



General Assembly

Distr.
GENERAL

A/HRC/12/22
2 September 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Twelfth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the United Nations High Commissioner for Human Rights
on the protection of human rights and fundamental freedoms while
countering terrorism***

* Late submission.

Summary

In resolution 7/7 on the protection of human rights and fundamental freedoms while countering terrorism, the Human Rights Council requested the United Nations High Commissioner for Human Rights to implement the mandate given to her by the Commission on Human Rights in its resolution 2005/80 and the General Assembly in its resolution 60/158 to examine the question of the protection of human rights and fundamental freedoms while countering terrorism; make general recommendations concerning the obligation of States in this context; provide assistance and advice to States, upon their request, as well as to the relevant United Nations bodies. This report is submitted in accordance with Council resolution 7/7.

This report analyses the links between counter-terrorism measures and economic, social and cultural rights. It examines how international treaty obligations to promote and protect these rights should form part of the counter-terrorism strategy of a State. It highlights the need to protect and promote all human rights and in particular economic, social and cultural rights, while at the same time taking effective counter-terrorism measures. Protecting and promoting all human rights while countering terrorism are complementary and mutually reinforcing objectives. They must be pursued in the context of the duty of States to protect, respect and fulfil all human rights.

Through specific examples, the report focuses on key aspects of economic, social and cultural rights, the legal framework in the context of countering terrorism, as well as the impact of terrorism and counter-terrorism measures and policies on the enjoyment of this category of rights. It also addresses issues related to monitoring, justiciability, remedies and impunity in this context.

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I. INTRODUCTION

1. Achieving global security objectives would be impossible without concerted efforts towards the realization of all human rights. In my previous reports on the protection of human rights while countering terrorism, I focused primarily on the impact of counter-terrorism measures on civil and political rights. In this report, I will focus on the issue of economic, social and cultural rights.

2. It is becoming clear that terrorism, and measures adopted to combat terrorist acts, are both influenced by and have a great impact on the enjoyment of economic, social and cultural rights, as well as on civil and political rights. The links between counter-terrorism measures and economic, social and cultural rights were highlighted by Member States through the adoption of the Global Counter-Terrorism Strategy and Plan of Action, by the General Assembly in resolution 60/288 and reaffirmed in resolution 62/272. Member States reaffirmed that the promotion and protection of all human rights for all, as well as respect for the rule of law are essential to all components of the Global Counter-Terrorism Strategy. They recognized that effective counter-terrorism measures and the protection of all human rights are not conflicting goals, but complementary and mutually reinforcing.

3. In the Strategy, Member States also recognized the need to deal with the conditions conducive to the spread of terrorism. These include: "... 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 ...".¹ This cannot be read outside the context of the need for States to respect, protect and fulfil their obligations regarding economic, social and cultural rights.

4. The Human Rights Council in its resolution 10/15 urged States, while countering terrorism, "to protect all human rights, including economic, social and cultural rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of these rights".² Efforts to understand and address the linkages between counter-terrorism measures and the enjoyment of economic, social and cultural rights must be continued.³

5. This report draws on the discussions that took place during an expert seminar organized by my Office on "The impact of terrorism and counter-terrorism measures on the enjoyment of economic, social and cultural rights" in Geneva on 5-7 November 2008. The meeting took place in the context of the work of the Working Group on Protecting Human Rights While Countering Terrorism, of the Secretary General's Counter-Terrorism Implementation Task Force (CTITF). My Office chairs this Working Group.

¹ Resolution 60/288, annex, part I, first paragraph.

² Paragraph 6.

³ See for example the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/6/17.

II. KEY ASPECTS OF THE GENERAL FRAMEWORK OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF TERRORISM AND COUNTER-TERRORISM

A. General framework

6. Without doubt, terrorism has a very serious impact on all human rights - civil, political, economic, social and cultural - and it contributes to the creation of a climate of fear and insecurity. As part of their duty to protect individuals' human rights, States must therefore take effective measures to counter terrorism. At the same time, all such measures must respect human rights.

7. It is clear now that terrorism, and measures adopted by States to combat terrorist acts, are both influenced by and have an impact on the enjoyment of the economic, social and cultural rights of affected individuals, as well as on broader development objectives. To effectively work towards eliminating terrorism, States must pay more attention to the recognition of these rights and give effect to all human rights. It is only by addressing human rights issues, including economic, social and cultural rights, through the lens of the conditions that lead to the spread of terrorism, such as socio-economic marginalization and exclusion, ethnic, national and religious discrimination, political exclusion and lack of good governance, that this goal can be achieved.

8. The obligations of States to respect, protect and fulfil the rights enshrined in the International Covenant on Economic, Social and Cultural Rights⁴ are spelt out in article 2, paragraph 1, of the Covenant and further clarified in general comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights on the nature of States parties' obligations.

9. Recognizing that some rights may be realized only over a period of time due to resource constraints, some of the obligations of States assumed under the International Covenant on Economic, Social and Cultural Rights are defined by the concept of progressive realization. However, that should not be interpreted to mean that until States have sufficient resources, they do not have to fulfil their obligations on economic, social and cultural rights. On the contrary, the Covenant imposes an immediate obligation on States to take deliberate, concrete and targeted measures to move as expeditiously and effectively as possible towards the full realization of all rights contained in the Covenant,⁵ and to use the maximum available, and not just remaining, resources.

⁴ See International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997, available at: <http://www.unhcr.org/refworld/docid/48abd5730.html>; see also African Commission on Human and Peoples' Rights, *the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria*, communication No. 155/96, October 2001.

⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant), para. 9.

10. The Covenant also contains rights and safeguards that must be guaranteed immediately. One example is the obligation on States to guarantee non-discrimination, including ensuring the equal rights of men and women in the enjoyment of economic, social and cultural rights. Moreover, a number of rights contained in the Covenant can clearly be implemented immediately, irrespective of the resource constraints of a State, including the right to join and form trade unions, protection against forced evictions, or the freedom indispensable for scientific research and creative activity.⁶

11. The Committee on Economic, Social and Cultural Rights defined the minimum core obligations of the Covenant, which are obligations considered to be of immediate effect to meet the minimum essential levels of each of the rights. Where any significant number of individuals are deprived of enjoying them, *prima facie*, States parties would be considered as failing to discharge their obligations under the Covenant.⁷ Minimum core obligations are generally determined by having regard to fundamental needs, particularly of the most vulnerable persons. The Committee holds the view that for a State to attribute failure to meet its minimum core obligations to a lack of resources, it must show that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.⁸ The Optional Protocol to the Covenant, adopted in December 2008 by the General Assembly, refers to the “reasonableness of the steps taken by the State party”.⁹

12. When allocating available resources to different programmes, due regard should be given to the core content of each right, with special focus on the requirements of “the vulnerable members of society”.¹⁰ In the words of the Committee, “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances”.¹¹

13. It should be noted that violations of economic, social and cultural rights can occur through the adoption of retrogressive measures that reduce the extent to which any right is already guaranteed.¹² Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential rights, and there is a strong presumption that retrogressive measures taken in

⁶ See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing (art. 11 (1) of the Covenant): forced evictions, and A/HRC/4/18.

⁷ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

⁸ *Ibid.*

⁹ Article 8, para. 4.

¹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 12.

¹¹ *Ibid.*, para. 11.

¹² See footnote 4 above, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para. 14.

relation to the minimum core obligations are not permissible under the Covenant.¹³ A State party would have to demonstrate that these measures can be justified by reference to the totality of rights provided for in the Covenant,¹⁴ i.e. that they are taken in pursuit of a pressing goal, that they are strictly necessary and that no less restrictive measures were available to achieve the same goal. The Committee recalls in general comment No. 3, paragraph 12, that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

14. Obligations under the Covenant apply to nationals and also to non-nationals, including refugees and asylum-seekers. Nonetheless, under article 2, paragraph 3, of the Covenant, developing countries may determine, with due regard to human rights and their national economy, to what extent they would guarantee the rights recognized in the Covenant to non-nationals. Moreover, the provisions in the Covenant concerning international assistance and cooperation, particularly in article 2, have been interpreted to reflect an obligation to refrain from actions which interfere with the enjoyment of economic, social and cultural rights in other countries.¹⁵

B. Links between economic, social and cultural rights and civil and political rights

15. From the perspective of the general human rights framework, there are links between economic, social and cultural rights and civil and political rights. The Universal Declaration of Human Rights contains a range of economic, social, civil, cultural and political rights. The World Conference on Human Rights in its 1993 Vienna Declaration and Plan of Action affirmed that “all human rights are universal, indivisible, and interdependent and interrelated”, and that all human rights must be treated “globally in a fair and equal manner, on the same footing, and with the same emphasis”.¹⁶ Some regional instruments, such as the African Charter on Human and Peoples’ Rights, do not make any distinction between the two sets of rights. In addition, the principles of non-discrimination and equality are equally applicable to all human rights.

16. The Human Rights Committee, the body that monitors implementation of the International Covenant on Civil and Political Rights, holds the view that when a State party takes action affecting economic, social and economic rights - even rights not protected by the Covenant - this requires that, under article 26 of the Covenant, any such action be taken in a non-discriminatory way, regardless of any shortage of resources. In addition, the Human Rights Committee is of the

¹³ Committee on Economic, Social and Cultural Rights, general comments No. 12 (1999) on the right to adequate food (art. 11), para. 19, and No. 14 (2000) on the right to the highest attainable standard of health (art. 12), para 32.

¹⁴ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

¹⁵ Committee on Economic, Social and Cultural Rights, general comments No. 12, para. 14, and No. 15 (2002) on the right to water (arts. 11 and 12 of the Covenant), paras. 30-36.

¹⁶ Chapter I, para. 5.

view that, under article 27 of the Covenant, the rights of persons to engage in economic and social activities that are part of the culture of the minority community to which they belong are protected.¹⁷

17. Economic, social and cultural rights cannot be fully achieved where civil and political rights are curtailed. Conversely, civil and political rights cannot be fully exercised where economic, social and cultural rights are neglected. Counter-terrorism measures and policies that neglect these rights risk creating a fertile climate for poverty, unemployment, and greater insecurities in societies. Systematic discrimination and structural inequities may spark or exacerbate social and political tensions resulting in terrorist acts and counter-terrorist activities.

18. The enjoyment of civil and political rights impacts on the enjoyment of economic, social and cultural rights as much as the enjoyment of the latter impacts on the enjoyment of the former. For example, limitations on the freedom of movement may impact on the right to adequate housing and/or the right to work, whilst there is a clear correlation between the enjoyment of the right to food and the right to life. Therefore, States have an obligation to incorporate international human rights norms and standards into their national legal orders, including the constitution and national legislation, so those rights can be fulfilled in a complementary form. In some jurisdictions, economic, social and cultural rights have been protected through the protection of civil and political rights. For example, the Supreme Court of India has read the right to health care, the right to adequate housing and the right to food as being part of the right to life which is protected by the International Covenant on Civil and Political Rights.

19. The International Covenant on Economic, Social and Cultural Rights does not contain express provisions for derogating from economic, social and cultural rights during emergencies, disasters or armed conflict, while obviously such situations may affect the ability of States to guarantee those rights, for example the availability of resources to ensure enjoyment of them on an immediate basis.

20. General comment No. 14 (2000), of the Committee on Economic, Social and Cultural Rights, on the right to the highest attainable standard of health (art. 12) refers to the non-derogability of core obligations.¹⁸ Recalling its general comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. The Committee further indicated in its general comment No. 14 that: "... Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:

¹⁷ Human Rights Committee, general comment No. 23 (1994) on article 27 (Rights of minorities), para. 6.2.

¹⁸ Paragraph 47.

- (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services;
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups”.¹⁹

21. In addition, in times of emergency, it is important to protect fundamental economic, social and cultural rights, in particular those of the most vulnerable groups of society. It is also important to ensure that all counter-terrorism measures conform to the legal framework applicable at the time of their adoption. International human rights obligations, including obligations under the International Covenant on Economic, Social and Cultural Rights, must be respected at all times, even when international humanitarian law applies.

22. In many countries, the justification for imposing a state of emergency has been largely abused since 11 September 2001, and the exceptional measures taken to counter terrorism tend to become permanent. Such measures usually curtail civil and political rights and affect the economic, social and cultural rights of entire communities. As a result, they could lead to further marginalization, discrimination and possibly radicalization within those communities.

23. Excluding the consideration of the impact of states of emergency on economic, social and cultural rights is particularly problematic in States where long-standing states of emergency have been imposed. In these cases, the socio-economic situation needs to be taken into account to determine whether the measures adopted are proportionate, which may vary over time. Therefore, there is a need for the concept of security to factor in such rights. In addition, if situations which warrant the declaration of states of emergency are considered solely within the framework of civil and political rights, any solution will also be framed from that perspective. Such a limited perspective fails to recognize the role to be played by socio-economic rights in any comprehensive solution.

¹⁹ Paragraph 43.

III. THE IMPACT OF COUNTER-TERRORISM MEASURES AND POLICIES ON THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The inadequate fulfilment of economic, social and cultural rights

24. Because of the nature of the counter-terrorism measures adopted by States, policy priorities may appear to be distorted. Economic, social and cultural rights have not been among the priorities of the human rights discourse in the context of counter-terrorism, which has largely focused on civil and political rights, leaving little or no space for discussion of the impact of counter-terrorism measures on economic, social and cultural rights, or the positive measures that States need to adopt to implement them as part of any strategy to address terrorism. This has been reflected in public spending on counter-terrorism, which in most countries has focused on the military, on policing and on intelligence gathering and analysis. Allocations to areas such as basic social services (for example, health and education) and international development have largely not increased or, worse, have declined. This trend, however, appears to be changing as States broaden their counter-terrorism responses.

25. Classic examples of counter-terrorism measures that have an impact on economic, social and cultural rights are measures that affect the right to housing. This right is often subject to abuse through forced evictions and house demolitions, especially in high-security zones. These actions often lead to displacement and deepen poverty, resulting in additional human rights violations.

26. The European Court of Human Rights stated, in a case where it found that the destruction of a home and possessions by security forces amounted to inhuman treatment, that “even assuming that the acts in question were carried out without any intention of punishing the applicant, but instead as a discouragement to others or to prevent his home from being used by terrorists, this would not provide a justification for the ill-treatment”.²⁰ In relation to the right to housing, several resolutions of the Commission on Human Rights and the Human Rights Council, as well as a general comment of the Committee on Economic, Social and Cultural Rights, have reaffirmed that forced evictions represent a violation of human rights, and provided clarification on the due process requirements for evictions that can be justified under international human rights law.²¹

²⁰ *Bilgin v. Turkey* (Application No. 23819/94), 16 November 2000.

²¹ See Committee on Economic, Social and Cultural Rights, general comment No. 7 and Commission on Human Rights resolution 1993/77. See also Basic principles and guidelines on development-based evictions and displacement, A/HRC/18, annex I.

27. General comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights on the right to adequate food (art. 11) calls on States to “... refrain at all times from food embargoes or similar measures, which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure”.²² Nor should it be used as a counter-terrorism measure.

28. General comment No. 14 of the Committee on Economic, Social and Cultural Rights also notes that “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services”.²³

29. There is a need to make a clear distinction between immigration and migration laws and regulations, and security and counter-terrorism measures. It is neither correct nor desirable to consider all migration laws and policies as counter-terrorism legislation. However, it is clear that terrorism and security may be used as a trigger for States to take measures aimed at targeting ethnic minorities and migrants.²⁴ Measures that targeted particular minorities, for example, took the form of invasive surveillance of a group, fingerprinting campaigns targeting a specific ethnic group, the adoption of decrees stating that a particular minority was a security threat, or the adoption of measures to facilitate their eviction. All of these measures have a serious impact on economic, social and cultural rights.

30. In addition, a number of specific human rights concerns may occur in the context of ensuring border security, linked to the treatment and screening of individuals when crossing an internationally recognized State border.

31. States are increasingly placing their immigration laws and policies at the centre of their counter-terrorism strategies. Terrorism and national security concerns have become a justification to tighten immigration and asylum regimes. There is a tendency to return asylum-seekers or repatriate refugees hastily without paying sufficient attention to their economic, social and cultural rights, with the risk that they may face persecution in their countries of origin. Such measures could have a disproportionate and discriminatory impact on asylum-seekers, refugees and immigrants and, more generally, non-citizens.

²² Paragraph 37.

²³ Paragraph 34.

²⁴ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the Covenant), paras. 10 (a), 16, 17, 22, 23, 30 and 40.

32. The special impact of counter-terrorism measures on the economic, social and cultural rights of women and children is often disregarded. There have been impermissible effects on women that are often neither acknowledged nor compensated.²⁵ The International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women require States to ensure that non-discrimination and equality on the basis of gender and sex are respected in all circumstances. Broad definitions of offences related to terrorism, such as those that criminalize material support, financing and association with terrorists, may also directly and indirectly impact women and children.²⁶

33. The impact of counter-terrorism measures on family members has been examined at the international level by the Working Group on Enforced and Involuntary Disappearances,²⁷ at the regional level by the European Court of Human Rights²⁸ and by national courts. These instances have heard a number of cases dealing with serious human rights violations which primarily impact on the civil and political rights of the targeted individual, and have had an impact on female family members, who bear the burden of anxiety, harassment, social exclusion and economic hardship occasioned by the loss of the male breadwinner.²⁹ Similar effects ensue from the prolonged detention without trial of male family members. The practice of extraordinary rendition, and forced deportations of male family members has an adverse impact on the principle of equality in the enjoyment of economic, social and cultural rights, such as the right to adequate housing, and the right to family life.

34. States have a particular responsibility for guaranteeing that women's economic, social and cultural rights are not violated in the context of counter-terrorism.³⁰ In some cases, where women and children have been deprived of the source of their livelihoods, as a result of measures taken against husbands and fathers, it has been shown that such counter-terrorism measures can increase poverty and poverty-related discrimination in fulfilling economic, social and cultural

²⁵ "Cases of arbitrary arrest and detention of farmers at strategic times for agriculture". See the United Nations Counter-Terrorism Implementation Task Force, Working Group on Protecting Human Rights While Countering Terrorism, *Expert Seminar on "The Impact of Terrorism and Counter-terrorism Measures on the Enjoyment of Economic, Social and Cultural Rights"*, para. 27, p. 9 (5-7 November 2008).

²⁶ International Commission of Jurists, *Assessing Damage, Urging Action: Report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights*, 4 May 2009, available at <http://ejp.icj.org/IMG/EJP-Report.pdf>.

²⁷ E/CN.4/1435, paras. 184-187, E/CN.4/1492, paras. 164-171, E/CN.4/1983/14, paras. 130-137.

²⁸ *Saadi v. Italy* (Application No. 37201/06), 28 February 2008.

²⁹ See, e.g., Amnesty International, *Pakistan: Human rights ignored in the "war on terror"* (2006).

³⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 20, paras. 10, 16 and 17.

rights, which can disproportionately affect women and children. In addition, counter-terrorism measures often lead to increased militarization and policing, which - like terrorism itself - can have a broader negative impact on the human rights of women and children. Any sustainable counter-terrorism strategy should be developed with particular attention paid to economic, social and cultural rights, including those of women and children.

35. Another aspect of the impact of counter-terrorism measures on economic, social and cultural rights is where legislation or its application may result in the criminalization of legitimate social protests, and of national movements for the protection of those rights. This includes trade unions and human rights defenders, and movements for labour rights, land rights, women's rights and indigenous peoples. Special legislation and regulations have been enacted in several countries to restrict the fundamental freedoms of civil society groups that seek to peacefully promote economic, social and cultural rights. In several countries, social activists have been arrested and charged under counter-terrorism legislation for their human rights-based claims concerning access to water or land. Groups that challenge social exclusion and unequal power relations by promoting human rights and development are sometimes labelled as extremists and suffer constraints on their ability to operate.

36. The rights of peaceful assembly and to freedom of association must be seen as a platform for the exercise, claims and defence of economic, social and cultural rights, as well as of civil and political rights. They are also often the basis for the work of human rights defenders, and the creation of civil society and NGOs, including those focusing on economic, social and cultural rights. As such, these rights are one foundation of a democratic society. Often, however, limitations imposed on their enjoyment go beyond the scope necessary to counter terrorism and can be used to limit the rights of, inter alia, trade unions and human rights defenders.³¹

37. The social stigmatization of religious, ethnic, or political groups seen as supporting terrorism creates a culture of fear. This limits the enjoyment of economic, social and cultural rights of members of those groups. The ensuing discrimination in access to employment or housing especially impacts on vulnerable groups, such as migrants and minorities, and has a direct impact on escalating poverty. Where human rights defenders are stigmatized, this discredits their cause and prevents them from taking it to an international forum or before international human rights bodies.³²

³¹ See A/61/267, paras. 9 and 11.

³² For more detail, see the summary of discussions of the expert seminar mentioned in paragraph 5 above, available at http://www.un.org/terrorism/pdfs/wg_protecting_human_rights.pdf.

38. Given the negative impact that comprehensive sanctions may have on human rights, including on economic, social and cultural rights, the Security Council has adopted targeted sanctions³³ as a tool to fight terrorism. The changes brought about by Security Council resolution 1822 (2008) are encouraging, but they do not go far enough to provide the necessary safeguards to ensure the full enjoyment of all human rights,³⁴ or provide a just assessment of the impact of the sanctions regime on economic, social and cultural rights.³⁵

39. It is important that the Sanctions Committee³⁶ pays due attention to the impact of sanctions on economic, social and cultural rights when it decides to list an individual or an entity.³⁷ The sanctions regimes established under Security Council resolution 1373 (2001)³⁸ may raise greater challenges than those relating to the Taliban established in resolution 1267 (1999)³⁹ if economic, social and cultural rights are not fully considered in their implementation.

³³ Targeted sanctions are a tool for bringing Governments or groups in line with international laws and norms. Security Council resolution 1267 (1999) established a sanctions regime to cover individuals and entities associated with Al-Qaida, Osama bin Laden and/or the Taliban wherever located. The regime has since been reaffirmed and modified by a dozen further Security Council resolutions. They have all been adopted under Chapter VII of the Charter of the United Nations and require all States to take specified measures in connection with any individual or entity associated with Al-Qaida, Osama bin Laden and/or the Taliban.

³⁴ Member States are required to freeze without delay funds and other financial assets of Al-Qaida, Osama bin Laden and/or the Taliban, and individuals or entities associated with them.

³⁵ Committee on Economic, Social and Cultural Rights, general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights, para 1, "... whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights".

³⁶ The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities.

³⁷ "The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when the results are subsequently evaluated." A/53/1, para. 64, Report of the Secretary-General on the work of the Organization (1998).

³⁸ See paragraph 1 (c) of resolution 1373 (2001) which does not identify a consolidated list of specific persons whose assets must be frozen pursuant to these measures, such as Al-Qaida and the Taliban.

³⁹ See paragraph 4 (b) of resolution 1267 (1999), which refers specifically to the Taliban or "any undertaking owned or controlled, directly or indirectly, by the Taliban".

40. The practice of listing and de-listing individuals and groups as terrorist and associated entities may seriously impact on a number of internationally protected human rights, as increasingly recognized by a number of regional and national courts. Following the recent European Court of Justice judgment in the case of *Kadi and Al Barakaat International Foundation*,⁴⁰ as well as the Views of the Human Rights Committee,⁴¹ institutional changes to the sanctions regime have become necessary.

41. The freezing of assets has an impact on several human rights including the right to property. It impacts directly on the right to work and the right to freedom of movement associated with it. The impact of listing on an individual's right to work was illustrated by a recent case before the Human Rights Committee. In the case of *Nabil Sayadi and Patricia Vinck v. Belgium*, the Human Rights Committee addressed the national implementation of the sanctions regime set forth in Security Council resolution 1267 (1999).⁴² The Committee noted that a travel ban against the complainants resulted from the transmittal by Belgium of their names to the Sanctions Committee. The Committee found that the travel ban constituted a violation of the authors' right to freedom of movement under article 12 of the International Covenant on Civil and Political Rights, because both the dismissal of a criminal investigation and the State party de-listing requests showed that the restrictions were not necessary to protect national security or public order. The Committee indicated that because of the travel ban, the victims had not been able to accept an offer of employment in another country. Based on its general comment No. 27 (1999) on article 12 (Freedom of movement), the Committee noted that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function".⁴³ This decision was followed by six individual opinions from Committee members, both on admissibility and on merits.

42. Because individual listings are currently open-ended in duration, they may result in a temporary freeze of assets becoming permanent which, in turn, may amount to criminal punishment due to the severity of the sanction. This threatens to go well beyond the purpose of the United Nations to combat the terrorist threat posed by an individual case. In addition, there is no uniformity in relation to evidentiary standards and procedures. This poses serious human rights issues, as all punitive decisions should be either judicial or subject to judicial review.

⁴⁰ Grand Chamber of the European Court of Justice, *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, joined cases C-402/05P and C-415/05P, 3 September 2008.

⁴¹ Communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, CCPR/C/94/D/1472/2006, Views adopted on 22 October 2008.

⁴² *Ibid.*

⁴³ *Ibid.*, para. 10.5.

B. Conditions conducive to terrorism

43. The Global Counter-Terrorism Strategy provides a list of conditions conducive to terrorism, for instance: prolonged conflicts, occupation, subjugation, absence of democracy and rule of law, poverty, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, inequality, insecurity and collective punishment. Due to their inherent link with human dignity, cultural rights are particularly important in this context.

44. Research into the conditions conducive to terrorism draws a distinction between the following four categories of causes: (a) structural causes, e.g. demographic imbalances, subjective feeling of deprivation, internal feeling of injustice; (b) facilitating causes, such as the existence of failed States, access to weapons, explosives, the development of mass media and the Internet; (c) motivational causes, including conflicts and deep-rooted historical injustices; and (d) so-called triggering causes - events that ultimately push an individual to carry out a terrorist act. Respect for human rights could be achieved by addressing all those categories effectively and jointly.⁴⁴

45. The reallocation of resources towards security and counter-terrorism can have additional negative consequences when allocations are drawn away from programmes that contribute to the implementation of economic, social and cultural rights, such as those in the health or education sectors. The global emphasis on counter-terrorism has accelerated a trend among donor countries and agencies towards incorporating security concerns into development policies. The policies of some States of funding security activities with official development assistance has created some controversy among development groups and civil society, which argue that they can have a negative impact on available assistance, and thus the capacity of countries to realize economic, social and cultural rights.

46. Identifying the conditions conducive to terrorism could help in formulating the measures to counter them, without creating adverse effects on the enjoyment of economic, social and cultural rights. The conditions will depend on whether the movements carrying out acts of terrorism are national movements, ethnic identity movements, minority religious movements or insurgency movements. Examples of human rights violations in these contexts include the denial of access to productive resources (including land), lack of recognition of cultural rights, which are depriving entire groups of their identity and dignity, destruction of their homes and property, lack of access to justice, impunity for human rights violations, and criminalization of the activities of human rights defenders and others who seek to express their needs within a democratic space.

⁴⁴ Tore Bjorgo, *Root Causes of Terrorism: Myths, Reality and Ways Forward* (New York, Routledge, 2005), p. 3.

IV. OBLIGATIONS AND ACCOUNTABILITY RELATING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

47. Human rights treaty bodies are uniquely placed to monitor the implementation by States of counter-terrorism measures and their compliance with international human rights law, in particular the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee. The Committee on Economic, Social and Cultural Rights has examined both the impact of counter-terrorism measures in the context of economic, social and cultural rights⁴⁵ as well as the impact of terrorism on them.⁴⁶ The Human Rights Committee has also looked at the impact of individual sanctions on the economic, social and cultural rights of those organizations and institutions on the United Nations Sanctions Committee list or those benefiting from their services.⁴⁷ Challenges for such human rights monitoring include the fact that many States parties do not report to the treaty bodies on time and some do not report at all. This may result in a lack of scrutiny of counter-terrorism measures with potential adverse consequences on economic, social and cultural rights.

48. Special procedures mandate holders examine the human rights implications of counter-terrorism measures. Through their country missions, thematic research, reports and communications, mandate holders can contribute to the protection of economic, social and cultural rights in this context.⁴⁸

49. At the national level, the preventive role and monitoring function of the national human rights mechanisms of the judiciary, national human rights institutions, civil rights groups and human rights organizations should be emphasized, as well as the role of the legislature in drafting and enacting relevant legislation and in deciding on budget allocations to economic, social and cultural rights, while taking security concerns fully into account. Other universal and regional human rights mechanisms for monitoring economic, social and cultural rights in the context of countering terrorism are also important. These include the newly established Universal Periodic Review mechanism of the Human Rights Council, which brings to light the impact of counter-terrorism measures on economic, social and cultural rights, the African Court on Human and Peoples' Rights and the African Peer Review Mechanism, the Inter-American Commission on Human Rights, the European Court of Human Rights and the European Committee of Social Rights.

⁴⁵ E/C.12/1/Add.105, para. 14

⁴⁶ E/C.12/1/Add.71, para. 8.

⁴⁷ Communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, CCPR/C/94/D/1472/2006, Views adopted on 22 October 2008.

⁴⁸ See for example A/HRC/6/17, E/C.12/1/Add.105, paras. 14 and 35, E/CN.4/2004/80/Add.3 and E/CN.4/2004/80.

50. The question of access to justice and remedies for violations of economic, social and cultural rights is critical. A proper judicial review and reparation for the victims of violations of economic, social and cultural rights is crucial to ensure the accountability of States in this respect. An independent judicial review of the counter-terrorism measures undertaken by States, including those affecting economic, social and cultural rights, serves to ascertain their proportionality, effectiveness and legitimacy. To be truly effective, the justiciability of human rights needs to be secured at the national, regional and international levels.

51. In this connection, it is important to recall general comment No. 9 (1998) of the Committee on Economic, Social and Cultural Rights on the domestic application of the Covenant which states that: "It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society."⁴⁹

52. Additional challenges include the fact that even where economic, social and cultural rights are subject to judicial review, the decisions of courts are often not fully implemented. This may call for specific mechanisms to monitor compliance with judicial decisions. In addition, the length of judicial proceedings can be a significant problem. In this respect, national human rights institutions, such as the ombudsmen in the Latin American context, and an effective administrative complaints system could offer swifter responses to claims regarding access to social services and programmes.

53. In many cases when economic, social and cultural rights are violated in the context of countering terrorism, issues of compensation, reparation and restitution are not examined. The recent adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁵⁰ is a major development for the justiciability of economic, social and cultural rights. Its approval closes a historic gap in the international human rights system. In addition to providing a voice to the victims of human rights violations,⁵¹ the Optional Protocol enhances victims' capacity to seek justice for the violations of their economic, social and cultural rights after exhausting all domestic means of recourse.⁵²

⁴⁹ Paragraph 10.

⁵⁰ Adopted by the General Assembly on 10 December 2008.

⁵¹ A/HRC/4/18, annex II, paras. 32 and 33.

⁵² See United Nations High Commissioner for Human Rights, press release, 10 December 2008.

V. CONCLUSIONS AND RECOMMENDATIONS

54. **Terrorism has a serious impact on all human rights, including economic, social and cultural rights. Counter-terrorism measures must be adopted in compliance with the obligations of States under international human rights law, humanitarian law and refugee law. These measures must be adequate, proportionate, reasonable, non-discriminatory, non-arbitrary, effective and justified, and they must not overly affect the enjoyment of human rights, particularly of groups most vulnerable to human rights violations, such as indigenous people, minorities, migrants, women and children.**

55. **When adopting exceptional counter-terrorism measures, including measures in the framework of states of emergency, in particular long-standing ones, States must pay particular attention to their impact on human rights, in particular economic, social and cultural rights. These can have a particularly damaging effect on vulnerable communities, including the potential risk of leading to radicalization.**

56. **States are encouraged to become parties to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights once it is open for signature, and to develop national mechanisms to address the issue of remedies and reparations for victims of violations of economic, social and cultural rights.**

57. **In developing counter-terrorism legislation, policies and measures, States should examine their impact on economic, social and cultural rights in order to ensure that all the requirements relating to their protection are respected. Particular attention should be paid to allocating sufficient resources to economic, social and cultural rights.**

58. **The United Nations human rights system continues to address the question of the protection of human rights and fundamental freedoms while countering terrorism with a view to assisting Member States to abide by their international human rights obligations while effectively combating terrorism. My Office will continue to examine the question of the protection of economic, social and cultural rights while countering terrorism and to make general recommendations about the obligations of States in this regard.**
