



MEMORANDUM FOR THE RECORD

IN COMMEMORATION OF THE 75TH ANNIVERSARY OF THE END OF THE SECOND WORLD WAR

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## KEY FINDINGS AND TRENDS (2017– 2023)

Since 2003, the Security Council, in its resolutions, has stressed that any measures taken by Member States to counter terrorism must comply with their obligations under international law, in particular international human rights, refugee, and humanitarian law.

The United Nations Security Council Counter-Terrorism Committee (CTC) and its Executive Directorate have mainstreamed human rights across all of their mandated activities, including their monitoring and stocktaking tools. These include the Overview of Implementation Assessment, the electronic Detailed Implementation Survey and assessment visits conducted in Member States aimed at monitoring, promoting, and facilitating the implementation of Security Council resolutions on counter-terrorism.

In the most recent 54 country visit assessment reports adopted by the CTC, which contain observations and recommendations to visited Member States, about 15 per cent of all recommendations pertain to ensuring respect for human rights while countering terrorism.

The most frequent human rights-related recommendations made by the CTC to Member States in the context of counter-terrorism are on the topics of persons deprived of liberty, the right to fair trial, freedom of expression and opinion, and the definitions of terrorism and terrorist acts in national legislation, as well as their conformity with the principle of legality.

The CTC has increasingly made recommendations to Member States to promote respect for the rights of victims of terrorism.

# Background





## Specific language in Security Council resolutions on counter-terrorism relevant to human rights

While human rights were only briefly mentioned in Security Council resolution 1373 (2001), the Council began to address this deficit with resolution 1456 (2003), in which it declared “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law”. Over the succeeding years, the Council has increasingly made reference to the requirement that counter-terrorism measures taken by States in accordance with Council resolutions must comply with their obligations under international human rights law. In addition to this general pronouncement, the Council has also addressed specific human rights issues in its counter-terrorism resolutions.

The Security Council has addressed the principle of non-discrimination, for example, in two ways. Firstly, the Council has reaffirmed “that terrorism should not be associated with any religion, nationality, civilization, or group”.<sup>5</sup> Secondly, in resolutions 2242 (2015), 2395 (2017) and 2617 (2021), the Council urges the Executive Directorate in collaboration with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and other relevant United Nations Global Counter-Terrorism Coordination Compact entities to conduct and gather gender-sensitive research and data collection on the impacts of counter-terrorism strategies on women’s human rights and women’s organizations.<sup>6</sup>

Relevant to the rights of persons deprived of liberty, the Security Council has encouraged Member States to collaborate and share best practices regarding well-managed custodial environments where human rights are respected and efforts to rehabilitate and reintegrate convicted terrorists are made.<sup>7</sup> It also encourages States to “take all appropriate actions to maintain a safe and humane environment in prisons ... and explore ways to prevent, within their prison systems, radicalization to violence”.<sup>8</sup> It also refers to “treating those who are being prosecuted for or have been convicted of terrorism offences humanely and respecting their human rights”.<sup>9</sup> In resolution 2396 (2017) on foreign terrorist fighters, the Council encourages States “to maintain a safe and humane environment in prisons ... consistent with international humanitarian law and human rights law, as applicable and in accordance with relevant international law and taking into consideration, as appropriate, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).”<sup>10</sup>

The Security Council has also addressed the fair trial rights of those being prosecuted for terrorist offences. In resolution 2396 (2017), the Council urges States, “in accordance with

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<sup>5</sup> Security Council resolution 2617 (2021).

<sup>6</sup> See, respectively, operative paragraphs 12, 28 and 36.

<sup>7</sup> Security Council resolutions 2395 (2017), preambular para. 18, and 2617 (2021), preambular para. 21.

<sup>8</sup> Council resolution 2482 (2019), operative para. 20.

<sup>9</sup> Council resolution 2617 (2021), operative para. 9.

<sup>10</sup> Operative para. 40.

domestic and applicable international and human rights law and humanitarian law, to develop and implement appropriate investigative and prosecutorial strategies, regarding those suspected of foreign terrorist fighter-related offences".<sup>11</sup> In resolution 2617 (2021),



references were made in Council resolution 2354 (2017), on countering terrorist narratives.<sup>22</sup>

Finally, in resolutions 2395 (2017) and 2617 (2021), the Security Council recalls the importance of fully respecting the rights to freedom of expression and association of indi-

# Recommendations of the Counter-Terrorism Com-





In its reports on visited Member States, the CTC regularly makes recommendations concerning the prohibition of torture, or other cruel, inhuman and degrading treatment or punishment, in the context of investigations into terrorism

The management of persons who have been detained or convicted on the basis of alleged (or proven) involvement in terrorism-related offences poses major challenges to many Member States. In particular, prisons can serve as potential incubators for radicalization to terrorism and terrorist recruitment, and failure to comply with human rights obligations could be counterproductive to efforts to prevent violent extremism conducive to terrorism in prisons.<sup>26</sup> This issue has been addressed by the CTC in its reports to visited Member States.

In fact, one of the highest number of human rights-related recommendations made by the CTC in its visit reports pertain to the rights of persons deprived of liberty. The CTC has recommended that visited States strengthen their safeguards against arbitrary and unlawful arrest related to terrorism cases. It has referred to the need to ensure that detention in the counter-terrorism context is based on an adequate legal foundation. It has encouraged States to reduce the length of pretrial

general prison population, including allocation of adequate resources to the corrections system.

Prosecution of individuals for terrorism acts is an integral part of efforts aimed at countering terrorism, including foreign terrorist fighters. In this regard, the CTC has made recommendations to about half of the visited States to ensure fair trial guarantees in terrorism cases, including amending legal provisions. It has recommended that States ensure that legal aid is available to all individuals accused of terrorism and related offences. It has also urged States to ensure the independence of the judiciary. It has recommended adopting legislation on witness protection and ensuring that the full range of protection measures are made available to witnesses and victims, as well as to criminal justice officials in terrorism cases. The CTC has recommended that legal proceedings be conducted in a way that ensures equality of arms and enables defendants to challenge evidence produced against them. It has also urged States to provide for the admissibility of information gathered by intelligence services and the military, on the battlefield and digitally, while also ensuring that such provisions include safeguards for compliance with international fair trial standards.<sup>27</sup>

Defining terrorist acts clearly and precisely on the basis of the provisions of international law, including the international counter-

of legality which holds that legislation should be sufficiently precise so as to provide legal certainty and predictability over conduct that will entail criminal responsibility.

The CTC has made recommendations to about half of the visited States on the principle of legality, in particular as it relates to the definitions of terrorism and terrorist acts in national legislation. The CTC has recommended that States review their criminal legislation to ensure that any definition of a terrorist or related offence is clear and precise so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments to which the State is a party and to comply with international human rights law, including the principles of legality and predictability of criminal law. The CTC has recommended, for example, that elements of the terrorism offence that are vague, such as references to overly broad concepts that could be misused in the context of legal and non-violent activities are removed, and that open-ended language describing possible manifestations of terrorist intent is clarified. The CTC has also frequently recommended that offences of incitement to terrorism are drafted precisely to ensure clarity of the conduct that is criminalized (see more details under article 19 below). It has also encouraged States to ensure that mitigating circumstances are considered and that penalties are proportionate to the gravity of the conduct in question.



With the growing use of advanced technologies by States in their counter-terrorism policies, the CTC has referred in visit reports to the right to freedom from arbitrary interference with privacy. The CTC has frequently recommended that this right be protected, for example in the use of special means of surveillance, including urging States to clarify the rules for interception of communications. It has recommended that measures taken against terrorist abuse of the Internet and other information and communications technologies comply with the right to protection from arbitrary interference with privacy. It has encouraged States to ensure that financial information is collected and processed by law enforcement agencies with the necessary safeguards with respect to privacy and data protection; that development and maintenance of watch lists of known and suspected terrorists comply with applicable human rights standards; that the development and implementation of advance passenger information and passenger name record systems are in full compliance with international human rights law; and that the development and implementation of biometric tools include appropriate safeguards for protection of privacy and data.<sup>28</sup> It has encouraged the creation of oversight mechanisms to monitor these processes and ensure that the right to an effective remedy exists in case of violation of the right to freedom from arbitrary interference with privacy (see more details under article 8 above). Finally, the CTC has encouraged States to ensure that the retention and use of

<sup>28</sup> CTED Analytical Brief, "Biometrics and counter-terrorism", December 2021.







States have sought to find a balance between preventing the abuse of the non-profit organization (NPO) sector for terrorism-financing purposes and preserving the vital role played by NPOs in national economies and social systems.<sup>31</sup> In its visit reports, the CTC has encouraged States to ensure that their legislation, regulatory frameworks and opera-