

United Nations Counter-Terrorism Implementation Task Force

CTITF Working Group on Protecting Human Rights
while Countering Terrorism

About the United Nations Counter-Terrorism Implementation Task Force

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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 66/282 of 12 July 2012. 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, best practice examples and relevant documents prepared by United Nations entities and organizations.*

These 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.



** [United Nations Counter-Terrorism Centre, *Frequently Asked Questions on International Law Aspects of Countering Terrorism*, \[https://www.unctc.org/counterterrorism/counter-terror-basics/frequently-asked-questions-on-international-law-aspects-of-countering-terrorism\]\(#\)](#)

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I. Introduction

1. States have an obligation in international law to protect the public from acts of terrorism. Among other things, Security Council resolution 1373 (2001) requires States to “take the necessary steps to prevent the commission of terrorist acts [and] ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice”.¹ The design and implementation of counter-terrorism measures related to

of persons is examined in the following sections. The first section discusses the obligations of States to prevent terrorism, while the second section discusses the obligations of States to bring to justice those who are involved in terrorism. The third section discusses the obligations of States to protect human rights while countering terrorism.

- A “search” is the act that may follow a stop, by which a law enforcement official or any person authorized by the law, inspects a person and the area immediately within that person’s control, including clothes, any objects being carried or a vehicle.

A stop or a “stop and search” may take place, for example, when a person is walking or driving in the street; at a checkpoint; at an airport, train or bus station; or at a border. There are, however, several situations in which a person may talk or interact with law enforcement officials that do not constitute a stop. A stop could not be said to have taken place when, for example, a law enforcement officer asks a person for directions or information.

B. Key issues

5. Stopping and searching may be a critical element of effective counter-terrorism. One of the main priorities in counter-terrorism is prevention, and law enforcement officials may observe activity or behaviour that causes reasonable concern and requires immediate action in order to safeguard public safety. At the same time, these measures may interfere with the full enjoyment of a wide range of civil, political, economic, social and cultural human rights. In particular, the stopping and searching of persons may primarily impact on the right to personal liberty, the right to personal integrity, the principles of equality and non-discrimination, freedom of movement and the right to privacy.

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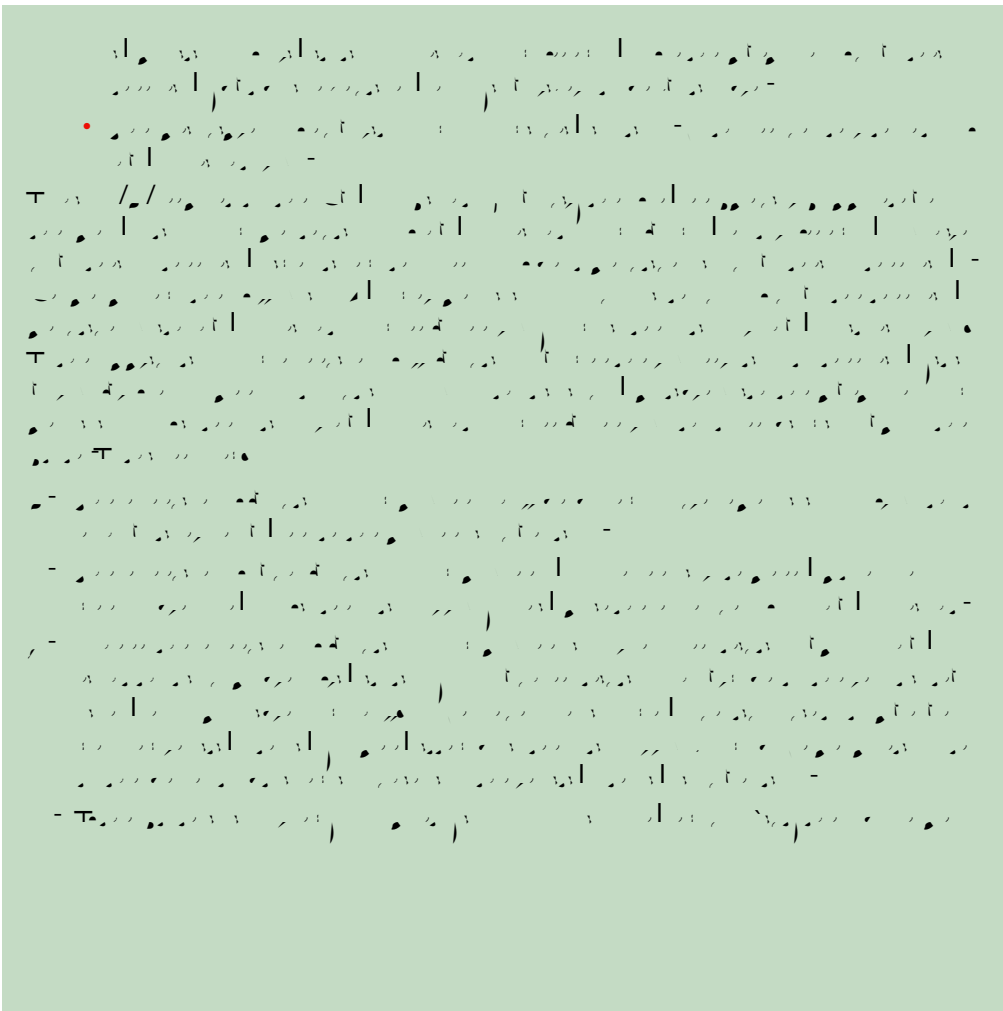
punished and reparations made to the victims.¹² This Guide also does not address the issue of international humanitarian law, but where counter-terrorism occurs within the context of an armed conflict, international humanitarian law applies, in addition to international human rights law. International humanitarian law does not allow for derogation as it was specifically conceived for the emergency situations that armed conflicts constitute.

C. Purpose of the Guide

13. The following guidelines aim to help States design and implement counter-terrorism policies while ensuring that they comply with international human rights law and standards. These guidelines are aimed at legislators, decision makers and persons responsible for the management of law enforcement officials; police and security agents, military officers and any other law enforcement officials; civilian contractors; and those called on to review challenges to the implementation of these measures (government officials and the judiciary). All these authorities should be made aware of the obligations, set out in the following guidelines, to ensure that practices of stopping and searching individuals respect an individual's human rights at all times. This document should be read in conjunction with the Guide "*Security Infrastructure*", the forthcoming Guides "*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*", "*Detention in the Context of Countering Terrorism*", "*Proscription of Organizations in the Context of Countering Terrorism*", and "*Right to a Fair Trial and Due Process in the Context of Countering Terrorism*", and Fact Sheet No. 32 (*Human Rights, Terrorism and Counter-Terrorism*) of the Office of the United Nations High Commissioner for Human Rights.

II. Guiding principles and guidelines

14. *...the decision to stop and/or search an individual to counter terrorism must at all times be consistent with international human rights law. ...the decision must be necessary to prevent acts of terrorism or apprehend those who participate in acts of terrorism, it must be authorised by law, and it must not have a dispro-*

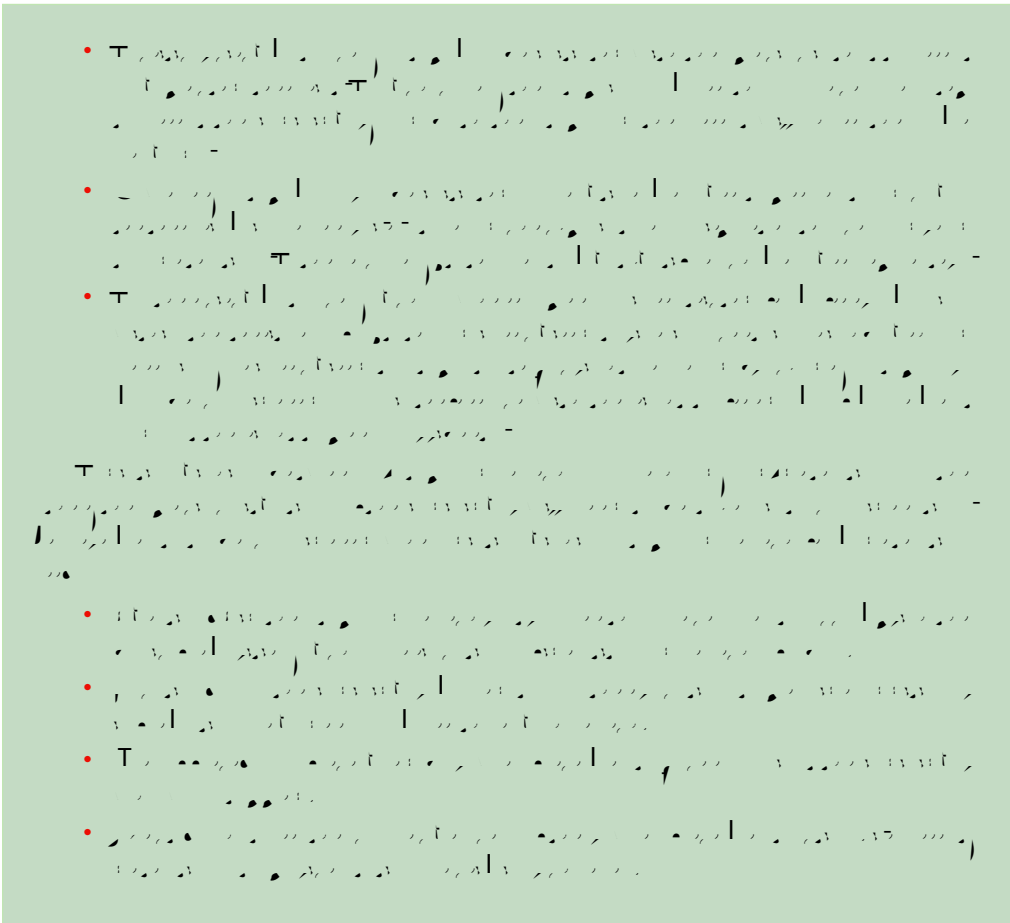


21. *No one shall be subject to unlawful or arbitrary deprivation of liberty in the implementation of counter-terrorism measures.*
22. Everyone has the right to liberty and security of person.²¹ States shall respect and ensure the full enjoyment of this right by all persons within their jurisdiction. As with any other crime, in cases where a State arrests or detains a person suspected of having committed acts of terrorism, strict compliance with international human rights law is essential. Furthermore, any deprivation of liberty must be conducted in accordance with procedures established by law. This element of the right to liberty refers to the procedural guarantees that the law must provide and which any State agent entrusted with its implementation must respect in favour of the person being deprived of his liberty. While the specific characteristics of the procedure should be established by domestic law, the procedure must fulfil the minimum guarantees provided by international human rights law.²²
23. Stops and searches, as well as interferences with the right to personal liberty, such as detention, affect a person's freedom of movement.²³ However, stops and

searches and detention are carried out for different purposes, have different legal grounds and legal guarantees attached to them. One regional human rights court has stated that the difference between deprivation of liberty and restrictions on liberty of movement is “merely one of degree or intensity and not one of nature or substance”.²⁴ While acknowledging that “the process of classification into one or the other of them sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion [...] the starting point must be [the] concrete situation and account must be taken of a whole range of criteria such as type, duration, effects and manner of implementation of the measure in question”.²⁵ In particular, in cases of stops and searches, the applicants are deprived of any freedom of movement; they are obliged to remain where they are and submit to the search. When they refuse, they may be subject to arrest, detention at a police station or other criminal charges. “This element of coercion is indicative of deprivation of liberty”.²⁶ Where force is used by law enforcement officials against an individual during a stop or a search, the element of coercion goes beyond affecting freedom of movement to impacting one’s right to liberty.²⁷

24. Consequently, each time a person is stopped, State agents should assess whether their actions are of such a degree or intensity as to affect the right to personal liberty. Among other things, State agents should take into account whether or not the stop extends beyond a limited time, sus(m)16(e)11(i)- -29.208-3(t t)-8(h)1 us17(e o)1forcer o, sus

- 26. The right to personal liberty is, in principle, among those rights that may be temporarily suspended or derogated, in the event of a declared emergency. It may be partially suspended for a limited period of time and is subject to a number of substantive and procedural requirements with which the State shall comply, as with any other derogable right, before the State can legitimately derogate it.³²



any other item that may be used to conceal the person's identity, the request may only be made when the agent seeks to confirm the identity of a person, or has

34. *All counter-terrorism measures, including the stopping and searching of persons, must respect the principles of equality and non-discrimination. Any difference in treatment, including through profiling practices, must be supported by objective and reasonable grounds.*⁵⁴

35. If based on “profiling”, measures related to the stopping and searching of persons in the context of law enforcement activities may violate the right to equality and non-discrimination, the right to the presumption of innocence,⁵⁵ the right to honour and reputation⁵⁷ and the prohibition of incitement to discrimination, hostility or violence.⁵ Profiling is generally defined as the systematic association of sets of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law enforcement decisions.⁵ As such, profiling is, in principle, a permissible means of law enforcement activity.⁶⁰ The use of profiles that reflect unexamined generalizations may, however, constitute disproportionate interference with human rights and violate the principle of non-discrimination. This is likely to be the case if profiling is based on ethnic or national origin (racial profiling), religion (religious profiling), or if profiling solely or disproportionately affects a specific part of the population.⁶¹
36. A difference in treatment based on criteria such as race, ethnicity, national origin

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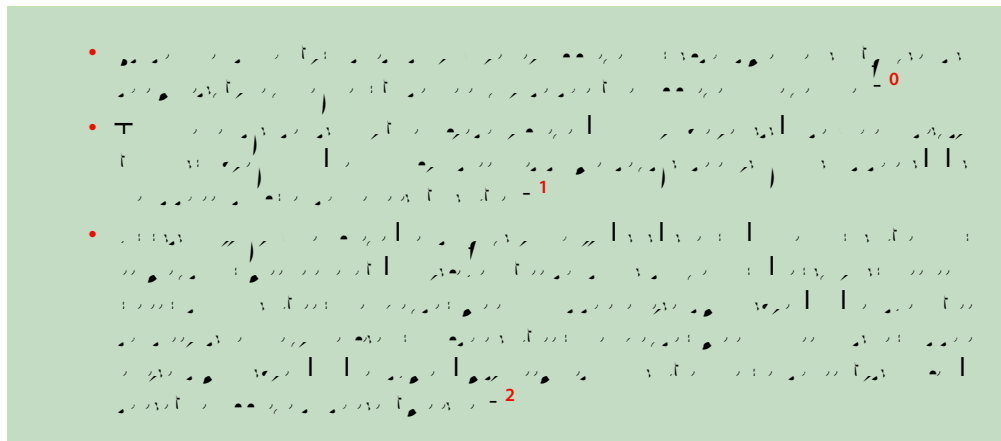
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members of certain groups. Research has shown that racial profiling has considerably negative effects. Racial profiling generates a feeling of humiliation and injustice among certain groups of persons and results in their stigmatization and alienation as well as in the deterioration of relations between these groups and the police, due to loss of trust in the latter. In this context, it is important to examine, as part of the assessment of the harm criterion, the behaviour of the police when conducting the relevant control, surveillance or investigation activity. For instance, in the case of stops, courtesy and explanations provided on the grounds for the stop have a central role in the individual's experience of the stop. It is also important to assess the extent to which certain groups are stigmatized as a result of decisions to concentrate police efforts on specific crimes or in certain geographical areas."

European Commission against Racism and Intolerance,
General Policy Recommendation No. 11 on combating racism
and racial discrimination in policing, adopted 29 June 2007

37. However, when a terrorist crime has been committed or is in preparation and there is evidence or information raising reasonable grounds to assume the suspect fits a certain descriptive profile, then reliance on such characteristics as ethnic appearance, national origin or religion may be justified.⁶⁵ In the case of preventive counter-terrorism efforts that are not based on evidence or specific information, the situation is different, however. In those cases, a profile may not be based on stereotypical generalizations that certain ethnic or religious groups pose a greater terrorist risk than others.⁶⁶
38. Profiling based on behavioural indicators appears to be significantly more efficient, although reliance on such indicators must be neutral and the indicators must not just be used as proxies for ethnicity, national origin or religion.⁶⁷ When law enforcement officials are unable to rely on evidence, specific information or useful behavioural indicators, the stopping and searching of persons should be carried out on a genuinely random basis and affect everyone equally. Indeed, as opposed to profiling, these techniques are impossible for terrorists to evade and may thus also be more effective.⁶





42. *Counter-terrorism measures shall not arbitrarily or unlawfully interfere with a person's right to privacy.*

"The right to privacy is a fundamental human right that has been defined as the presumption that individuals should have an area of autonomous development, interaction and liberty, a "private sphere" with or without interaction with others and free from State intervention, and free from excessive unsolicited intervention by other uninvited individuals ... while privacy is not always directly mentioned as a separate right in constitutions, nearly all States recognize its value as a matter of constitutional significance. In some countries, the right of privacy emerges by extension of the common law of breach of confidence, the right to liberty, freedom of expression or due process. In others, the right to privacy emerges as a religious value. The right to privacy is therefore not only a fundamental right, but also a human right that supports other human rights and forms the basis of any democratic society."

Special Rapporteur on the promotion and protection
of human rights and fundamental freedoms
while countering terrorism ³

43. The right to privacy includes a wide range of interrelated rights protecting the individual's existence and freedoms. ⁴ In relation to this right, the Human Rights Committee has stated that the notion of privacy refers to the sphere of a person's life in which he or she can freely express himself or herself, be it by entering into relationships with others or alone. ⁵ Therefore, this right encompasses, among other things, a person's intimacy, identity, name, appearance, gender, honour and dignity and extends to their home, family and correspondence. ⁶

As noted by a regional court, a stop or search affects the right to privacy:

with the right to privacy. designing these measures. Ineffective measures may result in an arbitrary interference with the right to privacy.

48. The right to privacy may be derogated, subject to the strict compliance of substantive and procedural requirements of international human rights law.⁴

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49.

of these counter-terrorism measures should be subject to judicial review and oversight, with effective remedies for the violation of rights and freedoms.¹⁰

57. States should raise awareness among all individuals within their territory and subject to their jurisdiction of human rights—including individuals who may potentially be affected by a stop or search. States should also help all national authorities strengthen their promotion and protection of human rights. For this purpose, States could organize public awareness and education programmes on counter-terrorism measures, including those integrating international standards of human rights into stops and searches. These programmes could provide information on the availability and accessibility of complaint mechanisms and legal remedies.¹¹⁰
58. In addition, States may collect, monitor and analyse relevant information regarding the stops and searches of persons.¹¹¹ This process may help detect patterns of conduct by law enforcement officials that may question the compatibility of these counter-terrorism measures with international human rights standards. Any collection and storing of information related to stops and searches of persons should be compatible with international standards of human rights law.¹¹²
59. Finally, States should provide for the sophisticated professional training of personnel involved in the implementation and management of stops and searches, including training in human rights law.¹¹³ ()]TJn8.p1 Tf-0.042 Tc -0.151 T7u(s)l1(17(-8(h)17n10(6T5)

- The Counter-Terrorism Implementation Task Force (CTITF) was established in 2005 to monitor and report on the implementation of the 2002 ACP Counter-Terrorism Arrangements (CTAs).
- The CTITF is a multi-stakeholder initiative involving the United Kingdom, the United States, and the African, Caribbean, and Pacific (ACP) Group of States.
- The CTITF's mandate is to assess the progress of ACP countries in implementing the CTAs and to provide technical assistance and capacity building to support these efforts.
- The CTITF is currently chaired by the United Kingdom and the United States.
- The CTITF's work is organized into several thematic areas, including:
 - Counter-terrorism legislation and policy
 - Counter-terrorism financing
 - Counter-terrorism operations and intelligence
 - Counter-terrorism training and capacity building
 - Counter-terrorism cooperation and information sharing
 - Counter-terrorism research and analysis
- The CTITF has published several reports and documents, including the Counter-Terrorism Implementation Progress Report (CTIPR) and the Counter-Terrorism Implementation Strategy (CTIS).
- The CTITF is also active in providing technical assistance and capacity building to ACP countries, through a variety of mechanisms, including workshops, seminars, and on-site visits.

III. Reference materials

Note

For the text of the general comments and general recommendations of the human rights treaty bodies, see “Compilation of general comments and general recommendations adopted by human rights treaty bodies”, Vols. I and II (HRI/GEN/1/Rev.9 (Vol. I) and HRI/GEN/1/Rev.9 (Vol. II)), available from the United Nations official document system at <http://ods.un.org>.

- 1 Security Council resolution 1373 (2001), paras. 2 (b) and (e). See also report of the Special Rapporteur (Ben Emmerson) on the “Promotion and protection of human rights and fundamental freedoms while countering terrorism”, (A/66/310), paras. 20 et seq.
- 2 General Assembly resolution 34/169, annex, Code of Conduct for Law Enforcement Officials, commentary to art. 1.
- 3 International Covenant on Civil and Political Rights, art. 9(1); Universal Declaration of Human Rights, art. 3; European Convention on Human Rights, art. 5(1); American Convention on Human Rights, art. 7(1); African Charter on Human and Peoples’ Rights, art. 9(1). See Human Rights Committee, General comment No. 8: art. 9 (Right to liberty and security of persons), art. 9.
- 4 International Covenant on Civil and Political Rights, art. 4(1); Human Rights Committee, General comment No. 29: art. 4 Derogation during state of emergency; American Convention on Human Rights, art. 27; European Convention on Human Rights, art. 15. See also report of the Human Rights Committee (A/61/40 (Vol. I)), chap. IV, para. 76 (15). (“The State party should recognize the absolute nature of the prohibition of torture”)

(Non-discrimination). See also Report of the Committee on the Elimination of Racial Discrimination (A/57/18, chap. XI.C), statement on racial discrimi-

not be associated with any religion, nationality, civilization or group”): Security Council resolution 2083 (2012), third preambular paragraph (“Reaffirming that terrorism cannot and should not be associated with any religion, nationality or civilization”); Outcome Document of the Durban Review Conference, Geneva 2009,

term implies that the limitation: (a) is based on one of the grounds justifying

against force or threat of force”) and para. 30 (“National security cannot be invoked ... to prevent merely local or relatively isolated threats to law and order”). See Human Rights Committee, Aleksander Belyatsky et al. v. Belarus, Communication No. 1296/2004 (CCPR/C/90/D/1296/2004) (2007), para. 7.3 (“The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose”); Human Rights Committee, Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002 (CCPR/C/84/D/1119/2002) (2005), para. 7.2.

- 18 Universal Declaration of Human Rights, art. 2(1); International Covenant on Civil and Political Rights, art. 26 and also art. 4(1). See also Committee on Economic, Social and Cultural Rights, General Comment No. 20 (Non-discrimination in economic, social and cultural rights), para. 32; Report of the Independent Expert on the protection of human rights and fundamental freedoms while countering terror-

(“Everyone shall have the right to recognition everywhere as a person before the law.”) and Human Rights Committee, General comment No. 13: art. 14 (Administration of justice).

- 23 European Court on Human Rights, *H. M. v. Switzerland*, Application No. 39187/98 (2002), para. 40.
- 24 European Court on Human Rights, *Guzzardi v. Italy*, Application No. 7367/76

terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism

also Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 11. See also Committee on the Elimination of Racial Discrimination, General recommendation XXVI on art. 6 of the Convention, para. 1.

- 58 See International Covenant on Civil and Political Rights, art. 20(2); *Report of the*

Add.3), para. 52 (“The use of indicator clusters to profile potential suspects is, in principle, a permissible means of investigation and law enforcement activity.”).

- 61 See Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), para. 18; *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban Declaration and Programme of Action) (A/ CONF.189/12), Programme of Action, para. 72 (urges States “to design, implement and enforce effective measures to eliminate the phenomenon popularly known as ‘racial profiling’”). See also Committee on the Elimination of Racial Discrimination, General recommendation XXX on discrimination against non-citizens, para. 10 (States must “ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or

Committee, *S. W. M. Brooks v. the Netherlands*, Communication No. 172/1984 (CCPR/C/OP/2) (1990), para. 13: “The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of art. 26.”

- 63 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), paras. 45-54, particularly para. 54. (The available evidence suggests that profiling practices based on ethnicity, national origin or religion are an unsuitable and ineffective, and therefore a disproportionate, means of countering terrorism: they affect thousands of innocent people, without producing concrete results.)
- 64 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), paras. 55-58.
- 65 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), para. 59 (“Despite the human rights concerns outlined above, the use of terrorist profiles that include criteria such as ethnicity, national origin and religion is, in the view of the Special Rapporteur, not always forbidden. If, in the context of an investigation into a terrorist crime already committed, there are reasonable grounds to assume that the suspect fits a certain descriptive profile, then the reliance on characteristics such as ethnic appearance, national origin or religion is justified. Similarly, these factors can be employed to target search efforts where there is specific intelligence suggesting that someone fulfilling these characteristics is

stereotypical generalizations that certain ethnic or religious groups pose a greater terrorist risk than others.”).

- 67 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), paras. 36 and 60 (“The Special Rapporteur takes the view that, in any event, profiling based on behavioural patterns is significantly more efficient than reliance on ethnicity, national origin or religion. The importance of focusing on behaviour is highlighted, for example, by the experiences of the [Member State’s] Customs Service. In the late 1990s, the Customs Service stopped using a profile that was based, among other factors, on ethnicity and gender in deciding whom to search for drugs. Instead, the customs agents were instructed to rely on observational techniques, behavioural analysis and intelligence. This policy change resulted in a rise in the proportion of searches leading to the discovery of drugs of more than 300 per cent. The Special Rapporteur believes that behaviour is an equally significant indicator in the terrorism context. He therefore urges States to ensure that law-enforcement authorities, when engaging in preventive counter-terrorism efforts, use profiles that are based on behavioural, rather than ethnic or religious, characteristics ... at the same time, the Special Rapporteur reminds States that behavioural indicators must be implemented in a neutral manner and must not be used as mere proxies for ethnicity, national origin or religion.”).
- 68 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26)), A/HRC/4/26, para. 61 (“However, it may not always be possible for law-enforcement agencies to rely on specific intelligence or useful behavioural indicators in the context of preventive counter-terrorism efforts. The Special Rapporteur is of the view that in such situations controls should be universal, affecting everyone equally. Where the costs for blanket searches are deemed to be too high, the targets for heightened scrutiny must be selected on a random rather than on an ethnic or religious basis. In fact, this is what airlines are already routinely doing. As opposed to profiling, random searches are impossible for terrorists to evade and may thus be more effective than profiling.”).
- 69 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), paras. 55-61.
- 70 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter referenced to as the “Basic Principles”) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of

Officers, Havana, 27 August to 7 September 1990; General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 3. See also Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 22.

- 71 See “Basic Principles”.
- 72 See “Basic Principles”, principle 4.
- 73 See “Basic Principles”, principle 4. See also principles 9-11 regarding the use of firearms (“9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means

9.4 (“The Committee recalls that even when used as a last resort lethal force may only be used, under art. 6 of the Covenant, to meet a proportionate threat. The Committee further recalls that States parties are required to prevent arbitrary killing by their own security forces”); see also report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26), para. 76 (“[The Special Rapporteur] reiterates that the use of lethal force by law-enforcement officers must be regulated within the framework of human rights law and its strict standard of necessity.”); Reports of the former Special Rapporteur on extra-judicial, summary or arbitrary executions, Philip Alston (E/CN.4/2006/53), paras. 44-54; A/61/311, paras. 33-45.

- 82 See “Basic Principles” principles 5(b) (c), (d) and 6; General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 3 and commentary (c). See also Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication 11/45 (1982), paras. 13.2 and 13.3.
- 83 See A/HRC/13/37, para. 11.
- 84 International Covenant on Civil and Political Rights, art. 17; Universal Declaration of Human Rights, art. 12; European Convention on Human Rights, art. 8; American Convention on Human Rights, art. 11. See also Human Rights Committee, General comment No. 16 art. 17 (Right to privacy).
- 85 Human Rights Committee *A. R. Coeriel and M. A. R. Aurik v. The Netherlands*, Communication 453/1991 (CCPR/52/D/453/1991) (1994), para. 10.2. See also report of the Special Rapporteur on the promotion and protection of

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- 98 International Covenant on Civil and Political Rights, art. 4. See also Human Rights Committee, General comment No. 29: art. 4 (Derogations during state of emergency); American Convention on Human Rights, art. 27; European Convention on Human Rights, art. 15; “The Siracusa Principles” (E/CN.4/1985/4), annex, paras. 39-70
- 99 International Covenant on Civil and Political Rights, art. 12(3) (requiring that any restriction on the freedom of movement must be “provided by law”). See also Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), para. 13 (“The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”).
- 100 International Covenant on Civil and Political Rights, art. 12(3) (“The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security which are permanent Rights 26(n) 1(s) 9(h) 16(n) 8(d) 16(n) C) 1

- exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.”).
- 102 Human Rights Committee, *Sandra Lovelace v. Canada*, Communication No. 24/1977 (1981); Human Rights Committee, *Shirin Aumeeruddy-Czira et al v. Mauritius (Mauritian Women case)*, Communication No. 35/1978 (1981).
- 103 Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), para. 15.
- 104 International Covenant on Economic, Social and Cultural Rights, arts. 10(1) and 15(1)(a); International Covenant on Civil and Political Rights, arts. 17(1) and 24. See also report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin Mission to Israel, including visit to the Occupied Palestinian Territories (A/HRC/6/17/Add.4), para. 42 (“The permits regime also has an impact on the integrity of family units and the ability of men and women to marry with people outside their own permit zones. The permits regime and checkpoint closures and procedures have also had a negative impact on the ability of families to visit those in detention, whether sentenced prisoners or those held in administrative detention.”).
- 105 International Covenant on Economic, Social and Cultural Rights, art. 11(1); International Covenant on Civil and Political Rights, art. 6(1) (“Every human being has the inherent right to life”). See also report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin Mission to Israel, including visit to the Occupied Palestinian Territories (A/HRC/6/17/Add.4), para. 39 (“As a result of closures and the system of permits regulating the movement of people from one area to another, the [people] are adversely affected in their ability to gain access to education; health services, including emergency medical treatment; other social services; and places of employment. Access by ordinary [people] to their land and water resources, including through the devastation or separation from villages of agricultural land in the course of erecting the barrier, is also being impeded, in some cases to the point of having a devastating socio-economic impact on communities.”).
- 106 International Covenant on Economic, Social and Cultural Rights, arts. 6, 11(1), 12(1) and 13. See also International Covenant on Economic, Social and Cultural Rights, art. 10(2) (“Special protection should be accorded to mothers during a reasonable period before and after childbirth”). Additionally, see report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin Mission

to Israel, including visit to the Occupied Palestinian Territories (A/HRC/6/17/Add.4), paras. 40-41. 40. Delays at checkpoints have complicated childbirth for women. This has resulted in the delivery of children at checkpoints and unattended roadside births, putting at risk the health of both child and mother, and leading to numerous miscarriages and the death of at least five mothers. These hardships are reported to have contributed to an 8.2 per cent increase in home deliveries ... 41. As a result of the barrier, children encounter significant obstacles in attending or remaining at educational institutions. It also affects the movement of teaching staff, whether this be as a result of the barrier having been erected between “closed” communities and educational facilities, or the difficulties in obtaining special permits from the [Member State’s] Defense Forces to enter areas in which educational facilities are present ...”).

- 107 International Covenant on Civil and Political Rights, art. 2(3) (“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) To ensure that the competent authorities shall enforce such remedies when granted”).
- 108 See “Basic Principles” principle 22 (“Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances.”); principle 23 (“Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process.”). See also Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region (2009), para. 10 (recommendation b).
- 109 International Covenant on Civil and Political Rights, art. 2(3); “The Siracusa Principles” (E/CN.4/1985/4), annex, paras. 24 and 34 (“24. State organs or agents responsible for the maintenance of public order (*ordre public*) shall be subject to controls in the exercise of their power through the parliament, courts or other competent independent bodies. 34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.”). See also Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region (2009),

para. 10 (recommendation b) and para. 12 (“the HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints, in line with the requirements of art. 12 of the convention.”).

- 110** See General Assembly resolution 63/185, para. 5. See also A/CONF.189/12,

- 115 See “Basic Principles”, principle 20.
- 116 General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 2.
- 117 General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, arts. 7 and 8; “Basic Principles”, principles 22-26.
- 118 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65, principle 9; “Basic Principles”, principle 23; General Assembly resolution 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 33; Standard Minimum Rules for the Treatment of prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 36.
- 119 General Assembly resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, principle 6; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 9; General Assembly resolution 47/133, Declaration on the Protection of all Persons from Enforced Disappearance, art. 13.
- 120 See “Basic Principles”, principle 24.
- 121 Office of the United Nations High Commissioner for Human Rights, Professional Training Series, “Human Rights and Law Enforcement: A Trainer’s Guide on Human Rights for the Police”.

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