



COUNTER-TERRORISM

IMPLEMENTATION TASK FORCE CTITF

**Working Group on protecting human rights
while countering terrorism**

BASIC HUMAN RIGHTS REFERENCE GUIDE

**CONFORMITY OF NATIONAL
COUNTER-TERRORISM LEGISLATION
WITH INTERNATIONAL HUMAN RIGHTS LAW**

**CTITF
PUBLICATION
SERIES**

**OCTOBER
2014**

United Nations Counter-Terrorism Implementation Task Force

CTITF Working Group on Protecting Human Rights
while Countering Terrorism

Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law

October 2014



United Nations Office of the High Commissioner on Human Rights

With the support of

Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism

United Nations Office on Drugs and Crime

Counter-Terrorism Committee Executive Directorate

Office of Legal Affairs

United Nations Interregional Crime and Justice Research Institute

International Maritime Organization

International Criminal Police Organization

And the participation of the International Committee of the Red Cross,
the Office for the Coordination of Humanitarian Affairs
and the United Nations High Commissioner for Refugees as observers

The Basic Human Rights Reference Guides series is made possible by
the contribution of the United Nations Counter-Terrorism Centre (UNCCT).



United Nations
New York, 2014

About the United Nations Counter-Terrorism Implementation Task Force

The Counter-Terrorism Implementation Task Force (CTITF), established by the Secretary-General in 2005, is chaired by the Under Secretary-General of the Department of Political Affairs, Mr. Jeffrey Feltman, and is comprised of 34 UN and international entities. CTITF works to ensure overall coordination and coherence in the counter-terrorism activities of the United Nations system and to support Member States efforts in the implementation of the UN Global Counter-Terrorism Strategy (A/RES/60/288) adopted in 2006. CTITF provides for the delivery of this focused and coherent assistance mainly through its Working Groups and other initiatives, and strives to ensure that the Secretary-General's priorities are integrated in its work, including respect for human rights, as expressed in the "Human Rights Up Front" action plan. CTITF also seeks to foster constructive engagement between the United Nations system and international and regional organizations, civil society and the private sector, where appropriate, on the implementation of the Strategy.

The United Nations Global Counter-Terrorism Strategy, which brings together into one coherent framework decades of United Nations counter-terrorism policy and legal responses emanating from the General Assembly, the Security Council and relevant United Nations specialized agencies, has been the focus of the work of CTITF since its adoption by the General Assembly in September 2006 (General Assembly resolution 60/288).

The Strategy sets 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;
- (iv) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

In accordance with the Strategy, which welcomes the institutionalization of CTITF within the United Nations Secretariat, the Secretary-General in 2009 established a CTITF Office within the Department of Political Affairs to provide support for the work of CTITF. Via the CTITF Office, with the help of a number of thematic initiatives and working groups, and under the policy guidance of Member States through the General Assembly, CTITF aims to coordinate United Nations system-wide support for the implementation of the Strategy and catalyse system-wide, value-added initiatives to support Member State efforts to implement the Strategy in all its aspects. CTITF will also seek to foster constructive engagement between the United Nations system and international and regional organizations and civil society on the implementation of the Strategy.

The United Nations Counter-Terrorism Centre (UNCCT)

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

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About the Basic Human Rights Reference Guide Series

The Basic Human Rights Reference Guide series is an initiative of the Counter-Terrorism Implementation Task Force (CTITF) Working Group on Protecting Human Rights while Countering 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, lastly by General Assembly resolution 68/276 of 13 June 2014. 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 Task Force formed the Working Group on Protecting Human Rights while Countering Terrorism, which is led by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Members include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Office on Drugs and Crime (UNODC), the Counter-Terrorism Committee Executive Directorate (CTED), the Office of Legal Affairs (OLA), the United Nations Interregional Crime and Justice Research Institute (UNICRI), the International Maritime Organization (IMO), the International Criminal Police Organization (INTERPOL), and the 1267/1988 Monitoring Team. The International Committee of the Red Cross (ICRC), the Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations High Commissioner for Refugees (UNHCR) 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, good 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.

* For a brief overview of the broader international law framework, including an introduction which aims to give a quick insight into the general principles of international law as well as the basic elements of international criminal law, humanitarian law, refugee law and human rights law which may be relevant in a counter-terrorism context, see United Nations Office on Drugs and Crime, *Frequently Asked Questions on International Law Aspects of Countering Terrorism*, United Nations, Vienna, 2009.

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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, and law enforcement officials, this document identifies and explains eight guiding principles and guidelines concerning conformity of national counter-terrorism legislation with international human rights law:

1. States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, including international human rights law.
2. National counter-terrorism legislation should aim to address conditions conducive to the spread of terrorism and must, to that end, be compliant with the rule of law and human rights.
3. All counter-terrorism measures must comply with the principle of legality. In the absence of an internationally agreed comprehensive definition of terrorism, where States link counter-terrorism measures to a definition of terrorism or acts of terrorism in their domestic legislation, this definition must be clear and precise and not be overly broad. Conviction on any terrorism offence must relate to a crime that constituted a criminal offence under national or international law at the time when the act was committed. A convicted person shall benefit from any lighter sentence applicable since the time of the offence and shall not be made subject to more severe penalties than those applicable at the time when the offence was committed.
4. States must ensure consistency between national counter-terrorism legislation and international human rights and refugee law, as well as, when applicable, international humanitarian law. This includes the need to ensure that the conduct of State agencies involved in the countering of terrorism is in compliance with international law. Counter-terrorism powers should be conferred, to the greatest extent possible, upon law enforcement authorities, with appropriate measures to ensure that discretionary powers are not exercised arbitrarily or unreasonably.
5. States should establish independent mechanisms for the regular review of the operation of national counter-terrorism law and practice.
6. States should establish national systems of assistance to promote the needs of victims of terrorism and their families. Victims of terrorism who have suffered

violations of their basic rights are entitled to material, legal and psychological assistance. Mechanisms providing for compensation to victims of terrorism should be implemented in a way that ensures the greatest possible consistency in the admissibility of claims and in the award of compensation.

7. States have an obligation to conduct prompt, independent and effective investigations into credible allegations of human rights violations, including those allegedly perpetrated during counter-terrorism operations, whether by law enforcement officials, intelligence services or non-State actors.
8. Any person whose human rights or fundamental freedoms have been violated in the course of any action to counter terrorism must be provided with access to effective remedies and reparation.

I. Introduction

1. States have both a right and duty to protect individuals under their jurisdiction from acts of terrorism and to bring to justice persons who commit, or prepare or assist the commission of acts of terrorism.¹ This is a component of international and regional human rights law itself, stemming from the general duty of States to protect individuals under their jurisdiction from interference with the enjoyment of human rights, including as part of States' obligations to ensure respect for the right to life and the right to security.²
2. The United Nations Global Counter-Terrorism Strategy resolves that UN Member States will take "urgent action to prevent and combat terrorism in all its forms and manifestations".³ States use various tools to that end. Together with the responsibility to protect those within their jurisdiction from acts of terrorism, States have an obligation to comply with international law, including human rights law, refugee law and humanitarian law.⁴ This requires States to ensure that national counter-terrorism legislation, and its implementation, conforms to international law.

A. Purpose of the guide

3. This Guide is not intended to cover all issues concerning the conformity of national counter-terrorism legislation with international human rights law. Its main purpose is to assess the key challenges in this field and to provide Member States with legal and practical guidance to assist them in ensuring that counter-terrorism measures 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, and law enforcement officials.
4. This document should be read in conjunction with other Basic Human Rights Reference Guides of the CTITF Working Group on protecting human rights while countering terrorism and Fact Sheet No. 32 of the Office of the High Commissioner for Human Rights, on *Human Rights, Terrorism and Counter-Terrorism*. The current document focuses on the overall need for national counter-terrorism legislation to conform with international human rights law, and the need for States to ensure that the implementation of this legislation is similarly

human rights-compliant. Other Basic Human Rights Reference Guides of the CTITF Working Group focus on particular areas of law and practice in which challenges have been presented in the conformity of counter-terrorism law and practice with international human rights obligations, namely: security infrastructure; stopping and searching of suspects; detention; fair trial; and the prescription of organisations.⁵

B. Applicable law

International human rights law

5. International human rights law is established through treaties and customary international law. In general terms, this requires States to respect, protect and fulfil human rights. States can become parties to international human rights treaties, the consequence of which is that they are obliged to act in accordance with and uphold all of the requirements, both negative and positive, imposed by the treaty. States are obliged to adopt laws or other measures in order to give effect to those treaties, as called for, for example, in article 2(2) of the International Covenant on Civil and Political Rights (ICCPR). Where States may find issue with a specific provision within a human rights treaty, reservations can be made to that provision, except where the right or freedom is non-derogable or where the reservation is contrary to the object and purpose of the treaty.⁶ Extensive reference to the ICCPR is made in this and other Basic Human Rights Reference Guides, this treaty being one of the core international human rights instruments, to which 161 States are parties, and also representing in many respects a codification of the content of customary international law and of the Universal Declaration of Human Rights.
6. International human rights law is also found in customary international law, which is established through State practice (being practice that is uniform and consistent, generally applied, and established over time) that is carried out by States in the belief that such practice is required by law (*opinio juris*). Customary international law is applicable to all States, regardless of individual treaty ratifications. Norms of *jus cogens*, or peremptory norms of customary international law, are those that are accepted by the international community as a whole as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of customary international law having the same character. It is universally accepted that the prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, as well as the right to self-determination, are norms of *jus cogens*.⁷

International refugee law

7. International refugee law defines the term ‘refugee’ and establishes an international framework for the protection of refugees, setting out the obligations of States and the basic minimum standards of treatment for individuals defined as refugees. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the core universal instruments that enable an operative legal framework. The Convention and its Protocol are supplemented by customary international law and are complemented by international human rights law. The principle of *non-refoulement* is the cornerstone of international refugee protection. Enshrined in article 33(1) of the Refugee Convention, it provides that a refugee may not be expelled or otherwise forcibly returned to a country where his or her life or freedom is threatened based on race, religion, nationality, membership of a particular social group or political opinion. While article 33(2) of the Convention contains certain limited exceptions to this protection, refugees, like all other persons, benefit from protection against *refoulement* to a risk of torture or other serious harm under international human rights law.⁸
8. International refugee law does not specifically refer to terrorism, but the proper application of the refugee definition, as well as several other provisions, enables States to ensure that persons involved in terrorism may not hide behind the institution of asylum. On the one hand, persons fleeing legitimate prosecution rather than persecution do not meet the criteria of the refugee definition of article 1A(2) of the Refugee Convention. On the other hand, pursuant to article 1F of the Convention, persons are excluded from international refugee protection if there are “serious reasons for considering” that they committed; crimes against peace; war crimes; crimes against humanity; serious non-political crimes; or acts contrary to the principles and purposes of the United Nations. Acts considered being of terrorist nature generally fall within the scope of article 1F. As an exception to a right which the person would otherwise be entitled to enjoy, the exclusion clauses of article 1F need to be applied rigorously, yet interpreted restrictively.⁹

International humanitarian law

9. International human rights law also applies in situations of armed conflict, but the main body of law applicable in such situations is international humanitarian law. There are two sets of rules that may apply, depending upon whether the armed conflict is international or non-international. These rules are enshrined in the four Geneva Conventions and their Additional Protocols, as well as in customary rules of international humanitarian law.¹⁰ While there is no explicit definition of terrorism within international humanitarian law, acts that “specifically aim to terrorise civilians, for example campaigns of shelling or sniping of

civilians in urban areas” are prohibited under relevant provisions.¹¹ Additionally, “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” are strictly prohibited.¹² It is important to recall that international human rights law applies complementarily during armed conflict.¹³ This concurrent application provides greater protection for the individual during times of conflict.

C. UN human rights mechanisms

10. This document and other Basic Human Rights Reference Guides of the CTITF Working Group on protecting human rights while countering terrorism make reference to various human rights mechanisms of the United Nations.

Human rights treaty bodies¹⁴

11. Comprised of independent experts serving in their personal capacity, there are ten human rights treaty bodies. Each is established by one of the corresponding universal human rights treaties, with the exception of the Committee on Economic, Social and Cultural Rights, which was established by the Economic and Social Council under its resolution 1985/17. Treaty bodies, also referred to as ‘Committees’, are responsible for monitoring the implementation of the core universal human rights treaties.¹⁵ The human rights treaty bodies undertake several core functions, depending on their specific mandates.
12. A common obligation of States parties to the core universal human rights treaties is to submit periodic reports to the relevant treaty body on the implementation of the obligations under each instrument. One of the core functions of the treaty bodies is to review these reports and to issue ‘Concluding Observations’, which include recommendations on what legislative, policy and other measures should be taken to ensure the enjoyment of the rights and freedoms set out in the relevant treaty.
13. Certain treaty bodies can receive ‘individual communications’ (the technical term used to refer to complaints from individuals) from persons who claim that their rights under the corresponding treaty have been violated by a State party that has accepted the competence of the treaty body to receive such communication. The individual communications process is undertaken in writing, through the submission of documentation to the relevant Committee, and without any oral hearing of witnesses or representatives on behalf of the alleged victim(s) or the respondent State. The process concludes in the issuing of ‘views’ by the relevant Committee on whether an individual’s rights have been violated and, if so, what reparation measures are recommended by the Committee. Where a

Committee considers a situation to be urgent, it will send a request to the concerned State to implement interim measures in order to avoid further harm to the individual while a communication is being considered.

14. As a measure to enhance the implementation of the treaties, the Committees can prepare ‘General Comments’/‘General Recommendations’. General Comments set out the treaty body’s authoritative interpretation of the content and application of human rights treaty provisions and related procedural obligations of States Parties.

Special Procedures of the UN Human Rights Council¹⁶

15. ‘Special Procedures’ is the general name given to the independent expert mechanisms of the UN Human Rights Council whose purpose is to address either specific country situations or thematic issues in all parts of the world. Special Procedures may be established as individual experts (‘Special Rapporteurs’, ‘Independent Experts’ or ‘Special Representatives of the Secretary General’) or as a group of five experts (‘Working Groups’), each expert being from one of the five United Nations regional groups. In general, the mandates of the Special Procedures involve the functions of monitoring, advising and publicly reporting on human rights situations in particular countries (country mandates) or on major phenomena of human rights violations worldwide (thematic mandates). Each Special Procedure mandate is defined in the Human Rights Council resolution establishing or renewing the mandate.

D. Key issues

16. In adopting the Global Counter-Terrorism Strategy in 2006, the General Assembly reaffirmed that terrorist acts are aimed at the destruction of human rights, fundamental freedoms and democracy.¹⁷ Noting that terrorism constitutes one of the most serious threats to international peace and security, the General Assembly strongly condemned terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes.¹⁸
17. Measures to combat terrorism may also prejudice the enjoyment of, or may violate, human rights and the rule of law.¹⁹ As observed by the Office of the High Commissioner for Human Rights:

“...the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a

real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement. The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many.

“These practices, particularly when taken together, have a corrosive effect on the rule of law, good governance and human rights. They are also counterproductive to national and international efforts to combat terrorism.”²⁰

18. In addition, national counter-terrorism measures have adversely affected humanitarian operations, particularly in contexts where people in need are under the *de facto* control of groups designated as terrorists. These measures have impacted the funding and operations of humanitarian actors in a variety of ways. Adverse impacts have included halts and decreases in funding; blockage or suspension of programmes; planning and programme design not according to needs; delays in project implementation; increased administrative procedures for procurement or vetting; and limitations on financial transactions, impacting particularly Islamic charities and remittance systems. There has also been a tendency within humanitarian organizations towards self-censorship because of perceived legal or reputational risks, although donor legislation generally does not prohibit contact with entities designated as terrorists.²¹

II. Guiding principles and guidelines

1. *States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, including international human rights law.*

1.1 Obligation to comply with international law when countering terrorism

19. Together with the responsibility to protect those within their jurisdiction from acts of terrorism, States have an obligation to comply with international law, including international human rights law, international refugee law and humanitarian law.
20. These legal obligations stem from customary international law, applicable to all States, and international treaties, applicable to States parties. According to 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), compliance with all human rights while countering terrorism represents a best practice because “not only is this a legal obligation of States, but it is also an indispensable part of a successful medium- and long-term strategy to combat terrorism”.²² The Global Counter-Terrorism Strategy also identifies respect for human rights for all and the rule of law as one of its four pillars and as the fundamental basis of the fight against terrorism (thus applicable to all aspects of the Strategy).²³ In Pillar I, the Strategy also recognizes that compliance with human rights is necessary in order to address the conditions conducive to the spread of terrorism, which include lack of rule of law and violations of human rights (see Guideline 2 herein).

1.2 General Assembly and Security Council resolutions

21. The Global Counter-Terrorism Strategy Plan of Action resolves that Member States will take urgent action to implement all resolutions on measures to eliminate international terrorism, including resolutions on the protection of human rights and fundamental freedoms while countering terrorism.²⁴ It recognises that:

“...international cooperation and any measures that we undertake to prevent and combat terrorism must comply with our obligations under international law, including the Charter of the United Nations and relevant international conven-

*tions and protocols, in particular human rights law, refugee law and international humanitarian law.*²⁵

22. The General Assembly has adopted a series of resolutions concerning terrorism since December 1972, addressing measures to eliminate international terrorism as well as the relationship between terrorism and human rights. It has emphasized that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law.²⁶ The Security Council has also, in several of its resolutions, called on States to ensure that counter-terrorism measures comply with international human rights law, refugee law and humanitarian law.²⁷

1.3 Universal terrorism-related treaties

23. It should also be noted that the universal treaties on counter-terrorism themselves expressly require compliance with some aspects of human rights law. This is illustrated by article 15 of the International Convention for the Suppression of the Financing of Terrorism, for example, expressly permitting States to refuse extradition or legal assistance if there are substantial grounds for believing that the requesting State intends to prosecute or punish a person on prohibited grounds of discrimination. Article 17 requires the “fair treatment” of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law. Article 21 makes it clear that the Convention does not affect the other rights, obligations and responsibilities of States, which includes international human rights obligations.

1.4 Flexibility of human rights law to deal with security challenges

24. Ensuring both the promotion and protection of human rights and effective counter-terrorism measures raises practical challenges for States. The Office of the High Commissioner for Human Rights has noted that these challenges are not insurmountable.²⁸ Through the careful application of human rights law it is possible to respond effectively to the challenges involved in the countering of terrorism while at the same time complying with human rights.²⁹ Noting that this reflects the flexibility of human rights law, the Special Rapporteur on human rights while countering terrorism has observed that:

*“There is no need in this process for a balancing between human rights and security, as the proper balance can and must be found within human rights law itself. Law is the balance, not a weight to be measured.”*³⁰

25. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States

with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.

1.5 Permissible limitations on the exercise of certain rights

International human rights treaties allow States to legitimately limit the exercise of certain rights—including, for example, the right to freedom of expression, the right to freedom of association and assembly and the right to freedom of movement—provided that the following conditions are met:

- The right in question is one that is capable of limitation under the treaty, i.e., it is not an absolute right (such as the right to hold opinions without interference) or a right that reflects a norm of *jus cogens* (such as the prohibition against torture).
- The measure restricting the enjoyment of rights or freedoms is set out within, or authorised by, a prescription of law.
- The measure is necessary to pursue a legitimate purpose in a free and democratic society.
- The restriction on enjoyment of the rights or freedoms, and its implementation, is proportional.
- The restriction on enjoyment of the rights or freedoms, and its implementation, does not involve discrimination.

26. To be prescribed by law, the measure permissibly restricting the enjoyment of rights or freedoms must: (a) have some basis in national law; (b) be adequately accessible so that the citizen has an adequate indication of how the law limits his or her rights; and (c) be formulated with sufficient precision so that the citizen can regulate his or her conduct.³¹
27. Concerning the condition of necessity, this means that any counter-terrorism measure that permissibly restricts the enjoyment of rights and freedoms must be in furtherance of a permissible objective in a free and democratic society. The permissible legitimate purposes for interference depend on the particular provision of the human rights treaty in which the right in question is set out.³² They include national security, public safety, public order, health, morals, and the human rights and freedoms of others. For a counter-terrorism measure to ‘necessarily’ limit a right or freedom, it must be rationally connected to the achievement of the permissible objective being pursued.³³ The existence of a rational link will normally be accepted if the measure logically furthers the objective, although more evidence of this connection might be necessary if such a link is not plainly evident.³⁴
28. Any counter-terrorism measure permissibly restricting the enjoyment of rights or freedoms must also be proportionate, such that the State may not use more restrictive means than are required to achieve the legitimate objective being

pursued.³⁵ At the outset, this means that the limiting measure in fact provides for a ‘limitation’ on the enjoyment of rights or freedoms, rather than an exclusion of them or such a severe limitation that the measure impairs the very essence of the rights or freedoms affected.³⁶ Assessing the proportionality of a counter-terrorism measure, and of its implementation, calls for a full consideration of all relevant issues,³⁷ although there are two common factors that are brought to bear: the negative impact of the limiting measure upon the enjoyment of the right; and the ameliorating effects of the limiting measure and their importance. In determining the importance of a particular measure’s objective, it will be instructive to determine: how the measure is linked with the countering of an actual or potential threat of terrorism against the State; the measure’s contribution to international and regional frameworks on counter-terrorism as well as, subsidiarily, its contribution to other national interests of the State.³⁸

29. Counter-terrorism measures permissibly limiting the exercise of rights and freedoms must be non-discriminatory in nature.³⁹ The prohibition of discrimination does not exclude the possibility for different treatment under specific circumstances, but for any distinction to be permissible there needs to be an objective and reasonable justification.⁴⁰ The UN Global Counter-Terrorism Strategy has explicitly recognised discrimination as a condition conducive to the spread of terrorism.⁴¹ The principles of equality and non-discrimination are central to international human rights law and are recognised as *jus cogens* norms of customary international law, thus applicable to all States. In its statement on racial discrimination and measures to combat terrorism, the Committee on the Elimination of Racial Discrimination demanded that:

*“...States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin”; and insisted that: “...the principle of non-discrimination must be observed in all matters, in particular in those concerning liberty, security and dignity of the person, equality before the courts and due process of law, as well as international cooperation in judicial and police matters in these fields”.*⁴²

1.6 Ability to temporarily derogate from certain human rights provisions

In a limited set of circumstances, States may also take measures to temporarily derogate from certain human rights provisions under the ICCPR. For such derogation to be valid:

- The rights or freedoms in question must be capable of derogation.
- The State must officially proclaim the existence within its territory of a public emergency that threatens the life of the nation.
- The derogating measures must be ones that are adopted during a “time of public emergency which threatens the life of the nation”.
- The derogating measures must be limited to those “strictly required by the exigencies of the situation”.
- The measures must not be “inconsistent with [the State’s] other obligations under international law”.
- Such measures must not “involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”.

30. Article 4(2) of the ICCPR identifies non-derogable rights, i.e. those that may not be subject to derogation even in a state of emergency.⁴³ The Human Rights Committee has noted that the list of non-derogable rights in article 4(2) is not exhaustive. The Committee has explained that provisions of the ICCPR relating to procedural safeguards, which often correspond to judicial guarantees, can never be made subject to measures if this would circumvent the protection of the non-derogable rights within article 4(2).⁴⁴ For example, any trial leading to the imposition of the death penalty must conform to all the procedural requirements of article 14 of the ICCPR. The Committee has also noted that the full complement of ‘non-derogable rights’ includes rights applicable as part of obligations under international human rights law, international humanitarian law, and international criminal law since article 4(1) requires that no measure derogating from the provisions of the ICCPR may be inconsistent with the State party’s other obligations under international law.⁴⁵ This includes certain rights under customary international law, including: the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (reflected within article 10 of the ICCPR); the prohibition against taking of hostages, abductions, or unacknowledged detention (also prohibited under article 9 of the ICCPR); the international protection of the rights of persons belonging to minorities (corresponding to article 27); the deportation or forcible transfer of a population without grounds permitted under international law; and the prohibition against propaganda for war or in advocacy of national, racial, or religious hatred that would constitute incitement to discrimination, hostility, or violence (article 20 of the ICCPR).⁴⁶

31. Through the intermediary of the UN Secretary-General, a derogating State must immediately inform other States parties to the ICCPR of the provisions from which it has derogated and the reasons for which it has done so (article 4(3) of the ICCPR). The Human Rights Committee has emphasised that notification should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached concerning the relevant law.⁴⁷ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights are more detailed in setting out the requirements of a notification of derogation.⁴⁸
32. A state of emergency must be understood as a truly exceptional, temporary measure to which resort can be had only if there is a genuine threat to the life of the nation. Short of such extreme situations, States must develop and implement effective domestic legislation and other measures in compliance with their international human rights obligations. Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.⁴⁹ Interpreting the comparable derogation provision within the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights has spoken of four criteria to establish that any given situation amounts to “a time of public emergency which threatens the life of the nation”.⁵⁰ First, it should be a crisis or emergency that is actual or imminent.⁵¹ Second, it must be exceptional, so that “normal” measures are inadequate.⁵² Next, the emergency must threaten the continuance of the organized life of the community.⁵³ Finally, it must affect the population of the State taking measures. On this fourth point, early decisions of the Court spoke of an emergency needing to affect the whole population. The Court appears to have subsequently accepted that an emergency threatening the life of the nation might only materially affect one part of the nation at the time of the emergency.⁵⁴
33. For derogating measures to be limited to those “strictly required by the exigencies of the situation”, they must be necessary and proportionate (expressions considered earlier).⁵⁵ Key to this requirement is the temporary nature of any derogation, meaning that the derogating measures must be in place only as long as a state of emergency threatening the life of the nation exists; and calling for a derogating State to regularly review the necessity for continuation of the derogating measures. The Human Rights Committee has said that the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant.⁵⁶ In determining the necessity of a derogating measure, it must be determined that other limiting measures—those permissible to pursue a legitimate objective (as described earlier)—are plainly incapable of responding to the emergency

situation.⁵⁷ As stated by the Special Rapporteur on human rights while countering terrorism, for example:

*“...recourse to derogations under article 4 must be temporary and exceptional in nature, and (...) the enunciation of certain rights within the International Covenant on Civil and Political Rights already provide for the proportionate limitation of rights as prescribed by law and necessary for the protection of national security or public order, including articles 12(3), 19(3) and 21, relating to the freedoms of movement and residence, opinion and expression, and peaceful assembly.”*⁵⁸

34. A further substantive requirement of any derogation under the ICCPR is that any derogating measure must not be inconsistent with the State party's other obligations under international law, whether based on treaty law or customary international law. Although this criterion is rarely referred to in the views or comments of the Human Rights Committee, it is a feature that has been important to the enumeration of the full list of non-derogable rights (discussed earlier). The Human Rights Committee has emphasised that it is a requirement particularly relevant to the compliance of States with the rules of international humanitarian law during a state of emergency.⁵⁹
35. Finally, article 4(1) of the ICCPR specifies that any derogation from rights in times of emergency may not involve discrimination solely on the ground or race, colour, sex, language, religion or social origin. When resorting to measures that derogate from the Covenant, the Human Rights Committee has emphasised that this aspect of article 4 must be complied with if any distinctions are made between persons under the derogating measures.⁶⁰ This list is more limited than the prohibited grounds of discrimination contained in article 2(1) of the ICCPR, since it may be permissible, during war or national emergency, to discriminate against enemy aliens and their property.⁶¹

2. National counter-terrorism legislation should aim to address conditions conducive to the spread of terrorism and must, to that end, be compliant with the rule of law and human rights.

36. The 2004 High-level Panel on Threats, Challenges and Change reported that recruitment by international terrorist groups was aided by grievances nurtured by factors including poverty and the absence of human rights and democracy.⁶² The UN Global Counter-Terrorism Strategy resolves, in its first pillar, to undertake measures aimed at addressing the conditions conducive to the spread of terrorism.⁶³

Measures identified in the UN Global Counter-Terrorism Strategy as being aimed at addressing the conditions conducive to the spread of terrorism include:

- Strengthening the capacities of the UN to prevent and peacefully resolve prolonged and unresolved conflicts;
- Continue to arrange initiatives and programmes through the UN to promote dialogue, tolerance and understanding among civilisations, cultures, peoples and religions;
- Ensure the timely and full realisation of agreed development goals and objectives;
- Support the UN system to scale up engagement in the fields of rule of law, human rights and good governance; and
- Promote the needs of victims of terrorism and their families.

37. The Global Counter-Terrorism Strategy describes ‘conditions conducive to the spread of terrorism’ as:

*“...including but not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance, while recognizing that none of these conditions can excuse or justify acts of terrorism”.*⁶⁴

38. While making it clear that none of these conditions can excuse or justify terrorism, the Strategy represents a clear affirmation by all UN Member States that effective counter-terrorism measures and the protection of human rights are not conflicting, but rather complementary and mutually reinforcing goals.⁶⁵

3. All counter-terrorism measures must comply with the principle of legality. In the absence of an internationally agreed comprehensive definition of terrorism, where States link counter-terrorism measures to a definition of terrorism or acts of terrorism in their domestic legislation, this definition must be clear and precise and not be overly broad. Conviction on any terrorism offence must relate to a crime that constituted a criminal offence under national or international law at the time when the act was committed. A convicted person shall benefit from any lighter sentence applicable since the time of the offence and shall not be made subject to more severe penalties than those applicable at the time when the offence was committed.

3.1 Principle of legality and definition of terrorism in national law

39. The General Assembly’s 1994 Declaration on Measures to Eliminate International Terrorism states that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes.”⁶⁶ Similarly, the Security Council in its resolution 1566 (2004) calls on States to combat the following conduct in the

fight against international terrorism: those “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.”⁶⁷

40. United Nations Member States have not, however, yet been able to adopt a comprehensive definition of terrorism. Instead, the 19 universal counter-terrorism conventions and protocols take what has been termed a “sectoral” approach. They define specific offences, such as those relating to the security of international aviation and maritime navigation, hostage-taking, bombings in public places and the financing of terrorism, and oblige States parties to make these acts punishable as serious offences in domestic legislation.
41. In the absence of an internationally agreed and comprehensive definition of terrorism, any definition of terrorism linked to counter-terrorism measures (including the criminalisation of acts of terrorism or the establishment of administrative mechanisms or other powers) must be clear, precise and not overly broad so as to avoid human rights abuses resulting from the characterisation as terrorism of conduct that cannot be properly considered terrorist in nature.⁶⁸
42. The principle of legality is an essential element of the rule of law and forms part of customary international law, which is thereby binding on all States.⁶⁹ In its 2013 resolution on protecting human rights and fundamental freedoms, the General Assembly “urges States, while countering terrorism (...) [t]o ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.”⁷⁰
43. Most States link terrorist offences to a stand-alone definition of “terrorism”, a “terrorist act”, “terrorist activity” or similar terms. Such definitions are very often also linked to the listing of proscribed organizations; powers of arrest, questioning and investigation; alterations in the rules concerning detention and trial; and administrative measures, such as deportation procedures and the forfeiture of property. The Special Rapporteur on human rights while countering terrorism has observed that:

“The adoption of overly broad definitions of terrorism therefore carries the potential for deliberate misuse of the term—including as a response to claims and social movements of indigenous peoples—as well as unintended human rights abuses. Failure to restrict counter-terrorism laws and implementing measures to the coun-

tering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.”⁷¹

44. The Special Rapporteur on human rights while countering terrorism has formulated a model definition of terrorism in his report on ten areas of best practices in countering terrorism.⁷²

3.2 No punishment without the law

45. In the context of criminal proceedings, article 15 of the ICCPR codifies the principle of legality, requiring that for a conviction to be valid, the criminal offence with which the person is charged must constitute a criminal offence under national or international law at the time when the act was committed.⁷³ It is an absolute and non-derogable right,⁷⁴ which means that national counter-terrorism law must comply with the principle at all times.⁷⁵
46. The offence in question and the penalties associated with it must be clearly defined in the law so that individuals know precisely what acts or omissions render a person criminally liable.⁷⁶ The law must be clear to this extent, drawn from legislation and any interpreting case law.⁷⁷ Ambiguity in the formulation of criminal offences undermines the certainty of the law and provides the opportunity for abuse of power. Every person, if need be with the assistance of legal practitioners, must be able to understand by looking at the wording of the relevant statutes, which acts or omissions will establish criminal liability and what the potential consequences are in terms of sentencing.⁷⁸ State practice alone cannot be treated as ‘law’ for these purposes,⁷⁹ nor can administrative acts that are *ultra vires* under national law (administrative acts that are not permitted by national law or go beyond the authority conferred on State agencies).⁸⁰ Article 15(2) of the ICCPR clarifies that a criminal offence under international law can include an offence according to the general principles of law “recognized by the community of nations”, namely an offence under customary international law.⁸¹
47. When defining terrorism-related criminal offences, national legislation should clearly specify both the material elements (*actus reus*) of the crime as well as its mental elements (*mens rea*), such as intent and knowledge, consistent with international standards.⁸² A clear formulation of terrorist offences consistent with international standards would also enhance the effectiveness of international cooperation due to the requirement of double criminality for extradition and mutual legal assistance.⁸³

3.3 Continuing offences

48. With so-called “continuing offences”, where the conduct began before and continued after it became a criminal offence, the prosecution of such conduct will be in breach of the non-retroactivity principle unless it can be shown that the conviction is solely based on the acts committed after criminalisation of the conduct.⁸⁴

3.4 Procedural and evidentiary rules

49. The principle of non-retroactivity applies to the criminalization of conduct only, meaning the question of whether an accused person’s acts, at the material time of commission, constituted a defined criminal offence under domestic or international law. It does not include reference to accompanying procedural or evidentiary rules including, for example, rules concerning the admissibility of evidence.⁸⁵

3.5 Non-retroactivity of penalties

50. As well as encompassing the principle of no punishment without the law, article 15(1) of the ICCPR also prohibits the retrospective application of more severe penalties than those applicable at the time when the criminal offence was committed, together with guaranteeing the benefit of lighter sentences.⁸⁶ In most cases, this means that the convicted person can only be sentenced under the law that existed at the time that the offence took place. If the law pertaining to the sentence applicable to the offence changed since the time of offending, two situations arise:
- (a) If the law reduces the applicable sentence, the convicted person must be given the benefit of a lighter sentence under the new law (article 15(1)).
 - (b) If the law increases the maximum penalty for the criminal offence, the actual sentence imposed must be within the margins of the sentencing provision applicable at the time of offending.⁸⁷
51. The practical implication of this aspect of the principle of legality is that it also prevents the re-characterization of ordinary crimes as terrorist offences in light of subsequent legislation, if such re-characterization would lead to the imposition of heavier penalties on the accused. In all cases, the reintroduction of death penalty for crimes of terrorism would be considered as contrary to the spirit of the ICCPR and to the repeated calls by the General Assembly for all States that still maintain the death penalty to progressively restrict the use of the death penalty; to reduce the number of offences for which it may be imposed; to establish a moratorium on executions with a view to abolishing the death penalty; and, for those States which have abolished the death penalty, not to reintroduce it.⁸⁸

3.6 Incitement to terrorism

52. In the context of the offence of incitement to terrorism, the Security Council has called on States to prohibit the incitement to terrorism.⁸⁹ Some States have taken the view that this does not require the establishment of a separate offence of incitement to terrorism, because incitement is in some countries treated as a form of participation in an offence and, as such, the incitement to any criminal offence, including terrorism offences, already amounts to an offence.⁹⁰ However, noting practical difficulties with this approach,⁹¹ article 5 of the Council of Europe Convention on the Prevention of Terrorism has commended as a best practice in this regard, which requires States parties to criminalize the public provocation to commit acts of terrorism as a specific offence.⁹² It has been recommended that, in the implementation of article 5 of the Convention on the Prevention of Terrorism, the offence of incitement to terrorism: (a) must be limited to the incitement to conduct that is truly terrorist in nature (see Guideline 3 herein); (b) must restrict the freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals (in accordance with article 19(3) of the ICCPR); (c) must be prescribed by law in precise language;⁹³ (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to two elements of intent, namely intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful” incitement to terrorism.⁹⁴ Adapting the description of public provocation to terrorism in the Council of Europe Convention, the Special Rapporteur on human rights while countering terrorism has formulated the following model offence of incitement to terrorism:

“It is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed.”⁹⁵

4. *States must ensure consistency between national counter-terrorism legislation and international human rights and refugee law, as well as, when applicable, international humanitarian law. This includes the need to ensure that the conduct of State agencies involved in the countering of terrorism is in compliance with international law. Counter-terrorism powers should be conferred, to the greatest extent possible, upon law enforcement authorities, with appropriate measures to ensure that discretionary powers are not exercised arbitrarily or unreasonably.*

4.1 Consistency between national counter-terrorism legislation and international human rights obligations

53. There has been a proliferation of security and counter-terrorism legislation and policy throughout the world since the adoption of Security Council resolution 1373 (2001), much of which has an impact on the enjoyment of human rights. Legislative and practical measures to counter terrorism have created many negative consequences for civil liberties and fundamental human rights, often due to the fact that counter-terrorism legislation has been hastily established.⁹⁶
54. States must ensure consistency between national counter-terrorism legislation—whether as separate pieces of legislation or as part of ‘ordinary’ laws, such as the inclusion of terrorism offences within the criminal code of a country—and international human rights and refugee law, as well as, when applicable, international humanitarian law.⁹⁷ Consistency is essential for both existing and future laws.

4.2 Proposed legislation

55. In the case of proposed legislation, many States include mechanisms for identifying whether proposed legislation, including on counter-terrorism, complies with human rights law.⁹⁸ Treating this practice as a best practice, it has been recommended that: “Proposals for new legislation or amendments to existing laws shall include a written statement bringing to the attention of the Legislature any provision in the proposal that appears to be inconsistent with the purposes and provisions of norms of international human rights and refugee law that are binding upon the State”.⁹⁹ Such a mechanism represents best practice because it ensures that the legislature is made aware of any potential violation of international obligations when enacting or modifying laws for the purpose of countering terrorism. Because of the potentially profound implications of counter-terrorism legislation, Governments have also been urged to seek to ensure the broadest possible political and popular support for counter-terrorism laws through an open and transparent process.¹⁰⁰

4.3 Legislative review of existing legislation

56. For the purpose of ensuring that existing counter-terrorism legislation complies with human rights law, the Special Rapporteur on human rights while countering

terrorism has recommended that: “The Legislature shall, through a specialized body or otherwise, review and ensure that any law approved by it conforms to the norms of international human rights and refugee law that are binding upon the State”.¹⁰¹ This mechanism allows legislative organs to reflect on, and amend as appropriate, counter-terrorism legislation that is found to be inconsistent with the State’s international obligations.

4.4 Judicial role in ensuring consistency with international human rights obligations

57. Additional to such mechanisms, many States empower the judiciary to strike down legislation that is incompatible with human rights law, including international human rights, or to adopt an interpretation of the legislation that is consistent with human rights.¹⁰² Referring to this practice as “essential”, the following has been recommended as a best practice:

“The judiciary shall be entrusted with ensuring that laws do not breach norms of international human rights and refugee law that are binding upon the State. In discharging this duty, the courts shall apply the techniques available to them under the Constitution, such as:

“(a) Adopting an interpretation of the law that is consistent with the purposes and provisions of norms of international human rights and refugee law that are binding upon the State;

“(b) Declaring that part of the law is without legal effect;

“(c) Declaring that the inconsistent law is to be of no force or effect, either with immediate effect or after a period of time that allows the Government to take remedial steps.”¹⁰³

58. The effectiveness of such mechanisms will rely on the existence and maintenance of a competent, independent, impartial and transparent judiciary.¹⁰⁴

4.4 Consistency between national counter-terrorism legislation and international humanitarian law

59. It has been explained that the three recommendations/practices outlined above should also apply—if a State is involved, as a party, to an ongoing armed conflict—to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.¹⁰⁵

4.5 Powers conferred on public agencies

60. Where legislation relating to terrorism confers powers upon public agencies, it has been recommended that the exercise of those powers should, to the broadest possible extent, be entrusted to “civilian authorities whose functions relate

to combating crime and whose performance of counter-terrorism functions is pursuant to ordinary powers”.¹⁰⁶ The Special Rapporteur on human rights while countering terrorism has emphasized that “while the privatization of counter-terrorist functions, such as security measures at checkpoints, should be avoided, such privatization, where it occurs, should include the same level of accountability as for conduct by State agents”.¹⁰⁷ Two further points pertain to the conferring of powers under legislation relating to terrorism:

- (a) In any case where discretionary powers are conferred, adequate safeguards (including judicial review) must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably.¹⁰⁸ Checks might also be implemented through internal and external supervision of agencies and public servants, as well as through the adoption and comprehensive implementation of codes of conduct.¹⁰⁹
- (b) If compelling reasons require the establishment of specific powers for certain authorities:¹¹⁰ (a) such powers should be contained in stand-alone legislation capable of being recognized as a unique exception to customary legal constraint;¹¹¹ (b) the provisions under which such powers are established should be subject to sunset clauses and regular review; and (c) the use of such powers for any purpose other than the combating of terrorism must be prohibited.¹¹²

To ensure that the *application and exercise* of all functions under the law relating to terrorism is in compliance with international human rights law, the following model provisions on consistency of counter-terrorism practices with human rights and refugee law, and humanitarian law has been formulated:¹¹³

1. The exercise of functions and powers shall be based on clear provisions of law that exhaustively enumerate the powers in question.
2. The exercise of such functions and powers may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.
3. Where the exercise of functions and powers involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall:
 - a. Be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and
 - b. Be proportionate to the benefit obtained in achieving the legitimate aim in question.
4. If the State is involved, as a party, in an ongoing armed conflict, the above provisions shall apply also to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.
5. If compelling reasons require the establishment of specific powers for certain authorities:
 - a. Such powers should be contained in stand-alone legislation capable of being recognized as a unique exception to customary legal constraint;
 - b. The provisions under which such powers are established should be subject to sunset clauses and regular review; and
 - c. The use of such powers for any purpose other than the combating of terrorism must be prohibited.

5. *States should establish independent mechanisms for the regular review of the operation of national counter-terrorism law and practice.*

5.1 Regular review of counter-terrorism law and practice

61. Many states include mechanisms for the regular review of counter-terrorism laws and practices. Some States also include “sunset clauses” requiring the renewal of laws or of certain provisions within their counter-terrorism law. The Special Rapporteur on human rights while countering terrorism has recommended that review should include: (a) annual governmental review of and reporting on the exercise of powers under counter-terrorism laws; (b) annual independent review of the overall operation of counter-terrorism laws; and (c) periodic parliamentary review.¹¹⁴ He has pointed out that, to be effective, it is important that independent review mechanisms be based on statutory terms of appointment, linked to the work of relevant parliamentary committees and accompanied by adequate resourcing.¹¹⁵ Review mechanisms should enable public consultation and should be accompanied by publicly available reports.¹¹⁶

5.2 Sunset clauses

62. Regular review and the use of sunset clauses are identified as best practices helping to ensure that special powers relating to the countering of terrorism are effective and continue to be required, and to help avoid the “normalization” or de facto permanent existence of extraordinary measures.¹¹⁷ As asserted by the Special Rapporteur on human rights while countering terrorism: “Periodic parliamentary review and sunset clauses also enable the legislature to consider whether the exercise of powers under counter-terrorism laws has been proportionate and thus whether, if they continue, further constraints on the exercise of such powers should be introduced, and/or whether the overall operation of counterterrorism laws calls for their modification or discontinuance”.¹¹⁸

The following model provisions on the review of the operation of national counter-terrorism law and practice have been formulated:¹¹⁹

1. Where specific counter-terrorism powers have been created, they shall lapse 12 months after their entry into force, unless the Legislature reviews and renews them before that date.
2. The Executive shall appoint a person or body to act as independent reviewer of the application and operation of the law relating to terrorism. The person so appointed shall, at least every 12 months, carry out a review of the operation of the law relating to terrorism and report the findings of such review to the Executive and the Legislature. The report shall contain an opinion on:
 - a. The implications of any proposed or recent amendments or additions to the law relating to terrorism, including an opinion on whether these are compatible with international human rights and refugee law that is binding upon the State, as well as, when applicable, principles and provisions of international humanitarian law;
 - b. Whether the application in practice of the law relating to terrorism, during the period of review, has been compatible with international human rights and refugee law that is binding upon the State, as well as, when applicable, principles and provisions of international humanitarian law.

6. States should establish national systems of assistance to promote the needs of victims of terrorism and their families. Victims of terrorism who have suffered violations of their human rights are entitled to material, legal and psychological assistance. Mechanisms providing for compensation to victims of terrorism should be implemented in a way that ensures the greatest possible consistency in the admissibility of claims and in the award of compensation.

6.1 Dehumanisation of victims of terrorism as a condition conducive to the spread of terrorism

63. The UN Global Counter-Terrorism Strategy identifies, in its first pillar, the dehumanization of victims of terrorism as a condition conducive to the spread

of terrorism.¹²⁰ It resolves to undertake measures aimed at addressing the conditions conducive to the spread of terrorism, including:

“To consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives. In this regard, we encourage States to request the relevant United Nations entities to help them to develop such national systems. We will also strive to promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation. This could include exploring at the General Assembly the possibility of developing practical mechanisms to provide assistance to victims.”¹²¹

64. The General Assembly resolution on the protection of human rights and fundamental freedoms while countering terrorism adopted in 2013 “urges States, while countering terrorism (...) [t]o ensure that (...) victims receive adequate, effective and prompt reparation, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees of non-recurrence, including where the violation constitutes a crime under international or national law, to ensure accountability for those responsible for such violations.”¹²²

6.2 Need to address the rights of victims of terrorism

65. The need to address the rights of victims of terrorism has been identified as representing a best practice “not just because it assists the victims of terrorism to rebuild their lives, but can also help to reduce tensions in society that might themselves result in conditions conducive to recruitment to terrorism”.¹²³ States are also recognizing the need for victims of terrorism to be provided with legal status as victims of human rights violations (see Guideline 9 herein concerning the right to effective remedies and reparation for victims of human rights violations) and with protection of their human rights at all times, including their rights to health, legal assistance, justice, truth and adequate, effective and prompt reparation.¹²⁴ Supporting the victims of terrorism who have suffered serious violations of their basic rights also includes the provision of material, legal and psychological assistance, in both an immediate and continuing context.¹²⁵ Such support should be provided to all victims of terrorism or their next-of-kin, without distinction¹²⁶
66. The Special Rapporteur on human rights while countering terrorism has recommended that States adopt a legal instrument declaring and protecting the rights of victims of terrorism.¹²⁷ Pending adoption of such an instrument, he has recommended that States review their national legislation, procedures and practices to bring these into line with his proposed framework principles for securing the human rights of victims of terrorism.¹²⁸

67. According to the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, victims include “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”.¹²⁹ The Declaration notes that an individual may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.¹³⁰ The term victim may include “the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.¹³¹

The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power requires, as minimum standards, that victims should:

- Be treated with compassion and respect for their dignity;
- Be informed about, and have their views and concerns presented at, legal proceedings;
- Be entitled to proper assistance throughout the legal process;
- Be protected against intimidation and retaliation;
- Have their privacy protected;
- Be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation;
- Enjoy restitution and compensation, as appropriate; and
- Receive the necessary material, medical, psychological and social assistance.

68. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereafter the Basic Principles and Guidelines on the Right to a Remedy and Reparation) underscore the need for victims to be treated with humanity and respect for their dignity and human rights, and emphasize that appropriate measures should be taken to ensure their safety, physical and psychological wellbeing and privacy, as well as those of their families.¹³²

The following model provisions on reparations and assistance to victims of terrorism have been formulated:¹³³

1. Damage to natural or legal persons and their property resulting from an act of terrorism or acts committed in the name of countering terrorism shall be compensated through funds from the State budget, in accordance with international human rights law.

2. Natural persons who have suffered physical or other damage or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism shall be provided with additional legal, medical, psychological and other assistance required for their social rehabilitation through funds from the State budget.

6.3 Participation by victims of terrorism in terrorist investigations

69. Victims of terrorist acts must also be allowed access to and ideally, participation in, the investigation of the acts committed.¹³⁴ Where a trial against the alleged perpetrator(s) of the act(s) takes place, a victim-sensitive approach within the criminal justice system is essential to avoiding re-victimization, and victims must be treated with respect at all times.¹³⁵ Specialist services should be provided to ensure victim protection (see further the Basic Human Rights Reference Guide on “*Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”, Guideline 10, concerning witness protection), including protection of the private and family life of victims of terrorism.¹³⁶ It has been recommended that media outlets should, in accordance with the right to freedom of expression, consider adopting self-regulatory mechanisms for dealing with victims of terrorism.¹³⁷

6.4 Compensation mechanisms

70. Where clear mechanisms for compensation to victims of terrorism are not in place, States should seek to establish such mechanisms.¹³⁸ Some countries allow for the proceeds of sale of terrorist property forfeited to the State to be used to compensate victims of terrorism.¹³⁹
71. Whatever the means are for State financing of compensation mechanisms, such mechanisms should be implemented in a way that ensures the greatest possible consistency in the admissibility of claims and in the award of compensation.¹⁴⁰ Compensation commissions should be composed in such a way that judicial independence and objectivity is guaranteed.¹⁴¹ Where compensation commissions do not comport with the requirements of an independent, impartial and competent tribunal established by law, rights of review and appeal to judicial courts from decisions of compensation commissions must be available and should, in all cases, not be frustrated by delays that would discourage recourse to them by victims of terrorism.¹⁴²

7. *States have an obligation to conduct prompt, independent and effective investigations into credible allegations of human rights violations, including those allegedly perpetrated during counter-terrorism operations, whether by law enforcement officials, intelligence services or non-State actors.*

7.1 State duty to investigate allegations of human rights violations

72. Where credible allegations exist of conduct involving the violation of human rights, States have an obligation to conduct prompt, independent and effective investigations into such allegations. This includes human rights violations or abuses allegedly perpetrated during counter-terrorism operations, whether by law enforcement agencies, intelligence services or non-State actors.¹⁴³
73. The duty to investigate is explicitly referred to in article 12 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. In the context of enforced disappearances, the International Convention for the Protection of All Persons from Enforced Disappearances enshrines this obligation in article 3 and expands upon the various elements of the duty in article 12. The duty is also referred to in various UN Declarations and Bodies of Principles.¹⁴⁴ While the duty to investigate is not explicitly found in all international human rights treaties, interpretation of these treaties has clearly established that a duty to investigation exists. As expressed by the Human Rights Committee, for example, the failure “by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant”.¹⁴⁵ In other words, the obligation to promptly, independently and effectively investigate claims is inherent within article 2 of the ICCPR and, especially, the right to an effective remedy under article 2(3).¹⁴⁶ The right to an investigation is treated as the first step to ensuring an effective remedy, since a thorough investigation of the facts will be necessary to meet the requirements of the right to an effective remedy (on the right to remedy and reparation, see Guideline 9 herein).¹⁴⁷

7.2 Trigger for the duty to investigate

74. The right to an investigation does not require an individual to make a formal complaint.¹⁴⁸ Officials that are the subject of investigation must be suspended during the time of investigation.¹⁴⁹ In the case of allegations of torture or of cruel, inhuman or degrading treatment or punishment, the CAT obliges States parties to investigate such allegations in a “prompt and impartial” manner and to institute criminal proceedings where appropriate.¹⁵⁰ If an investigation uncovers evidence that human rights violations did occur, the person(s) responsible must be held to account for their wrongdoing.¹⁵¹ The failure or inability to do so will result in impunity, meaning that the perpetrators of such violations are not held to account.¹⁵²

7.3 Need for an independent investigation

75. For an investigation to be ‘independent’, the authority whose personnel are alleged to have been involved in the conduct cannot be the authority that carries out the investigation.¹⁵³ This means that there should be “no hierarchical or institutional connection” between the authority or authorities carrying out the investigation and the persons concerned.¹⁵⁴ Independence of investigations will be particularly pertinent in the context of counter-terrorism, where States may consider the exigencies of a certain situation to outweigh the requirements of international human rights law and standards. Nevertheless, the Human Rights Committee has confirmed that the right to an effective remedy, of which the duty to investigate is an integral part, is non-derogable and inherent within the entirety of the ICCPR.¹⁵⁵

7.4 Need for an effective investigation

76. Investigations must also be effective, meaning that they must be thorough enough to enable identification of the alleged perpetrators and of the facts so as to evaluate whether there is a prima facie case to answer. This means that investigators must have the resources required to conduct an effective investigation.¹⁵⁶ The investigative report must be disclosed to judicial authorities without manipulation.¹⁵⁷ The Inter-American Court of Human Rights has further interpreted this to mean that any information required by investigators must be provided by State authorities, regardless of considerations of national security or “official secrets”.¹⁵⁸

7.5 Transparency

77. The duty to investigate must also be exercised in a transparent manner, with full access provided to the victims and their family members.¹⁵⁹ If authorities decide not to complete an investigation, or not to initiate a prosecution at the conclusion of the investigation, reasoned decisions must be made public and notice must be given to the victim(s) and the victim(s)’s family members.¹⁶⁰ Where publication of information may jeopardise an investigation or prosecution, it may be permissible for this information to remain undisclosed to the public, but any restrictions on access to information must be strictly necessary and provided for by law.¹⁶¹ Victims must also be informed of the fate and whereabouts of their loved ones.

Where credible allegations exist of conduct involving the violation of human rights during counter-terrorism operations:

- The State, through an authority whose personnel are not allegedly involved in the conduct, must undertake an independent and impartial investigation into the allegations.

- The commencement of such investigation must be prompt and does not require an individual to make a formal complaint.
- The investigation must be thorough, so as to enable the identification of alleged perpetrators and of the facts.
- Where the investigation finds prima facie evidence of criminal conduct involving human rights violations, criminal proceedings must be instituted against the persons allegedly involved, whether law enforcement officials, intelligence service personnel or non-State actors.

8. *Any person whose human rights or fundamental freedoms have been violated in the course of any action to counter terrorism must be provided with access to effective remedies and reparation.*

8.1 Obligation to provide access to an effective remedy and reparation to victims of human rights violations

78. The legal obligation to provide victims of human rights violations with an effective remedy is reflected in article 2(3)(a) of the ICCPR and article 8 of the Universal Declaration of Human Rights. The General Assembly has urged States, while countering terrorism: “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”.¹⁶²
79. The Basic Principles and Guidelines on the Right to a Remedy and Reparation outline remedies to be made available to victims of violations of international human rights and humanitarian law. They require States to ensure that their domestic law makes available adequate, effective, prompt and appropriate remedies, including reparation in respect of all violations of human rights.¹⁶³ This includes the victim’s right to equal and effective access to justice, effective and prompt reparation for harm suffered, and access to relevant information concerning the violations and reparation mechanisms. The Basic Principles and Guidelines outline certain obligations on States to provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law, and to establish national programmes for reparation and other assistance to victims, if the parties liable for the harm suffered are unable or unwilling to meet their obligations.¹⁶⁴

8.2 Remedies and reparation must be effective

80. Remedial provisions should be framed in sufficiently broad terms so as to enable effective remedies to be provided according to the requirements of each particular

case, including, for example, release from arbitrary detention, compensation and the exclusion of evidence obtained in violation of human rights.¹⁶⁵ To be effective, remedies should be tailored to ensure that they are both appropriate and just. Although a single remedy might not entirely satisfy this, the aggregate of several remedies may do so.¹⁶⁶

Notes

1. Office of the United Nations High Commissioner for Human Rights, *Human rights, terrorism and counter-terrorism*, (OHCHR, Fact Sheet No. 32, 2008) (hereafter OHCHR Fact Sheet on human rights, terrorism and counter-terrorism), pp. 1 and 6.
2. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 6.
3. The United Nations Global Counter-Terrorism Strategy, adopted under General Assembly resolution 60/288 (2006), was most recently reaffirmed in June 2014 in General Assembly resolution 68/276, itself reaffirming General Assembly resolutions 60/288, 62/272, 64/297 and 66/282 (hereafter the UN Global Counter-Terrorism Strategy), para. 2.
4. See, for example, Security Council resolutions 1456 (2003), annex, para. 6, and 1624 (2005), para.4; General Assembly resolution 60/288, annex, para. 3; the Statement by the President of the Security Council of 27 September 2010 (S/PRST/2010/19), para. 12; and A/HRC/16/51/Add.4.
5. See the Basic Human Rights Reference Guides on "*Security Infrastructure*", "*The Stopping and Searching of Persons*", "*Detention in the Context of Countering Terrorism*", "*Right to a Fair Trial and Due Process in the Context of Countering Terrorism*" and "*Proscription of Organisations in the Context of Countering Terrorism*".
6. Vienna Convention on the Law of Treaties, article 19(c).
7. See International Law Commission Commentary on Draft Articles on State Responsibility, *Yearbook of the International Law Commission* (1996), Vo. 2, p. 248. See also OHCHR Fact Sheet No. 32, p. 3.
8. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 3(1). The applicability of non-refoulement to the prohibition of torture has also been well established within international and regional jurisprudence. See, for example, European Court of Human Rights, *Chahal v. United Kingdom*, Application no. 22414/93 (1996), paras. 79–80; European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09 (2012), para. 200; *Agiza v. Sweden*, Committee against Torture Communication No. 233/2003, UN Doc CAT/C/34/D/233/2003 (2005), para. 13.4; Human Rights Committee, General Comment 20 (Prohibition of Torture or other Cruel, Inhuman or Degrading Treatment or Punishment), para. 9; Committee against Torture, *Concluding Observations on the fourth periodic report of the Russian Federation*, UN Doc CAT/C/RUS/CO/4 (2007), para. 15; and Committee against Torture, *Concluding Observations on the second periodic report of Tajikistan*, UN Doc CAT/C/TJK/CO/2 (2013), para. 18(a).
9. Office of the United Nations High Commissioner for Refugees (UNHCR), *Guidelines on international protection: application of the exclusion clauses: article 1F of the 1951 Convention relating to the Status of Refugees* (HCR/GIP/03/05); UNHCR, *Background note on the application of the exclusion clauses: article 1F of the 1951 Convention relating to the Status of Refugees* (2003); and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/62/263), paras. 65–71.
10. See generally Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (ICRC, 2006).
11. International Committee of the Red Cross, "International humanitarian law and terrorism: questions and answers" (5 May 2004).
12. Protocol I to the Geneva Conventions, article 51(2); Protocol II to the Geneva Conventions, article 13(2).
13. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Reports, para. 106; Human Rights Committee, General Comment 31: Nature of the general legal obligation imposed on states parties to the Covenant (hereafter General Comment 31), para.

- 11; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits (2005) ICJ Reports, paras. 216–220.
14. See further Office of the High Commissioner for Human Rights, *Monitoring the core international human rights treaties*, URL: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.
 15. The core universal human rights treaties are the: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment; Optional Protocol to the CAT; Convention on the Rights of the Child, Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention for the Protection of All Persons from Enforced Disappearance; and Convention for the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.
 16. See further Office of the High Commissioner for Human Rights, *Special Procedures of the Human Rights Council*, URL: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.
 17. UN Global Counter-Terrorism Strategy, preambular para. 7. See also OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, pp. 1 and 5–6.
 18. UN Global Counter-Terrorism Strategy, preambular para. 2 and Annex, Plan of Action, para. 1.
 19. 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), para. 8.
 20. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 1.
 21. Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action* (July 2013).
 22. 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), para. 12.
 23. See also Report of the United Nations Secretary-General, *Uniting against terrorism: recommendations for a global counter-terrorism strategy*, UN Doc A/60/825 (2006), para. 118.
 24. UN Global Counter-Terrorism Strategy, Annex, Plan of Action, para. 2.
 25. UN Global Counter-Terrorism Strategy, Annex, Plan of Action, para. 3.
 26. See, for example, General Assembly resolution 60/158 (2006), para. 1. See also the 2005 World Summit Outcome, set out in General Assembly resolution 60/1 (2005), para. 85.
 27. See, for example: Security Council resolution 1456 (2003), Annex, para. 6; Security Council resolution 1624 (2005), para. 4; and Security Council resolution 1963 (2010), preambular para. 13; and Security Council resolution 2083 (2012), preambular para. 5. See also the Statement by the President of the Security Council, UN Doc S/PRST/2013/5, p. 1.
 28. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 12.
 29. See, for example, OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, pp. 12 and 15.
 30. 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), para. 12.
 31. European Court of Human Rights, *Sunday Times v. United Kingdom*, Application no. 6538/74 (1979), paras. 47–49; reaffirmed in . European Court of Human Rights, *Silver v. United Kingdom*, Application nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (1983) paras. 86–88. See also Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4 (1985), Annex (hereafter the Siracusa Principles), para. 17.
 32. Siracusa Principles, paras. 6 and 10(a).
 33. Siracusa Principles, para. 10(b) and (c).
 34. See, for example, the approach of the Supreme Court of Canada to this effect: *Lavigne v. Ontario Public Service Employees Union* [1991] 2 SCR 211; and *Figuroa v. Canada (Attorney General)* [2003] 1 SCR 912.
 35. Siracusa Principles, para. 11.
 36. Siracusa Principles, para. 2; and Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, *Human Rights: A Uniting Framework*, UN Doc E/CN.4/2002/18 (2002), Annex entitled Proposals for “further guidance” for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001), para. 4(c), (d), (g) and (h).

37. See, for example, Human Rights Committee *Burgess v. Australia*, Communication No. 1012/2001, UN Doc CCPR/C/85/D/1012/2001 (2005), para. 4.13.
38. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 17.
39. Siracusa Principles, para. 9.
40. Human Rights Committee, General Comment 18 (Non-discrimination), para. 13.
41. UN Global Counter-Terrorism Strategy, Pillar I.
42. Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 18 (A/57/18 (2002))*, chap. XI, sect. C, Statement on racial discrimination and measures to combat terrorism, paras. 5–6.
43. Namely those rights under the following articles of the ICCPR: 6 (life); 7 (torture, or cruel, inhuman or degrading treatment); 8(1) and (2) (slavery and servitude); 11 (imprisonment for failure to perform a contractual obligation); 15 (no punishment without the law); 16 (recognition before the law); and 18 (manifestation of religious belief).
44. Human Rights Committee, General Comment 29 (States of Emergency) (hereafter General Comment 29), para. 15.
45. General Comment 29, paras. 9–13.
46. General Comment 29, para. 13.
47. General Comment 29, paras. 5, 16, and 17. See, for example, Human Rights Committee, *de Montejo v Colombia*, para. 10.3.
48. Siracusa Principles, para. 45, which requires a notification of derogation to contain: the provisions of the ICCPR from which the State has derogated; a copy of the proclamation of emergency, together with the constitutional provisions, legislation, or decrees governing the state of emergency in order to assist the States parties to appreciate the scope of the derogation; the effective date of the imposition of the state of emergency and the period for which it has been proclaimed; an explanation of the reasons which actuated the government’s decision to derogate, including a brief description of the factual circumstances leading up to the proclamation of the state of emergency; and a brief description of the anticipated effect of the derogation measures on the rights recognised by the Covenant, including copies of decrees derogating from these rights issued prior to the notification.
49. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 19.
50. European Court of Human Rights, *Lawless v Ireland (No 3)*, Application no 332/57 (1961) (followed in *The Greek Case (1969)* 12 *Yearbook of the European Court of Human Rights* 1 at 32).
51. Compare with: General Comment 29, para. 3; and Siracusa Principles, paras. 40 and 54.
52. Compare with General Comment 29, paras. 2 and 4.
53. Compare with Siracusa Principles, para. 39(b).
54. European Court of Human Rights, *Ireland v United Kingdom*, Application no. 5310/71 (1978), para. 207; European Court of Human Rights, *Sakik and others v Turkey*, Application No. 87/1996/706/898-903 (1997), para. 39.
55. General Comment 29, paras. 3–5; and Siracusa Principles, para. 15.
56. General Comment 29, para. 1.
57. General Comment 29, para. 4; and Siracusa Principles, para. 53.
58. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.4), para. 10. 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), Practice 3(2).
59. General Comment 29, para. 9.
60. General Comment 29, para. 8.
61. Manfred Nowak, *UN Covenant on Civil and Political Rights* (Kehl, Germany: 2nd Rev. Ed, NP Engel, 2005), pp. 99–100.
62. High-level Panel on Threats, Challenges and Change, *A more secure world: Our shared responsibility* (UN Publication, 2004), para. 21.
63. UN Global Counter-Terrorism Strategy, Annex, Pillar I.
64. UN Global Counter-Terrorism Strategy, Annex, Pillar I.
65. UN Global Counter-Terrorism Strategy, Annex, Pillar IV. See also: Security Council resolution 1963 (2010), para. 10; 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), para. 12; Report of the United Nations Secretary-General, *Uniting against terrorism: recommendations for a global counter-terrorism strategy*, UN Doc A/60/825 (2006), para. 5; Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/HRC/8/13 (2008); and Statement by the President of the Security Council of 27 September 2010 (S/PRST/2010/19), un-numbered para. 8.
66. Declaration on Measures to Eliminate International Terrorism, set out in General Assembly resolution 49/60 (1994), para. 3.
 67. See Security Council resolution 1566 (2004), para. 3
 68. See, for example, 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), para. 26. See also General Assembly resolution 68/178 (2013), para. 6(m).
 69. *Barayagwiza v. Prosecutor*, ICTR Appeals Chamber (Decision of 3 November 1999), Case No. ICTR-97-19, para. 40; *Kajelijeli v. Prosecutor*, ICTR Appeals Chamber (judgement of 23 May 2005), Case No. ICTR-98-44A-A, para. 209; *Prosecutor v. Delalic, Mucic, Delic, and Landzo*, ICTY Trial Chamber (Judgment of 16 November 1998), Case No. IT-96-21-T, para. 402.
 70. General Assembly resolution 68/178, para. 6(m)
 71. 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), para. 26.
 72. 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 7.
 73. See also article 11(2) of the Universal Declaration of Human Rights.
 74. The non-derogable nature of the principle is reflected in: article 4(1) of the ICCPR; article 15(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and article 27(1) of the American Convention on Human Rights. See also General Comment 29, para. 7.
 75. See, for example: General Assembly resolution 60/158 (2006), para. 3; General Assembly resolution 63/185 (2009), para. 4; Human Rights Council resolution 7/7 (2008), para. 4; and Commission on Human Rights resolution 2005/80, para. 3.
 76. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98), para. 42. See, for example: European Court of Human Rights, *Ould Dah v. France*, Application No 13113/03 (2009); *Prosecutor v. Mitar Vasiljevic*, Case: IT-98-32-T (judgement of 29 November 2002), para. 198.
 77. European Court of Human Rights, *Cantoni v. France*, Application no. 17862/91 (1996), para. 29; European Court of Human Rights, *Kokkinakis v. Greece*, Application no. 14307/88 (1993), para. 52.
 78. See, for example, European Court of Human Rights, *Kokkinakis v. Greece*, Application no. 14307/88 (1993) para. 52.
 79. European Court of Human Rights, *Streletz, Kessler and Krenz v. Germany*, Application nos. 34044/96, 35532/97 and 44801/98 (2001), paras. 73-74 and 87-88; European Court of Human Rights, *K.-H. W. v. Germany*, Application no. 37201/97 (2001) ECHR 229, para. 90.
 80. European Court of Human Rights, *Streletz, Kessler and Krenz v. Germany*, Applications nos. 34044/96, 35532/97 and 44801/98 (2001), paras. 56-65.
 81. See, for example: European Court of Human Rights, *Kokkinakis v. Greece*, Application no. 14307/88 (1993) , para. 51(2); European Court of Human Rights, *Korbely v. Hungary*, Application no. 9174/02 (2008), para. 90; and European Court of Human Rights, *Kononov v. Latvia*, Application no. 36376/04 (2010), paras. 203, 208, 211, and 221.
 82. See article 30 of the Statute of the International Criminal Court.
 83. See for example: United Nations Convention against Transnational Organized Crime, articles 16 and 18(9). See also report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98), para. 26.
 84. European Court of Human Rights, *Ecer and Zeyrek v. Turkey*, Application nos. 29295/95, 29363/95 (2001), para. 35. See also European Court of Human Rights, *Veeber (No 2) v. Estonia*, Application no. 37571/97 (2003) para. 35; and European Court of Human Rights, *Puhk v. Estonia*, Application no. 55103/00 (2004), para. 30.
 85. Human Rights Committee, *Nicholas v. Australia*, Communication no. 1080/2002 (2004), paras. 7.3-7.7.

86. See also article 11(2) of the Universal Declaration of Human Rights.
87. See, for example: Human Rights Committee, *Gombert v. France*, Communication no. 987/2001 (2003), para. 6.4; Human Rights Committee, *Filipovich v. Lithuania*, Communication no. 875/1999 (2003), para. 7.2; Human Rights Committee, *Gomez v. Peru*, Communication no. 981/2001 (2003), para. 7.4; and Human Rights Committee, *Gavrilin v. Belarus*, Communication no. 1342/2005 (2007), para. 8.3.
88. See also Human Rights Committee, *Judge v. Canada*, Communication no. 829/1998 (2003), para. 10.4.
89. Security Council resolution 1624 (2005), para 1(a).
90. 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), para. 29.
91. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.3), para. 26. See also Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism* (Berlin: Springer Verlag, 2010), pp. 450–460.
92. 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), para. 30; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.3), paras. 26–27.
93. See: OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 28; and the joint declaration of the Special Rapporteur on freedom of opinion and expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on freedom of expression, 21 December 2005.
94. 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), para. 31.
95. 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 8.
96. OHCHR Fact Sheet on human rights, terrorism and counter-terrorism, p. 13.
97. 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), para. 13.
98. See, for example: Canada, Department of Justice Act 1985, section 4.1; New Zealand, Bill of Rights Act 1990, section 7; and United Kingdom, Human Rights Act 1998, section 19. See also responses submitted by Finland, Mauritius and Monaco to the questionnaire of the former Special Rapporteur on counter-terrorism concerning best practices in countering terrorism. On the effectiveness of such mechanisms, see Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism* (Berlin: Springer Verlag, 2010), pp. 340–343.
99. 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 1(1).
100. 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), para. 13.
101. 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 1(2).
102. See, for example, Canada, Constitution Act 1982, section 52. On the operation of such mechanisms in certain Commonwealth countries, see Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism* (Berlin: Springer Verlag, 2010), pp. 318–321 and 329–339.
103. 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 1(3). See also International Commission of Jurists, *Assessing Damage, Urging Action - Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), pp. 169–170.
104. 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), para. 13.
105. 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 1(4).
106. 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), para. 17, and Practice 3(1).

See also International Commission of Jurists, *Assessing Damage, Urging Action - Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), p. 89.

107. 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), para. 15; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.4), paras. 38 and 59.
108. 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), para. 15; Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, *Human Rights: A Uniting Framework*, UN Doc E/CN.4/2002/18 (2002), paras. 3(b) and 3(j); Siracusa Principles, paras. 16 and 18; Council of Europe, *Guidelines on Human Rights and the Fight against Terrorism* (2002), Guideline II; and Center on Global Counterterrorism Cooperation, *Handbook on Human Rights Compliance While Countering Terrorism* (2008), Condition 3.3.
109. 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), para. 15.
110. 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), para. 17.
111. David Paccioco, "Constitutional Casualties of September 11: Limiting the Legacy of the Antiterrorism Act" (2002) 16 *Supreme Court Law Review* 185, p. 190.
112. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/60/370), para. 47; A preliminary framework draft of principles and guidelines concerning human rights and terrorism, Expanded working paper by Kalliopi K. Koufa (E/CN.4/Sub.2/2005/39 (2005)), para. 33; Council of Europe, *Guidelines on Human Rights and the Fight against Terrorism* (2002), Guideline III(2); and Inter-American Commission on Human Rights report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 (2002), paras. 51 and 55.
113. 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 2.
114. 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), para. 19.
115. 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), para. 19; and Clive Walker, "The United Kingdom's anti-terrorism laws: lessons for Australia", in *Law and Liberty in the War on Terror* (2007), p. 189.
116. 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), para. 19.
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118. 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), para. 20.
119. 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 4.
120. UN Global Counter-Terrorism Strategy, Annex, Pillar I. See also the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 14.
121. UN Global Counter-Terrorism Strategy, Annex, Pillar I, para. 8.
122. General Assembly resolution 68/178, para. 6(p).
123. 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), para. 24; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 15.

124. UN Global Counter-Terrorism Strategy, Pillar I. See also General Assembly resolution 64/168, para. 6(n); Statement by the President of the Security Council of 27 September 2010 (S/PRST/2010/19), para. 10; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.3), para. 43; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), paras. 12, 14–15 and 52–53.
125. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), paras. 44–46; Report of the Security Council working group established pursuant to resolution 1566 (2004) (S/2005/789), para. 31; European Council Guidelines on the Protection of Victims of Terrorist Acts (2005), Guidelines II and III; European Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings, article 13.
126. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 53.
127. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), paras. 15 and 66.
128. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 67.
129. Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in General Assembly resolution 40/34 (1985), para. 1.
130. Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in General Assembly resolution 40/34 (1985), para. 2.
131. Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in General Assembly resolution 40/34 (1985), para. 3. See also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 16.
132. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted under General Assembly resolution 60/147 (2005) (hereafter the Basic Principles and Guidelines on the Right to a Remedy and Reparation), para. 10.
133. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), paras. 36–38; European Council Guidelines on the Protection of Victims of Terrorist Acts (2005), Guideline X(ii); and Basic Human Rights Reference Guide on *“Right to a Fair Trial and Due Process in the Context of Countering Terrorism”*, Guideline 1.
134. 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 6.
135. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 42; European Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings, Article 2.
136. European Council Guidelines on the Protection of Victims of Terrorist Acts (2005), Guideline VII(1); European Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings, Article 8.
137. European Council Guidelines on the Protection of Victims of Terrorist Acts (2005), Guideline VII(2); Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 45.
138. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), para. 57.
139. 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), footnote 40. See also article 8(4) of the International Convention for the Suppression of the Financing of Terrorism.
140. 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. 29; Report of the Special

- Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.2), paras. 40–45.
141. 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. 29; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.2), paras. 42–43 and 80. On the independence and impartiality of tribunals established by law, see the Basic Human Rights Reference Guide on “*Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”, Guideline 2.
 142. 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. 29; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.2), para. 43.
 143. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/22/52), paras. 29–31.
 144. See, for example: Declaration on Human Rights Defenders, Article 9(5); and UN Principles on Extralegal Executions, Principle 9.
 145. General Comment 31, para. 15. See also para. 8.
 146. General Comment 31, para. 15.
 147. International Commission of Jurists, *The Right to Remedy and Reparation for Gross Violations of Human Rights: A Practitioner’s Guide* (2006), pp. 59–60; Report of the Special Rapporteur on the question of impunity of perpetrators of human rights violations (civil and political), Louis Joinet (E/CN.4/Sub.2/1997/20/Rev.1 (1997)), para 27.
 148. Inter-American Court of Human Rights, *Velasquez Rodríguez v. Honduras*, Series C No 4 (1988, para. 176; Inter-American Court of Human Rights, *Tibi v. Ecuador*, Series C. No 114 (2004), para. 159; European Court of Human Rights, *Aksoy v. Turkey*, Application no. 21987/93 (1996), para. 99; Committee against Torture, *Abdelli v. Tunisia*, Communication no. 188/2001 (2003), para. 10.4–10.5; Committee against Torture, *Ltaief v. Tunisia*, Communication no. 189/2001 (2003), para. 10.4–10.5; Committee against Torture, *Dimitrov v. Serbia and Montenegro*, Communication no. 171/2000 (2005), para. 7.2; and Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture—A Commentary* (Oxford: Oxford University Press, 2008), p. 448.
 149. Where officials are found guilty, they should be dismissed from their position, in addition to any other form of punishment imposed as a result of conviction. See: Human Rights Committee, *Concluding observations on Serbia and Montenegro*, UN Doc CCPR/CO/81/SEMO (2004), para. 9; and International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (2006), pp. 76–77.
 150. See articles 5–7, 12–13 and 16 of the CAT. See also: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (2006), pp. 69–70; and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan Mendez (A/HRC/19/61), para. 48.
 151. UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 (2005), para. 4.
 152. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1), Principle 1.
 153. UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by ECOSOC resolution 1989/65, Principle 11; UN Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 (2010), Principle 2; Committee against Torture, *Concluding Observations on the second periodic report of the Philippines*, UN Doc CAT/C/PHL/CO/2 (2009), para. 15; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan E. Mendez (A/HRC/22/53/Add.2), para. 87(g); and International Commission of Jurists, *The Right to Remedy and Reparation for Gross Violations of Human Rights: A Practitioner’s Guide* (2006), pp. 66–67.

154. European Court of Human Rights, *McKerr v. United Kingdom*, Application no. 28883/95 (2001), para 112; Committee against Torture, *Concluding Observations on the second periodic report of Albania*, UN Doc CAT/C/ALB/CO/2 (2012), para. 21(a).
155. General Comment 29, para. 14.
156. *Amnesty International and Others v. Sudan*, Communication Nos. 48/90, 50/91, 52/91, 89/93 (1999), African Commission on Human and Peoples' Rights, 26th and 27th Ordinary Sessions, May 2000, para. 51; UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by ECOSOC resolution 1989/65, Principle 10; UN Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 (2010), Principle 3(a).
157. Inter-American Court of Human Rights, *Myrna Mack-Chang v. Guatemala*, Series C. No 101 (25 November 2003), paras. 171–174; International Commission of Jurists, *The Right to Remedy and Reparation for Gross Violations of Human Rights: A Practitioner's Guide* (2006), p. 70.
158. . Inter-American Court of Human Rights, *Myrna Mack-Chang v. Guatemala*, Series C. No 101 (25 November 2003), para. 180.
159. UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by ECOSOC resolution 1989/65, Principle 10; European Court of Human Rights, *Kelly et. al. v. United Kingdom*, Application no. 30054/96 (2001), para. 117. In cases of enforced disappearances, article 18 of the International Convention for the Protection of All Persons from Enforced Disappearances requires that “any person with a legitimate interest” should have access to certain information such as the whereabouts of the person deprived of their liberty.
160. Inter-American Court of Human Rights, *Del Caracazo v. Venezuela (Reparations)*, Series C. No 95, (2002), para. 116; European Court of Human Rights, *Kelly et. al. v. United Kingdom*, Application no. 30054/96(2001), para. 116; European Court of Human Rights, *McKerr v United Kingdom*, Application no. 28883/95 (2001), para. 145.
161. International Convention for the Protection of All Persons from Enforced Disappearances, article 20; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/147, Principle 34.
162. General Assembly resolution 64/168 (2010), para. 6(n). 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), para. 22; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.4), paras. 38 and 59.
163. Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 2(c).
164. Basic Principles and Guidelines on the Right to a Remedy and Reparation, part III.
165. 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), para. 22.
166. European Court of Human Rights, *Silver v. United Kingdom*, Application nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (1983), para. 113(c).

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