the use of vague status-based offences of “membership of” or “association with” a terrorist group, which have become a main feature of prosecution strategies of suspects of terrorism-related offences, including women, in several countries. As the Executive Directorate of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism observed, “membership of a terrorist organization is to date the most widely used terrorism charge in the prosecution of female returnees and has led to convictions of women in several Member States, including in Europe and the Middle East”.⁵¹

30. In order to apply membership or association offences, some States have relied on circumstantial or limited evidence. In some countries, suspicion of an individual’s membership of a violent extremist or a terrorist group is based mainly on demographic considerations or sectarian or religious affiliation.⁵² In other cases, individuals found in areas previously controlled by a terrorist group have often been presumed to be affiliated with that group or to have supported it in some way. Consideration of the scope and nature of such affiliation or actual support and elements of duress and coercion do not appear to feature significantly in those cases.⁵³ As a result of widespread presumptions, many people have become terrorist suspects, including those who remained in territory controlled by those groups. Moreover, broad interpretation of the notions of “membership” or “association” have in some cases led courts to convict women for simply being family members of alleged Islamic State in Iraq and the Levant fighters, or for performing basic services and tasks for them, such as household chores.⁵⁴

31. That sweeping approach has resulted in a sizeable number of individuals being brought under the scope of harsh counter-terrorism laws and policies and has led to hasty and faulty prosecutions. In some circumstances, it could amount to a form of collective punishment against certain communities.⁵⁵ Furthermore, it has resulted in expending limited prosecutorial and judicial resources on individuals who could benefit from alternative accountability processes distinct from formal judicial process.⁵⁶

32. Some of the conduct considered as terrorist acts under national law may also constitute international crimes, including war crimes. Due recognition of the scope of such criminality, as well as the interest of victims, would call for prosecution of such international crimes, either instead of or in addition to terrorism offences. Yet, in countries where serious acts of terrorism have taken place, such as Iraq⁵⁷ and the Syrian Arab

⁵¹ Counter-Terrorism Committee Executive Directorate, “Analytical brief: the prosecution of ISIL-associated women”, July 2020, p. 3.

⁵² In Nigeria, there is reportedly widespread condemnation and distrust among society towards local populations who lived under Boko Haram rule. See Idayat Hassan, “What is justice? Exploring the need for accountability in the Boko Haram insurgency”, *Harvard Human Rights Journal*, online version, 27 December 2017. Available at <https://harvardhrj.com/2017/12/what-is-justice-exploring-the-need-for-accountability-in-the-boko-haram-insurgency/>.

⁵³ In Iraq, many civilian residents of territory controlled by Islamic State in Iraq and the Levant had to cooperate with the group. See UNU and Institute for Integrated Transitions, *The Limits of Punishment*, p. 47.

⁵⁴ Counter-Terrorism Committee Executive Directorate, “Analytical brief: the prosecution of ISIL-associated women”, pp. 3–4.

⁵⁵ United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and OHCHR, “Human rights and the peace process in Mali (January 2016–June 2017): executive summary”, February 2018, pp. 4–5; and UNAMI and OHCHR, “Human rights in the administration of justice in Iraq”, pp. 11 and 14.

⁵⁶ For example, the criminal justice systems in Mali, the Niger and Nigeria are overburdened and are making slow progress against terrorism. See <https://issafrica.org/iss-today/could-alternative-justice-help-counter-terrorism>.

⁵⁷ For example, A/HRC/38/44/Add.1, paras. 48–49.

Republic, the national legislation does not adequately incorporate international crimes, in practice preventing their prosecution as such and the imposition of commensurate sanctions on perpetrators. Of further concern is the fact that conflict-related sexual violence committed in the context of terrorism is rarely prosecuted, despite the Security Council resolutions acknowledging sexual violence as a crime of terrorism and calling on States for it to be investigated and prosecuted.⁵⁸

33. In some countries, that state of affairs is exacerbated by the development of amnesty agreements, often in ill-defined terms, for former fighters or persons associated with terrorist groups, which fail to conform to international law and standards. Vague agreements have resulted in some cases in concerned individuals being unable to make informed decisions about collaboration with the authorities, as the consequences could vary between amnesty and prosecution under legislation carrying harsh penalties. While amnesties may be permissible under international law under certain conditions, some crimes, in particular, genocide, war crimes, crimes against humanity and gross violations of human rights, may never be subject to amnesty.⁵⁹ Failing to explicitly exclude such conduct from amnesty agreements or implementing legislation would violate the obligations of the State to bring perpetrators to justice and to ensure that victims of such violations have an effective remedy.⁶⁰

34. In Somalia, for example, a lack of transparency regarding suspects' screening processes and the lack of clarity surrounding eligibility for amnesty has meant that amnesty could be granted on an ad hoc basis, and that potential defectors from Al-Shabaab risk their lives twice: firstly, to escape Al-Shabaab, and secondly, because they might be considered a high risk and thus subjected to military justice processes. Somali women and civil society representatives have expressed fierce opposition to broad amnesties for international crimes, which are not permissible under international law.⁶¹ In Nigeria, the Government embarked on broad amnesty-based negotiations with Boko Haram that would not result in the prosecution of some of the most egregious perpetrators of human rights violations. Many Nigerians opposed that policy, as it neither addressed criminal acts nor contributed to ending the cycle of violence. In Iraq, by contrast, pursuant to amendments made in November 2017 to the General Amnesty Law, No. 27/2016, terrorist suspects are ineligible for amnesties, regardless of the significance of the crimes of which they are accused.

35. Sweeping implementation of counter-terrorism legislation is resulting in high incarceration rates of pretrial detainees and persons sentenced for terrorism-related offences. Such overreach also feeds agendas of violent extremism. Core adherents of terrorist groups are frequently imprisoned with low-level members, and even sometimes with alleged victims of acts of terrorism presumed to be associated with terrorist groups, in substandard conditions.

4. Prosecution of suspected foreign fighters

36. The phenomenon of foreign fighters and States' efforts to ensure individual perpetrators' accountability for their acts raise distinct issues. A specific group of suspected foreign fighters has attracted international attention over the past few years, namely foreigners who joined terrorist groups in Iraq or the Syrian Arab Republic, many of whom are now held by the de facto authorities in the north-east of the Syrian Arab Republic. It is estimated that some 11,000 former Islamic State in Iraq and the Levant fighters are held in prisons in the Syrian Arab Republic by the de facto authorities, 2,000 or more of whom are foreign fighters from about 60 different nations.⁶² In addition, an estimated 12,000

⁵⁸ For example, S/2020/487, para. 15; and S/2018/250, paras. 20 and 45–46.

⁵⁹ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Amnesties* (United Nations publication, Sales No. E.09.XIV.1).

⁶⁰ International Covenant on Civil and Political Rights, art. 2. See also Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

⁶¹ UNU and Institute for Integrated Transitions, *The Limits of Punishment*, p. 136.

⁶² See, e.g. https://reliefweb.int/sites/reliefweb.int/files/resources/AI%20Hol%20Snapshot_26Jul2020.pdf; www.unicef.org/press-releases/governments-should-repatriate-foreign-

individuals of foreign origin, mostly women and children, with suspected family ties to Islamic State in Iraq and the Levant fighters, are being held separately in camps for displaced persons.

37. The Secretary General⁶³ and the High Commissioner⁶⁴ have repeatedly called upon States to facilitate the repatriation of foreign nationals, particularly women and children. Nevertheless, many States of origin have been reluctant to take back their nationals, particularly men, who went to Iraq or the Syrian Arab Republic. As a result, a large number of suspected foreign fighters and their families continue to be held by the de facto authorities in the north-east of the Syrian Arab Republic. The repatriation of women and children has been considered on a case-by-case basis. Some States have taken steps to deprive suspected fighters and family members of their nationality. A small number of States have committed to repatriate their nationals, and others have started doing so. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has affirmed that repatriation is both a positive implementation of States' international obligations under Security Council resolution 2178 (2014), and a welcome humanitarian response to the plight of those detained in overcrowded camps. She has also affirmed that such a step contributes to closing the impunity gap by prosecuting those individuals against whom there is sufficient evidence of criminal behaviour.⁶⁵

38. In 2018, the United Nations system developed guidance regarding human rights-based responses to the situation of foreign fighters and their families.⁶⁶ States of origin, however, continue to cite practical impediments that prevent them from dealing with those suspected of being foreign fighters and their families. Obstacles frequently cited relate to security considerations and operational and practical limitations, such as the inability to access the camps to extend consular services to their nationals owing to ongoing armed conflict. With regard to criminal prosecution, States have also cited difficulties collecting information or evidence against returnees that might be admissible in criminal proceedings in accordance with national laws. There have been suggestions that a special judicial accountability mechanism should be established to process those suspects. Pending such a step, repatriation of foreign nationals held in camps or detention centres remains a preferred option.⁶⁷ The de facto authorities in the north-east of the Syrian Arab Republic have reportedly created ad hoc counter-terrorism so-called tribunals known as "defence of the people" courts to prosecute suspects accused of committing crimes within the country. Most suspects have been convicted of violations of terrorism-related offences, such as membership of or association with a terrorist group. There are concerns about the appropriateness and fairness of those procedures. Moreover, the de facto authorities have been unwilling to put on trial Islamic State in Iraq and the Levant suspects of foreign origin, who are instead maintained in detention or sent to Iraq to face trial.

39. While acknowledging legitimate security and evidentiary considerations raised by States of origin when dealing with their nationals suspected of being foreign fighters, applicable human rights obligations should also be fully taken into account, including the duty to investigate gross violations of human rights committed by them.⁶⁸ Moreover, any

children-stranded-syria-its-too-late; and https://resourcecentre.savethechildren.net/node/17512/pdf/childrens_crisis_report_06052020.pdf.

⁶³ See www.un.org/sg/en/content/sg/statement/2020-07-06/secretary-generals-remarks-the-opening-of-the-virtual-counter-terrorism-week-united-nations-delivered.

⁶⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25986&LangID=E.

⁶⁵ A/HRC/43/46/Add.1, para. 9. See also www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25510&LangID=E.

⁶⁶ See www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf.

⁶⁷ Counter-Terrorism Committee Executive Directorate, "Analytical brief: the prosecution of ISIL-associated women", p. 6.

⁶⁸ On States' duties, see the legal analysis issued by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions, entitled "Extra-territorial jurisdiction of

security considerations should be strictly evidence-based and subject to appropriate independent review. Despite restricted access to crime scenes in Iraq and in the Syrian Arab Republic, information continues to emerge about activities and conduct committed by individual foreign fighters, which assists in building criminal cases against returned fighters and prosecuting them. That includes information collected by the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 and the Independent International Commission of Inquiry on the Syrian Arab Republic.

40. Some former fighters who have returned to European Union member States in particular have been investigated and prosecuted for terrorism charges, such as membership of a terrorist organization. In a minority of cases from various European Union member States, foreign fighters were prosecuted at the same time for terrorism offences and other international crimes, such as war crimes.⁶⁹ According to the Counter-Terrorism Committee Executive Directorate, the cumulative effect of counter-terrorism and war crime charges results in longer sentences in the event of conviction.⁷⁰ In addition, some States have initiated the creation of specialized war crimes units with the purpose of prosecuting international crimes and terrorism-related offences.⁷¹

C. Rights of victims

41. Acts of terrorism continue to take a significant toll on people's lives, physical and mental integrity and security. Terrorism takes place both within national territory and across borders, generating mass destruction and displacement. According to the Global Terrorism Index, the geographic breadth of the impact of terrorism has not declined in recent years, with 103 countries recording at least one terrorist incident in 2018, and 71 countries suffering at least one fatality in the same year.⁷² Women and girls in particular are often targeted directly by terrorist groups and subjected to gender-based violence, including human trafficking, rape, forced prostitution and forced marriage.

42. Victims of terrorism and their families have a right to an effective remedy and full reparation, and the corresponding State obligations include a duty to exclude any possibility of impunity for acts of terrorism.⁷³ States should systematically open a prompt, thorough, effective and independent investigation into each terrorist attack.⁷⁴ The Human Rights Committee has stressed that States parties are under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities, including armed or terrorist groups, whose conduct is not attributable to the State.⁷⁵

43. Victims of human rights violations, including those committed in the context of countering terrorism, have a right to an effective remedy and full reparation. That right is

States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic", para. 3.

⁶⁹ European Union Agency for Criminal Justice Cooperation (Eurojust), *Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences* (2020), p. 26; and Trial International, *Universal Jurisdiction Annual Review 2020 – Terrorism and international crimes: prosecuting atrocities for what they are* (2020), p. 12.

⁷⁰ Counter-Terrorism Committee Executive Directorate, "Analytical brief: the prosecution of ISIL-associated women", p. 4.

⁷¹ For example, A/HRC/40/52/Add.4, para. 16; www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and; and https://redress.org/wp-content/uploads/2018/03/UJAR_2018.pdf, pp. 8–10.

⁷² See <http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf>.

⁷³ A/74/790, para. 14.

⁷⁴ A/HRC/20/14, paras. 33–34.

⁷⁵ Human Rights Committee, general comment No. 36, para. 21. See also A/66/310, para. 20.

enshrined in international human rights law.⁷⁶ In addition to investigating and prosecuting both terrorist attacks and violations committed in the context of counter-terrorism, States should facilitate victims' participation in criminal proceedings, civil suits and public inquiries relating to such attacks and violations. States should enact laws and procedures to facilitate the provision of full reparation, including compensation and psychological support, to victims of terrorist acts, as appropriate. Support to victims should also include humanitarian assistance and legal assistance so as to ensure victims' access to an effective remedy and to justice.

44. Compensation can never substitute for bringing perpetrators to justice or for revealing the truth in compliance with applicable international human rights obligations. Nor should it be conditioned on victims' own ability to obtain reparations from perpetrators or their estates. Better practice has been for victims to have the option to benefit from State-administered compensation and assistance schemes.⁷⁷ The model provisions on reparations and assistance to victims developed in 2010 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as 1 of the 10 areas of best practices in countering terrorism,⁷⁸ and 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, provide a range of useful guidance in that regard.⁷⁹

45. Guidance also valuable in the terrorism and counter-terrorism contexts includes the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to General Assembly resolution 40/34. Article 2 indicates that a person may be considered a victim, under the Declaration, regardless of whether the perpetrator was prosecuted or convicted. Importantly, it indicates that the term "victim" also includes, where appropriate, the immediate family members or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. That is also the approach of the International Convention for the Protection of All Persons from Enforced Disappearance, which states that "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance (art. 24 (1)).

46. The former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated that there is no contradiction between defending the human rights of victims of terrorism and the human rights of persons affected by counter-terrorism measures.⁸⁰

47. Creating platforms for victims of acts of terrorism and of human rights violations committed in the context of countering terrorism and giving them a voice in designing or implementing justice mechanisms can contribute to healing,⁸¹ and increase the wider public legitimacy of such mechanisms. That can also be achieved, inter alia, through allowing victims broader access to judicial proceedings, with appropriate protection against intimidation, retaliation and other arbitrary interference with their rights, including the right to privacy.⁸²

48. More attention needs to be given to victims in the context of legal processes. Victims of terrorist acts, like other victims of serious crimes, commonly want the truth of

⁷⁶ International Covenant on Civil and Political Rights, art. 2 (3); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), arts. 13 and 34; American Convention on Human Rights, art. 63; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; and International Convention for the Protection of All Persons from Enforced Disappearance, art. 8.

⁷⁷ A/HRC/8/13, para. 55; and A/HRC/40/52/Add.4, para. 20.

⁷⁸ A/HRC/16/51, para. 25.

⁷⁹ See also CCPR/C/158.

⁸⁰ A/66/310, para. 23.

⁸¹ Haid Haid, "Breaking the cycle of violence: transitional justice for the victims of ISIS in Syria", Research Paper, Middle East and North Africa Programme (London, The Royal Institute of International Affairs, Chatham House, April 2020), p. 10.

⁸² A/HRC/19/38, para. 28.

their experience and suffering be determined and made known. Yet often, States' criminal justice systems are overly focused on the narrower objective of achieving convictions and pay scant attention to the independent right of victims to an effective remedy and reparations. Notably in terrorism-related trials, victims' perspectives and testimonies have tended to play a much more minor role than the criminal offence, and victims' attendance in court also tends to be more limited.⁸³

49. There are continuing challenges relating to the rehabilitation and reintegration of women and children who were, or are suspected of being, associated with violent extremist and terrorist groups, who are often also victims of serious human rights violations, including sexual violence. They continue to be viewed primarily as "affiliates" and their potential mixed roles as supporters and victims entail complexities. In the Syrian Arab Republic, large numbers of survivors of serious human rights violations, mostly women and children, continue to live in camps for displaced persons controlled by the de facto authorities, with no clear prospect of how their situation could be resolved. The vast majority of the populations of the camps are Iraqis and Syrians, in addition to third country nationals. Those women and children, unlike male adults and boys held in detention centres, are not suspected of having held combat functions with Islamic State in Iraq and the Levant. While not facing any criminal charges in the Syrian Arab Republic, they are prevented from leaving the camps. According to the United Nations Office for the Coordination of Humanitarian Affairs, increasing and persistent protection concerns have emerged in recent months, including in the context of the potential spread of COVID-19 in the displacement camps.⁸⁴

50. Women and child victims of serious human rights abuses are too often revictimized by communities, law enforcement officials and policymakers. Despite well-documented acts of sexual violence by terrorist groups in places including Iraq, Mali, Nigeria and the Syrian Arab Republic, there are yet to be adequate prosecutions of such crimes.⁸⁵ Furthermore, survivors of sexual violence and their children, including those born of wartime rape, have limited access to justice and face high levels of stigma and discrimination.⁸⁶ Some progress was made in Afghanistan in 2018, where individuals accused of rape by parties to the conflict, including members of the Taliban, were prosecuted and convicted.⁸⁷ In a judicial case in Iraq, one victim of conflict-related sexual violence testified about the acts she had endured while held by the defendant, a member of Islamic State in Iraq and the Levant, although the defendant was charged with affiliation to a terrorist group, rather than crimes relating to sexual violence.⁸⁸

III. Conclusions and recommendations

51. **Terrorism remains a serious threat to international peace and security. It has a negative impact on the enjoyment of a broad range of human rights and generates multifaceted short and long-term harm for individuals, communities and States. Responses to the threat of terrorism and violent extremism must be grounded in respect for the rule of law and human rights. Short of that, measures to counter terrorism risk being counterproductive and fuelling the further spread of terrorism and violent extremism.**

52. **The importance of accountability for both terrorism-related offences and human rights violations committed in the context of countering terrorism cannot be understated. Accountability contributes to prevention and to deterrence of future**

⁸³ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq", pp. 13–14.

⁸⁴ See https://reliefweb.int/sites/reliefweb.int/files/resources/AI%20Hol%20Snapshot_26Jul2020.pdf.

⁸⁵ S/2019/280, paras. 25, 52 and 60–61.

⁸⁶ CEDAW/C/NGA/CO/7-8, para. 15 (c); and S/2019/280, paras. 20–21.

⁸⁷ S/2019/280, para. 31.

⁸⁸ See Alissa J. Rubin, "She faced her ISIS rapist in court, then watched him sentenced to death", *New York Times*, 2 March 2002; and Holly Johnston, "'My dream came true': Yezidi survivor watches as ISIS rapist sentenced to death", *Rudaw*, 3 March 2020.

crimes and human rights violations. States should redouble their efforts to effectively investigate, prosecute and punish perpetrators of both terrorism-related offences and human rights violations committed in the context of countering terrorism, with a view to ensuring justice and combating climates of impunity that can be seen in that domain in several States. States should also ensure the compliance of all security forces with international law and increase training aimed at preventing future violations.

53. In order to develop and maintain a criminal justice system in accordance with their obligations under international law, States should:

(a) Bring their counter-terrorism legislation and its implementation into full compliance with international standards, with strict adherence to the principle of legality;

(b) Ensure that criminal prosecution of criminal acts committed by members of terrorist groups seeks to expose the fullest span of criminality committed by members of terrorist groups;

(c) Incorporate international crimes in national legislation to complement and reinforce counter-terrorism legislation;

(d) Take further steps towards the prevention of torture and other cruel, inhuman and degrading treatment or punishment of suspects of terrorism-related crimes, and avoid the trial of civilians by military or special courts. All trials must respect and comply with the right to a fair trial and judicial guarantees provided in international law.

54. States that retain capital punishment should establish a moratorium on the use of the death penalty, and in the interim, should undertake a comprehensive review of relevant legislation and its implementation for compliance with international standards, particularly concerning the limitation of the use of the death penalty to “the most serious crimes”, the absolute prohibition of its use for persons aged under 18 at the time of the offence, and strict compliance with due process guarantees.

55. Support and assistance should be prioritized to strengthen States’ capacities to investigate and prosecute crimes under international law, including under the principle of universal jurisdiction, in accordance with international standards.

56. Suspected foreign fighters and their family members held in displacement and detention camps should be repatriated to States of origin, in line with the principle of non-refoulement, unless they are prosecuted in accordance with international standards where individual criminal conduct is reasonably alleged. States should heed the guidance prepared by the United Nations in 2018 regarding human rights-based responses to the situation of foreign fighters and their families.

57. The human rights of all victims of terrorist acts must be addressed, without discrimination. A victim-centred approach should be at the heart of States’ efforts to ensure accountability for crimes relating to terrorism. Victims must be enabled to access justice as part of their right to know the truth and to be heard. They should be provided with an effective remedy and granted full reparation, commensurate with the harm suffered. They should be given the possibility to effectively participate in judicial proceedings and other mechanisms to enable them to understand the full dimensions of events. Victims who choose to participate must be protected against intimidation, retaliation and arbitrary interference with their rights. Those principles also apply to victims of abusive counter-terrorism practices.

58. The gender dimension of terrorist acts should be taken into full account. Concerns over enslavement, including sexual slavery, and trafficking by terrorist groups have increased, while the investigation and prosecution of those crimes continues to be insufficient. Children born out of rape in such contexts suffer particular stigma and rejection. Such children should be acknowledged as having rights both as children and as victims of crime.

59. The perspectives and experience of civil society organizations, including victims' groups and their advocates, should inform States' efforts to ensure accountability for the crimes of terrorism and human rights violations committed in the context of countering terrorism. Civil society has a unique ability to understand the needs and interests of victims and to raise their concerns, contributing to more legitimate and effective responses. To that end, States are also encouraged to provide financial assistance to organizations supporting victims of terrorism and victims of serious human rights violations.
