



GLOBAL COUNTER-TERRORISM COORDINATION COMPACT

**Working Group on Protecting and Promoting Human Rights,
the Rule of Law and Supporting Victims of Terrorism**

BASIC HUMAN RIGHTS REFERENCE GUIDE

PROSCRIPTION OF ORGANIZATIONS IN THE CONTEXT OF COUNTERING TERRORISM

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United Nations Global Counter-Terrorism Coordination Compact

Working Group on Protecting and Promoting Human Rights,
the Rule of Law and Supporting Victims of Terrorism

Basic Human Rights Reference Guide: Proscription of Organizations in the Context of Countering Terrorism

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United Nations Office of Counter-Terrorism
United Nations Office on Drugs and Crime
United Nations Special Representative of the Secretary-General on Violence against Children
And the participation of the Office for the Coordination of Humanitarian Affairs,
United Nations Children's Fund, and the
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About the United Nations Global Counter-Terrorism Coordination Compact

The United Nations Global Counter-Terrorism Coordination Compact is the largest coordination framework across the three pillars of work of the United Nations: peace and security, sustainable development, human rights and humanitarian affairs. It aims to strengthen a common UN action approach to support Member States, at their request, in the balanced implementation of the UN Global Counter-Terrorism Strategy (A/RES/60/288) adopted in 2006 and other relevant UN resolutions. The Counter-Terrorism Compact was developed as part of the reform of the United Nations system's counter-terrorism architecture, following the establishment of the UN Office of Counter-Terrorism (UNOCT) in 2017. As of November 2020, the Counter-Terrorism Compact brings together 43 entities, including 40 United Nations entities, INTERPOL, the World Customs Organization and the Inter-Parliamentary Union. The Under-Secretary-General for Counter-Terrorism chairs the Counter-Terrorism Compact Coordination Committee and UNOCT serves as its secretariat.

The United Nations Global Counter-Terrorism Strategy and ensuing review resolutions adopted by the General Assembly set out a plan of action for the international community based on four pillars:

- (i) Measures to address the conditions conducive to the spread of terrorism;
- (ii) Measures to prevent and combat terrorism;
- (iii) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and
- (iv) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

The United Nations Counter-Terrorism Centre (UNCCT)

The United Nations Counter-Terrorism Centre (UNCCT) was established in September 2011 to promote international counter-terrorism cooperation and support Member States in the implementation of the Global Counter-Terrorism Strategy. The Under-Secretary-General for Counter-Terrorism, Mr. Vladimir Voronkov, is the Executive Director of UNCCT.

About the Basic Human Rights Reference Guide Series

The Basic Human Rights Reference Guide series is an initiative of the United Nations Global Counter-Terrorism Coordination Compact Working Group on Protecting and Promoting Human Rights, the Rule of Law and Supporting Victims of Terrorism.

The United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288) was adopted by consensus by all Member States on 8 September 2006 and has since then been reaffirmed on a biannual basis, although the 2020 review was postponed as a result of the COVID-19 pandemic. The Strategy reaffirms respect for human rights and the rule of law as the fundamental basis for the fight against terrorism. In particular, Member States reaffirmed that the promotion and protection of human rights for all and respect for the rule of law are essential to all components of the Strategy, and recognized that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

In order to assist States in this regard, the Global Compact formed the Working Group on Protecting and Promoting Human Rights, the Rule of Law and Supporting Victims of Terrorism, which is chaired by the Office of the United Nations High Commissioner for Human Rights, with the Office of Counter-Terrorism serving as vice-chair. Members include the Counter-Terrorism Committee Executive Directorate, the Department of Global Communications, the Department of Peace Operations, the Department of Political and Peacebuilding Affairs, the Executive Office of the Secretary-General, Rule of Law Unit, the International Maritime Organization, the International Criminal Police Organization, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Special Adviser of the Secretary-General on the Prevention of Genocide, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the United Nations Entity for Gender Equality and the Empowerment of Women, the United Nations Institute for Training and Research, the United Nations Interregional Crime

and Justice Research Institute, the United Nations Office on Drugs and Crime, and the United Nations Special Representative of the Secretary-General on Violence against Children. The Office for the Coordination of Humanitarian Affairs, the United Nations Children’s Fund, and the United Nations High Commissioner for Refugees participate as observers.

The Guides have been prepared to assist Member States in strengthening the protection of human rights in the context of countering terrorism. They aim to provide guidance on how Member States can adopt human rights-compliant measures in a number of counter-terrorism areas. The Guides also identify the critical human rights issues raised in these areas and highlight the relevant human rights principles and standards that must be respected.

Each Guide comprises an introduction and a set of guiding principles and guidelines, which provide specific guidance to Member States based on universal principles and standards, followed by an explanatory text containing theoretical examples and descriptions of good practices. Each Guide is supported by reference materials, which include references to relevant international human rights treaties and conventions, United Nations standards and norms, as well as general comments, jurisprudence and conclusions of human rights mechanisms and reports of United Nations independent experts, best practice examples, and relevant documents prepared by United Nations entities and organizations.

The Guides are intended for: State authorities, including legislators; law enforcement and border officials; national and international non-governmental organizations; legal practitioners; United Nations agencies; and individuals involved in efforts to ensure the protection and promotion of human rights in the context of counter-terrorism.

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Principles and guidelines

For the purpose of assisting legislators, decision makers in the areas of policy and practice, judges, lawyers and prosecutors, this document identifies and explains nine guiding principles and guidelines concerning the national proscription of organizations in the context of countering terrorism:

1. National proscription of organizations and associated individuals and resulting sanctions must be based on legislation clearly establishing the grounds and procedures for proscription. If an individual is subjected to administrative and criminal measures due to his or her activities being deemed to be in support of a proscribed organization, the principle of non-retroactivity must be respected.
2. National decisions on the proscription of organizations, or related sanctions against organizations, and their members and/or associated individuals must be made on a case-by-case basis. Decisions to proscribe must be necessary and proportionate, taking into account the particular nature of the impact of the proscription or related sanctions.
3. Once a decision has been made to proscribe an organization, and/or to impose related sanctions upon it and its members and/or associated individuals, the entity and/or, where possible, its members and/or associated individuals should be promptly informed of the proscription and its factual grounds, as well as the resulting consequences. This should be done to the extent possible through reasonable, proactive, efforts made on behalf of the proscribing entity.
4. National proscriptions and resulting sanctions must be subject to regular and independent review to ensure that they remain necessary and as such, proportionate in assuring the intended purpose of the sanction.
5. An entity on a national proscription list, or a person whose legal rights and obligations are affected by such proscription, shall have the right to apply for review of the proscription or non-implementation of applicable sanctions. Such entities or persons should have the right to court review of the decision resulting from such an application; and to make a fresh application for review of the proscription in the event of a material change of circumstances or the emergence of

new evidence relevant to the listing. The review may be done at first instance by the original decision-making entity if they have the competency and capacity to do so in a timely manner, then by a competent court.

6. The proscription of organizations must respect the principles of equality and non-discrimination. Organizations must not be proscribed solely on the basis of their links to racial, ethnic, religious or linguistic minorities. The gender impact of proscription and resulting sanctions of family members including children and dependants should also be addressed.
7. The national proscription of organizations must not be used to suppress or deny the rights to freedom of association and of peaceful assembly, or as a means of quashing political dissent, silencing of unpopular or minority views or limiting the peaceful activities of civil society. States should not indirectly compel individuals to join particular State-sponsored or State-approved organizations by proscribing other organizations whose activities would otherwise be lawful.
8. Any individual whose individual human rights have been violated by a decision to proscribe an organization or to implement related sanctions must have access to an effective remedy for that violation. The appropriate remedy must be determined on a case-by-case basis in line with applicable international human rights standards.
9. All persons have the right to representation by competent and independent legal counsel of their choosing.

I. Introduction

1. The United Nations Global Counter-Terrorism Strategy resolves that United Nations Member States will take “urgent action to prevent and combat terrorism in all its forms and manifestations.”¹ The proscription of organizations and related targeted sanctions are widely recognized as a necessary measure for the prevention of terrorism, however, such proscriptions need to be in line with obligations under international human rights law.
2. Proscription can be applied at the national, regional and international level. Some States have adopted domestic proscription procedures, as well as provisions to combat support to organizations or individuals engaged in terrorist activities. In addition, regional organizations, for example the European Union, have established mechanisms to proscribe organizations.² A mechanism to that end has also been established at the international level by the United Nations Security Council for the listing of entities and individuals found to be associated with ISIL or Al-Qaida and the imposition of sanctions on listed entities and persons. United Nations Member States are obliged to adopt national procedures for the implementation of obligations under this listing mechanism, as well as their obligations to prosecute, suppress and prevent acts of terrorism, as per United Nations Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014).

A. Purpose of the guide

3. This Guide is not intended to cover all issues concerning the national proscription of terrorist organizations. Its main purpose is to address the key challenges presented when States take national measures to proscribe terrorist organizations, their members and/or associated individuals in their efforts to counter, suppress and prevent acts of terrorism, including through the implementation of sanctions imposed by the Security Council through the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities (“ISIL (Da'esh) and Al-Qaida Sanctions Committee”).³ It also aims to provide Member States with legal and practical

guidance to assist them in ensuring that the domestic process for proscribing entities and/or individuals, and the consequences that flow from this, comply with international human rights law. The Guide is aimed at legislators, decision makers in the areas of policy and practice, judges, lawyers and prosecutors.

4. This document should be read in conjunction with other Basic Human Rights Reference Guides of the Counter-Terrorism Implementation Task Force (CTITF) Working Group on protecting human rights while countering terrorism, especially those on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*” (which includes a brief description of the sources of international law and of the United Nations human rights mechanisms that are referred to in this document)⁴ and on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*” as well as Fact Sheet No. 32 of the Office of the High Commissioner for Human Rights, on *Human Rights, Terrorism and Counter-Terrorism*.

B. Definitions

5. In the context of countering terrorism, the “proscription of organizations” is the act of designating certain organizations and their members and/or associated individuals, as “terrorist organizations,” “terrorists,” individuals “associated with terrorism,” or other similar forms of listing or designation. Proscription may take place at the national level; at the regional level (for example, through regulations adopted by the European Union); or at the international level (“listing” by the United Nations Security Council’s ISIL (Da’esh) and Al-Qaida Sanctions Committee). Proscriptions at the national level are made either as a result of implementation of Security Council or regional listings, or through domestic law processes for the listing of additional terrorist entities, their members and/or associated individuals. For the purposes of the principles and guidelines set out in this document “proscription of organizations” refers to those designations which entail an actual or potential interference with the rights of individuals under international human rights law.
6. For the purposes of this document, “sanctions” are treated as actions taken by States in respect of certain individuals or entities as a result of their proscription. Sanctions may include travel bans, the freezing of assets, arms embargoes, or a ban on the existence and operation of the organization as a whole.⁵ For the purposes of the principles and guidelines set out in this document “sanctions” are those which, entail an actual or potential interference with the rights of individuals under international human rights law.

C. United Nations Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee

7. United Nations Member States have an obligation to implement the sanction measures arising from the listing of an individual or entity as associated to ISIL or Al-Qaida by the Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee.⁶ The ISIL (Da'esh) and Al-Qaida sanctions regime originates from sanction measures imposed on the Taliban by resolution 1267 (1999) and subsequently extended in 2000 to Usama bin Laden and Al-Qaida by resolution 1333 (2000). The sanctions regime was modified by subsequent Security Council resolutions,⁷ and with the adoption of resolutions 1988 (2011) and 1989 (2011) on 17 June 2011, the Security Council split the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan ("1267 Committee") into two Committees, namely, the Al-Qaida Sanctions Committee and the Security Council Committee established pursuant to resolution 1988 (2011) ("1988 Sanctions Committee").⁸ More recently, resolution 2253 (2015) modified the name of the Committee referring expressly to ISIL (Da'esh) and Al-Qaida and associated individual, groups, undertakings and entities. The ISIL (Da'esh) and Al-Qaida Sanctions Committee is tasked with the listing and delisting of entities and individuals associated with ISIL or Al-Qaida.⁹
8. The ISIL (Da'esh) and Al-Qaida sanctions regime requires Member States to freeze funds and other financial assets or economic resources controlled by or on behalf of listed entities, their members and/or associated individuals, to impose a travel ban on them, by preventing the entry into or transit through their territories, as well as an arms embargo by preventing the direct or indirect supply, sale or transfer of arms and related material to listed entities, their members and/or associated individuals.¹⁰

Listing and delisting of entities, their members and/or associated individuals

9. United Nations Member States may request the ISIL (Da'esh) and Al-Qaida Sanctions Committee to add names to the Sanctions List where they consider that an individual or entity meets the criterion of "association" with ISIL or Al-Qaida,¹¹ and are encouraged to establish national mechanisms or procedures for the identification of such entities and individuals.¹² Such nomination is accompanied by information that forms the basis for the proposed designation ("statement of case") along with certain identifying information.¹³ Under Security Council resolution 1822 (2008), a system for publicly disclosing

“narrative summaries” and “all relevant publicly releasable information” was introduced.¹⁴ Accessible on the website of the ISIL (Da’esh) and Al-Qaida Sanctions Committee, the summaries consist of allegations expressed with varying degrees of specificity. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter the Special Rapporteur on human rights while countering terrorism) has raised concerns about the absence of “detailed explanation of the evidential basis on which the assertion is made” in such summaries.¹⁵

10. Proposals for designation are adopted on a consensus basis by the ISIL (Da’esh) and Al-Qaida Sanctions Committee.¹⁶ In practice, the Committee follows a “no objection” procedure, meaning if no State has opposed a listing proposal within the specified period (or has put it “on hold”), the individual or entity will be added to the list.¹⁷ The Special Rapporteur on human rights while countering terrorism is concerned that the Sanctions Committee as a whole does not examine the evidence justifying a designation, and may not have all the relevant information available to it,¹⁸ a problem recognized by the Security Council itself.¹⁹ Concerns have also been voiced that bilateral diplomatic negotiations and selective disclosure of intelligence sometimes take place prior to a designation among States sympathetic to one another’s positions, and that there is no duty on designating States to disclose exculpatory information to the Committee.²⁰

Delisting requests from States

11. The ISIL (Da’esh) and Al-Qaida Sanctions Committee may consider requests for delisting from States. If a member of the Committee objects to a request, reasons for objection must be provided and the Committee is called on to share its reasons with relevant Member State(s) and national and regional bodies where appropriate.²¹ Decisions on delisting are adopted on a consensus basis following the “no objection” procedure.²² For the purposes of this process, the co-sponsors of listing requests are not considered designating States. The Committee undertakes annual reviews of all names on the Sanctions List that have not been reviewed in three years or more.²³
12. When a designating State requests delisting, it may provide all the relevant information to the Committee and the delisting will be granted unless there is reverse consensus to oppose it, that is, all Committee members object to the delisting. This kind of delisting request does not involve the Office of the Ombudsperson but follows a similar process in terms of the reverse consensus and trigger mechanism.²⁴

- Other delisting requests - Office of the Ombudsperson ISIL (Da'esh) & Al-Qaida Sanctions Committee
13. Alongside a number of reforms aimed at enhancing compliance of the sanctions regime with due process,²⁵ Security Council resolution 1904 (2009) established an Office of the Ombudsperson to receive delisting requests from entities and individuals on the Al-Qaida Sanctions List.²⁶ The Ombudsperson is mandated to gather information and to engage in a dialogue with the petitioner, as well as relevant States and other United Nations bodies,²⁷ with regard to such requests.²⁸ The Ombudsperson presents a report to the Sanctions Committee which, based on an analysis of all available information, subject to confidentiality restrictions, and the Ombudsperson's observations, sets out for the Committee the principal arguments concerning the specific delisting request; and includes a recommendation.²⁹ If the Ombudsperson recommends the retention of the listing, sanction measures will remain in place unless a Committee member submits a delisting request and the person is delisted through the normal Committee consideration of the same.³⁰ If the Ombudsperson recommends delisting, the name of the individual or entity will be removed from the list after 60 days, unless there is a consensus decision by the Committee to the contrary within that time period, or the matter is referred to the Security Council for a vote.³¹ Within 60 days, the Committee shall inform the Ombudsperson whether sanction measures regarding a delisting request are retained or terminated and approve an updated narrative summary where appropriate. In cases where the Committee informs the Ombudsperson that it has followed his or her recommendation, the Ombudsperson immediately informs the Petitioner of the Committee's decision and submits to the Committee, for its review, a summary of the analysis contained in the Comprehensive Report. The Committee reviews the summary within 30 days of the decision to retain or terminate the listing, and communicates its views on the summary to the Ombudsperson,³² for transmittal to the petitioner.³³
 14. The Office of the Ombudsperson has contributed significantly to improving access to a remedy and due process in relation to targeted sanctions under the ISIL (Da'esh) and Al-Qaida sanctions regime.³⁴ Importantly, the reverse consensus requirements introduced by resolution 1989 (2011) create a strong presumption that the Ombudsperson's recommendation will be heeded.³⁵ However, the "ultimate decision-making power continues to reside with the Committee" when the recommendation in the Comprehensive Report is to delist, while the power to retain the listing rests with the Ombudsperson.³⁶ For this reason, concerns have been expressed that the mandate of the

Ombudsperson does not meet the structural due process requirement of objective independence from the Committee, and proposals have been made to make it an independent, quasi-judicial procedure with final decision-making powers and the unconditional ability to provide an effective remedy.³⁷ Concerns have been expressed that the safeguards available through the Ombudsperson procedures do not meet international standards related to due process and the rule of law.³⁸ The Ombudsperson and Member States have made clear that due process can be enhanced, in particular regarding access to classified or confidential material.³⁹

International human rights law

15. Article 24(2) of the Charter requires the Security Council to discharge its duties “in accordance with the purposes and principles of the United Nations,” which include the promotion and protection of human rights. In this regard, it has been held that article 24(2) of the United Nations Charter requires an interpretive presumption that the Security Council does not intend that actions taken pursuant to its resolutions should violate human rights.⁴⁰

D. Key issues

16. All national counter-terrorism measures, including those involving the proscription of organizations, must comply fully with States’ international human rights obligations. The protection and promotion of human rights while countering terrorism is both an obligation of States⁴¹ and a condition for an effective and sustainable counter-terrorism strategy.
17. Several human rights are at risk of being violated when proscribing organizations, most notably the rights to privacy and property, the right to social security, and the freedoms of association, expression and movement. The absence of clear, established delisting mechanisms may also negatively affect the right to an effective remedy. Additionally, if an individual is charged with a criminal offence as a result of his or her membership or support of a proscribed organization, the right to judicial review and other fair trial rights also apply.
18. Furthermore, concerns have been expressed over the impact of the listing and delisting regime of the ISIL (Da’esh) and Al-Qaida Sanctions Committee, and of related national procedures for its implementation, on the human rights of those affected. As the High Commissioner for Human Rights has noted,

despite the reforms, there is still no “independent judicial or quasi-judicial review either of a decision to list or denial of a request to de-list.”⁴²

19. States have adopted national measures for the proscription of organizations with varying consequences on the enjoyment of human rights. Several countries have introduced periodic review mechanisms of proscription procedures, which have been identified as an example of a best practice.⁴³ The proscription of organizations has, however, also given rise to the arbitrary banning of organizations based on ill-defined or vague legislation, sometimes with the objective of banning political dissent or otherwise peaceful means of expression. Experience has shown that the absence of safeguards and procedural rules in the proscription of organizations may have a negative impact upon human rights and fundamental freedoms.⁴⁴

II. Guiding principles and guidelines

20. The right to freedom of association is well-established under international human rights law. Various international and regional human rights treaties include the right of an individual to form, join and participate in trade unions, associations, non-governmental organizations, business enterprises and other bodies.⁴⁵ The exercise of freedom of association is inter-linked with other rights such as freedoms of opinion and expression, the right of peaceful assembly, rights to work and to just and favorable conditions of work.⁴⁶ When States take actions to proscribe organizations (this could include a sanction that restricts an association's ability to receive funding or carry out financial transactions), this may frequently have an impact on the rights of individuals to freedom of association and other rights, including restricting an association's ability to carry out its statutory activities.⁴⁷ States have an obligation to guarantee the full enjoyment of these rights.⁴⁸

1. *National proscriptions of organizations, its members, and/or associated individuals and resulting sanctions must be based on legislation clearly establishing the grounds and procedures for proscription. If an individual is subjected to administrative measures due to his or her activities being deemed to be in support of a proscribed organization, the principle of non-retroactivity must be respected.*

1.1 Proscriptions based on clear and precise law

21. The principle of legality requires that prohibited conduct must be clearly defined in the law, and that the law should clearly set out the consequences that follow so as to allow individuals to understand what acts and omissions are prohibited.⁴⁹ Similarly, decisions to proscribe an organization must be taken in accordance with domestic laws that set out the legal basis and procedures for proscription.⁵⁰ A designated, competent authority that is granted such power by law should make the decision to proscribe any organization, its members and/or associated individuals. The relevant law should also be officially promulgated, published, and accessible. This will allow individuals to foresee the legal consequences of their conduct, so that anyone establishing, joining or

participating in or supporting the activities of an organization can understand what activities may lead to a risk of proscription or unlawful conduct.

22. The definition of a “member” of a designated organization should be clearly defined in national legislation. States should ensure that the legislation clearly indicates what the consequences of proscription are for individuals, in addition to ensuring that the impact of proscription on the individual is proportionate and necessary.⁵¹ National legislation that fails to define “membership,” or fails to require and define a link between the individual or their membership and the organization’s prohibited status or imposed sanctions, may be contrary to the principle of legality. This is especially the case where such membership leads to targeted sanctions or criminal penalties such as imprisonment. The former United Nations Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism stated that, in a number of countries, the listing of groups as terrorist entities is accompanied by safeguards, including the need to establish, on reasonable grounds, that the entity has knowingly carried out or participated in or facilitated a terrorist act.⁵² Only then can the measure, the sanction, meet the criteria of necessity. The sanction must be proportionate to the risk that the actions of the said individual or entity reasonably pose to the security of others. However, this standard or criterion is still to be widely accepted. Security Council resolution 1822 (2008) also recognized the continuing efforts of Member States to ensure that fair and clear procedures exist for placing individuals, groups, undertakings, and entities on the list created pursuant to resolutions 1267 (1999) and 1333 (2000).⁵³
23. The United Nations High Commissioner for Human Rights, as well as the United Nations Human Rights Committee, the United Nations Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, and others, have highlighted serious concerns related to the enactment by States of broadly formulated national counter-terrorism legislation, where such legislation contains definitions of terrorism and related offences that lack precision and allow for arbitrary or discriminatory enforcement by authorities, or otherwise undermine the enjoyment of human rights. Vague definitions may make it possible to use the proscription of organizations to jeopardize legitimate activities in a democratic society, such as the expression of political dissent, human rights advocacy and participation in public demonstrations.⁵⁴

1.2 Criminalization of conduct relating to a proscribed organization

24. In the context of counter-terrorism, proscriptions may lead to criminal proceedings under domestic law as a result of the criminalization of the activities of members of an organization that would otherwise be lawful. In some cases, this can lead to a breach of the principle of non-retroactivity enshrined in Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR). In all cases, it allows a State to use broad measures to repress the activities of certain groups, which, if not subjected to robust and independent oversight mechanisms and review, can lead to the silencing of political views and/or discrimination against a particular group.⁵⁵
25. The principle of non-retroactivity in this context means that a person cannot be prosecuted for his or her membership of, funding, recruitment or support for, a proscribed organization if, at the time the alleged offence took place, the organization was not proscribed.⁵⁶ However, conduct of this kind may at the time already be an offence under the law for other reasons. For example, it may be a criminal offence for a member of an organization to engage in the preparation and execution of an act that results in serious injury or death of civilians, with the purpose of spreading terror, regardless of the status of the organization at the time the acts occurred. Similarly, if a person were to fundraise or transfer funds to support or carry out specific terrorist acts, this person could also be prosecuted for these acts, as defined under the relevant national or international laws.
2. *National decisions on the proscription of organizations, or related sanctions against organizations must be made on a case-by-case basis. Decisions to proscribe must be necessary and proportionate, taking into account the particular nature of the impact of the proscription or related sanctions.*

2.1 National decisions made on a case-by-case basis

26. Each case must be determined according to its particular circumstances.⁵⁷ This is in accordance with the right to a fair trial, to judicial review and the presumption of innocence.⁵⁸

2.2 National decisions based on an actual threat posed

27. Decisions on proscription must be based on the actual threat posed by the organization at the time when the decision is taken and not merely on speculation.⁵⁹ While it may be permissible to criminalize preparatory activities,

such measures must adhere to applicable international human rights law. Accordingly, unless the founding document of the group or association clearly states that it would use terrorist aims or means to achieve its goals, a State's determination of whether or not an association may be proscribed on the basis of it being a "terrorist" organization must be based on facts presented with regard to its activities.⁶⁰ Counter-terrorism strategies will inevitably involve certain preventive measures to enable States to confront organizations and their members or supporters during the planning phase of acts of terrorism. If these measures involve restriction of certain fundamental rights, such as the right to freedom of expression or the freedom of association, it is essential that the limitations are justified and not "unnecessarily restrictive."⁶¹

A minimum guarantee identified in the implementation of any sanctions against individuals or entities listed as terrorist is that: "Sanctions against the individual or entity are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act (as properly defined [...])."⁶²

2.3 National proscription linked to the incitement to terrorism

28. There may in some circumstances be an overlap between the need to proscribe an organization in the context of countering terrorism and the obligation in article 20 of the ICCPR to prohibit "propaganda for war" and "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." Article 5(1) of the ICCPR also clearly specifies that groups or persons cannot "engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized [in the ICCPR] or at their limitation to a greater extent than what is allowed by the [ICCPR]."⁶³
29. The Human Rights Committee has noted that States Parties to the ICCPR have an obligation to prohibit individuals and organizations from engaging in propaganda for war or incitement to national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.⁶⁴ This may overlap with the incitement to terrorism, an offence considered in the Basic Human Rights Reference Guide on "*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*."⁶⁵

2.4 Proportionality of national decisions

30. States should also consider the impact of the proscription on individuals who are members or individuals associated to a listed organization. If targeted sanctions will disproportionately impact upon the individual human rights of the persons concerned, the State may be in violation of its obligations under international human rights law. In order to determine whether these measures are proportionate to the legitimate aim that they were supposed to pursue, the European Court of Human Rights examined “whether [the national authorities] took sufficient account of the particular nature” of each case and “whether they adopted, in the context of their margin of appreciation, the measures that were called for in order to adapt the sanctions regime” to a specific individual’s situation.⁶⁶ The effects of proscription should also not disproportionately impact asylum seekers when persons seeking protection come from geographical areas that are under the influence or control of proscribed organizations.

2.5 National decisions having an impact on the delivery of humanitarian assistance

31. It is essential that humanitarian organizations and their staff can have access to individuals who are in a vulnerable position due to external factors such as armed conflicts or natural disasters. The Committee on Economic, Social and Cultural Rights has noted that the rights to life and of economic, social and cultural rights, such as the rights to food and water, may be affected.⁶⁷ Humanitarian principles require that assistance is provided on the basis of need only, and that no other criteria should be taken into consideration. Humanitarian organizations need to be able to access conflict and disaster-affected individuals, regardless of their ethnic, social, political or other background and irrespective of whose control they are under, in accordance with international humanitarian law.⁶⁸ According to international humanitarian law, parties to a conflict must, provided that certain conditions are fulfilled, allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.⁶⁹
32. There has been an increasing trend in recent years to recognize that humanitarian efforts should involve local actors on the ground in order to facilitate the supply of provisions to those most in need. Where an armed conflict or civil unrest is taking place, this involvement may necessitate working with non-State armed groups that are *de facto* in control of the areas of concern where people in need are located.⁷⁰ However, the increasing trend towards proscription of organizations that promote or are associated with terrorism has proven

to have a considerable impact on the ability of humanitarian organizations and their staff to effectively function and reach populations in need.⁷¹

33. In a recent national decision, for example, it was held that the statute criminalizing the provision of material support to foreign terrorist organizations was constitutionally valid.⁷² The plaintiffs in this case argued that such a construction of proscription blocked peaceful measures, such as training of terrorist groups to facilitate respect of international human rights and humanitarian law, as well as instruction on how to engage with the United Nations. However, the court regrettably did not accept the plaintiffs' argument that the law should instead be formulated to only criminalize conduct accompanied by proof of a specific intent to further terrorist activities.
34. This inherent tension between counter-terrorism measures and the provision of material support to organizations associated with terrorism only strengthens the need for clear and precise definitions of applicable terms, set out in the law, as well as periodic review of proscribed organizations, with established mechanisms for delisting (see Guideline 4 herein). Such review should include consideration of humanitarian exemptions to alleviate the impact of measures on populations in need.
3. *Once a decision has been made to proscribe an organization, and/or to impose related sanctions upon it, its members and/or associated individuals, the entity and/or where possible, its members and/or associated individuals should be promptly informed of the proscription and its factual grounds, as well as the resulting consequences. This should be done to the extent possible through reasonable, proactive, efforts made on behalf of the proscribing entity.*
35. A group designated as proscribed should be informed of the reasons and evidence on which the proscription is based so that they may be able to legally challenge the decision.⁷³ While it may be difficult to notify all individuals that are listed due to their presumed affiliation to a proscribed group, the severity of the impact of the listing on their lives and members of their families requires that all possible efforts to do so be exhausted. Any failure to notify or disclose all relevant information to the group or individual in a timely manner must not interfere with the due process rights of a listed group or individuals in any related proceedings.⁷⁴
36. All possible efforts should be exhausted to inform a designated group or individual of their obligations flowing from the proscription, and of associated

rights, including those related to delisting and the implementation of sanctions (see Guideline 5 herein).

A minimum guarantee identified in the implementation of any sanctions against individuals or entities listed as terrorist is that: “The listed individual or entity is promptly informed of the listing and its factual grounds, [and] the consequences of such listing [...]”⁷⁵

4. *National proscriptions and resulting sanctions must be subject to regular and independent review to ensure that they remain necessary and that their consequences and impact are proportionate.*

4.1 Regular and genuine review of the continued need for national proscription

37. Periodic and independent review of the proscribed organizations, and the sanctions that flow from such proscription, is essential to ensure their continued need and proportionality.⁷⁶ The European Court of Human Rights, for example, in relation to the rights of individuals, took the view that, where States decide to adopt measures such as the listing of proscribed organizations, “the maintaining or even reinforcement of measures against individuals over the years must be explained and justified convincingly.”⁷⁷

38. Periodic review should include mechanisms allowing for a genuine review to ensure that the measures continue to be necessary and that the evidence upon which the proscription is based still supports continuing the restrictive measures.⁷⁸ If States cannot justify restrictions on this basis, States will be responsible for any limitation upon enjoyment of the concerned individual’s rights as a violation of those rights.⁷⁹

39. This is also important to ensure that any new information regarding an organization, or changes to its aims or membership, is assessed since this information may alter the assessment of any threat posed by it.⁸⁰ As identified by the Special Rapporteur on human rights while countering terrorism:

*“Without these safeguards, the lists may become open-ended in duration, thereby making temporary sanctions such as the freezing of funds tantamount to the confiscation of funds, a permanent measure.”*⁸¹

4.2 Regular review of the consequences and impact of national proscription

- 40. States must ensure that the least restrictive measures are taken in any national proscription and that any restrictions on an individual's rights as a result of proscription are necessary to protect national security and public order, and are proportionate to those ends.⁸²
- 41. Mechanisms should also be established to speedily consider claims of mistaken identity or premature listings.⁸³
- 5. *An entity on a national proscription list, or a person whose legal rights and obligations are affected by such proscription, shall have the right to apply for review of the proscription or non-implementation of applicable sanctions. Such entities or persons should have the right to court review of the decision resulting from such an application; and to make a fresh application for review of the proscription in the event of a material change of circumstances or the emergence of new evidence relevant to the listing. The review may be done at first instance by the original decision-making entity if they have the competency and capacity to do so in a timely manner, then by a competent court.*

5.1 Right to apply for delisting or non-implementation of sanctions

- 42. Given that proscriptions affect the rights and obligations of organizations, their members and/or associated individuals, the entity and individuals concerned must be able to effectively challenge the legality of the decision or the effects of the proscription.⁸⁴ This is a requirement of the right to access to justice, including the right to an effective remedy, as explained in the Basic Human Rights Reference Guide on "*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*."⁸⁵

5.2 Right to court review of decision on application for delisting or non-implementation of sanctions

- 43. As a minimum guarantee in the implementation of any sanctions against individuals or entities listed as terrorist, the Special Rapporteur on human rights while countering terrorism recommended that the listed individual or entity should have a right to court review of the decision from an application for delisting or non-implementation of sanctions.⁸⁶ However, it has been accepted by others, such as the Financial Action Task Force (FATF) that court review

is not required as long as the review is done by an independent competent authority.⁸⁷

5.3 Right to fresh application for delisting

44. The former Special Rapporteur recommended that in the event of a material change of circumstances or the emergence of new evidence relevant to the listing, a listed individual or entity has the right to make a fresh application for de-listing or lifting of sanctions to the relevant authority.⁸⁸ The former Special Rapporteur opined that this is essential to ensure that the measures continue to be necessary and that the evidence upon which the proscription is based still supports continuing the restrictive measures.⁸⁹ Delisting is also addressed in Security Council resolution 1904 (2009), which directs the ISIL (Da'esh) and Al-Qaida Sanctions Committee to remove from the Consolidated List of members and/or associates of Al-Qaida, Usama bin Laden, or the Taliban who no longer meet the criteria established in the relevant resolutions⁹⁰ and individuals, groups, undertakings, or entities seeking to be removed from the Security Council's ISIL (Da'esh) and Al-Qaida Sanctions List can submit their request for delisting to the Ombudsperson.⁹¹
6. *The proscription of organizations must respect the principles of equality and non-discrimination. Organizations must not be proscribed solely on the basis of their links to racial, ethnic, religious or linguistic minorities. The gender impact of proscription and resulting sanctions of family members including children and dependants should also be addressed.*
45. Counter-terrorism measures limiting the exercise of rights and freedoms, including the freedom of association, must be non-discriminatory in nature.⁹² Any grounds for the proscription of an organization justified solely by linking terrorism to a particular race, religion, ethnicity or social origin is contrary to the principles of equality and non-discrimination.
46. A State should not proscribe an organization on the sole basis that it protects, promotes or defends minority rights or religious rights. The fact that an organization calls for achieving, through peaceful means, ends that are contrary to the interests of the State is not a sufficient basis for its proscription as a counter-terrorism measure.⁹³ It is only where terrorist means or tactics are used or called for by an organization that the organization may be proscribed.⁹⁴
47. A State should also be mindful of the gender impact of proscription and resulting sanctions on the human rights of family members, children, and

dependants, such as the right to private and family life.⁹⁵ In relation to children, States have the obligation to primarily consider the child's best interest⁹⁶ and to protect children from "all forms of discrimination or punishment on the basis of the status, activities, expressed options, or beliefs of the child's parents, legal guardians, or family members."⁹⁷

7. *The national proscription of organizations must not be used to suppress or deny the rights to freedom of association and of peaceful assembly, or as a means of quashing political dissent, silencing of unpopular or minority views or limiting the peaceful activities of civil society. States should not indirectly compel individuals to join particular State-sponsored or State-approved organizations by proscribing other organizations whose activities would otherwise be lawful.*

7.1 Freedoms of association and assembly

48. The rights of peaceful assembly and to freedom of association, as articulated in articles 21 and 22 of the ICCPR, serve as a platform for the exercise of other rights, such as the right to freedom of expression and freedom of movement, right to culture, right to freedom of thought, conscience and religion, and the right to political participation. These rights are also crucial to the work of civil society as they are the basis for the creation and operation of political parties and non-governmental organizations. Any limitation on the enjoyment of these rights must be in strict accordance with international human rights law.⁹⁸

7.2 Limiting the peaceful activities of civil society

49. Contrary to the freedoms of assembly and of association, national measures to proscribe organizations have been used as a means to limit or prevent the peaceful activities of civil society. This means, for example, that an organization providing legal, medical, or other assistance, including legal advice to suspected terrorists or to organizations facing proscription, cannot be proscribed on that basis.⁹⁹ If such organizations are proscribed without valid grounds, this could lead to violations of human rights both upon the organization directly affected as well as those individuals seeking legal advice.

7.3 Suppressing political dissent or unpopular views

50. The freedoms of opinion, expression, and association allows, individually or in association with others, to criticize State policies and actions. For example, if an individual suspects a State of or has knowledge of a State committing

human rights violations, he or she should be allowed to express these views.¹⁰⁰ This is also the case in relation to counter-terrorism policies and practices. Individuals must be able to express dissent or opposing views to the State and to criticize and seek to hold to account State action in that regard, including through organizations.

7.4 Compulsion to join State-sponsored or approved organizations

51. Additionally, the Universal Declaration of Human Rights provides that no one may be compelled to belong to an association.¹⁰¹ A State that indirectly compels a person to join an organization by proscribing other organizations that address similar interests and issues will violate the right to freedom of association as well as the right to freedom of thought, conscience and religion. Minority rights may also be affected by such acts. Accordingly, a State cannot proscribe an organization on the basis that a State-supported organization dealing with similar issues already exists.
8. *Any individual whose individual human rights have been violated by a decision to proscribe an organization or to implement related sanctions must have access to an effective remedy for that violation. The appropriate remedy must be determined on a case-by-case basis in line with applicable international human rights standards.*
52. Any person whose human rights or fundamental freedoms have been violated in the course of any action to counter terrorism, including through proscription and related sanctions measures, must be provided with access to effective remedies and reparation.¹⁰² This means that if the proscription of an organization leads to a violation of international human rights law, the State must ensure that those whose rights have been violated have access to an effective remedy and reparation that is accessible and can be enforced through judicial, administrative or legislative avenues. The former Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism has noted that compensation must also be available to third parties wrongly affected by a proscription.¹⁰³
53. Where there is a change of circumstances at the national level which would warrant the delisting of an organization, the State should do all it can to remove the names from its listing as quickly as possible and to destroy that information.¹⁰⁴ The State should also ensure that formerly listed persons do not incur any violations in the future in relation to the terminated listing.¹⁰⁵

54. Any cases of mistaken identity should be dealt with swiftly and wronged parties should be provided with compensation, alongside other forms of reparation, as applicable.¹⁰⁶
9. *All persons have the right to representation by competent and independent legal counsel of their choosing.*
55. Any individual whose legal rights and obligations are affected by decisions on the proscription of organizations, or related sanctions against organizations, and their members and/or associated individuals, is entitled to legal representation by counsel of his or her choosing.¹⁰⁷ This right applies in both criminal and non-criminal proceedings.¹⁰⁸
56. Any limitation to this right must be based on reasonable and objective grounds, capable of being challenged by judicial review, it must not be permanent, it must not prejudice the ability of the person to answer the case, if the person is held in custody, it must not result in the detained person effectively held incommunicado or interrogated without the presence of counsel.¹⁰⁹

Notes

- 1 The United Nations Global Counter-Terrorism Strategy adopted under General Assembly resolution 60/288 (2006), Plan of Action, preamble para. 2.
- 2 Council Common Position 2005/936/CFSP, 21 December 2005, L 340/80.
- 3 Security Council resolution 2253 (2015) added “ISIL (Da’esh)” to the name of the Sanctions Committee, although the Committee had already listed ISIL and individuals affiliated with it due to their continued affiliation with Al-Qaida – ISIL was simply the re-naming of the Iraqi branch of Al-Qaida. The organization Boko Haram and the individuals associated with it were also listed by the Committee due to Boko Haram’s declared affiliation with ISIL.
- 4 See further the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*,” Section I (B) and (C).
- 5 Security Council resolution 1267 (1999), para. 4; Security Council resolution 1373 (2001), paras. 1(c) and 2(g); and Security Council resolution 1566 (2004), para. 9.
- 6 Security Council resolution 1452 (2002), para. 1, as amended by resolution 1735 (2006), preamble para. 15; resolution 2368 (2017). See also Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning ISIL (Da’esh), Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 11, which allows exemptions to an asset freeze to cover basic expenses to be determined by Member States on the condition that the Member State notifies the Committee, and it does not take a negative decision within three working days. Any such request requires approval by the Committee.
- 7 These include resolutions 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), and a number of more recent resolutions, the most recent was on 20 July 2017 (resolution 2368 (2017)).
- 8 Under the 1988 sanctions regime, the criterion for listing is “entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.” The 1988 Committee disposes of the following sanction measures: travel ban, assets freeze, and arms embargo. There are additional exemptions to the measures in the 1988 regime, including facilitating reconciliation in Afghanistan. The Sanctions Committee may also consider requests from States to remove names from the list, as well as requests submitted by petitioners through the Focal Point for De-Listing established pursuant to Security Council resolution 1730 (2006).
- 9 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning ISIL (Da’esh), Al-Qaida and Associated Individuals and Entities, *Guidelines of the*

- Committee for the Conduct of its Work* (as at 23 December 2016), paras. 6(a) and 7. The listing criteria are defined in Security Council resolution 2368 (2017), para. 2. The Committee is a subsidiary organ of the Security Council, comprised of all of its 15 members, and is assisted by the Analytical Support and Sanctions Monitoring Team (Monitoring Team), which consists of independent experts.
- 10 Security Council resolution 1267 (1999), para. 4(a) and (b); modified most recently in Security Council resolution 2368 (2017), para. 1.
 - 11 The criteria establishing the “association” with ISIL or Al-Qaida can be found in Security Council resolution 2368 (2017), para. 2.
 - 12 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning ISIL (Da’esh), Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 6(b). The designating State is expected to have reviewed the underlying information, but not all Member States have clear procedures for conducting such a review.
 - 13 See Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 6; Security Council resolution 1617 (2005), paras. 4 and 6; Security Council resolution 1735 (2006), para. 5; Security Council resolution 1822 (2008), para. 12; Security Council resolution 1989 (2011), para. 13; Security Council resolution 2083 (2012), para. 11, and Security Council resolution 2161 (2014), paras. 30 and 32 and most recently Security Council resolution 2368 (2017), paras. 50-51.
 - 14 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 9. These summaries are prepared with the assistance of the Monitoring Team and should be as detailed and specific as possible (Security Council resolution 2368 (2017), para. 55). See also Security Council resolution 2368 (2017), para. 51.
 - 15 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 25.
 - 16 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 4(a).
 - 17 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), paras. 4(c) and (e).
 - 18 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 26.
 - 19 Security Council resolution 1989 (2011), para. 18.

- 20 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 26. Here, he also described the political and diplomatic character of the listing process as raising concerns that “the regime is open to misuse as a means of targeting individuals and entities in order to advance national political goals essentially unrelated to Al-Qaida, or even that States might use listing ‘as a convenient means of crippling political opponents.’”
- 21 Security Council resolution 2083 (2012), para. 33; Security Council resolution 2161 (2014), para. 58 and Security Council resolution 2253, para. 71, Security Council resolution 2368 (2017), para. 77.
- 22 Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 7(j). The Secretariat is required to notify relevant Member State(s) as soon as possible after a decision on a delisting request. *Ibid.*, paras. 7(k) and (n).
- 23 Security Council resolution 2083 (2012), paras. 39-42; Security Council resolution 2161 (2014), paras. 66-67, Security Council resolution 2253 (2015), paras. 80-82 and Security Council resolution 2368 (2017), paras. 85-88. See also Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 10.
- 24 Security Council resolution 2368 (2017), para. 69.
- 25 For example: providing for notification to the listed person (Security Council resolution 1735 (2006), paras. 10-11); requiring the production of statements and narrative summaries of reasons for listings (Security Council resolution 1822 (2008), para. 12); and removing the requirement for consensus decisions by the Sanctions Committee (Security Council resolution 1989 (2011), paras. 23 and 27. Among others, the United Nations High Commissioner for Human Rights and the Special Rapporteur on human rights while countering terrorism have criticised the listing and delisting processes for their lack of adherence to due process. See Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), paras. 15-16; Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/88), para. 25. Member States have also called for fair and clear procedures in relation to the sanctions regime, see for example General Assembly resolution A/RES/68/178, para. 11; Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1), para. 29; 2005 World Summit Outcome (A/RES/60/1), para. 109.
- 26 Security Council resolution 1904 (2009), paras. 20-21. The procedure is laid out in Annex II of Security Council resolution 2368 (2017).
- 27 That is to say the Sanctions Committee, as well as the Monitoring Team (a group of experts which assists the Committee), see <https://www.un.org/securitycouncil/ombudsperson/procedure>.

- 28 The Ombudsperson may also request the Committee to grant exemptions from travel bans for the purpose of interviewing petitioners, see Security Council resolution 2368 (2017), para. 80. See also Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. 12(b).
- 29 Security Council resolution 2368 (2017), Annex II, para. 8.
- 30 Security Council resolution 2368 (2017), Annex II, para. 14. See para. 12 above.
- 31 Security Council resolution 2368 (2017), paras. 61-62. See also Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and Associated Individuals and Entities, *Guidelines of the Committee for the Conduct of its Work* (as at 23 December 2016), para. (7)(ii)(ii).
- 32 The purpose of the Committee's review is to address any security concerns, including to review if any information confidential to the Committee is inadvertently included in the summary.
- 33 Security Council resolution 2368 (2017), Annex II, para. 16. The resolution specifies that the summary shall accurately describe the principal reasons for the recommendation of the Ombudsperson, as reflected in the analysis of the Ombudsperson. In cases where the listing is retained, the summary of the analysis shall cover all the arguments for delisting by the Petitioner to which the Ombudsperson responded. In cases of delisting, the summary shall include the key points of the analysis of the Ombudsperson.
- 34 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), paras. 30, 33 (“[The Ombudsperson] has succeeded in delivering significant due process improvements, and has demonstrated independence of mind, an ability to gain the confidence of all stakeholders, and a personal determination to make the system as fair and effective as it can be within the limits of her mandate.”).
- 35 Since the adoption of the process in June 2011 until August 2017, in no case has there been a consensus overturn or referral to the Security Council.
- 36 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/65/258), paras. 56-58; See also Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/50), para. 21.
- 37 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 35; Letter dated 17 April 2014 from the Permanent Representatives of Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland to the United Nations addressed to the President of the Security Council, Improving fair and clear procedures for a more effective United Nations sanctions system: Input paper by the Group of Like-Minded States on Targeted Sanctions (S/2014/286), 6-8.

- 38 Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), paras. 38-59; Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/50), para. 21.
- 39 See for example Report of the Office of the Ombudsperson pursuant to Security Council resolution 2083 (2012) (S/2014/73), paras. 12, 29, 42-43, and 49-50; Annex to the letter dated 12 November 2015 from the Permanent Representatives of Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland to the United Nations addressed to the President of the Security Council, Proposal by the Group of Like-Minded States on Targeted Sanctions for fair and clear procedures for a more effective United Nations sanctions system (S/2015/867), pages 8-9; Annex to the letter dated 17 April 2014 from the Permanent Representatives of Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland to the United Nations addressed to the President of the Security Council, Improving fair and clear procedures for a more effective United Nations sanctions system: Input paper by the Group of Like-Minded States on Targeted Sanctions (S/2014/286), page 6.
- 40 See the Individual Opinion of Committee Member Sir Nigel Rodley in *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008).
- 41 See Security Council resolution 2396 (2017), preamble para. 7; United Nations Global Counter-Terrorism Strategy contained in the Annex to General Assembly resolution 60/288, part IV; Statement by the President of the Security Council of 27 September 2010 (S/PRST/2010/19), para. 12; and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51/Add.4); and Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*,” (Guidelines 1 and 2).
- 42 Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/50), para.21.
- 43 Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(5).
- 44 See, for example, the following jurisprudence where listing procedures have been found to be unlawful: *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), see especially Individual Opinion of Sir Nigel Rodley; See also Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 20.
- 45 Article 20 of the Universal Declaration of Human Rights, article 22 of the International Covenant on Civil and Political Rights, article 8 of the International Covenant on Economic, Social, and Cultural Rights. For regional instruments, see article 10 of the African

Charter on Human and Peoples' Rights, article 16 of the American Convention on Human Rights, paras. 27(2), and 32 of the Association of Southeast Asian Nations Human Rights Declaration, and article 11 of the European Convention on Human Rights.

- 46 Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, *Statement on freedom of association, including the right to form and join trade unions* (6 December 2019), E/C.12/66/5-CCPR/C/127/4, para. 2.
- 47 United Nations Human Rights Committee, *Korneenko et al. v. Belarus*, 10 November 2006, Comm. 1274/2004, para. 7.2.
- 48 There is growing jurisprudence, notably by the African Commission on Human and Peoples' Rights and the European Convention on Human Rights, that recognizes legal persons as rights holders and that certain actions by the State could amount to violations of rights of organizations. See African Commission on Human and Peoples' Rights: *Civil Liberties Organization v. Nigeria*, Comm. 101/93 (1995), para. 17 and *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria*, Comm. 140/94, 141/94, 145/95 (1999), para. 54. See also, article 1 First Protocol of the European Convention on Human Rights. Additionally, the United Nations Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights have held that, within certain parameters, rights of legal persons may be infringed if it also personally affects the individual's rights and that human rights protection generally available to individuals apply to legal persons as well. See United Nations Human Rights Committee: *Singer v. Canada*, 26 July 1994, Comm. 455/1991, para. 11.2; Inter-American Court of Human Rights: *Cantos v. Argentina*, Judgment of September 7, 2001, para. 27-9; European Court of Human Rights: *Glas Nadezhda EOOD & Anatoliy Elenkov v. Bulgaria*, Appl. 14134/02, para. 40; *G.J. v. Luxembourg*, Appl. 21156/93, Judgment of 26 October 2000, para. 24; *Khamidov v. Russia*, Appl. 72118/01, Judgment of 15 November 2007, para. 123-126; and, *Pine Valley Developments Ltd v. Ireland*, Appl. 12742/87, Judgment of 29 November 1991, para. 42.
- 49 See Human Rights Committee, General Comment No. 34 (12 September 2011), CCPR/C/GC/34, para. 22; Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, United Nations Doc E/CN.4/1985/4 (1985), Annex (hereafter the Siracusa Principles), para. 17; Basic Human Rights Reference Guide on "Conformity of National Counter-Terrorism Legislation with International Human Rights Law" (Guideline 4). See also, for example, in regional contexts *Castillo Petruzzi, et al. Case*, Judgment of May 30, 1999, Inter-American Court of Human Rights (1999), para. 121; see further the; *Sunday Times v. United Kingdom*, ECHR (1979), paras. 47-49; reaffirmed in *Silver v. United Kingdom*, ECHR (1983), paras. 86-88.
- 50 See Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32 (July 2008), 40 and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/61/267), paras. 31-32. See also, for example, in regional systems: Council of Europe, Guidelines on human rights and the fight against terrorism, Guideline III and Principles 6A and 6D of the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, African Commission on Human and Peoples' Rights.

- 51 For the general principle that any restriction to freedom of association must be proportionate and necessary, see *Kalyakin v. Belarus*, Communication No. 2153/2012 (20 November 2014), CCPR/C/112/D/2153/2012; see also the Basic Human Rights Reference Guide on “Conformity of National Counter-Terrorism Legislation with International Human Rights Law,” Guideline 1.
- 52 Report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 34. See also Security Council resolution 2396 (2017) paras. 2–3 and 29.
- 53 See Security Council resolution 1822 (2008) (S/RES/1822 (2008)), preamble para. 12.
- 54 See, for example, Human Rights Committee, Concluding Observations: Fifth Periodic Report of Canada, UN Doc CCPR/C/CAN/CO/5, para. 12; Human Rights Committee, Concluding Observations: Fourth Periodic Report of Iceland, UN Doc CCPR/CO/83/ISL (2005), para. 10. See also the following report of the High Commissioner for Human Rights, A/HRC/8/13, A/HRC/22/26, A/HRC/28/28.
- 55 See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/16/51, para. 26; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/40/52 paras. 34 and 39 and Basic Human Rights Reference Guide on “Conformity of National Counter-Terrorism Legislation with International Human Rights Law,” (Guidelines 4 and 5). See also, for example, in a regional context: Report of the African Commission on Human and Peoples’ Rights Study Group on Freedom of Association and Assembly in Africa, “Freedom of Association, as Pertaining to Civil Society, and Freedom of Assembly in Africa: A Consideration of Selected Cases and Recommendations,” 2014, paras. IV.54, IV.53, and IV.51.
- 56 Regarding the principle of non-retroactivity, article 15 of the International Covenant on Civil and Political Rights provides that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”
- 57 Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32 (July 2008), 44; Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 26. See also, for example, in regional contexts: Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, Countering Terrorism, Protecting Human Rights: A Manual (2007), p. 193, para. 4; Council of Europe, Guidelines on human rights and the fight against terrorism, Guideline III.
- 58 See the Basic Human Rights Reference Guide on “The Right to a Fair Trial and Due Process in the Context of Countering Terrorism,” Guideline 3.
- 59 See *Keun-Tae Kim. v. Republic of Korea*, Communication, HRC (1999), paras. 12.4 12.5 (UN Doc No 574/1994 CCPR/C/64/D/574/1994 (4 January 1999) where the Human Rights Committee held that the State must specify and justify the precise nature of the threat posed by the exercise of freedom of expression by an individual; see also *Yassin*

Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities, Joined Cases C-402/05 P and C-415/05 P (European Court of Justice (Grand Chamber), 2008).

- 60 See para. 26 of the report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism (A/61/267) for useful guidance on this. In practice, these facts are established by law enforcement officers whose methods of gathering information must also comply with principles of equality and non-discrimination; see also Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32 (July 2008), 44.
- 61 Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism (A/61/267), para. 11; for the general principle that restrictions to freedom of expression should comply with the principle of proportionality and should not be overboard, see Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, para. 34.
- 62 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(1). The Financial Action Task Force also recommends the standard of “reasonable grounds or basis/to suspect/to believe,” as does the Commonwealth’s Model Legislative Provisions on Measures to Combat Terrorism (reasonable grounds to suspect or to believe). Security Council Resolution 2396 (2017) (paras. 2, 3, and 29) also refers to the standard of “reasonable grounds to believe” in relation to screening procedures, risk assessments, prosecution, rehabilitation, and reintegration measures, of terrorists.
- 63 See also Article 29 of the Universal Declaration of Human Rights.
- 64 *Ross v. Canada*, Human Rights Committee Communication No. 736/1997, UN Doc CCPR/C/70/D/736/1997 (2000), para. 10.6.
- 65 See Guideline 3; see also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), paras. 29–32 and Practice 9(1).
- 66 For the general principle that any restriction to freedom of association must be proportionate and necessary, see *Kalyakin v. Belarus*, Communication No. 2153/2012 (20 November 2014), CCPR/C/112/D/2153/2012; see also the Basic Human Rights Reference Guide on “Conformity of National Counter-Terrorism Legislation with International Human Rights Law,” Guideline 1; *Nada v. Switzerland* (2012) ECHR 2022, para. 185.
- 67 Committee on Economic, Social and Cultural Rights, General Comment No 15: The right to water, UN Doc E/C.12/2002/11 (2003), paras. 21-22.
- 68 In the context of an international armed conflict, see article 53 of the Fourth Geneva Convention, and article 70(1) of the First Additional Protocol. In the context of a non-international armed conflict, see Common Article 3 of the Geneva Convention and article 18(2) of the Second Additional Protocol.

- 69 For international armed conflict, see article 23 of the Fourth Geneva Convention and article 70(2) of the Additional Protocol I. For non-international armed conflict, see article 18(2) of the Additional Protocol II.
- 70 N.K. Modirzadeh, D.A. Lewis and C. Bruderlein, *Humanitarian engagement under counter-terrorism: A conflict of norms and the emerging policy landscape* [2011] 93 (883) IRRIC; Program on Humanitarian Policy and Conflict Research, *Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement* (Harvard University Working Paper, February 2011), pp. 2-3.
- 71 See, for example, Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action (July 2013, commissioned by the UN Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council).
- 72 *Holder v. Humanitarian Law Project*, 561 UNSC No. 08-1498 and 09-89 (2010).
- 73 See Reports of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 34 and A/63/223, paras. 16 and 45 (a). See also, generally, Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/88), paras. 17-22.
- 74 See the Basic Human Rights Reference Guide on “The Right to a Fair Trial and Due Process in the Context of Countering Terrorism,” Guideline 9.
- 75 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(2). See also Security Council resolution 1735 (2006) paras. 10-11.
- 76 *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), pg.38; Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 29.
- 77 *Nada v. Switzerland* (2012) ECHR 2022, para. 186.
- 78 Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 34. This is also reflected in Security Council resolution 1735 (2006) para. 14, which notes that proscribed individuals or organizations should be considered for removal from the proscription list depending upon, “among other things (i) whether the individual or entity was placed on the Consolidated List due to a mistake of identity, or (ii) whether the individual or entity no longer meets the criteria set out in relevant resolutions”; see also Security Council resolution 1822 (2008), paras. 24 to 26.
- 79 *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), para. 10.8.
- 80 Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 34; Report of the Special

- Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 34.
- 81 Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 34.
- 82 *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), para. 10.8; the European Court of Human Rights has held similarly in *Nada v. Switzerland* (2012) ECHR 2022, para. 183.
- 83 Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 34. See also *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), para. 10.7, where the Committee considered that the listing of an organisation only a few weeks after the investigation was premature.
- 84 See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(3). See also General Comment 31 (para. 9) of the United Nations Human Rights Committee states that the ICCPR does not prevent “individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.” In *Singer v. Canada*, Communication No. 455/1991, United Nations Doc. CCPR/C/51/D/455/1991 (1994), the Human Rights Committee considered that State law (requiring businesses to replace commercial advertisements in English with French ones) affecting the legal person directly affects the human rights of the business owner and that freedom of expression, are by their nature inalienably linked to the person. The author has the freedom to impart information concerning his business in the language of his choice. As far as regional courts are concerned, in a judgment of 7 September 2001 in *Cantos v. Argentina* delivered by the Inter-American Court of Human Rights, the latter held that an individual may resort to the inter-American system for the protection of human rights to enforce his fundamental rights even when they are encompassed in a legal figure or fiction created by the same system of law. With respect to the European Court of Human Rights, see *Nada v. Switzerland* (2012) ECHR 2022, para. 213.
- 85 See especially Guidelines 1 and 12. For regional courts, see for example *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, ACHPR (2006) paras 213–214 (Communication 245/02) (holding that the right of access to judicial protection requires “available and effective recourse for the violation of a right protected under the Charter or the Constitution of the country concerned” and “that judicial and other mechanisms are in place to provide recourse and remedies at the national level.”).
- 86 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(3). For the general principle that all counter-terrorist measures should be subject to review by civilian courts, see Note by the United Nations High Commissioner for Human Rights, Protection of human rights and fundamental freedoms while countering terrorism (7 February 2005), E/CN.4/2005/103, para. 15. As far as regional courts are concerned, see for example *Civil Liberties Organization v. Nigeria*, African Commission on Human and Peoples’ Rights, Comm. No. 129/94 [1995] ACHPR 4; (22 March 1995) where the

African Commission held that a legal entity had a right to court review for violations of human rights under the African Charter on Human and Peoples' Rights.

- 87 See e.g. Recommendation 6 of the Financial Action Task Force, reviews of designation decisions should be done by a court or other independent competent authority (Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations (2012)).
- 88 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(4).
- 89 Report of the Special Rapporteur on the protection and promotion of human rights while countering Terrorism, Martin Scheinin (A/61/267), para. 34.
- 90 Security Council resolution 1904 (2009), S/RES/1904 (2009), para. 22.
- 91 See <https://www.un.org/securitycouncil/ombudsperson>.
- 92 Committee on the Elimination of Racial Discrimination, General Comment No. 30 (2004), CERD/C/64/Misc.11/rev.3, para. 10; See further the Basic Human Rights Reference Guide on "Conformity of National Counter-Terrorism Legislation with International Human Rights Law," Guideline 1.
- 93 *Kim v. Republic of Korea*, Human Rights Committee Communication No. 574/1994, UN Doc CCPR/C/64/D/574/1994 (1999), paras. 12.4-12.5; *Park v. Republic of Korea*, Human Rights Committee Communication No. 628/1995, UN Doc CCPR/C/64/D/628/1995 (1998), para. 10.3; Concluding observations on the third periodic report of Vietnam (28 March 2019), CCPR/C/VNM/CO/R.3, para. 11.
- 94 See Report of the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin (A/61/267), para. 24. On the requirement to ensure that acts of terrorism are defined in accordance with international standards, including restricting the definition to cases involving acts of violence, see Concluding observations on Swaziland in the absence of a report (23 August 2017), CCPR/C/SWZ/CO/1, para. 37; Concluding observations on the fifth periodic report of Jordan (4 December 2017), CCPR/C/JOR/CO/5, para. 13; Concluding observations on the Gambia in the absence of its second periodic report (30 August 2018), CCPR/C/GMB/CO/2, para. 21 wherein concerns are expressed vis-à-vis national legislation failing to differentiate between terrorist crimes and ordinary crimes; Concluding observations on the initial report of Bahrain (15 November 2018), CCPR/C/BHR/CO/1, para. 30; Concluding observations on the fourth periodic report of Bulgaria (15 November 2018), CCPR/C/BGR/CO/4, para. 34 wherein the State party is invited to review its legislation to "define the acts that constitute terrorism in a precise and narrow manner, so that they comply with the principles of legal certainty and predictability and cannot be used to prosecute peaceful protesters or political opponents"; Concluding Observations of the Human Rights Committee on United States of America, CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 11 wherein concerns are expressed vis-à-vis the definitions of terrorism in the domestic law of the State party which seem to extend to conduct, e.g. in the context of political dissent, which, although unlawful, should not be understood as constituting terrorism.

- 95 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: visit to France (8 May 2019), A/HRC/40/52/Add.4, para. 24; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: visit to Belgium (8 May 2019), A/HRC/40/52/Add.5, paras. 64, 65, and 83.
- 96 Article 2 of the Convention on the Rights of the Child.
- 97 Article 3 of the Convention on the Rights of the Child.
- 98 See Basic Human Rights Reference Guide on “Conformity of National Counter-Terrorism Legislation with International Human Rights Law,” Guideline 1 “States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, including international human rights law.” See Communication 550/1993, *Robert Faurisson v. France*, CCPR/C/58/D/550/1993, paras. 9 (4) and (6), and Views of 21 July 1994 on the freedom of expression; Communication N° 458/1991, *Case Albert Womah Mukong v. Cameroon*, CCPR/C/51/D/458/1991, para. 9.7 on the freedom of expression. In the context of the African Charter on Human and Peoples’ Rights, see the decisions by the African Court on Human and Peoples’ Rights in *Judgment in the Matter of Lohé Issa Konate v. Burkina Faso* (5 December 2014), Application No. 004/2013 and *Umuhzoza v. Rwanda* (003/2014) [2018] AFCHPR 21.
- 99 See Principles 16 and 17 of the United Nations Basic Principles on the Role of Lawyers. In *Case of Pollo Rivera et al. v. Peru*. Merits, Reparations and Costs, Judgment of October 21, 2016, Series C No. 319, the Inter-American Court of Human Rights held that international jurisprudence prohibits criminalisation of the provision of medical acts to terrorists.
- 100 See the Report of the Special Representative of the Secretary General on human rights defenders, Hina Jilani (A/59/401), para. 49. See also, for example, *Law Office of Ghazi Suleiman v. Sudan*, ACHPR (2003), paras 42, 43, 61, 62, and 66, where the African Commission on Human and Peoples’ Rights held that speaking out about violations of human rights and encouraging the government to respect human rights are among the most important exercises of human rights and as such should be given substantial protection that do not allow the State to suspend these rights for frivolous reasons and in a manner that is thus disproportionate to the interference with the exercise of these fundamental human rights.”).
- 101 See article 20(2) of the Universal Declaration of Human Rights. See also article 10 of the African Charter on Human and Peoples’ Rights.
- 102 See Article 2(3) of the ICCPR on the effective remedy; General Assembly Resolution 64/168 (2009), paras 1 and 6(n) (“1. Reaffirms that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights [] law.”) (“6. Urges States, while countering terrorism: (n) To ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims receive adequate, effective and prompt reparations, where appropriate, including by bringing to justice those responsible for such violations.”); Basic Human Rights Reference Guide on “Conformity of National Counter-Terrorism Legislation with International Human Rights Law,” Guideline 8;

United Nations Human Rights Committee decision in *Polay Campos v. Peru*, 9 January 1998, CCPR/C/61/D/577/1994. In the regional contexts, see for example, the decision of the Inter-American Court of Human Rights in *Castillo Petruzzi, et al.*, Case Judgment of May 30, 1999; the European Convention on Human Rights (Article 13), the Charter of Fundamental Rights of the European Union (Article 47), the American Convention on Human Rights (Articles 7.1(a) and 25), the American Declaration of the Rights and Duties of Man (Article XVIII), the Inter-American Convention on Forced Disappearance of Persons (Article III (1)), the Inter-American Convention to Prevent and Punish Torture (Article 8.1), the African Charter of Human and Peoples' Rights (Article 7(a)) and the Arab Charter on Human Rights (Article 9).

- 103** Report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), Practice 9(6); see also *Sharmila Tripathi, et al. v. Nepal*, HCR (2014), paras 2.1, 7.6, 7.8, and 8–9, in a case of enforced disappearance, the Human Rights Committee held that a State party is under an obligation to provide the author with an effective remedy to the wife and child in the case of enforced disappearance of their husband/father.
- 104** See for example, *Sayadi and Vinck v. Belgium*, Human Rights Committee Communication No. 1472/2006, UN Doc CCPR/C/94/D/1472/2006 (2008), para. 12.
- 105** Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 21.
- 106** Report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 34; Report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/61/267), para. 40.
- 107** Basic Human Rights Reference Guide on “The Right to a Fair Trial and Due Process in the Context of Countering Terrorism,” Principle 8; Human Rights Committee, *Lopez v. Uruguay*, Communication No. 52/1979, UN Doc CCPR/C/OP/1 at 88 (1984), para. 13; and Human Rights Committee, *Kulov v. Kyrgyzstan*, Communication No. 1369/2005, UN Doc CCPR/C/99/D/1369/2005 (2010), para. 8.7.
- 108** Inter-American Court of Human Rights, *Baena Ricardo v. Panama*, Ser. C No. 72 (2001), para. 125, could be read as to state that the right of representation is applicable to non-criminal proceedings (Article 8(2) (d) of the American Convention on Human Rights).
- 109** Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para. 40.

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