



# General Assembly

Distr.: General  
12 May 2022

Original: English

---

## Human Rights Council

### Fiftieth session

13 June–8 July 2022

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**

## Terrorism and human rights

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

In the present report, the United Nations High Commissioner for Human Rights addresses the relationship between equality, non-discrimination, and counter-terrorism, focusing on the extent to which State responses to terrorism adhere to the rights to equality and non-discrimination in accordance with international human rights law. In this regard, the High Commissioner examines the proscription and listing of terrorist entities and individuals, watch-listing, surveillance and content moderation, law enforcement and criminal justice, and the deprivation of nationality. Because of the prominent risks of discrimination on the basis of race, ethnicity, religion and political opinion, the High Commissioner recommends a series of legislative, structural and policy measures to prevent discrimination while countering terrorism.

---

\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 45/11. In the resolution, the Council reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism. It also stressed the responsibility of States to protect persons in their territories against acts of terrorism, in full compliance with their obligations under international law. These elements have also been stressed in the United Nations Global Counter-Terrorism Strategy and numerous resolutions of the Security Council and the General Assembly.

2. In the same resolution, the Council urged States to ensure that measures taken to counter terrorism and violent extremism conducive to terrorism were not discriminatory, and not to resort to profiling based on stereotypes founded on ethnic, racial or religious grounds or any other ground of discrimination prohibited by international law. It also emphasized that terrorism and violent extremism conducive to terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group.<sup>1</sup>

3. Recent decades have shown that the human rights impact of terrorism and counter-terrorism measures are not identical for all members and groups of society. In some contexts, terrorist groups have specifically targeted certain groups through their propaganda and recruitment tactics and sometimes by directing violent attacks against minority or religious groups. The High Commissioner and United Nations human rights mechanisms have affirmed that some groups have been disproportionately affected by counter-terrorism measures.<sup>2</sup>

4. In light of the above, the present report is focused on the impact of counter-terrorism measures on the enjoyment of the rights to equality and to non-discrimination. In previous reports to the Human Rights Council on countering terrorism, and on terrorism and human rights, the High Commissioner has focused on, among others, the themes of criminal accountability for terrorism-related offences; legislative measures taken by States; the right to life, liberty and security of the person; the prohibition of torture and ill-treatment; foreign fighters and their families; due process and targeted sanctions; the right to a fair trial; the right to privacy; economic, social and cultural rights; and the rights of victims.

5. The High Commissioner first examines the rights to equality and to non-discrimination (part II), and analyses the extent to which certain types of counter-terrorism measures might be discriminatory (part III). Subsequently, she sets out conclusions and recommendations to assist Member States in ensuring compliance with the rights to equality and to non-discrimination while countering terrorism (part IV).

## II. Rights to equality and to non-discrimination

6. The rights to equality and to non-discrimination have found expression in the Charter of the United Nations,<sup>3</sup> the Universal Declaration of Human Rights,<sup>4</sup> and global and regional human rights treaties.<sup>5</sup>

---

<sup>1</sup> Similar language is included in paragraph 103 of General Assembly resolution 75/291.

<sup>2</sup> See, for example, [A/72/287](#), paras. 7, 15 and 34–42. See also [A/HRC/45/27](#), para. 16.

<sup>3</sup> Preamble and Arts. 1 (3) and 55.

<sup>4</sup> Arts. 1–2 and 7.

<sup>5</sup> International Covenant on Civil and Political Rights, arts. 2 and 26; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child, art. 2; Convention on the Rights of Persons With Disabilities, art. 5; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 7. See also Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 14 and Protocol No. 12 thereto, art. 1; American Convention on Human Rights, arts. 1 (1) and 24; and African Charter on Human and Peoples' Rights, arts. 2–3 and 28.

7. States have an obligation to respect, protect and fulfil the rights to equality and to non-discrimination, including while countering terrorism, which has repeatedly been reaffirmed by the Security Council, the General Assembly and the Human Rights Council.<sup>6</sup> The obligations entail a duty to refrain from violating these rights, and positive duties to protect and fulfil them. The prohibition of discrimination also places limits on the extent to which States may lawfully derogate from their human rights obligations.<sup>7</sup>

8. In order for an act to constitute discrimination, there must be differential treatment, defined as any “distinction, exclusion, restriction or preference”<sup>8</sup> on the basis of any protected ground under international human rights law. These protected grounds include race, colour, sex,<sup>9</sup> language, religion, political or other opinion, national or social origin, property, birth, or other status,<sup>10</sup> including disability.<sup>11</sup> Other grounds recognized include age, health, nationality, place of residence, and economic and social situation.<sup>12</sup>

9. Not all forms of differential treatment constitute discrimination.<sup>13</sup> To be considered discriminatory, treatment must have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of rights.<sup>14</sup> This covers both direct and indirect forms of differential treatment.<sup>15</sup> The nullified or impaired rights are not limited to those enumerated in international human rights law, but can also be rights afforded to individuals under domestic law.<sup>16</sup> The central requirement is thus whether the differential treatment prevents individuals from enjoying their rights “on an equal footing” with others.<sup>17</sup> In order to be compatible with human rights law, the differential treatment must be based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the relevant human rights treaty.<sup>18</sup> The requirement of reasonable and objective criteria entails that the treatment must be necessary and proportionate to the legitimate aim pursued.<sup>19</sup> Aims recognized as legitimate

<sup>6</sup> See, for example, General Assembly resolution 76/169, preamble and paras. 10 and 14.

<sup>7</sup> As stipulated in article 4 (1) of the International Covenant on Civil and Political Rights, derogations may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

<sup>8</sup> Human Rights Committee, general comment No. 18 (1989), para. 7; and International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 (1). See also and Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

<sup>9</sup> The Human Rights Committee has interpreted the ground of sex to cover sexual orientation and gender identity: see *Young v. Australia* (CCPR/C/78/D/941/2000) and *G. v. Australia* (CCPR/C/119/D/2172/2012).

<sup>10</sup> International Covenant on Civil and Political Rights, art. 26.

<sup>11</sup> Convention on the Rights of Persons with Disabilities, art. 5 (2).

<sup>12</sup> See, for example, Paul M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press, 2020), pp. 752–782.

<sup>13</sup> Human Rights Committee, *S.W.M. Broeks v. Netherlands*, communication No. 172/1984, para. 13. In its general comment No. 18 (1989), the Committee has clarified that the prohibition on discrimination does not preclude positive differential treatment in compliance with international human rights law (para. 10).

<sup>14</sup> Human Rights Committee, general comment No. 18 (1989), para. 7. See also Human Rights Committee, *Genero v. Italy* (CCPR/C/128/D/2979/2017), para. 7.3; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 (1); Committee on the Elimination of Racial Discrimination, general recommendation No. 14 (1993), para. 1; and Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

<sup>15</sup> Human Rights Committee, *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2; Committee on Economic, Social and Cultural Rights, *Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), and general comment No. 20 (2009), para. 10; and Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 18.

<sup>16</sup> Human Rights Committee, *S.W.M. Broeks v. Netherlands*, para. 12.3.

<sup>17</sup> Human Rights Committee, general comment No. 18 (1989), para. 7.

<sup>18</sup> *Ibid.*, para. 13; Human Rights Committee, *Genero v. Italy*, para. 7.3; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 13.

<sup>19</sup> Human Rights Committee, general comment No. 31 (2004), para. 6, and *Genero v. Italy*, para. 7.6; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 13, and *Trujillo Calero v. Ecuador*, para. 19.5. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 8.

under human rights treaties include, for example, the protection of national security or public order.<sup>20</sup>

10. The extent to which the differential treatment is reasonable and objective will depend on the circumstances of the individual case.<sup>21</sup> Some forms of differential treatment will only be permissible in narrow and exceptional circumstances. The Human Rights Committee has thus held that differential treatment based on one of the specific grounds enumerated in the Covenant places a heavy burden on the State party to explain the reason for the differentiation.<sup>22</sup> A narrow permissibility for differential treatment also arises in cases where the individual is in a particular situation of vulnerability, for example because of intersections between different forms of discrimination.<sup>23</sup>

11. As mentioned, States also have obligations to protect and to fulfil the rights to equality and non-discrimination. International human rights treaties contain a large range of such positive obligations to ensure substantive equality. Obligations incumbent on States include measures to reduce inequality and to address systemic or structural discrimination,<sup>24</sup> through the adoption of comprehensive policy programmes, including educational measures and positive and temporary differential treatment.<sup>25</sup> In addition, States are under obligation to protect against discrimination. This means that States can be held responsible for failing to exercise due diligence to prevent, punish, investigate and redress discrimination committed by non-State actors.<sup>26</sup> States shall prohibit by law any advocacy of hatred constituting incitement to discrimination, hostility or violence.<sup>27</sup>

### III. Equality and non-discrimination while countering terrorism

#### A. Introduction

12. International law places obligations on States to counter terrorism. Under human rights law, States have obligations to protect the rights of everyone within their jurisdiction, including from the threats posed by terrorism. However, human rights law also places requirements on the manner in which such measures should be implemented in order to be

<sup>20</sup> See, for example, Human Rights Committee, *Borzov v. Estonia* (CCPR/C/81/D/1136/2002).

<sup>21</sup> The Human Rights Committee, for example, adopted a less rigorous standard of review in a case concerning a refusal to grant citizenship, on the basis of national security considerations (see *Borzov v. Estonia*, paras. 7.3–7.4).

<sup>22</sup> See, for example, Human Rights Committee, *Müller and Engelhard v. Namibia* (CCPR/C/74/D/919/2000), para. 6.7. For an example in which the Committee applied this approach in cases concerning discrimination on the basis of religion, see *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 8.14.

<sup>23</sup> See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 17, and *Trujillo Calero v. Ecuador*, para. 19.2. See also Human Rights Committee, *Yaker v. France*, para. 8.15.

<sup>24</sup> See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), paras. 8–9; Human Rights Committee, general comment No. 18 (1989), para. 10; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 20.

<sup>25</sup> See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, art. 2 (2) and Committee on the Elimination of Racial Discrimination, general comment No. 32 (2009); Convention on the Rights of Persons with Disabilities, art. 5 (4); Committee on Economic, Social and Cultural Rights, general recommendation No. 20 (2009), para. 9; and Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004).

<sup>26</sup> Human Rights Committee, general comment No. 31 (2004), para. 8, in which the Committee clarifies State obligations to ensure all Covenant rights, including the prohibition on discrimination. See also Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (e), and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), paras. 13 and 17.

<sup>27</sup> International Covenant on Civil and Political Rights, art. 20 (2). See also International Convention on the Elimination of All Forms of Racial Discrimination, art. 4 (a) and (b), which, for example, imposes obligations to prohibit incitement to discrimination and violence, and obligations to prohibit organizations promoting and inciting racial discrimination.

lawful. This section explores examples where responses to terrorism raise concerns with regard to the prohibition on discrimination in international human rights law.<sup>28</sup> As noted by the Secretary-General in his remarks at the second United Nations High-level Conference of Heads of Counter-Terrorism Agencies of Member States and by the Human Rights Council in its resolution 45/11, discrimination in the implementation of responses to terrorism risks hampering the effectiveness of counter-terrorism efforts.<sup>29</sup> Discriminatory measures risk alienating groups and creating or exacerbating grievances that could be conducive to the rise of the terrorist threat.<sup>30</sup>

13. The present section is focused on some key counter-terrorism measures with potentially discriminatory effects: first, the process of designation of individuals or organizations as terrorists; second, watch-listing; third, mass and targeted surveillance measures; fourth, policing, including racial and ethnic profiling, and the application of criminal laws; and, fifth, the deprivation of nationality.

## **B. Proscription and listing practices**

14. In the plan of action for the United Nations Global Counter-Terrorism Strategy, States Members of the United Nations resolved to take urgent action to prevent and combat terrorism in all its forms and manifestations. More specifically, in its resolution 75/291, the General Assembly encouraged Member States to integrate the sanctions regime pursuant to the relevant Security Council resolutions<sup>31</sup> into their national and regional counter-terrorism strategies, including by proposing for inclusion on the Security Council sanctions list the names of individuals, groups, undertakings and entities and submitting relevant information in order to keep the sanctions list reliable and up-to-date. The proscription of organizations and related targeted sanctions are widely recognized as a necessary measure for the prevention of terrorism; however, such proscriptions need to be in line with obligations under international law.

15. In practice, the listing of individuals as terrorists and the proscription of organizations in counter-terrorism contexts is carried out on three levels:<sup>32</sup> at the global level, by the Security Council, at the regional level, through regional organizations, such as the European Union,<sup>33</sup> and at the national level, by individual States. The proscription by the Security Council and by regional organizations can, and often does, depend on the nomination by States on the basis of their domestic listings. The criteria for proscription at the national level vary greatly from context to context. The continuing absence of an authoritative definition of terrorism at the international level in part creates this divergence between national systems,<sup>34</sup> as States exercise broad discretion in determining what is labelled as terrorism. Accordingly, the development and application of national criteria for listing and proscription sometimes raise concerns that applied in specific cases or contexts the measures could run contrary to international human rights standards, including the principle of non-discrimination.<sup>35</sup>

16. Special procedure mandate holders have, for example, raised concerns of indirect differential treatment, where the overwhelming majority of persons and entities proscribed

<sup>28</sup> The Forum on Minority Issues recently encouraged two special procedure mandate holders to conduct a joint study on the targeting of minorities as part of counterterrorism measures and how that contributed to conflicts (A/HRC/49/81, para. 33).

<sup>29</sup> See also A/76/273, para. 8.

<sup>30</sup> See, for example, A/74/270, para. 27.

<sup>31</sup> For example, Security Council resolution 1267 (1999).

<sup>32</sup> Working Group on Protecting and Promoting Human Rights, the Rule of Law and Supporting Victims of Terrorism, "Proscription of organizations in the context of countering terrorism" (2021), p. 3.

<sup>33</sup> See Council of the European Union, Council Common Position 2001/931/CFSP.

<sup>34</sup> See, among others, A/HRC/45/27, para. 14.

<sup>35</sup> See, among others, A/HRC/40/52, para. 19; A/76/273, paras. 22 and 36; and Working Group on Protecting and Promoting Human Rights, the Rule of Law and Supporting Victims of Terrorism, "Proscription of organizations".

belong to a particular religion.<sup>36</sup> There are also instances where proscription or designation of groups as terrorist has been used against civil society organizations and human rights defenders seemingly to prevent their lawful exercise of rights or as a reprisal for criticism or dissent.<sup>37</sup> In some contexts, this has predominantly affected certain ethnic and religious groups or indigenous communities, including those who defend the rights of such groups.<sup>38</sup> In other contexts, such as in Algeria, Egypt, the Philippines and the United Arab Emirates, members of the political opposition have been targeted,<sup>39</sup> raising concerns that the proscription entails discrimination on the basis of the political opinions of those affected.<sup>40</sup>

17. The scale of the impact of some of these differential treatments in practice raises the question of whether proscription and listing measures are necessary and proportionate. Vague and broadly worded legislation can also increase the number of people who could be affected by these measures. Proscription and listing can entail the threat of prosecution not only of individuals or organizations proscribed as terrorists, but also those who aid or assist them, significantly increasing the number of people being subject to those measures. Furthermore, the effects of proscription and listing measures can be wide-ranging and include other restrictions, such as asset freezes and travel bans. A lack of procedural safeguards against abuse can compound these discriminatory effects.<sup>41</sup> In particular contexts, these measures can also expose many individuals to human rights violations committed by State agents,<sup>42</sup> as well as violence by non-State actors.<sup>43</sup> For example, in the Philippines, the so-called red-tagging of individuals has been linked to attacks and killings of human rights defenders and others referred to as “communists” or “terrorists”.<sup>44</sup>

### C. Watch lists

18. Many States have developed or expanded watch lists, or databases of known and suspected terrorists, including “foreign terrorist fighters”.<sup>45</sup> While the number of individuals and organizations formally proscribed tends to be limited, watch lists can include numbers ranging from several thousands of individuals to over one million.<sup>46</sup>

<sup>36</sup> See, for example, communication NZL 1/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>37</sup> A/HRC/49/25, paras. 35–40; “Israel’s ‘terrorism’ designation an unjustified attack on Palestinian civil society – Bachelet”, press release, 26 October 2021; and CCPR/C/ISR/CO/5, paras. 18–19.

<sup>38</sup> A/HRC/44/22, para. 51; A/HRC/43/46; communication LKA 3/2021, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26575>; and “UN experts condemn Israel’s designation of Palestinian human rights defenders as terrorist organisations”, press release, 25 October 2021.

<sup>39</sup> Iddir Nadir, “Haut Conseil de Sécurité : Le MAK et Rachad classés «organisations terroristes»”, *El Watan*, 19 May 2021; A/HRC/44/22; and communications EGY 8/2021 and ARE 1/2022, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>40</sup> See, for example, A/HRC/44/22, para. 51; and communication ARE 1/2022.

<sup>41</sup> A/HRC/45/27, paras. 21–28; see also paras. 30–35 of the present report. On procedural deficits in proscription practices at the global level, see, among others, A/HRC/16/50, paras. 17–20, 27 and 44.

<sup>42</sup> See communication PHL 6/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26768>.

<sup>43</sup> A/HRC/44/22, paras. 49–55 and 84–85.

<sup>44</sup> See A/HRC/44/22.

<sup>45</sup> See Security Council resolution 2178 (2014). On concerns related to the term “foreign terrorist fighters”, see United Nations Counter-Terrorism Implementation Task Force, *Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters* (2018), p. 1.

<sup>46</sup> In the United States of America, in 2020, the Terrorist Identities Datamart Environment contained about 2.5 million individuals (see National Counterterrorism Center, Terrorist Identities Datamart Environment fact sheet, October 2020). In 2017, the Terrorist Watchlist of the Federal Bureau of Investigation (FBI) reportedly contained 1.1 million individuals (see American Civil Liberties Union et al., brief for *amici curiae* in the United States Court of Appeals for the Fourth Circuit, *s Elhady et al. v. Kable et al.*, cases No. 20-1119 and No. 20-1311, p. 10). In 2017 in France, the so-called *fiches S* contained the names of some 25,000 individuals (see France, Minister of the Interior, “Sortie de l’état d’urgence: un bilan et des chiffres clés”, 2 November 2017). In 2019, a watch list developed by France in 2015 for the prevention of terrorist radicalization reportedly included over 21,000



19. In its resolution 2396 (2017), the Security Council states that the purpose of watch lists or databases of known and suspected terrorists is the use by law enforcement, border security, customs, military, and intelligence agencies to screen travelers and conduct risk assessments and investigations. In some States, the inclusion of an individual on a watch list entails the additional risk of exposure to surveillance, enhanced police and border-control checks, travel bans and further restrictions on liberty.<sup>47</sup>

20. There are concerns that in some contexts the practice of watch-listing may entail discrimination on the grounds of race, ethnicity, religion or political opinion. Some risks of differential treatment arise from the very design of the watch-list regime, such as the inclusion of protected grounds in the criteria used to nominate individuals for inclusion in the watch list. In one State, the nomination of an individual for a so-called terrorist screening database is based on a number of factors, including the person's ethnic and religious affiliations, travel history and international connections.<sup>48</sup> Direct differential treatment may also arise because of the type of information recorded about individuals in the database. In another case before the Council of State in France, civil society organizations unsuccessfully challenged the ability to include, inter alia, religious beliefs and political opinions in watch lists.<sup>49</sup> As of May 2022, the recording of information is restricted to the manifestation of those opinions and beliefs.<sup>50</sup>

21. Watch-listing can also lead to indirect differential treatment. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has observed the conflation of certain religious practices with terrorist radicalization.<sup>51</sup> This conflation could have contributed to the inclusion of a higher number of individuals sharing religious practices being considered radicalized and included in watch lists.<sup>52</sup> The Special Rapporteur has also expressed concern in relation to the inclusion of entire families on "no-fly" lists, which also unduly penalized family relationships.<sup>53</sup>

22. Concerns regarding discrimination, particularly on the basis of religion, are compounded by a reported lack of procedural safeguards in place, including the lack of transparency and oversight of the procedure for watch-listing.<sup>54</sup> This is all the more concerning when, typically, the standard of proof for inclusion on watch lists is low. In one country, the requirement is satisfied if there is "articulable intelligence or information" which "creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities".<sup>55</sup> Moreover, while individuals often retain the right to request information about themselves under general access-to-information laws, there are limited practical opportunities to know whether an individual is included on a watch list, as the person concerned is typically not informed that such an inclusion has taken place. Lastly, there are concerns with respect to the remedies in place for affected individuals.<sup>56</sup> When inclusion on a watch list is challenged, some States place the burden on the individual to

---

individuals (see Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République, "Rapport d'Information", 27 June 2019). In the United Kingdom of Great Britain and Northern Ireland, the domestic intelligence service MI5 has reportedly confirmed the inclusion of over 40,000 individuals on its watch list (see Robert Mendick, "Number of potential terrorists on MI5 watchlist has doubled", *Independent*, 23 June 2020).

<sup>47</sup> On restrictions on liberty, see, among others, A/HRC/40/52/Add.5, para. 56.

<sup>48</sup> United States of America Court of Appeals for the Fourth Circuit, *Elhady et al. v. Kable et al.*, Cases No. 20-1119 and No. 20-1311, Decision of 30 March 2021, p. 7.

<sup>49</sup> France, Council of State, "Modification des dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel : décisions en référé du 4 janvier 2021".

<sup>50</sup> Decree No. 2020-1512 of 2 December 2020. Available at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042607387/2022-05-01/>.

<sup>51</sup> See, for example, A/HRC/40/52/Add.4, para. 43.

<sup>52</sup> Ibid.

<sup>53</sup> A/64/211, para. 49; and A/HRC/46/36, para. 11.

<sup>54</sup> A/HRC/40/52/Add.5, paras. 59–60.

<sup>55</sup> United States of America Court of Appeals for the Fourth Circuit, *Elhady et al. v. Kable et al.*, p. 7. For a comparable standard, see France, Decree No. 2010-569 of 28 May 2010, art. 2 (III) (8).

<sup>56</sup> See, for example, Amnesty International, *Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France* (2018), pp. 18–19.

prove why she or he is incorrectly listed. This approach could place an unreasonable burden on the individual, given the low standard of proof required for listing to occur and the asymmetric access to information with respect to the justification for the listing.<sup>57</sup> Where the listing is challenged before judicial bodies, the practice of allowing the executive branch wide discretion in cases involving national security, adopted in many domestic systems, could hamper the effectiveness of the review.<sup>58</sup>

## D. Surveillance and content moderation

23. A number of States have incorporated surveillance measures as a central part of their responses to terrorism. Many States have significantly expanded the powers of law enforcement and security agencies to conduct targeted and bulk or mass surveillance. They have taken advantage of new technologies, and have increasingly made demands of and imposed obligations on private companies, including Internet service providers, search engine providers and social media companies to facilitate data collection,<sup>59</sup> as well as taken specific steps to moderate content online.<sup>60</sup> While the interception of communications provides a valuable source of information by which States can investigate, forestall and prosecute acts of terrorism and other serious crime,<sup>61</sup> such measures often risk contravening international human rights law, specifically the rights to privacy and to non-discrimination.

24. Surveillance measures have had a significant impact on individuals on the basis of their race, ethnicity and religion.<sup>62</sup> This is in part due to the focus of surveillance and law enforcement efforts on religiously motivated violent extremism and terrorism.<sup>63</sup> In some contexts, such as Sri Lanka and Viet Nam, surveillance measures with national security and counter-terrorism justifications have targeted particular ethnic and religious minorities, as well as individuals based on their political opinions.<sup>64</sup> Other examples include the surveillance programme targeting Muslim communities in the United States of America after the attacks of September 11, 2001,<sup>65</sup> and the surveillance of mosques in some European countries with the justification of countering terrorism.<sup>66</sup>

25. One prevalent tool States have used to combat terrorism is mass surveillance or bulk interception of communications, which has long been the subject of human rights concerns.<sup>67</sup>

<sup>57</sup> In some contexts, the individual is not part of the procedure. See, for example, Amnesty International, *Punished Without Trial*.

<sup>58</sup> See, for example, Shirin Sinnar, “Courts have been hiding behind national security for too long”, Brennan Center For Justice, 11 August 2021.

<sup>59</sup> For a comparative overview, see Ira S. Rubinstein, Gregory T. Nojeim and Ronald D. Lee, “Systematic government access to private-sector data: a comparative analysis”, in *Bulk Collection: Systematic Government Access to Private-Sector Data*, Fred H. Cate and James X. Dempsey, eds. (Oxford University Press, 2017).

<sup>60</sup> See, for example, [A/HRC/38/35](#).

<sup>61</sup> [A/69/397](#), para. 6.

<sup>62</sup> [A/72/287](#), paras. 39–42. See also the statement presented by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, 9 October 2020, available at [https://www.ohchr.org/sites/default/files/SR\\_Statement\\_SecurityCouncil\\_CounterTerrorismCommitteeBriefing.pdf](https://www.ohchr.org/sites/default/files/SR_Statement_SecurityCouncil_CounterTerrorismCommitteeBriefing.pdf).

<sup>63</sup> See, for example, the report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, part 8, sect. 16, in which the Commission found that the concentration of counter-terrorism resources focused on the threat of Islamist extremist terrorism had been inappropriate.

<sup>64</sup> See [CCPR/C/VNM/CO/3](#), para. 43; and [A/HRC/45/45/Add.1](#), paras. 27, 62 and 87 (b).

<sup>65</sup> [A/72/287](#), para. 39; Georgetown University, Bridge Initiative, “Factsheet: the NYPD Muslim surveillance and mapping program” (11 May 2020); and Muslim Advocates, “Newly released documents reveal that LAPD misrepresented the origins, intent, and lifespan of Muslim mapping program” (25 July 2018).

<sup>66</sup> [A/HRC/46/30](#), para. 28.

<sup>67</sup> See, for example, [A/69/397](#); [A/HRC/27/37](#); and [A/HRC/29/32](#), paras. 20–21.



In addition to its indiscriminate impact on the right to privacy,<sup>68</sup> such surveillance measures have raised concerns of discrimination,<sup>69</sup> including on the basis of race, ethnicity, religion, and political opinion. The Committee on the Elimination of Racial Discrimination has expressed alarm at reports of mass surveillance disproportionately targeting ethnic Uighurs.<sup>70</sup>

26. There are also examples where surveillance directly discriminates on other grounds, such as nationality. Importantly, several States have adopted laws where the powers to conduct surveillance depend on the nationality of the individual surveyed and whether the individual is located within the territory of the State.<sup>71</sup> Such laws significantly lower the standard of privacy protection for non-nationals outside the territory of the State conducting the surveillance.<sup>72</sup>

27. Digital technologies are playing an increasing role in the fight against terrorism. At the same time, these technologies have significant human rights impacts, including on the enjoyment of the right to non-discrimination.<sup>73</sup> For example, automation to facilitate data gathering and processing in mass surveillance programmes<sup>74</sup> can amplify the discriminatory impacts of surveillance. The use of biometric recognition technologies, such as facial recognition, including in the fight against terrorism, entails significant risks of profiling on the basis of race, ethnicity and religion.<sup>75</sup> Because of these risks, the High Commissioner has called for a moratorium on the use of facial recognition technologies in public spaces.<sup>76</sup> Furthermore, private surveillance technologies,<sup>77</sup> reportedly marketed for use to combat terrorism and serious crime,<sup>78</sup> have been used to target people of minority backgrounds, journalists, human rights defenders, political opponents and dissidents.<sup>79</sup> This situation has led the High Commissioner and the Special Rapporteur on the right to freedom of opinion and expression to call on States to implement a moratorium on the sale and transfer of such surveillance tools until compliance with human rights standards can be guaranteed.<sup>80</sup>

28. The surveillance and moderation of content online highlights the role private actors have come to play in counter-terrorism efforts. For example, some States have either proposed or placed actual obligations on private actors in order to get access to private data,<sup>81</sup>

<sup>68</sup> A/HRC/39/29, para. 17.

<sup>69</sup> A/HRC/46/36, para. 11.

<sup>70</sup> CERD/C/CHN/CO/14-17, para. 40 (b). See also communication CHN 18/2019.

<sup>71</sup> A/HRC/27/37, para. 35; and Marcin Rojszczak, “Extraterritorial bulk surveillance after the German BND Act Judgment”, *European Constitutional Law Review*, vol. 17 (2021), pp. 53–77. For a general assessment, see Marko Milanovic, “Human rights treaties and foreign surveillance: privacy in the digital age”, *Harvard International Law Journal*, vol. 56, No. 1 (winter, 2015).

<sup>72</sup> See, for example, Federal Constitutional Court of Germany, Judgment of the First Senate of 19 May 2020, Case No. BvR 2835/17.

<sup>73</sup> On the impact of artificial intelligence on racial profiling and discrimination, see Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), part. VII.

<sup>74</sup> See, for example, European Court of Human Rights, *Centrum för Rättvisa v. Sweden*, Application No. 35252/08, Judgment of 25 May 2021, paras. 239–245.

<sup>75</sup> A/HRC/48/31, paras. 25–27; A/HRC/44/57, paras. 39–40; communication OTH 229/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26677>; and Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), paras. 35 and 59.

<sup>76</sup> A/HRC/48/31, para. 59.

<sup>77</sup> See A/HRC/41/35.

<sup>78</sup> See, for example, NSO Group Technology reply to a joint communication from special procedure mandate holders, 20 September 2021. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36555>.

<sup>79</sup> A/HRC/41/35, para. 44; communication OTH 211/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26564>; and Bill Marczak and others, “Hooking Candiru: another mercenary spyware vendor comes into focus”.

<sup>80</sup> See A/HRC/41/35 and “Use of spyware to surveil journalists and human rights defenders”, statement by the High Commissioner. See also the statement of the High Commissioner presented in the context of the hearing on the implications of the Pegasus spyware conducted by the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe.

<sup>81</sup> See A/HRC/39/29, para. 18 and Rubinstein, Nojeim and Lee, “Systematic government access”.

and to remove and block content online,<sup>82</sup> including for the purposes of combating terrorism.<sup>83</sup> A number of States have also imposed obligations to moderate content online, which can create risks of overcompliance on the part of companies, at times resulting in undue restrictions on content.<sup>84</sup> These risks are particularly acute when the obligations to restrict content have strict deadlines, are based on vague or broad definitions of terrorism and related notions,<sup>85</sup> and lack judicial oversight.<sup>86</sup> The Special Rapporteur on the right to freedom of opinion and expression has raised concerns with respect to informal State pressure exercised on private actors to release data or to moderate content.<sup>87</sup> To the extent that surveillance and moderation of online content can disproportionately affect individuals from specific religious, ethnic or other groups, this raises concerns of discrimination. In this regard, the State has obligations not only to ensure that its actions do not lead to discrimination by private actors but also to protect individuals from discrimination by private actors.

29. The discriminatory impact of content removal by the private sector is not only due to State regulation and pressure. In 2021, the Facebook Oversight Board found that content restrictions under the Facebook community standards on terrorist content had been unjustified, and recommended an independent review of whether there was bias in content moderation following allegations that Facebook had disproportionately removed or demoted content from Palestinian users and content in Arabic.<sup>88</sup> Moreover, given the vast amounts of content continuously uploaded online, many online platforms have made increasing use of automation and artificial intelligence technologies to moderate content.<sup>89</sup> Such technologies can have serious human rights impacts, including discriminatory impacts.<sup>90</sup> Automated tools are imprecise in their ability to detect harmful content, and entail real risks of restricting protected speech while missing expression that should be restricted,<sup>91</sup> such as incitement to discrimination, hostility or violence. Moreover, their use risks perpetuating or enhancing discriminatory removal of content, because of the inherent risks of human, statistical and systemic bias.<sup>92</sup>

## E. Law enforcement and criminal justice

30. Law enforcement maintenance of public safety, public order and the rule of law is a necessary component to prevent and punish acts of terrorism. In order to counter terrorism, States have adopted or amended criminal and counter-terrorism laws and expanded the powers of law enforcement in a myriad of ways. Many such measures reflect the need to protect the rights of everyone within the jurisdiction of the State, including their enjoyment of the right to life. The Human Rights Committee has, for example, held that States parties must enact a protective legal framework that includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, such as terrorist attacks.<sup>93</sup> Moreover, States are obliged to take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being

<sup>82</sup> A/HRC/38/35, paras. 15–17.

<sup>83</sup> See, for example, Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

<sup>84</sup> See A/HRC/38/35.

<sup>85</sup> See, for example, communications OTH 46/2018, OTH 73/2020 and OTH 229/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>86</sup> See, for example, CCPR/C/DEU/CO/7, para. 46. See also <https://www.ohchr.org/en/stories/2021/07/moderating-online-content-fighting-harm-or-silencing-dissent>.

<sup>87</sup> See, for example, A/HRC/38/35, para. 20.

<sup>88</sup> Case decision 2021-009-FB-UA.

<sup>89</sup> A/73/348, paras. 13–14.

<sup>90</sup> A/HRC/48/31, para. 57.

<sup>91</sup> A/73/348, paras. 15–16.

<sup>92</sup> Ibid., paras. 15, and 37–38. See also A/HRC/48/31, para. 24 and Reva Schwartz and others, *Towards a Standard for Identifying and Managing Bias in Artificial Intelligence* (National Institute of Standards and Technology, United States Department of Commerce, 2022).

<sup>93</sup> General comment No. 36 (2018), para. 20.

murdered or killed by terrorist groups.<sup>94</sup> In some cases, however, such laws and practices raise concerns with respect to compliance with international human rights obligations.

31. One such example is the expansion of police powers to conduct checks and controls,<sup>95</sup> which reportedly has led to an increase in police profiling, including in immigration control.<sup>96</sup> Vague and broad law enforcement powers increase the risk of misapplication and misuse, and may thus facilitate the commission of human rights violations, such as through the discriminatory application of criminal laws and violence against political dissidents, ethnic and religious minorities.<sup>97</sup> The Secretary-General and human rights bodies have expressed concern at the misuse of counter-terrorism legislation by law enforcement to repress the rights of political dissidents, ethnic and religious groups, including in the online space.<sup>98</sup>

32. Concerns have been raised that counter-terrorism laws in some contexts have been used to target individuals on the basis of their race, ethnicity or political opinion.<sup>99</sup> In some States, such laws have reportedly been used to arrest political dissidents, activists and human rights defenders.<sup>100</sup> The individuals affected often experience a series of related human rights concerns, such as a lack of due process guarantees.<sup>101</sup> Prohibitions against full-face covering for security reasons result in the prohibition of the burka or niqab, and thus are indirectly discriminatory against Muslim women.<sup>102</sup> In Sri Lanka the enactment of a such prohibition after the terrorist attacks in 2019 led to a rise in intolerance towards those observing religious dress codes, especially Muslim women in public institutions such as hospitals and schools and on public transport.<sup>103</sup> With respect to Eritrea, the Human Rights Committee expressed concern at allegations that arbitrary detention, torture and extrajudicial killings had been committed against members of the Muslim community as a group for their alleged links with terrorist groups.<sup>104</sup>

33. Secret and irregular detention facilities have also been used by several States in the fight against terrorism. The use of such facilities and the transfer of individuals to or between them are measures that exacerbate the risk of serious human rights violations, in part because they often bypass domestic due process safeguards.<sup>105</sup> In practice, use of secret detention facilities and extraordinary renditions seem to disproportionately target religious or minority groups.<sup>106</sup> Special procedure mandate holders have, for example, noted that the transfer of detainees on counter-terrorism grounds in the Russian Federation and in the Commonwealth of Independent States disproportionately affected ethnic minorities and members of religious groups.<sup>107</sup> In such cases, human rights violations do not only arise in the destination country. In some contexts, the detention of individual members of minority groups suspected of

<sup>94</sup> Ibid., para. 21.

<sup>95</sup> For an early overview, see Daniel Moeckli, *Human Rights and Non-discrimination in the "War on Terror"* (Oxford University Press, 2008), chap. 7.

<sup>96</sup> Ibid. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), paras. 8 and 10; [A/72/287](#), paras. 25–26 and 32–33; and [A/HRC/40/52/Add.4](#), para. 25.

<sup>97</sup> See, for example, [CCPR/C/GNQ/CO/1](#), para. 22; [CERD/C/CHN/CO/14-17](#), para. 36; and [A/HRC/43/48/Add.2](#), para. 74.

<sup>98</sup> See, for example, [CCPR/C/TJK/CO/3](#), para. 23; communication KGZ 4/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26884>; [A/72/287](#), paras. 34–38; and [A/74/270](#), para. 42.

<sup>99</sup> See, for example, communications PHL 1/2022, IRN 22/2021, and COG 1/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>; [A/HRC/43/19](#), para. 29 and [CCPR/C/ERI/CO/1](#), para. 17.

<sup>100</sup> See, for example, EGY 8/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26554>; and [CCPR/C/NER/CO/2](#), paras. 14 and 36.

<sup>101</sup> See, for example, [A/HRC/45/27](#), paras. 21–28; [CCPR/C/NER/CO/2](#), para. 14; and EGY 12/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26743>.

<sup>102</sup> [A/HRC/43/19](#), para. 29; and Human Rights Committee, *Yaker v. France*.

<sup>103</sup> [A/HRC/43/19](#), para. 29.

<sup>104</sup> [CCPR/C/ERI/CO/1](#) para. 17.

<sup>105</sup> [A/HRC/43/35](#), paras. 11 and 36; and [A/HRC/49/45](#), para. 5.

<sup>106</sup> [A/HRC/49/45](#), para. 5.

<sup>107</sup> See, for example, [A/HRC/49/45](#), para. 27.

terrorism has led to allegations of arbitrary detention, enforced disappearance and torture prior to transfer.<sup>108</sup>

34. Several States have adopted or proposed the adoption of legislation that criminalizes association or membership in terrorist organizations. The human rights concerns associated with such provisions have been addressed in a previous report.<sup>109</sup> In the determination of association and membership, the assessment of membership has sometimes specifically relied on affiliation with a specific religion, minority or ethnic group.<sup>110</sup>

35. Against this background where members of minority groups are increasingly targeted by law enforcement counter-terrorism efforts, the spread of new and emerging forms of violent extremism conducive to terrorism has been noticed in recent years.<sup>111</sup> These forms include antisemitic or anti-Muslim hatred, and “supremacist” ideologies. Accordingly, United Nations human rights mechanisms have warned about the globally accelerating threat of violence stemming from groups harbouring such ideologies.<sup>112</sup> This has led security and law enforcement agencies in some States to acknowledge the undue concentration of counter-terrorism efforts on so-called Islamic terrorism to the detriment of addressing other acts of terrorism that predominantly affect religious and ethnic minorities.<sup>113</sup>

## F. Deprivation of nationality

36. The right to a nationality is recognized in article 15 of the Universal Declaration of Human Rights.<sup>114</sup> The Convention on the Reduction of Statelessness imposes obligations on States to prevent and reduce statelessness (arts. 1–9), and sets out rules on the permissibility of deprivation of nationality where such deprivation would result in statelessness (art. 8). Under international human rights law, deprivation of nationality is unlawful, *inter alia*, if it is arbitrary,<sup>115</sup> or if it is discriminatory.<sup>116</sup>

37. Several States have adopted new grounds or expanded existing grounds for the deprivation of nationality for the protection of national security and as part of their counter-terrorism policy.<sup>117</sup> One criterion often utilized is that the concerned individual has, or could

<sup>108</sup> See, for example, communications KEN 5/2021 and NGA 5/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>109</sup> See [A/HRC/45/27](#), paras. 17–18 and 29.

<sup>110</sup> See, for example, United Nations Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, “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”, January 2020, p. 14. For a review of the interpretation of “membership” by Iraqi courts, see Mara Redlich Revkin, “The limits of punishment: transitional justice and violent extremism – Iraq case study” (2018), p. 18.

<sup>111</sup> See General Assembly resolution 75/291.

<sup>112</sup> See, for example, [A/HRC/43/46](#), para. 28; the statement presented by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, 9 October 2020; [A/HRC/34/56](#), paras. 81–89; [A/HRC/41/45/Add.1](#), para. 53; [A/HRC/44/58](#), para. 12; [CCPR/C/AUT/CO/5](#), para. 15; [CERD/C/AUT/CO/18-20](#), para. 11; [CERD/C/IRL/CO/5-9](#), para. 21; [CAT/C/GRC/CO/5-6](#), para. 12, and [A/HRC/28/64](#), para. 79.

<sup>113</sup> [A/76/273](#), paras. 48–49.

<sup>114</sup> Aspects of the right to nationality are guaranteed in global and regional human rights treaties.

<sup>115</sup> [A/HRC/25/28](#), para. 4. See also Office of the United Nations High Commissioner for Refugees, Guidelines on Statelessness No. 5 (May 2020), paras. 91–108.

<sup>116</sup> See, for example, [A/HRC/31/29](#); Luuk van der Baaren and others, “Instrumentalising citizenship in the fight against terrorism” (Institution on Statelessness and Inclusion and Global Citizenship Observatory, 2022), p. 34.

<sup>117</sup> Institute on Statelessness and Inclusion, *The World’s Stateless: Deprivation of Nationality* (2020), pp. 211–222. See also Parliamentary Assembly of the Council of Europe Committee on Legal Affairs and Human Rights, “Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”, report (7 January 2019), document No. 14790, explanatory memorandum, para. 25; and Jules Lepoutre, “Citizenship loss and deprivation in the European Union (27+1)”, European University Institute Working Paper No. 29 (2020), pp. 8–9.

acquire, another nationality.<sup>118</sup> Some laws also distinguish between nationality acquired by birth versus through naturalization process, allowing for deprivation only of the latter.<sup>119</sup> Concerns have also been raised that the practice of deprivation of nationality, including in the context of counter-terrorism efforts, entails indirect differential treatment because of the particular impact on individuals on the basis of their race, ethnicity, national origin and religion.<sup>120</sup>

38. Within Europe, the practice of deprivation of nationality has increased, particularly with a view to targeting so-called Islamic terrorism and the phenomenon of “foreign terrorist fighters”.<sup>121</sup> The phenomenon of European citizens travelling to join terrorist groups, coupled with the occurrence of terrorist attacks in Europe, prompted increased interest in nationality deprivation as a counter-terrorism tool.<sup>122</sup> Research has shown that in some instances deprivation of nationality, especially in the case of foreign fighters and their families, could be counterproductive, as it may cause further radicalization and can play into the hands of terrorist groups.<sup>123</sup> The High Commissioner has repeatedly called on States of origin to repatriate their nationals, especially women and children, and prosecute those against whom there is sufficient evidence that they engaged in crimes, in accordance with international human rights law.<sup>124</sup>

39. Several special procedure mandate holders have highlighted that indirect discrimination may arise because nationality deprivation may disproportionately affect communities whose members are more likely to hold a second nationality.<sup>125</sup> This is borne out in practice in many States, where a strong majority of those affected by deprivation of nationality are individuals with a second nationality from Arab or South Asian States.<sup>126</sup>

40. Additional factors can compound possible discriminatory effects of deprivation of nationality. For example, the legal basis for the deprivation of nationality, including with counter-terrorism justifications, is often broadly formulated, in some cases permitting the deprivation of nationality where it is “conducive to the public good”.<sup>127</sup> In this regard, the High Commissioner recalls that laws must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and may not confer unfettered discretion for the restriction of rights to those charged with its execution.<sup>128</sup>

41. Similarly, the deprivation of nationality has an enormous impact on the individuals concerned and may affect their enjoyment of a great number of rights. Where the individual

<sup>118</sup> For an overview of European legislation, see Maarten P. Bolhuis and Joris van Wijk, “Citizenship deprivation as a counterterrorism measure in Europe; possible follow-up scenarios, human rights infringements and the effect on counterterrorism”, *European Journal of Migration and Law*, vol. 22 (2020). See also, for example, [A/HRC/43/46/Add.1](#), para. 52. See also, however, Human Rights Watch, “Bahrain: hundreds stripped of citizenship” (27 July 2018).

<sup>119</sup> Parliamentary Assembly of the Council of Europe Committee on Legal Affairs and Human Rights, “Withdrawing nationality as a measure to combat terrorism”, explanatory memorandum, para. 28. See also Parliamentary Assembly of the Council of Europe, resolution 2263 (2019), para. 9.5; and [A/HRC/40/52/Add.5](#), para. 66.

<sup>120</sup> See communication GBR 3/2022, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27073>. See also van der Baaren and others, “Instrumentalising citizenship”, p. 38.

<sup>121</sup> See Parliamentary Assembly of the Council of Europe Committee on Legal Affairs and Human Rights, resolution 2263 (2019). See also Open Society Justice Initiative, *European States’ Obligations to Repatriate the Children Detained in Camps in Northeast Syria* (2021), paras. 83–84.

<sup>122</sup> See, for example, Bolhuis and van Wijk, “Citizenship deprivation”, pp. 339 and 351. See also Freemovement, “How many people have been stripped of their British citizenship?” (10 January 2022).

<sup>123</sup> Bolhuis and van Wijk, “Citizenship deprivation”, pp. 357 and 363.

<sup>124</sup> See, for example, [A/HRC/45/27](#), para. 56.

<sup>125</sup> See communication GBR 3/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27073>; and [A/HRC/40/52/Add.5](#), para. 66.

<sup>126</sup> See, for example, communication NLD 4/2021; and Bolhuis and van Wijk, “Citizenship deprivation”, pp. 342, 344, 346 and 349.

<sup>127</sup> See, for example, the British Nationality Act 1981, section 40. See also [CCPR/C/BEL/CO/6](#), para. 11.

<sup>128</sup> Human Rights Committee, general comment No. 34 (2011), para. 25.



is not expelled from the territory of the State, either because no such decision was taken or because the individual is in a position where they cannot be expelled,<sup>129</sup> deprivation of nationality may place the individual in a legal limbo with broad effects on their enjoyment of rights. Where the individual is removed from the territory of the State,<sup>130</sup> it raises particular concerns with respect to the right to private and family life. In situations where individuals are deprived of their nationality while abroad,<sup>131</sup> the situation of vulnerability of the individual can increase substantially, particularly where the individual is located in a third State, and can expose the individual to a series of human rights violations.<sup>132</sup> Where the person is left stateless, deprivation of nationality has grave and far-reaching consequences, as it prevents the individual concerned from accessing many human rights.

42. Moreover, often there are inadequate procedural safeguards against abuse, which is of particular concern given the severe consequences that deprivation of nationality entails. States have taken different approaches in regulating procedures for deprivation of nationality. Some States adopt a reactive model, where the decision to deprive nationality is taken after a conviction for crimes of terrorism. Other States adopt a proactive model, where the decision on deprivation is taken without a prior conviction.<sup>133</sup> Some States allow for a combination of the two models.<sup>134</sup> Both models raise several human rights concerns. In some States, the decision can be taken by the executive branch rather than by the judiciary. States adopting a proactive model often require no judicial involvement in the decision. Given the nature of the procedures before the executive branch involving matters of national security, there is often lack of sufficient information regarding the precise reasons behind the decision, placing the individual at a disadvantaged position.<sup>135</sup> Where the classification of the measure under domestic law is an administrative rather than a criminal sanction, the individual will normally not enjoy the procedural safeguards afforded in criminal procedure.<sup>136</sup> Some States allow for the deprivation of nationality in absentia, exacerbating due process concerns for the individual affected.<sup>137</sup> In this respect, the United Kingdom of Great Britain and Northern Ireland Court of Appeal found that the deprivation of nationality in absentia of a woman detained in the Rawj camp in the northeast of the Syrian Arab Republic without giving notice of the decision was unlawful, declaring the decision a nullity.<sup>138</sup>

## IV. Conclusions and recommendations

**43. Terrorism remains a substantial threat to international peace and security. It denies and hinders the enjoyment of all rights, and in some contexts disproportionately affects certain individuals and minority groups. States have an obligation to combat**

<sup>129</sup> For example, because of the principle of non-refoulement, or because the other State of nationality does not agree to receive the person. See Bolhuis and van Wijk, “Citizenship deprivation”, pp. 354–357.

<sup>130</sup> This is typically the norm, either by independent departure, expulsion or extradition. See Bolhuis and van Wijk, “Citizenship deprivation”, p. 352.

<sup>131</sup> See, for example, the facts in European Court of Human Rights, *K2 v. the United Kingdom*, Application No. 42387/13, Decision of 7 February 2017.

<sup>132</sup> Bolhuis and van Wijk, “Citizenship deprivation”, pp. 358–363. See also A/HRC/49/31, para. 77; and Institute on Statelessness and Inclusion, “Arbitrary deprivation of nationality and denial of consular services to Turkish citizens” (July 2017).

<sup>133</sup> Tom Boekestein, “Deprivation of nationality as a counter-terrorism tool: a comparative analysis of Canadian and Dutch legislation”, *The Transnational Human Rights Review*, vol. 5 (2018), pp. 26–28. See also Parliamentary Assembly of the Council of Europe Committee on Legal Affairs and Human Rights, “Withdrawing nationality as a measure to combat terrorism”, explanatory memorandum, paras. 36 and 38–39.

<sup>134</sup> See, for example, CRC/C/AUS/CO/5-6.

<sup>135</sup> See, for example, CCPR/C/NLD/CO/5, para. 50; and Amnesty International, *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe* (2017), p. 59.

<sup>136</sup> See, for example, European Court of Human Rights, *Ghoumid and others v. France*, Application No. 52273/16 and four others, Judgment of 25 June 2020.

<sup>137</sup> Office of the United Nations High Commissioner for Refugees, Guidelines on Statelessness No. 5, paras. 104–105.

<sup>138</sup> United Kingdom Court of Appeal (Civil Division), Case No. CA-2021-000739, judgment of 26 January 2022.



terrorism. Under international human rights law, States must protect individuals against human rights abuse, including acts of terrorism, committed by non-State actors. Victims and survivors of terrorism must be treated with dignity and respect. They should be supported and informed of their rights to truth, justice and redress. To strengthen the legitimacy and effectiveness of counter-terrorism measures, States must comply with their obligations under international human rights law, including the rights to equality and non-discrimination.

44. The present report illustrates how counter-terrorism measures sometimes entail differential treatment, either by design or in effect, particularly on the basis of race, ethnicity, religion and political opinions. The impact of such differential treatment goes beyond the individual victim of discrimination. In some contexts, discriminatory counter-terrorism measures contribute to the stigmatization of communities, hampering the work of civil society organizations and those professing dissenting political views, and may have served to perpetuate discrimination, hostility and violence against racial, ethnic and religious minority groups.

45. States must comply with their obligations to respect the rights of equality and non-discrimination, including when countering terrorism. In order to be lawful, differential treatment must be necessary and proportionate, and pursue a legitimate aim. This underlines the importance of counter-terrorism measures being evidence based. Furthermore, counter-terrorism measures that lead to rights restrictions must be provided for by clear and accessible laws. In all cases, affected individuals should have access to an effective remedy.

46. States should ensure that domestic laws and practices related to counter-terrorism measures respect the principle of non-discrimination, including by:

- (a) Ensuring that definitions of terrorism and related offences are narrowly tailored;
- (b) Repealing the proscription and listing of organizations and individuals solely on the basis of race, ethnicity, religion or political opinion;
- (c) Revising laws and practices on surveillance and watch-listing to ensure they include substantive procedural safeguards, are not overly broad in their reach and are subject to transparent and effective oversight mechanisms;
- (d) Revising laws on the deprivation of nationality, including foreseeable grounds for deprivation and adequate procedural safeguards.

47. In addition, States should:

- (a) Take effective measures to cease profiling by law enforcement;
- (b) Undertake human rights impact assessments in the development, use and transfer of new technologies intended or used for counter-terrorism purposes, including assessment of their potential discriminatory effects;
- (c) Ensure that the regulation or moderation of online content is compatible with international human rights law, including the requirements of transparency and accountability;
- (d) Involve affected communities and diverse civil society in the development, implementation, and review of counter-terrorism responses, and ensure that members of ethnic and religious minorities, including women, are adequately represented in the judiciary and in law enforcement.

48. Private companies should adhere to the Guiding Principles on Business and Human Rights, including in their online content moderation practices.