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

Vision and priorities

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul

Summary

In the present report, the recently appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul, outlines his approach to his mandate, reviews the state of human rights protection in global counter-terrorism efforts, identifies areas of continuity with his predecessor and sets out new thematic priorities. The Special Rapporteur will continue the advocacy work on the impacts of counter-terrorism laws and practices on civil society, arbitrary detention in north-eastern Syrian Arab Republic, protection for detainees and transferees from the detention facility at Guantánamo Bay, Cuba, human rights in the United Nations counter-terrorism architecture and new technologies. New themes for future reports include the protection of human rights in countering terrorism by regional and subregional organizations and arrangements, administrative measures in countering terrorism, the roles of non-State actors and specialized international bodies in countering terrorism and accountability and reparation for large-scale violations of human rights resulting from counter-terrorism measures. The Special Rapporteur highlights the ways in which many human rights violations identified by his predecessors over the past 18 years have not only not been remedied but have worsened, and he calls upon States to redouble their efforts to place human rights at the centre of efforts to counter terrorism.



I. Activities

A. Former mandate holder, Fionnuala Ní Aoláin

1. The former mandate holder, Fionnuala Ní Aoláin, concluded her tenure on 31 October 2023. During her final year, she prioritized sustained engagement with diverse States and regional groups, conducted a country visit to Bosnia-Herzegovina from 13 to 20 January 2023¹ and a joint thematic country visit to Germany and North-Macedonia from 3 to 12 July 2023, which addressed the repatriation, reintegration and prosecution of persons returning from north-eastern Syrian Arab Republic.² Her report for 2023 to the General Assembly details many of her activities through September 2023.³

2. The former mandate holder prioritized addressing the interface between new technologies, countering terrorism and human rights, including in her 2023 report⁴ to the Human Rights Council. In June 2023 she attended the RightsCon Summit in Costa Rica. In October 2023, she issued a statement affirming the necessity for binding global regulation of the spyware industry.⁵ She issued position papers on spyware,⁶ the rights of children,⁷ the United Nations Countering Terrorist Travel Programme,⁸ prosecutions relating to north-eastern Syrian Arab Republic⁹ and non-refoulement and arbitrary detention in north-eastern Syrian Arab Republic.¹⁰ The former mandate holder also addressed human rights violations in countering terrorist financing.¹¹

3. The former mandate holder provided technical assistance to the Co-Chairs (Canada and Tunisia) of the eighth review of the United Nations Global Counter-Terrorism Strategy and participated in events during negotiations relating to the review. She participated in the third United Nations High-Level Conference on Counter-Terrorism, in June 2023, and was active in the United Nations Global Counter-Terrorism Coordination Compact and its working groups.

4. The former mandate holder undertook a technical visit to the United States of America and to the detention facility at Guantánamo Bay, Cuba,¹² and urged the Government of the United States to implement her recommendations, in particular with respect to the conditions of detention at Guantánamo Bay and the urgent human rights situation of many of the men transferred from there.

5. In her 2023 report to the General Assembly,¹³ the former mandate holder presented the core analysis and findings of the 2023 global study on the impact of counter-terrorism on civil society and civic space.¹⁴ The study was informed by global consultations led by civil society organizations, including 13 regional civil society consultations, 110 written

¹ A/HRC/55/48/Add.1.

² A/HRC/55/48/Add.2.

³ A/78/520, paras. 3–8.

⁴ A/HRC/52/39.

⁵ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/unsrcthr-stm-spyware.pdf>.

⁶ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2022-12-15/position-paper-unsrct-on-global-regulation-ct-spyware-technology-trade.pdf>.

⁷ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/activities/position-paper-child-rights-in-contexts-affected-by-terrorism-2023.pdf>.

⁸ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/2023-10-30-act-travel-gotravel-position-paper.pdf>.

⁹ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Position-Paper-on-prosecutions.pdf>.

¹⁰ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/non-refoulement-in-context-repatriation-from-northeast-syria-oct2023.pdf>.

¹¹ A/78/520, para. 5.

¹² Ibid., para. 6.

¹³ Ibid.

¹⁴ Fionnuala Ní Aoláin, *Global Study on Counter-Terrorism and Civic Space* (Office of the United Nations High Commissioner for Human Rights, 2023), available at <https://defendcivicspace.com>.

submissions, of which 78 were from civil society organizations and individuals, and two surveys of civil society. The report to the Assembly documented unrelenting restrictions on civic space across every region and a direct link between such restrictions and the regulatory and institutional practices established to counter terrorism and prevent and counter violent extremism. The report also presents key findings regarding the conditions, features and consequences of such systemic misuse.

6. The former mandate holder undertook a technical visit to the Syrian Arab Republic in July 2023.¹⁵ In her 2023 report to the General Assembly, she augmented her findings from the visit and addressed several legal issues, including responsibility under international law in relation to mass and arbitrary detention, gross and systematic human rights violations experienced by children and responsibility for core international crimes.¹⁶

B. Special Rapporteur Ben Saul

7. The current Special Rapporteur, Ben Saul, assumed office on 1 November 2023. The present section covers the first two months of his tenure. He was grateful to receive numerous briefings from the previous mandate holder on all aspects of her extensive and exemplary work. He participated in the induction for new mandate holders, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in Geneva from 20 to 24 November 2023. He also met with ambassadors and diplomats of 15 States and representatives of the International Committee of the Red Cross and civil society organizations to consult on his priorities. In response to his call for inputs to inform the present report, the Special Rapporteur received submissions from 38 civil society organizations and individuals,¹⁷ five States, one regional government and one regional organization.¹⁸ He is grateful that so many stakeholders responded within the short period of three weeks, which was necessitated by the delay in his appointment from July to November 2023 and the compressed time available to write the present report (less than two weeks). In addition, he met individually with representatives of 23 civil society organizations.¹⁹

8. On average, the Special Rapporteur issued, individually or jointly, two to three communications to States per week spanning a variety of issues, including mass arbitrary detention, mass unfair trials, mass extrajudicial executions and attacks on civil society. He

¹⁵ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>.

¹⁶ A/78/520, paras. 49–64 and 77–82.

¹⁷ Australian Lawyers for Human Rights, the Australian Muslim Advocacy Network, Amnesty International, Anethum Global, Article 19: International Centre against Censorship, Center for Truth and Justice, Charity and Security Network, CIVICUS – World Alliance for Citizen Participation, Collectif des Familles Unies, Committee for Justice, Conectas Direitos Humanos, CSO Coalition on Human Rights and Counter-Terrorism, Foundation on Advocacy for People’s Integrity and Disadvantaged Individuals, Federation Handicap International – Humanity and Inclusion, Front Line: International Foundation for the Protection of Human Rights Defenders, Fundación Karisma, Global NPO Coalition on FATF, International Center for Not-for-Profit Law, MENA Rights Group, Norwegian Refugee Council, NPO Working Group, New South Wales Council for Civil Liberties, Paradigm Initiative, Privacy International, Repatriate the Children – Denmark, Repatriate the Children – Sweden, Reprieve, Rights and Security International, Rise Coalition, Saferworld, Serbian Council of Australia, Sine Qua Non, The Grief Directory, World Uyghur Congress and five individuals.

¹⁸ Cuba, Ecuador, Lithuania, Morocco, Saudi Arabia and Tunisia, as well as the European Union and the government of Catalonia.

¹⁹ Adalah: Legal Center for Arab Minority Rights in Israel, Advancing Justice, Amnesty International, Asian Forum for Human Rights and Development, Centre for Information Resilience, CSO Coalition on Human Rights and Counter-Terrorism, Emirates Detainees Advocacy Centre, Franciscans International, Geneva Academy of International Humanitarian Law and Human Rights, Global Center on Cooperative Security, Gulf Centre for Human Rights, Human Rights Watch, International Centre for Counter-Terrorism, Islamic Human Rights Commission, International Service for Human Rights, MENA Rights Group, Privacy International, Reprieve, Royal United Services Institute, Saferworld, Save the Children International, South Asia Justice Campaign, Water Protector Legal Collective and a network of women’s organizations of Sri Lanka.

also issued press releases and gave dozens of media interviews, including on his priorities. He engaged in advocacy with States on diverse issues. As a member of the Global Counter-Terrorism Coordination Compact and its eight working groups, the Special Rapporteur presented his priorities to the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism and Supporting the Victims of Terrorism and to the Working Group on Border Management and Law Enforcement relating to Counter-Terrorism. He joined a new reference group for the oversight and accountability mechanisms in counter-terrorism workstream of the International Institute for Justice and the Rule of Law. The mandate holder also participated in a human rights dialogue in connection with the Border Security Management initiative of the Global Counterterrorism Forum. He spoke at the commemoration, held by the United Nations Office on Drugs and Crime (UNODC), of the seventy-fifth anniversary of the adoption of the Universal Declaration of Human Rights.²⁰ He briefed Member States of the European Union on international humanitarian law in the Gaza conflict.

II. Approach to the mandate

9. The Special Rapporteur is honoured to have been appointed as the fourth holder of this vital mandate. He intends to continue his predecessors' legacy of precise, thorough, balanced and innovative human rights analysis and advocacy on countering terrorism and for the victims of terrorism. He will discharge his mandate in an independent, impartial and objective manner in order to maintain the confidence of States and civil society. Recognizing the sensitivity around countering terrorism, he will engage in constructive dialogue with States to highlight concerns, identify workable solutions and build diplomatic relationships based on trust and confidence. He acknowledges that some rights violations may be inadvertent or stem from a lack of familiarity with or expertise in human rights standards or from limited resources. The Special Rapporteur can provide advisory services and technical assistance to remedy those and other deficits. Where dialogue does not remedy violations or where they are deliberate and systemic, the Special Rapporteur may call publicly upon States to account for their actions. He is also interested in highlighting good national and regional practices that could serve as models elsewhere and recognizes that many States have made genuine efforts to align their counter-terrorism measures with international human rights law. He will consult and collaborate civil society organizations as indispensable stakeholders in promoting human rights in countering terrorism.

A. State of global counter-terrorism measures

10. The misuse of counter-terrorism measures not only violates the rights of suspected terrorists but can also incidentally or deliberately jeopardize the freedoms of the innocent. It is a matter of deep regret that many human rights violations identified over the past 18 years by previous mandate holders have not only not been remedied but have worsened.²¹ In the absence of an agreed international definition of terrorism, sweeping national and regional definitions have violated the principle of legality and many fundamental rights. Vague offences relating to terrorist organizations have criminalized conduct and expression that have no proximate causal connection to terrorist violence. Organizations and individuals have been abusively listed as terrorist without due process or judicial safeguards. Excessive counter-terrorism sanctions and financing laws have undermined legitimate non-profit organizations, the freedoms of association, assembly and expression and humanitarian activities protected under international humanitarian law. Counter-terrorism laws have been deliberately and discriminatorily misused against political opponents and dissidents, the media, civil society and minorities. Mass and online surveillance have exceeded the bounds of privacy and other rights. Criminal procedure has been marred by arbitrary arrests, protracted pretrial detention, torture and ill-treatment, forced confessions, restrictions on legal counsel, the non-disclosure of secret evidence, the use of special courts, the trial of

²⁰ See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/activities/UNODC-human-rights-day-message-20231211.pdf>.

²¹ See [A/78/269](#).

children in adult courts and the unlawful use of the death penalty. There has often been inadequate participation by victims of terrorism in legal proceedings and a lack of remedies for them.

11. Administrative measures for countering terrorism, outside the criminal justice system, have proliferated but have not always been necessary or proportionate or have not ensured due process or judicial safeguards. Some extraordinary or emergency regimes for countering terrorism have violated rights, including through secret, preventive or arbitrary administrative detention and unnecessary or disproportionate limitations on or derogations from rights. Military operations against terrorism, whether within or outside armed conflict, have too frequently involved the arbitrary deprivation of life. In armed conflicts, there have been serious violations of international humanitarian law, including the intentional killing of civilians, attacks on protected civilian objects, indiscriminate and disproportionate attacks, the failure to take precautions in attack, the denial of humanitarian relief and the starvation of civilians, arbitrary forced displacement and violations of the obligations of occupying powers. Some States have not exercised the legally required standard of care in sparing civilians, have seemingly valued the lives of foreign civilians less than those of their own civilians and have even engaged in genocidal rhetoric. Other States have been complicit in violations by, for example, providing weapons or intelligence knowing that they will be used to commit war crimes. In some instances, cross-border military force has been repeatedly used where there is no international legal basis in self-defence. Impunity for serious violations of international law in countering terrorism has often prevailed, including because powerful States have selectively thwarted action by the Security Council and the International Criminal Court. Excessive counter-terrorism wars continue to entrench, rather than resolve, cycles of violence for which there is no military solution.

12. The Security Council, the General Assembly and the Human Rights Council have repeatedly affirmed that States must respect international law when countering terrorism. The Security Council appears to have assumed optimistically, after the terrorist attacks of 11 September 2001, that States would respect international law when implementing counter-terrorism resolutions. Yet, as it soon became apparent that violations were commonplace, the Council continued prolifically to mandate new counter-terrorism standards and to energetically promote them through its monitoring machinery and technical assistance. The Council has not conditioned the implementation of new repressive norms on the prior reform of political and legal orders that gravely endanger rights. Those include, for example, abusive predicate definitions of terrorism; authoritarian political cultures that habitually weaponize security laws against opponents and civil society; the absence of a rule of law culture, including due process and independent judiciaries; and the lack of professional law enforcement, prison, security and military actors trained and disciplined to respect human rights. The predictable result is that Council measures have too often accelerated and amplified latent repressive tendencies, while international efforts to mitigate human rights impacts have not been sufficiently assertive or effective. The perception that the United Nations counter-terrorism system is not sufficiently cognizant of human rights is aggravated by the involvement and funding of that system by certain States that notoriously violate human rights when countering terrorism.

13. Despite progress towards a more balanced approach, there remains a disproportionate focus in international efforts to counter terrorism on repressive measures, with inadequate attention to measures to address the conditions conducive to the spread of terrorism (pillar I of the Global Counter-Terrorism Strategy) and to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism (pillar IV).²² Recent conflicts illustrate the ongoing militarization of counter-terrorism efforts and the denial or erasure of the contributing causes of violence, which often include violations of human rights, including self-determination, and of international humanitarian law and international criminal law.

14. It is always difficult to advocate for the rights of people stigmatized as “terrorists”, given the political pressures on Governments to unreservedly denounce them and the lack of

²² See, for example, Fionnuala Ní Aoláin, “Rethinking Counterterrorism”, *Just Security*, 2 November 2023.

popular constituencies that value their rights. The present moment brings additional risks in protecting human rights in countering terrorism because of rising authoritarianism, surging domestic political polarization and extremism, geopolitical competition, dysfunction in the Security Council and new tools, including social media, for fuelling dehumanization, vilification, incitement and misinformation. Double standards and selectivity by major powers in the enforcement of human rights generally is also eroding the credibility and legitimacy of and public confidence in the international human rights system, which may be perceived as merely another extra-legal site of political contestation and power struggle. The Special Rapporteur urges all States to move beyond rhetorical commitment to human rights and, instead, to place human rights at the heart of all counter-terrorism activities. Protecting human rights even when faced with distressing violence distinguishes responsible States from terrorist offenders. All individuals are entitled to be treated with dignity. States must also redouble their efforts to combat impunity and ensure accountability for violations of international law when countering terrorism, including to restore public confidence that no State is above the law.

B. Resources

15. The Special Rapporteur reiterates the concerns of his predecessors that the “unusually broad” mandate is impossibly underresourced for its mandated functions.²³ Those functions include the commitments of mandate holders to write two annual reports, one for the Human Rights Council and the other for the General Assembly, undertake two country visits and draft associated reports, handle a high volume of communications,²⁴ engage in frequent liaison with States and civil society organizations across 193 States and engage with the media globally. In addition, the mandate holder is charged with providing advice and technical assistance, sharing best practices, monitoring the prolific normative and technical work of the United Nations counter-terrorism bodies in New York, namely the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (Counter-Terrorism Committee), the Counter-Terrorism Committee Executive Directorate, the Office of Counter-Terrorism and the sanctions committees. The Special Rapporteur is one of the 46 entities participating in the Global Counter-Terrorism Coordination Compact, which also has eight working groups, each meeting quarterly for a total of 32 meetings per year. The mandate also covers engagement with numerous other entities, including the Global Counterterrorism Forum, the Financial Action Task Force, bodies working on technology issues and regional organizations, among others. The mandate holder’s views are sought in the regular reviews of the Global Counter-Terrorism Strategy and resolutions of the Security Council, the General Assembly and the Human Rights Council. The mandate spans not only law enforcement actors, courts and legislatures, but also highly sensitive security agencies, military operations, social programmes for preventing and countering violent extremism and more. Considerable time is also spent fundraising for extrabudgetary resources.²⁵

16. The mandate holder is expected to accomplish all of those activities working half-time (two and a half days per week), with two full-time OHCHR staff in Geneva and no staff in New York, where the United Nations counter-terrorism architecture is based, and no discretionary travel funds. To put the situation into perspective, the main United Nations counter-terrorism bodies count almost 300 staff members,²⁶ plus numerous consultants, while the 45 United Nations entities that are part of the Compact (excluding the mandate holder)

²³ A/HRC/34/61, para. 50; see also A/72/495, para. 35.

²⁴ For example, from 1 November 2022 to 31 October 2023, the previous mandate holder issued or joined 137 communications (an average of almost three per week), available at <https://spcommreports.ohchr.org>.

²⁵ The Special Rapporteur is grateful for the new contributions from Spain, Switzerland, the Human Rights Center at the University of Minnesota Law School and the University of Sydney.

²⁶ In 2022, the Office of Counter-Terrorism had 180 staff members and the Counter-Terrorism Committee Executive Directorate had 44. In 2023, the Terrorism Prevention Branch had 62 staff members dedicated to countering terrorism. The Analytical Support and Sanctions Monitoring Team has 10 members. See <https://unsceb.org/human-resources-statistics>.

also engage in some counter-terrorism activity. Up until mid-2021, the Executive Directorate was provided with the resources to conduct 176 visits to 114 States.²⁷ In contrast, the former mandate holders conducted 18 country visits. It is welcome that the counter-terrorism bodies have increased their human rights staff and taken steps to mainstream human rights, that the Office of the Ombudsperson to the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities also has two staff members, that OHCHR has two counter-terrorism staff members (excluding the mandate holder) and that other human rights bodies of the United Nations address counter-terrorism issues. Nonetheless, it is clear that human rights are not given sufficient institutional support or resources relative to the predominant repressive approach to countering terrorism. In stark contrast, one State has an independent office tasked with reviewing its national counter-terrorism laws, with nine staff members and an annual budget of millions of dollars, to monitor only one State, not 193, and to review laws, but not their application in individual cases,²⁸ and military operations.

C. Geographical focus of country visits

17. Over the 18-year history of the mandate, the mandate holders have conducted 21 official country visits²⁹ to 21 States and one occupied territory. Nine, or almost half, of those visits have been to countries in the Group of Western European and Other States and the Eastern European Group. The remainder have been to five countries in the Asia-Pacific Group, four in the African Group and two in the Latin American and Caribbean Group. The previous mandate holder focused on Europe and Central Asia. The present mandate holder wishes to focus on West Africa, the Middle East and East, South and South-East Asia, given the severity and scale of the terrorist threats in those regions or the characteristics of certain national counter-terrorism regimes within them.

18. Country visits depend on the consent and good-faith cooperation of States. A previous mandate holder regretted the difficulty of obtaining consent to carry out country visits.³⁰ The Special Rapporteur acknowledges that countering terrorism is a sensitive issue and reassures States that country visits are intended to be constructive engagements with relevant authorities to highlight both good practices, which can be shared with others, and areas warranting improvement, including by means of ongoing engagement with the mandate holder and technical assistance from the United Nations. He encourages States to view country visits in that cooperative spirit and to give their consent.

III. Continuity with the work of the previous mandate holder

19. The Special Rapporteur will advance the important work of his predecessor on the following key issues: the impacts of countering terrorism on civil society; violations in relation to detention in north-eastern Syrian Arab Republic; the protection of those detained in and those transferred from the Guantánamo Bay detention facility; human rights in the United Nations counter-terrorism system; and new technologies. Ample normative work has already been done in many of those areas. The emphasis, therefore, will be on advocacy for the implementation of human rights standards by systematically engaging relevant actors, including through dialogue with States, communications, strategic litigation and public advocacy. Further normative work will be undertaken in relation to new technologies.

A. Impact of counter-terrorism laws on civil society

20. The Special Rapporteur will maintain a focus on the impact of measures for countering terrorism and violent extremism on civic space, civil society organizations and

²⁷ See S/2022/529, annex I.

²⁸ See <https://www.inslm.gov.au>.

²⁹ See <https://www.ohchr.org/en/special-procedures/sr-terrorism/country-visits>.

³⁰ A/HRC/34/61, para. 12.

human rights defenders by vigorously promoting his predecessor's recommendations,³¹ including on human rights-compliant definitions of terrorism and violent extremism, the non-criminalization of political freedoms and humanitarian activities, the cautious regulation of civil society actors, terrorist financing and online content and effective remedies and oversight mechanisms. A significant number of communications issued under the mandate relate to civic space and laws to counter terrorist financing. In recent consultations with stakeholders, there was extremely strong support for advocacy on those issues, including in relation to the targeting of particular groups, digital harassment and Internet restrictions.

B. Violations relating to detention in north-eastern Syrian Arab Republic

21. The Special Rapporteur will advocate to end the grave violations of international human rights law, international humanitarian law and international criminal law affecting more than 70,000 people detained in north-eastern Syrian Arab Republic³² in the context of the conflict involving Da'esh. They include at least 43,000 foreign nationals. The overwhelming majority of detainees are women and children, who have special vulnerabilities and have been the main focus of repatriation efforts. The situation of 10,000 male detainees also urgently needs attention. Many people have been arbitrarily and indefinitely detained for more than six years. The Special Rapporteur will seek access to the detention facilities that his predecessor was unable to visit.

22. The Special Rapporteur reiterates his predecessor's recommendations,³³ including for the release and repatriation of all persons from arbitrary detention, respect for non-refoulement, reintegration and prosecution as appropriate and, in the interim, humane treatment in detention, the maintenance of family unity, non-discrimination and immediate access to all places of detention by impartial humanitarian actors. The Special Rapporteur welcomes the continuing cooperation of the Syrian Arab Republic. He also commends the recent repatriation of nationals by France, Iraq, Kyrgyzstan, the Russian Federation and the United Kingdom of Great Britain and Northern Ireland. Recent unsuccessful litigation on repatriation in Australia and Canada underscores the urgent need for States to pursue diplomatic solutions. The Special Rapporteur endorses his predecessor's view that States have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, where there are reasonable grounds to believe that they face flagrant violations of international law.³⁴ He offers technical assistance to any State interested in repatriating its nationals or in improving respect for the human rights of people detained in north-eastern Syrian Arab Republic.

C. Resolution of Guantánamo Bay detention facility cases

23. More than two decades after the terrorist attacks of 11 September 2001, 30 detainees remain at the Guantánamo Bay detention facility and 16 of those have been cleared for release and transfer. The Special Rapporteur welcomes the efforts of the United States to address the situation and looks forward to cooperating with it to implement the recommendations that his predecessor made, following her recent technical visit,³⁵ on enhancing the rights of victims of the attacks of 11 September 2001, improving the conditions of the remaining detainees, repatriation and resettlement and accountability for violations of international law. There is also a need to urgently address the alleged arbitrary detention and inhuman treatment

³¹ A/HRC/40/52, paras. 72–75. See also *Global Study on Counter-Terrorism and Civic Space*.

³² A/78/520, paras. 49–64.

³³ *Ibid.*, paras. 64 and 77–82.

³⁴ See <https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>.

³⁵ A/78/520, para. 8; and United Nations Human Rights Special Procedures, "Technical visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism", 14 June 2023, available at <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf>.

of persons transferred to Kazakhstan and the United Arab Emirates.³⁶ The Special Rapporteur observes that, given the international influence of the United States, its grave violations of international law following the attacks of 11 September 2001 signalled to other States that excessive and unlawful counter-terrorism measures were permitted. The United States now has an opportunity to reassert leadership on human rights by guaranteeing accountability for violations.

D. Human rights in the United Nations counter-terrorism system

24. The previous mandate holder recommended that the United Nations counter-terrorism bodies, the General Assembly and the Security Council engage more genuinely, proactively, meaningfully and constructively with diverse civil society organizations, enhance interaction with human rights bodies and procedures, including the mandate holder, address issues concerning humanitarian exemptions, conduct human rights due diligence regarding external partners and more intensively scrutinize adherence to human rights when dealing with States.³⁷ Consultations between civil society organizations and the present mandate holder have revealed broad concern about the limited opportunities to engage with United Nations bodies in an accessible, inclusive and meaningful way and a fear of tokenism. There was also strong support for increasing the transparency, oversight and accountability of United Nations activities, a recommendation also made by the previous mandate holder.

25. The Special Rapporteur acknowledges the increasing openness among United Nations bodies to improving engagement on human rights and with civil society and to increasing the presence of dedicated human rights staff in some of those bodies. He welcomes, in principle, the proposed civil society unit in the Office of Counter-Terrorism and encourages the inclusion of civil society organizations in such high-level events as the African Counter-Terrorism Summit, to be held in Abuja in April 2024.³⁸ He likewise encourages the Counter-Terrorism Committee and the Executive Directorate to consider a permanent civil society consultative procedure. He acknowledges the Executive Directorate's recent publication entitled "Trends tracker on human rights: recommendations by the Security Council Counter-Terrorism Committee following assessment visits to Member States (2017–2023)",³⁹ which publicizes recommendations on human rights issued after the Directorate's country visits and estimates that 15 per cent of the recommendations in 54 reports from 2017 to 2023 concern human rights. The report provides insight into the Committee's approach to human rights scrutiny. While country assessments are not publicly available unless States consent, which they almost never do, the mandate holder has confidential access to 27 Committee reports and 73 overviews of implementation assessment through the Global Counter-Terrorism Coordination Compact platform. Such access allows the mandate holder to scrutinize independently the Committee's approach to human rights and enables feedback. However, the confidentiality of the reports limits how effectively the Special Rapporteur can use them and resource constraints limit the extent to which he can engage in advance of, during or after country visits by the Executive Directorate. The Special Rapporteur can also provide independent input on human rights in internal United Nations deliberations through the Compact and its working groups. In addition, OHCHR is identifying avenues through which civil society could provide input into the Compact.⁴⁰ Again, however, resource constraints spread the contributions of the mandate holder very thinly across the large United Nations counter-terrorism architecture.

³⁶ "Technical visit to the United States and Guantánamo Detention Facility", para. 62.

³⁷ A/HRC/40/52, paras. 71–75. See also *Global Study on Counter-Terrorism and Civic Space*.

³⁸ See https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/20230921_usgs_opening_statement_ministerial_meeting.pdf.

³⁹ See https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/trends_tracker_on_human_rights_-_december_2023.pdf.

⁴⁰ A/78/269, para. 24.

E. New technologies

26. The Special Rapporteur will undertake new normative work that builds on his predecessor's emphasis on the human rights impacts of new technologies in countering terrorism. The misuse of covert digital surveillance technology can lead to serious rights violations and there are significant challenges to effective regulation. Following up on the position paper and statement on spyware, the Special Rapporteur will produce a position paper on the human rights harms stemming from spyware. He will assess the strengths and limitations of current regulatory proposals and action, including export control recommendations in the European Union.⁴¹ He will analyse the negative externalities of regulation, including black markets and their outsized impact in some States and regions, and what can be done to address them.

27. The Special Rapporteur will issue a position paper on the use of and trade in facial recognition technology among States and international organizations, which will include an examination of existing and proposed regulation and compliance with international human rights law.

28. He will produce a position paper on the human rights and gender impacts of protecting critical infrastructure and vulnerable targets, including on compliance with international law when developing strategies for prevention and crisis response and management.

29. Consultations with stakeholders revealed strong support for a focus on new technologies, including surveillance regulation, technology company accountability, excessive social media content moderation, personal data protection, cyberterrorism, the impact of Financial Action Task Force recommendations, the role of the United Nations in supporting excessive State surveillance and the limited participation of civil society in the drafting of non-binding principles under the Delhi Declaration on countering the use of new and emerging technologies for terrorist purposes.

IV. Future directions

30. In the past 18 years, in 36 thematic annual reports and other outputs, the mandate holders have addressed most of the key intersections between countering terrorism and the spectrum of human rights.⁴² Such issues remain relevant in advocacy with States. Some may be updated.⁴³ Stakeholders indicated interest in many of those issues and others, as discussed in the next section.

31. The Special Rapporteur has identified the following five thematic issues that may be the subjects of annual reports: human rights in efforts to counter terrorism by regional organizations (the subject of his first report to the General Assembly in 2024); administrative measures; non-State actors; specialized international bodies; and accountability and reparation for large-scale violations of human rights in countering terrorism.

A. Views of stakeholders

32. Stakeholders raised a wide variety of issues in their submissions and in consultations, which will inform the mandate holder's work, including human rights concerns relating to oversight and accountability in countering terrorism, militarization, the targeting of political opponents and the shrinking of civil society space, the participation of civil society, new technologies, data protection, the strengthening of social approaches and the promotion of

⁴¹ See European Parliament, Decision No. 2022/2586 (RSO) of 10 March 2022; and Recommendation No. 2023/2500(RSP) of 15 June 2023.

⁴² See <https://www.ohchr.org/en/special-procedures/sr-terrorism/annual-reports-human-rights-council-and-general-assembly> and <https://www.ohchr.org/en/special-procedures/sr-terrorism/issues-addressed-thematic-reports>.

⁴³ For example, previous mandate holders have revisited the issues of secret detention, surveillance, refugees, civil society, preventing and countering violent extremism, gender and the United Nations counter-terrorism system.

pillar IV (human rights and rule of law) of the Global Counter-Terrorism Strategy. Issues relating to detention raised by States included arbitrariness, detention in north-eastern Syrian Arab Republic, the employment of female personnel in detention facilities and the monitoring and improving of preventing and countering violent extremism in detention. There were concerns about the forced recruitment of children by terrorist groups, reparation for victims of terrorism, the effects of terrorism on human rights and the need to tackle Islamophobia, the contempt of religions, hate speech, racism and incitement to hostility and violence.

33. Some States raised concerns about the application of human rights in countering terrorism, including non-interference in internal affairs, the need to balance universality and national particularities, the non-exploitation of freedom of expression, the recognition of law enforcement needs when protecting personal data, working constructively with States rather than “naming and shaming” and avoiding multiple human rights procedures for the same complaint. Some States identified issues more relevant to countering terrorism than human rights.⁴⁴

34. Civil society organizations identified issues relating to criminal justice, including vague definitions of terrorism and extremism, including a suggestion to remove “motive” elements to avoid profiling Muslims, the non-criminalization of extremist material, disproportionate sentences, trial by military courts, the death penalty, arbitrary and preventive detention, post-sentence continuing detention, extended supervision orders upon release and the rehabilitation of convicted terrorists. There was concern about the use of lethal force, the militarization of policing and other operations, State complicity in mass surveillance, oversight and the investigations of violations.

35. Discrimination was a recurring theme for civil society organizations, including in preventing and countering violent extremism, the mass detention of or restrictions on minorities and the targeting of religious facilities and dual citizens affected by citizenship stripping. Issues relating to the rights of migrants and refugees were emphasized, including the risk of refoulement and the denial of visas to human rights defenders. There was interest in the role of women as victims and perpetrators of terrorism, the rights of women and girls, the co-opting of women in countering terrorism and gender mainstreaming. The rights of victims of terrorism were noted, including protection from forced migration and human trafficking, the needs of women and young people, rehabilitation and victim participation. It was recommended to pursue social measures to prevent terrorism, including by addressing the conditions that are conducive to terrorism.

36. There was a cluster of concerns relating to the impacts of sanctions and terrorist financing laws on humanitarian action and on development, peacebuilding and human rights work, the need for broader exemptions and for the wider exclusion of armed conflict from sanctions and offences. The misapplication of Financial Action Task Force recommendations was emphasized, along with the need to reform its methodology, train its personnel in human rights, engage similar regional bodies on human rights and sign a memorandum of understanding between the Task Force and the Special Rapporteur.

37. Stakeholders also commented on the situations in approximately 50 States and regions.⁴⁵

⁴⁴ Including State terrorism, the unjustified sanctioning of States as sponsors of terrorism, the links between terrorism and organized crime, including corruption, strengthening cooperation on prevention, law enforcement and intelligence, preventing and countering violent extremism and realism in capacity-building and technical assistance.

⁴⁵ Afghanistan, Algeria, Australia, Azerbaijan, Bahrain, Bangladesh, Brazil, Burkina Faso, China, Colombia, Denmark, Egypt, Eswatini, France, Germany, Ghana, Guatemala, India, Indonesia, Iraq, Israel, Kenya, Libya, Maldives, Myanmar, Nigeria, Pakistan, Poland, Russian Federation, Serbia, South Africa, Spain, Sri Lanka, Sweden, Syrian Arab Republic, Tajikistan, Tunisia, Türkiye, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of), Yemen and State of Palestine.

B. Regional and subregional organizations and arrangements

38. Regional and subregional organizations and arrangements, formal and informal, have been engaged in countering terrorism since the 1970s, yet their prolific and multifaceted activities have not been subject to sufficient human rights scrutiny. Compared with more heterogeneous and divided international organizations, regional organizations have been able to develop deeper and wider counter-terrorism norms and cooperate more extensively with one another due to their smaller memberships, common identity, shared interests, geographical proximity, legal similarities or political familiarity or solidarity.

39. Sixteen regional organizations⁴⁶ have adopted 38 binding counter-terrorism instruments, representing two thirds of all international counter-terrorism instruments.⁴⁷ They address a wide range of issues, including specific or general terrorist offences, thematic issues, from terrorist financing to border control, and transnational cooperation. Highly integrated regional organizations have issued internal laws that bind Member States. Many regional organizations have also issued political declarations, commitments, standards, guidelines, plans and strategies.⁴⁸ Some have a “soft law” quality,⁴⁹ influencing behaviour, and migrate, over time, into treaties or binding Security Council resolutions. Many regional organizations have established formal bodies or programmes,⁵⁰ while informal arrangements

⁴⁶ African Union, Association of Southeast Asian Nations, Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation, Black Sea Economic Cooperation Organization, Central African Economic and Monetary Community, Collective Security Treaty Organization, Commonwealth of Independent States, Cooperation Council for the Arab States of the Gulf, Council of Europe, Eurasian Group on Combating Money Laundering and Financing of Terrorism, European Union, League of Arab States, Organization of American States, Organization of Islamic Cooperation, Shanghai Cooperation Organization and South Asian Association for Regional Cooperation.

⁴⁷ [A/78/221](#), paras. 26 and 41.

⁴⁸ Asia-Pacific Economic Cooperation, Asia-Pacific Parliamentary Forum, Caribbean Community, Central American Integration System, Common Market for Eastern and Southern Africa, Commonwealth, Economic Community of West African States, Euro-Atlantic Partnership Council, Intergovernmental Authority on Development, Movement of Non-Aligned Countries, North Atlantic Treaty Organization (NATO), NATO Parliamentary Assembly, Organization for Democracy and Economic Development-GUAM, Organization for Security and Cooperation in Europe (OSCE), Pacific Islands Forum, Permanent Mechanism for Consultation and Policy Coordination, Regional Forum of the Association of Southeast Asian Nations and Southern African Development Community.

⁴⁹ See [A/74/335](#).

⁵⁰ African Centre for Studies and Research on Terrorism, Anti-Terrorism Centre of the Commonwealth of Independent States, Arab Office for Combating Extremism and Terrorism, Association of Southeast Asian Nations Regional Forum Inter-Sessional Meetings on Counter-Terrorism and Transnational Crime, Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation Counter-Terrorism and Transnational Crime Sector, Club de Berne Counter Terrorism Group, Council of Arab Interior Ministers, Council of Europe Committee on Counter-Terrorism, Eastern Africa Police Chiefs Cooperation Organization Counter-Terrorism Sub-Committee and Regional Counter-Terrorism Centre of Excellence, Economic Community of West African States Counter-Terrorism Coordination Unit and Counter-Terrorism Training Centre, European Counter Terrorism Centre, European Union Agency for Law Enforcement Cooperation, European Union Council Working Party on Terrorism, European Union Counter-Terrorism Coordinator, Group of Eight Counter-Terrorism Action Group, Inter-American Committee against Terrorism of the Organization of American States, Intergovernmental Authority on Development Centre of Excellence for Preventing and Countering Violent Extremism and Capacity-Building Programme against Terrorism 2006–2011, League of Arab States Counter-Terrorism Committee and Counter-Terrorism Department, Parliamentary Assembly of the Mediterranean Special Parliamentary Committee on Counterterrorism, Organization for Democracy and Economic Development – GUAM Working Group on combating terrorism, organized crime and drug trafficking and Virtual Center for combating terrorism, organized crime, drug trafficking and other dangerous types of crime, Quadilateral Security Dialogue Counterterrorism Working Group, Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization, Southern African Development Community Regional Counter-Terrorism Centre, South Asian Association for Regional Cooperation Terrorist Offences Monitoring Desk, Southeast European Law Enforcement Center Anti-Terrorism Task Force and Southern Common Market Working Group on Terrorism and Specialized Forum on Terrorism.

have also been established.⁵¹ Some regional organizations or ad hoc regional arrangements have deployed on military operations in countering terrorism.⁵²

40. Regional counter-terrorism norms relate to international counter-terrorism law in several ways. Distinctive regional norms have emerged with no counterparts in international law, such as definitions of terrorism and extremism and exceptions to them, such as for self-determination movements,⁵³ and certain forms of cooperation. Regional norms have stimulated parallel international norms⁵⁴ and influenced the adoption of norms by other regional organizations.⁵⁵ Regional organizations have implemented or been influenced by international counter-terrorism standards, including universal treaties⁵⁶ and United Nations resolutions or standards. Regional organizations regularly seek to influence the development of universal counter-terrorism norms within international organizations, including the Security Council, the General Assembly and the Human Rights Council, and the norms of other regional organizations.

41. Since 1979, the General Assembly has periodically recommended that regional organizations consider measures to prevent and combat international terrorism.⁵⁷ The Assembly also encouraged regional organizations to support the implementation of the Global Counter-Terrorism Strategy.⁵⁸ In 2016, in the context of the fifth review of the Strategy, the Assembly invited regional organizations to develop plans of action to prevent violent extremism.⁵⁹ The Office of Counter-Terrorism and the United Nations Counter-Terrorism Centre have provided technical support to regional organizations to

⁵¹ For example, the Gulf of Aden Regional Counterterrorism Forum, the Partnership for Regional East Africa Counterterrorism and the Trans-Sahara Counterterrorism Partnership.

⁵² For example, the NATO command of the International Security Assistance Force in Afghanistan, from 2003 to 2014, the African Union Military Observer Mission in Somalia, from 2007 to 2021, the Southern African Development Community regional standby force in Mozambique, in 2021, the Economic Community of West African States mission in Mali and regional standby force, in 2022, the Multinational Joint Task Force of the Lake Chad Basin Committee, since 2015, the Joint Force of the Group of Five for the Sahel, since 2017, the Multinational Joint Task Force of the Accra Initiative, since 2022, the Operation Barkhane Task Force Takuba, the International Coalition for the Sahel, the Nouakchott Process, in the Sahelo-Saharan region, since 2013, and the international counter-Da'esh coalition.

⁵³ See the OAU Convention on the Prevention and Combating of Terrorism, the Arab Convention on the Suppression of Terrorism and the Convention of the Organization of the Islamic Conference on Combating International Terrorism.

⁵⁴ For example, the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance of the Organization of American States, of 1971, influencing the drafting of a universal convention on the same issue, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in 1973, or the Council of Europe Convention on the Prevention of Terrorism, of 2005, on incitement to terrorism, influencing the drafting of Security Council resolution 1624 (2005).

⁵⁵ For example, the South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism of 1987 was based on the European Convention on the Suppression of Terrorism of 1977. In turn, the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation Convention on Cooperation in Combating International Terrorism, Transnational Organized Crime and Illicit Drug Trafficking of 2009 was based on the South Asian Association convention. There are similarities between the Arab Convention on the Suppression of Terrorism of 1998 and the Convention on Combating Terrorism of the Organization of Islamic Cooperation of 1999. A Council of Europe definition of terrorism under development is based on Directive (EU) No. 2017/541 of the European Parliament and of the Council of 15 March 2017.

⁵⁶ Also by encouraging Member States to adopt them; see, for example, the Additional Protocol to the South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism, art. 5.

⁵⁷ General Assembly resolutions 34/145, para. 10; 42/159, para. 5 (c); 44/29, para. 4 (c); 46/51, para. 4 (c); 49/60, annex, paras. 5 (c) and 6; and 77/113, preamble and paras. 2, 15 and 24.

⁵⁸ General Assembly resolution 60/288, para. 3 (d). See also Eric Rosand and others, "The UN Global Counter-Terrorism Strategy and regional and subregional bodies: strengthening a critical partnership", Center on Global Counterterrorism Cooperation (New York and Washington, D.C., 2008).

⁵⁹ General Assembly resolution 70/291.

develop strategies, the Global Counter-Terrorism Coordination Compact has a working group on national and regional counter-terrorism strategies and a joint United Nations-African Union technical working group on countering terrorism and preventing and countering violent extremism was established in 2022.⁶⁰ United Nations bodies have organized events with regional organizations, such as the upcoming African Counter-Terrorism Summit.

42. Regional organizations have played a voluntary role in assisting States to implement binding counter-terrorism resolutions of the Security Council. The Council has encouraged regional organizations in countering terrorism,⁶¹ including by implementing international standards and transnational cooperation and addressing such thematic issues as sanctions and terrorist financing and travel. It has also encouraged the Executive Directorate to cooperate with them on regional strategies and country visits.

43. Regional counter-terrorism regimes can have profound impacts on human rights, yet human rights law has often not been at their core. Regional regimes have historically had a law enforcement focus on repressing terrorism, rather than on holistically preventing it, addressing the conditions conducive to it or human rights issues or engaging civil society. The dominant political and legal cultures of some regions have also adversely influenced attitudes towards human rights. Weak national protection of human rights can be exacerbated by a lack of regional human rights mechanisms or ineffective ones. Human rights compliance by regional organizations has also not been a focus of the Security Council's engagement with them, even in regions in which human rights are weakly institutionalized.

44. Human rights are explicitly acknowledged in some regional counter-terrorism instruments and some regional organizations have widened their approaches pursuant to the Global Counter-Terrorism Strategy. Regional human rights mechanisms can enable independent scrutiny and offer binding remedies, although usually only indirectly, through challenges to the national implementation of regional measures. Some generalist regional courts can directly review regional measures, as when the European Court of Justice, in the *Kadi* cases, considered European Union measures implementing Security Council sanctions.⁶² That case prompted a course correction on due process by the Council, with its establishment of the Office of the Ombudsperson.

45. Some regions also task non-binding mechanisms with human rights scrutiny of counter-terrorism measures,⁶³ including by issuing guidance.⁶⁴ Regional measures may also be scrutinized before international human rights procedures directly or in challenges to national implementation.⁶⁵

⁶⁰ See <https://www.un.org/counterterrorism/partnerships>.

⁶¹ Security Council resolutions 1373 (2001), para. 4; 1390 (2002), para. 5 (a); 1617 (2005), preamble; 2129 (2013), preamble and paras. 4, 7, 10, 11, 14, 19, 20 and 23; 2178 (2014), paras. 11 and 13; 2322 (2016), paras. 3, 13 (h), 18 and 19; 2368 (2017), preamble, paras. 11, 39, 67, 77, 78, 90, 95 98 and annex I (u)–(y); 2395 (2017), preamble and paras. 5, 13, 15 and 16; 2396 (2017) preamble and paras. 9, 12, 15, 22, 27 and 39; 2462 (2019), preamble and paras. 11 and 35; 2482 (2019), preamble and paras. 4, 12, 15 (e), 21 and 22. See also Counter-Terrorism Committee Policy Guidance on International Cooperation, para. 2; and [S/2020/731](#), paras. 9 (2) (d) and 9 (3) (a), (c)–(e), part IV (4), and part V (i), (j) and (r).

⁶² Court of First Instance of the European Communities, *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities*, No. T-315/01, Judgment, 21 September 2005; and European Court of Justice, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, Nos. C-402/05 P and C-415/05 P, Judgment, 3 September 2008. See also [A/67/396](#).

⁶³ For example, Office for Democratic Institutions and Human Rights of OSCE.

⁶⁴ For example, the Guidelines on Human Rights and the Fight against Terrorism, adopted by the Committee of Ministers of the Council of Europe in 2002, and the Inter-American Commission on Human Rights, Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism (2006).

⁶⁵ For example, the previous mandate holder addressed a communication to the Council of Arab Interior Ministers (OTH 71/2023), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. She also made recommendations to regional organizations generally. See, for example, *Global Study on Counter-Terrorism and Civic Space*, pp. 104 and 105; and [A/76/261](#), paras. 26–36.

C. Administrative measures in countering terrorism

46. In a future thematic report, the Special Rapporteur will examine the proliferation of “administrative measures” for countering terrorism, that is, coercive restrictions on human rights imposed outside of the criminal justice system. While there is a long history of such measures, including, for example, preventive detention and border controls, their use has expanded, with frequent reproduction across jurisdictions and the creation of new types. Some measures have been prompted by Security Council resolutions, such as sanctions or measures to counter terrorist financing or travel, while others have been generated independently by States.

47. Common examples include preventive detention by police, security agencies or the military, control orders and so-called terrorism prevention and investigative measures, curfews, home detention and other restrictions on movement, bail-like obligations to report to police, electronic monitoring, restrictions on communication, including by telephone and the Internet, on assembly, on religion, such as on places of worship, or on contact with specified people and coercive measures, such as mandatory meetings or courses, to prevent and counter violent extremism. Measures relating to border control or terrorist travel include the denial of entry, visa cancellation, deportation or expulsion, immigration detention, the suspension or cancellation of passports, temporary exclusion orders, managed return schemes, the deprivation of citizenship and the collection and sharing of personal data. Administrative measures have also been applied to non-profit organizations and other entities, from sanctions and financing measures to registration and other regulatory requirements.

48. Some administrative measures are imposed by executive authorities, while others are ordered by a civil court. Some are deployed in close connection with the criminal justice system, for example, continuing detention after the expiry of a criminal sentence to manage a risk of recidivism, sometimes based on inadequate risk-assessment tools,⁶⁶ or extended supervision orders after release from prison. In this sense, although administrative measures often operate in a pre-criminal space,⁶⁷ they may also apply in a post-criminal space. The executive proscription of terrorist organizations for various purposes can trigger subsequent criminal liability, where individuals violate administrative regulations, such as on dealing with terrorist assets, or for offences relating to the organizations, such as membership.

49. Administrative measures may be intended to be preventive,⁶⁸ but they still may have punitive effects without the safeguards of criminal process, namely, the adequate disclosure of evidence, including classified or security-sensitive information, and the criminal standard of proof. Such measures should not substitute for criminal trials, where there is admissible evidence of an offence and, in many States, there are ample preparatory terrorism offences that impose criminal liability at an early stage, often obviating the need to resort to administrative measures. At the same time, such measures can be substantively less invasive or restrictive than criminal imprisonment, albeit with a lower level of due process. There is, however, a temptation to design or use them to circumvent criminal law safeguards, creating a parallel justice system that normalizes exceptionalism.

50. Administrative measures have received increasing scrutiny with regard to human rights, both in relation to specific measures and their expansion as a category.⁶⁹ Measures have affected many rights and freedoms, including those relating to liberty, movement,

⁶⁶ See Grant Donaldson, “Review into Division 105A (and related provisions) of the Criminal Code Act 1995 (Cth)”, *Independent National Security Legislation Monitor Report* (Commonwealth of Australia, 2022).

⁶⁷ See Tanya Mehra, Matthew Wentworth and Bibi van Ginkel, “The Expanding Use of Administrative Measures in a Counter-Terrorism Context Part 1: In Need of Rule of Law Safeguards”, International Centre for Counter-Terrorism Policy Brief, November 2021.

⁶⁸ See the Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context of the Global Counterterrorism Forum.

⁶⁹ See, for example, the Glion Recommendations; “The Expanding Use of Administrative Measures in a Counter-Terrorism Context Part 1”; and Bérénice Boutin, “Administrative measures against foreign fighters: in search of limits and safeguards”, International Centre for Counter-Terrorism Research Paper (The Hague, 2016).

privacy, expression, association, assembly, religion, family and nationality. Human rights concerns have encompassed the adequacy of the legal bases for measures, necessity, proportionality and non-discrimination, due process and judicial safeguards, effective remedies, derogation in public emergencies, protections under international humanitarian law in armed conflict and evaluation and monitoring. Their proper relationship to criminal justice has also been of concern, including the risks of double jeopardy and self-incrimination. Further rights-based scrutiny is needed across the spectrum of administrative measures.

D. Participation of non-State actors in countering terrorism

51. Countering terrorism has traditionally been the preserve of State authorities, given that maintaining national security has long been understood as a core function of sovereignty and that counter-terrorism measures can have profound impacts on human rights, for which the State is internationally responsible. Recent decades have seen a growth in various non-State actors involved in countering terrorism. Private companies have provided a growing suite of security-related goods and services beyond conventional arms and ammunition, including such technologies as surveillance equipment and capabilities, spyware, artificial intelligence, data processing and analysis, risk assessment databases and predictive tools, border watchlists and biometrics. In armed conflict involving terrorism, services by private military and security contractors have extended to combat and combat support, and detention and other security services.

52. Private actors have been voluntarily co-opted or mandated to perform quasi-regulatory activities on behalf of States. For instance, banks and other financial institutions undertake due diligence in relation to sanctions or measures to counter terrorist financing, with risks of excessive impacts on humanitarian action and other legitimate activities of non-profit organizations, and are required to report suspicious transactions. They are also consulted in the development of standards, as in the case of the Financial Action Task Force Private Sector Consultative Forum. Technology companies have played an increasingly interactive role with State authorities in the moderation of online terrorist or violent extremist content, affecting the freedoms of expression, religion and assembly, and in relation to new payment systems in the context of terrorist financing. The role of such private actors has been recognized in Security Council resolutions, the Delhi Declaration, the Global Counterterrorism Forum and such initiatives as Tech Against Terrorism, the Global Internet Forum to Counter Terrorism and Christchurch Call.

53. Other non-State actors have been engaged in preventing and countering violent extremism. Such efforts are most commonly voluntary, as where civil society organizations receive State funding to administer programmes relating to prevention, including education, training, employment or social services, or to disengagement, deradicalization or rehabilitation. Some activities are mandatory, such as reporting children at risk in private schools or childcare centres or in the context of private health facilities. Victims of terrorist organizations can also undertake activities relating to countering terrorism.

54. Civil society organizations and some United Nations counter-terrorism bodies,⁷⁰ have expressed concern about the human rights impacts of private sector activities, State engagement with them and the underlying international, regional and national legal regimes that enable them. The human rights issues are framed by general guidance, including the Guiding Principles on Business and Human Rights and the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict. There are more specific contemporary debates about the regulation of private actors in particular contexts in relation to spyware, content moderation or countering terrorist financing online. Work remains to be done to identify where more specific human rights-based regulation of private actors is necessary in the context of countering terrorism.

⁷⁰ For example, Counterterrorism Executive Directorate, “Establishing effective public-private partnerships on countering the financing of terrorism”, Analytical Brief (December 2023), pp. 16–19.

55. A final category of non-State actor involved in countering terrorism is non-State armed groups comprising de facto governmental authorities in armed conflicts. Some have deliberately distinguished themselves from other armed groups regarded as terrorist within a conflict, whether for reasons relating to group moral identity, political legitimacy or appeal to foreign sponsors or diasporas. For example, the so-called Autonomous Administration of North and East Syria has engaged in counter-terrorism operations against Da'esh, including in cooperation with foreign States claiming to be engaged in self-defence.⁷¹ State cooperation with non-State armed groups can include joint operations, intelligence-sharing, the supply of arms and munitions, the transfer or custody of detainees, cooperation in investigations and support for public order or respect for international humanitarian law. Such situations raise questions of how international human rights law and international humanitarian law apply to non-State actors and to State cooperation with them. Also relevant are rules on State sovereignty, non-intervention and the non-use of force.

E. Human rights in countering terrorism by specialized international bodies

56. Specialized international bodies have long participated in countering terrorism, namely the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). Since the late 1950s, ICAO has played a convening and normative role in developing eight universal counter-terrorism conventions and protocols on the safety and security of international civil aviation. It has also issued other relevant binding and non-binding standards.⁷² Since 2001, ICAO has become enmeshed in the “all-of-UN” approach to countering terrorism as a member of the Global Counter-Terrorism Coordination Compact and relevant working groups (on border management and law enforcement and on the protection of critical infrastructure) and in implementing the Global Counter-Terrorism Strategy. ICAO has also played a significant role in the implementation of Security Council resolutions relating to travel and aviation, including on Advance Passenger Information and Passenger Name Record data.⁷³ Council resolution 2309 (2016) is dedicated to aviation security and affirms the pre-eminent role of ICAO in developing international security standards, monitoring State implementation and assisting States to comply. ICAO participates in country visits by the Counter-Terrorism Committee and its Executive Directorate, provides technical assistance and engages with the Office of Counter-Terrorism, UNODC and other United Nations entities. Its recent work has focused on the misuse of unmanned aerial systems, the protection of vulnerable targets and critical infrastructure, the terrorist misuse of information and communications technologies, passenger data and aviation risk assessments.

57. Since 1988, IMO has been central to the adoption of four maritime safety instruments relating to countering terrorism, following the model of the aviation safety conventions. IMO has also issued relevant binding and non-binding standards relating to maritime safety and security, including at ports, particularly after 2001.⁷⁴ IMO is also a member of the Global Counter-Terrorism Coordination Compact and relevant working groups. Like ICAO, it has participated in country visits by the Counter-Terrorism Committee and its Executive

⁷¹ Other examples include Free Syrian Army operations against Islamist groups in the Syrian Arab Republic; the “Sahrawi Arab Democratic Republic”, which established a counter-terrorism force after aid workers were taken hostage by Islamist militants in 2011; and the Northern Alliance, which cooperated with the United States against Al-Qaida in Afghanistan in 2021.

⁷² These include annex 17 of the Convention on International Civil Aviation, the ICAO Aviation Security Manual and Aviation Security Oversight Manual and instruments of the ICAO Assembly, including aviation security plans, global risk statements and resolutions, including on unlawful interference with aircraft, the destruction of aircraft, the misuse of aircraft as weapons, plastic explosives, man-portable air defence systems and cyber security.

⁷³ For example, Security Council resolution 2396 (2017), paras. 11 and 12.

⁷⁴ Namely, amendments to the International Convention for the Safety of Life at Sea, 1974, by revisions to chapter XI-1 on special measures to enhance maritime safety and a new chapter XI-2 on special measures to enhance maritime security and the addition of an annex on the new International Ship and Port Facility Security Code.

Directorate and is engaged in capacity-building and other activities. The counter-terrorism work of IMO also intersects with the law of the sea.

58. The expanding regulatory remit of those bodies in countering terrorism has often not been accompanied by a sustained human rights analysis of their activities, with the exception of the position paper of the Special Rapporteur on the United Nations Countering Terrorist Travel Programme, in which the role of ICAO was addressed. As highly technically oriented bodies drawn from specialized industries, historically they have not been repositories of human rights expertise or engaged routinely with human rights actors and their criminal law treaties have had a fairly incidental engagement with human rights, as in relation to the fair treatment of suspects and consular access. Only one recent IMO instrument, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, addresses rights more directly. The domains of ICAO and IMO bodies – the air and the sea – also raise special problems in relation to human rights jurisdiction, responsibility, accountability and remedies. The interests of private actors in international transport regulation can also affect the protection of human rights.

F. Accountability and reparation for large-scale human rights violations when countering terrorism

59. High-intensity counter-terrorism campaigns, whether at or below the level of armed conflict, have often been accompanied by partial or nearly total impunity for large-scale systemic violations of international human rights law, international criminal law and international humanitarian law. Previous mandate holders have drawn attention to the need for accountability in certain situations.⁷⁵ As emphasized in the Global Counter-Terrorism Strategy, serious violations of human rights, along with protracted unresolved conflict, are among the conditions conducive to terrorism. The failure to hold State perpetrators accountable for unlawful violence and other violations, whether against suspected terrorists or innocent bystanders, can be a recipe for more terrorism. Continuing impunity over time also tends to breed more State violations, as individuals acting for the State know that there are likely to be no consequences for their actions. Even in the rare cases in which counter-terrorism operations lead to the total defeat or effective subduing of terrorist groups, achieving justice remains a legal and moral imperative. Often, accountability for rights violations is linked to ensuring remedies for the victims of terrorism, whose rights are central to the mandate of the Special Rapporteur. Such multifaceted requirements for justice are highlighted in transitional justice processes, in which the rights of victims of both terrorism and countering terrorism can be vindicated.

60. The Special Rapporteur is interested in exploring and cataloguing good practices derived from actual situations in ensuring accountability and reparation for large-scale violations of human rights in countering terrorism. The Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace between the Government of Colombia and Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo, signed in 2016, ending 50 years of conflict, provides a positive example of reckoning with a conflict framed as countering terrorism, including by holding accountable State, parastatal and non-State actors. The agreement comprehensively covers victims, the reintegration of former combatants, security sector reform, rural development, land rights, drug policy, political participation and women's empowerment.⁷⁶ The Commission for the Clarification of Truth, Coexistence and Non-Repetition, which operated for four years across Colombia, enabled victims to tell their stories and perpetrators to accept responsibility for international crimes,⁷⁷ made violations public and made recommendations to address root causes, including historic inequalities, discrimination and racism, and impunity and justice and the reform of the security sector and

⁷⁵ See, for example, [A/HRC/22/52](#).

⁷⁶ See <https://www.ohchr.org/en/stories/2023/07/war-victims-search-peace-reconciliation-colombia#:~:text=Right%20to%20truth%20and%20justice,comprehensive%20process%20of%20transitional%20justice>.

⁷⁷ See “Nearly Five Years into Colombia’s Historic Peace Agreement, Unprecedented Strides in Justice Marked alongside Lingering Violence, Experts Tell Security Council”, Security Council Meetings Coverage, 13 July 2021.

State institutions.⁷⁸ The Special Jurisdiction for Peace is prosecuting serious crimes and the United Nations Verification Mission in Colombia is monitoring compliance with sentences. The work of the Unit for the search for persons deemed missing in the context of and due to the armed conflict has led to the recovery of victims' bodies. OHCHR is mandated to collaborate with the transitional justice institutions under the Agreement. While many challenges remain,⁷⁹ the process, which is to be carried out over 15 years, represents a genuine attempt by all parties to redress past atrocities.

61. The Special Rapporteur is also interested in examining and publicizing situations in which substantial impunity has prevailed, both to identify structural impediments to accountability in counter-terrorism contexts and make recommendations for remediation and to maintain scrutiny and pressure on States that are in breach of international law. Particularly where the victims of unlawful counter-terrorism measures are terrorist suspects or belong to minority or other vulnerable communities, there is often little political or public momentum for accountability, in addition to the common tendency to forget the past and move on. The mandate holder will consider how to mobilize the suite of tools available for pursuing remedies, including national justice processes, universal jurisdiction in foreign domestic courts, international criminal justice, regional and international procedures, diplomacy, peacebuilding and technical assistance.

V. Recommendations

62. **The Special Rapporteur makes the following recommendations:**

(a) **States are encouraged to invite the Special Rapporteur or consent to requests to conduct official country visits as a cooperative process for sharing good practices and constructively improving human rights compliance;**

(b) **States should provide the Special Rapporteur with resources that are proportionate to the scope of the mandate under United Nations resolutions. At a minimum, one additional post, based in New York, should be funded from the regular budget to support activities relating to the United Nations counter-terrorism bodies;**

(c) **The Security Council should ensure that counter-terrorism measures proposed for binding resolutions are independently vetted, before their adoption, by an expert body, such as the Special Rapporteur or OHCHR, for their compatibility with human rights;**

(d) **The United Nations counter-terrorism bodies should ensure that there are inclusive, accessible, regular and meaningful opportunities for diverse civil society organizations worldwide to be consulted in the design, application and review of United Nations counter-terrorism activities;**

(e) **States must ensure that their counter-terrorism laws and practices, including on countering the financing of terrorism, do not limit the activities of civil society organizations, civic space or humanitarian action in any manner that is unlawful, unnecessary, disproportionate or discriminatory;**

(f) **States whose nationals are detained in north-eastern Syrian Arab Republic must prioritize their urgent voluntary repatriation, in conformity with the principles of non-refoulement and the best interests of the child, and, as appropriate, their prosecution, reintegration and rehabilitation;**

(g) **States must ensure that administrative measures to counter terrorism comply with international standards on due process, judicial safeguards and other relevant rights;**

⁷⁸ See <https://www.ohchr.org/en/statements-and-speeches/2022/07/transitional-justice-colombia>.

⁷⁹ See "Nearly Five Years into Colombia's Historic Peace Agreement".

(h) States must prioritize accountability for all violations of human rights committed while countering terrorism, including large-scale violations, by means of prosecution and reparation and, as appropriate, truth and reconciliation processes;

(i) States are encouraged to share information with the Special Rapporteur on the human rights consistency of their administrative measures for countering terrorism, their engagement with private actors in countering terrorism and their efforts to ensure accountability in past or present situations involving large-scale violations of human rights when countering terrorism;

(j) Regional organizations, ICAO and IMO are encouraged to share with the mandate holder their practices and experiences relating to protecting human rights while countering terrorism and the rights of victims of terrorism.
