



COUNTER-TERRORISM

IMPLEMENTATION TASK FORCE CTITF

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

BASIC HUMAN RIGHTS REFERENCE GUIDE

**THE STOPPING AND SEARCHING
OF PERSONS**

**CTITF
PUBLICATION
SERIES**

**MARCH
2014**

United Nations Counter-Terrorism Implementation Task Force

CTITF Working Group on Protecting Human Rights
while Countering Terrorism

Basic Human Rights Reference Guide: The Stopping and Searching of Persons in the Context of Countering Terrorism

**Updated 2nd edition
March 2014**

**1st edition
September 2010**



With the support of

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

United Nations Office on Drugs and Crime

Counter-Terrorism Committee Executive Directorate

Office of Legal Affairs

United Nations Interregional Crime and Justice Research Institute

International Maritime Organization

International Criminal Police Organization

1267/1988 Monitoring Team

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



United Nations
New York, 2014

About the United Nations Counter-Terrorism Implementation Task Force

The United Nations Counter-Terrorism Implementation Task Force (CTITF), established by the Secretary-General in 2005, aims to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system and to support implementation of the UN Global Counter-Terrorism Strategy (General Assembly resolution 60/288). CTITF is comprised of 31 UN and international entities and is chaired by a senior UN official, Under-Secretary-General Mr. J. Feltman. CTITF provides for the delivery of focused and coherent assistance to Member States in implementing the UN Global Strategy, mainly by working together through the Working Groups and other initiatives to coordinate activities and build synergies in UN counter-terrorism efforts

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

The Strategy sets out a plan of action for the international community based on four pillars:

Measures to address the conditions conducive to the spread of terrorism;

Measures to prevent and combat terrorism;

Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard;

Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

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

United Nations
Department of Political Affairs
Counter-Terrorism Implementation Task Force
New York, NY 10017

Website: <http://www.un.org/en/terrorism/ctitf/index.shtml>

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.*

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

The Counter-Terrorism Implementation Task Force is grateful to the Governments of the Netherlands, Spain and Sweden, and the United Nations Counter-Terrorism Centre (UNCCT) for their generous support of this project

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

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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 the stop and search of persons may be central to a State’s counter-terrorism strategy to fulfil these obligations. At the same time, it must be emphasized that such counter-terrorism measures must be in conformity with the relevant provisions of international law, including international human rights law.

A. Definitions

2. In the present Basic Human Rights Reference Guide, the stopping and searching of persons is examined as a law enforcement tool to prevent terrorism and apprehend those who participate in acts of terrorism. The Guide examines how this area of law enforcement can be made compatible with international standards of human rights law, in the context of States’ counter-terrorism strategies.
3. In accordance with General Assembly resolution 34/169, the term law enforcement officials used in this document includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such powers.² Similarly, when States delegate police powers to civilian contractors, these contractors shall also be regarded as law enforcement officials for the purpose of this document.
4. The stopping and searching of persons are two interrelated, but distinct, acts. As such, their legality, including necessity and proportionality, must be individually justified to ensure their compatibility with human rights law.
 - A “stop” is the act by which a law enforcement official requires a person, in a public space, to account for himself or herself.

- 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.
6. Everyone has the right to liberty and security of person.³ States shall respect and ensure the full enjoyment of this right by all persons within their jurisdiction. Any limitation must be provided by law, be non-discriminatory, necessary and proportional.
7. The right to personal integrity and dignity mandates an absolute prohibition of torture and other cruel, inhuman or degrading treatment. This prohibition is a norm of *ius cogens*, non-derogable even in states of emergency threatening the life of the nation. This prohibition does not yield to the threat posed by terrorism or to the alleged danger posed by an individual to the security of a State.⁴ In addition, searching a person may affect the person’s right to personal integrity and dignity. Whenever a search is required, it should be conducted with professionalism and sensitivity, with respect for the inherent dignity of the human person.
8. The principles of equality and non-discrimination are both integral to international human rights law, and crucial for effectively countering terrorism.⁵ International human rights law also provides that any derogating measure must not involve discrimination solely on ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth

or other status.⁶ In addition, compliance with the principle of non-discrimination as crucial for countering terrorism has been identified in the United Nations Global Counter-Terrorism Strategy as an essential measure when addressing conditions conducive to the spread of terrorism.⁷ The design and implementation of counter-terrorism measures related to the stopping and searching of persons must always fully respect the principles of equality and non-discrimination.⁸

9. Freedom of movement is a cornerstone of modern society and includes the right to move freely within the whole territory of a State, to leave any country and to enter a person's own country.⁹ It is essential for a person's social and individual development and the functioning of families, communities and countries. Every day, people depend on their ability to move freely from their residences to their offices, hospitals, grocery stores, schools, etc. Likewise, entire economies depend on individuals being able to receive and transport food, medicine and other goods from one place to another each day. Stopping a person, regardless of the purpose, affects the right to freedom of movement and may dramatically impact a person's life and community. States must ensure that measures related to the stopping and searching of individuals do not disproportionately affect the right to freedom of movement.
10. The right to privacy includes a wide range of interrelated rights protecting individuals' existence and freedoms. The notion of privacy refers to the sphere of a person's life in which he or she can freely express himself or herself, whether by entering into relationships with others or alone, as long as the actions do not interfere with the rights and freedoms of others.¹⁰ Counter-terrorism measures, such as the stopping and searching of persons, may interfere with this right. Therefore, States are required to adopt legislative and other measures to carry out the prohibition against the arbitrary or unlawful interference with a person's privacy, family, home or correspondence as well as the protection of the right to privacy.¹¹
11. In order to effectively counter terrorism, States may legitimately limit the exercise of certain rights, including the right to freedom of expression, the right to freedom of association and assembly, the right to freedom of movement and the right to privacy. In a very limited set of circumstances, States may also take measures to derogate from certain human rights provisions. In either case, States must strictly respect a number of conditions to ensure that they remain within the framework of international human rights law.
12. Because the stopping and searching of persons can severely affect the full enjoyment of human rights, this area of counter-terrorism law must be subject to appropriate safeguards and oversight, which may include judicial authorization. Any violation of human rights should be investigated, those found responsible

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 disproportionate or discriminatory impact upon the lives of ordinary citizens.*
15. The obligation to respect, protect and promote human rights while countering terrorism is both an obligation of Member States and a condition for an effective counter-terrorism strategy. Therefore, all aspects of counter-terrorism measures related to the stop and search of persons must be prescribed by law and regulated by precise and strict guidelines, necessary for the protection of public order or safety or of national security, and implemented by proportional means.¹³
16. The international human rights framework is conceived to be flexible enough to allow States to deal with a number of exceptional national circumstances in which they need to restrict the enjoyment of some human rights, while at the same time remaining within the boundaries of what is permissible under international human rights law. In order to do so, two means may be used: limitations and derogations.
17. States may legitimately limit the exercise of certain rights, including the right to freedom of movement and the right to privacy. Limitations must be prescribed by law and in pursuance of one or more specific legitimate purposes. The protection of public order and safety, and of national security, are commonly referred to as legitimate objectives for the restriction of human rights under the International Covenant on Civil and Political Rights.¹⁴ Public order has been defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*). In turn, public safety has been defined as protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.¹⁵
18. Limitations must also be both necessary and proportionate. These requirements mandate that States shall use the least restrictive means for the achievement of the objective sought.¹⁶ Therefore, it must be analysed and assessed in each case

whether the measure, including the duration, location and scope of its implementation, is proportional, in light of the objective of the measure. In addition, limitations imposed for the protection of national security must be necessary to avert a real and imminent—not just hypothetical—danger to the existence of the nation, its territorial integrity or political independence.¹⁷ Finally, the measures and their implementation must be in strict compliance with the principles of equality and non-discrimination.

19. In a very limited set of circumstances, such as a public emergency which threatens the life of the nation, States also may take measures to derogate from certain human rights provisions under international human rights law. However, as with limitations, any derogation must comply strictly with a number of conditions, including the principles of necessity and proportionality, and must not involve discrimination on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁸
20. Finally, it is always in the interest of the authorities implementing counter-terrorism measures which involve the stopping and searching of individuals, to ask whether the measure itself or the manner in which it is implemented may have an overly negative impact on the ability of the police or other law enforcement officials to work in and cooperate with certain communities or groups. If this is the case, the collateral impact should lead to a revision of the measure or the modalities of its implementation.

Where a State adopts counter-terrorism legislation related to the stopping and searching of persons which limits the full enjoyment of human rights, or where the application of the legislation restricts the enjoyment of human rights, States must show the following principles are respected in order to comply with the international human rights framework.

- The principle of legality. The restrictive measures must be set out within, or authorized by, a prescription of law which is both accessible and precise.
- The principle of legitimate purpose. Restrictions on the exercise of human rights cannot be lawfully justified under the Covenant for reasons not expressly contained therein or for purposes alien to the effective protection of human rights. Counter-terrorism legislation which would limit the exercise of human rights should not be applied to conduct that does not amount to terrorism,¹⁹ nor should it be used to broaden State powers in other areas.
- The principles of necessity and proportionality. The interference with the exercise of the individual's right must be necessary for a legitimate purpose or purposes, as well as proportionate when applied to a specific individual. It is not sufficient that the measure be simply reasonable or possibly advisable: It must be necessary. It will be instructive to determine how the measure is linked to the countering of an actual or potential threat of terrorism against the State and the measure's contribution to international and regional frameworks on countering terrorism. The

imposition of a limitation on rights and freedoms for the purpose of countering terrorism, but by ineffective means, is unlikely to be justifiable.

- The principles of equality and non-discrimination. Both are central tenets of human rights law.

In his 2010 report to the Human Rights Council, the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism identified ten areas of best practices in countering terrorism. He proposed the following “model provision on consistency of counter-terrorism practices with human rights and refugee law, and [international] humanitarian law: In the application and exercise of all functions under the law relating to terrorism, it is unlawful for any person to act in any way that is incompatible with the purposes and provisions of international human rights and refugee law that are binding upon the State. In this regard:

1. The exercise of functions and powers shall be based on clear provisions of law that exhaustively enumerate the powers in question.
2. The exercise of such functions and powers may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.
3. Where the exercise of functions and powers involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall: (a) Be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and (b) Be proportionate to the benefit obtained in achieving the legitimate aim in question.
4. If the State is involved, as a party, in an ongoing armed conflict, the above provisions shall apply also to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.²⁰

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, requires the use of force, or requires the person to be moved to a location other than the immediate place where he was stopped. State agents should consider the reasons for such movement. The intention of law enforcement officials and the person’s consent to the restriction may also be taken into account, distinguishing, for example, between situations in which a person is questioned by law enforcement officials without being detained and situations in which a person is held against his or her will.
25. Those responsible for the design and implementation of counter-terrorism measures related to stopping of persons must ensure that any deprivation of the right to personal liberty, such as arrests or detentions after the stop of a person, are done on well-defined grounds previously established by law²⁸ and in accordance with a procedure established by law. For example, if a person is arrested for having committed acts of terrorism, these acts must be criminal acts under domestic law. In such cases, strict compliance with the principle of legality is required.²⁹ It is not enough that the arrest or detention is carried out within the framework provided by the law; its implementation must also not be arbitrary.³⁰ An arrest or detention may be arbitrary if it is conducted as a result of a discriminatory stop, extends beyond a reasonable time without proper justification, or does not respect the minimum procedural guarantees established by international human rights standards.³¹

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 However, human rights treaties have established that in order to protect non-derogable rights, a State's decision to derogate rights must not diminish the right to take proceedings before a court to decide without delay on the lawfulness of the detention.³³

- In critical circumstances, a stop may be initiated with the specific intent to arrest a suspected terrorist. In such cases, the stop is no more than a necessary step to arrest the individual, and both the stop and the arrest will share the same grounds.
- However, a stop may also be initiated as a routine measure to prevent and counter terrorism in general (i.e. at a road checkpoint or an airport entrance) and lead to a detention. In these cases, State agents must justify each measure separately.
- In other circumstances, such as where a person is restricted from freely moving within the territory of a State and is required to live in a certain neighbourhood or region, or is required to stop at a traffic light or a road blockade, a stop only may be considered as an interference with the right to freedom of movement and not the right to personal liberty.

In distinguishing between a “stop and search” on one hand, and “detention” on the other, the specific situation of the individual will need to be taken into consideration. Key elements to be considered when distinguishing stop and search from detention are:

- Duration: Did the stop and search last longer than necessary to accomplish the basic formalities, such as verification of identity and search of a bag?
- Location: Was the individual moved to another location to provide additional information or undergo a more thorough search?
- Use of force: Was force used by law enforcement officers against the individual who was stopped?
- Effects: What are the consequences of the law enforcement action; i.e arrest, detention at a police station or criminal charges?

27. *The implementation of counter-terrorism measures related to stopping and searching of persons should be carried out in a manner consistent with the inherent dignity of the person and international human rights law.*

“So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.”

Human Rights Committee³⁴

28. The right to personal integrity mandates that no one shall be subject torture or to cruel, inhuman or degrading treatment or punishment.³⁵ This right is a norm of *ius cogens*; therefore this prohibition is absolute under international law and non-derogable even in states of emergency threatening the life of the nation.³⁶ States must ensure that a full range of legal and practical safeguards to prevent the violation of this prohibition is available, including guarantees related to the right to personal liberty and security and due process.³⁷
29. Searching a person, whether with personal or strip searches or body cavity searches, affects the person's right to integrity and dignity. Therefore, any counter-terrorism measure related to the searching of persons must be prescribed by law and strict and precise guidelines must clearly specify the circumstances in which such measures may be used and specify the conditions that must be obeyed by those applying the procedure.³⁸ The law shall establish the circumstances in which there is a reasonable and clear justification to conduct a search.³⁹ In most circumstances, its implementation will require a case-by-case assessment. Even if a law authorizes (within the context of a personal search or a strip search) an agent to request a person to remove an overcoat, jacket, gloves, hat, sunglasses or 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 reasonable suspicion that the person is hiding a weapon underneath items.
30. However, certain measures—such as going through a metal detector, taking off one's coat and shoes at an airport—may be acceptable as they apply to everybody. Under these circumstances, any further screening that goes beyond the universal standard must be justified on a case-by-case basis.
31. Furthermore, States must ensure the proper and effective implementation of laws through precise and strict guidelines regulating searches of persons.⁴⁰ Searches, whenever necessary, must be conducted with the least intrusive means possible and fully conform with the prohibition of cruel, inhuman or degrading treatment.⁴¹ All requests made by law enforcement officials while conducting a personal or strip search must meet the standards of necessity and proportionality under the specific circumstances.
32. Law enforcement officials must at all times conduct searches with professionalism and sensitivity. This means agents should, among other things, take into account the particular characteristics of the person being searched (see box below).⁴²
33. In addition to the requirements established for any type of search, the right to personal integrity mandates special standards for body cavity searches. While every search shall be subject to oversight and judicial scrutiny, body cavity searches particularly require that an independent monitoring mechanism be

made available at the request of the person being searched⁴³ and strict judicial scrutiny.⁴⁴ A prior judicial order authorizing law enforcement officials to take this type of action is, in principle, required.⁴⁵

Basic standards relating to respect for human dignity in the context of stops and searches include:

- Human rights derive from the inherent dignity of the human person.⁴⁶
- All human beings are born free and equal in dignity and rights.⁴⁷
- Law enforcement officials shall at all times respect and obey the law.⁴⁸
- In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons,⁴⁹ as protected under national legislation.
- In protecting and servicing the community, police shall not discriminate on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁰
- It shall not be considered unlawfully discriminatory for the police to enforce certain special measures designed to address the special status and needs of women (including pregnant women and new mothers), juveniles, the sick, the elderly and others requiring special treatment in accordance with international human rights standards.⁵¹

Special attention should be given to:

- Ensuring that the location for the stop and search is considered. For example, a State agent stopping a person driving on the highway, asking the person to fully undress in the middle of the highway, without further justification, may be abusive and disproportional.
- Taking into account gender and religious sensitivities, as well as the age and any other special need of the person being stopped and searched. When ordering an individual to remove any religious attire, religious and gender sensitivity requires that State agents ensure this is done out of public view and in the presence of agents of the same sex as the person being searched. The search of children also requires special measures; and the presence of a trusted adult or a medical doctor may be seen as good practice.

In all cases, body cavity searches must be:

- Conducted only in very limited and specific circumstances when it is absolutely necessary and as a means of last resort to achieve the security objective in the particular case.⁵²
- Performed only by trained health personnel of the same sex as the person being searched.
- In strict observance of safety and hygiene conditions.⁵³

National police forces should be encouraged to develop a code of conduct for national police services that incorporates international standards and includes elements relating to national cultural sensitivities. Training at the national level should be provided.

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

“The prohibition of racial discrimination is a peremptory norm of international law from which no derogation is permitted. States and international organizations must ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin. The principle of non-discrimination must be observed in all matters, in particular in those concerning liberty, security and dignity of the person, equality before the courts and due process of law, as well as international cooperation in judicial and police matters in these fields.”

Statement on discrimination and measures to combat terrorism,
the Committee on Elimination of Racial Discrimination⁵⁵

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,⁵⁶ the right to honour and reputation⁵⁷ and the prohibition of incitement to discrimination, hostility or violence.⁵⁸ 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.⁵⁹ 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 or religion would only be compatible with the principle of non-discrimination if it was supported by objective and reasonable grounds.⁶² However, it should be noted that the general position is that racial and religious profiling can generally not be justified on objective and reasonable grounds because profiling practices based on ethnicity, national origin and religion have proved to be both inaccurate and largely unsuccessful in preventing terrorist activity or identifying potential terrorists.⁶³ Such practices may affect thousands of innocent people without producing concrete results yet produce considerable negative effects, making the

practices disproportionate. Such negative effects are not limited to the particular cases in which these counter-terrorism measures are implemented, but extend into the broader population as illustrated below.

“Profiling practices based on ethnicity, national origin or religion can take a profound emotional toll on those subjected to them. The Special Rapporteur believes that profiling practices have a more serious impact than “neutral” law enforcement methods. While anyone stopped, searched or questioned by the police may feel intimidated or degraded to a certain extent, the encounter has a particularly humiliating effect when characteristics such as ethnicity or religion played a role in the law enforcement officer’s decision. The Special Rapporteur is concerned that these individual experiences may translate into negative group effects. Terrorist-profiling practices single out persons for enhanced law enforcement attention simply because they match a set of group characteristics, thus contributing to the social construction of all those who share these characteristics as inherently suspect. This stigmatization may, in turn, result in a feeling of alienation among the targeted groups. The Special Rapporteur takes the view that the victimization and alienation of certain ethnic and religious groups may have significant negative implications for law enforcement efforts, as it involves a deep mistrust of the police The lack of trust between the police and communities may be especially disastrous in the counter-terrorism context. The gathering of intelligence is the key to success in largely preventive law enforcement operations. ... To be successful, counter-terrorism law enforcement policies would have to strengthen the trust between the police and communities.”

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In the context of racial profiling, when making an assessment of proportionality, the European Commission against Racism and Intolerance has noted that consideration must be given to the “harm criterion”, defined as the extent to which a concrete measure affects the rights of the individual (right to respect for private and family life, right to liberty and security, right to be free from discrimination):

“Beyond considerations relating to the individual rights affected, the harm criterion should be understood in more general terms, as including considerations on the extent to which the measure in question institutionalizes prejudice and legitimizes discriminatory behaviour among the general public towards

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.⁶⁸

In the context of preventive counter-terrorism efforts, where law enforcement officials do not have specific intelligence on which to rely:

- Profiling shall never be based solely on a person's racial or religious belonging. Profiling based on national identity or other criteria shall never be used as a proxy for racial or religious profiling.

- Profiling based on behavioural indicators should be used instead as it yields more effective results. Care should be taken in relying on certain indicators in isolation, such as signs of nervousness or the wearing of bulky clothes in warm weather, as they could be overinclusive. The use of indicators such as mumbling or reciting prayers may be mere proxies for religion.
- Ideally, controls should be universal and affect everyone equally. Where the costs for blanket searches are deemed to be too high, the targets for heightened scrutiny should as a general rule be selected on a random rather than on an ethnic or religious basis. As opposed to profiling, random searches are impossible for terrorists to evade and may thus be more effective than profiling

In cases where either a terrorist crime has been committed or information exists regarding its preparation, and there is specific evidence or information raising reasonable grounds to assume the suspect fits a certain descriptive profile, law enforcement officials may rely on characteristics such as ethnic appearance, national origin or religion as an element of the descriptive profile.⁶⁹

39. *State agents conducting a stop or search as a counter-terrorism measure shall not make use of force unless it is strictly necessary and only to the extent required by the circumstances.*
40. The use of force by law enforcement officials affects the right to personal integrity and dignity, and also potentially may affect the right to life. Therefore, decision makers and those managing law enforcement officials must ensure that the use of force, as may be required in the implementation of counter-terrorism measures related to the stopping and searching of persons, be provided by law.⁷⁰ Likewise, law enforcement officials' use of force shall be limited to situations where it is strictly necessary and only to the extent required to perform their duty.⁷¹
41. When a person does not comply with an order to stop or instructions provided by law enforcement officials during a stop, State agents shall use non-violent means as far as possible before resorting to force.⁷² The use of force and firearms shall only be authorized where other means remain ineffective or hold no promise of achieving the intended result.⁷³ Nevertheless, even when the lawful use of force is unavoidable, State agents do not have an unfettered discretion in its use. State agents shall exercise restraint in the use of force and act proportionally to the seriousness of the offence or threat posed by the person and the pursued security objective.⁷⁴

General guidance and good practice on the use of force

- Force is to be used exclusively for lawful law enforcement purposes;⁷⁵ no exceptions or excuses shall be allowed for the unlawful use of force.⁷⁶
- Non-violent means are to be attempted first;⁷⁷ force is to be used only when strictly necessary.⁷⁸ This includes cases to prevent a particularly serious crime that involves a grave threat to life.⁷⁹

- State agents should start at a low level of force and if that proves insufficient in the particular case, graduate or escalate the use of force as necessary.⁸⁰
- In any event, intentional use of lethal force may only be legitimate when strictly unavoidable, as a means of last resort to protect, inter alia, against the imminent threat of death or serious injury.⁸¹
- Additionally, law enforcement officials shall minimize damage and injury and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; promptly report any injury or death resulting from their use of force to their superiors.⁸²

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."

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43. The right to privacy includes a wide range of interrelated rights protecting the individual's existence and freedoms.⁸⁴ 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.⁸⁵ 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.⁸⁶

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

“Irrespective of whether in any particular case correspondence or diaries or other private documents are discovered and read or other items are revealed in the search, the court considers that the use of coercive powers conferred by the legislation to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amount to a clear interference with the right to private life. ... In the court’s view, the public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of humiliation and embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public.”

European Court of Human Rights,
Gillian and Quinton, 12 January 2010, para. 63

44. Thus, as in any other interference, it must be authorized by law and be reasonable in the particular circumstances.⁸⁷ The notion of “unlawful interference” refers to a measure not implemented in accordance with the law.⁸⁸ The notion of “arbitrary interference” refers to elements of injustice, unpredictability and unreasonableness.⁸⁹
45. Therefore, States should first adopt legislative and other measures to give effect to the prohibition against arbitrary or unlawful interference with a person’s privacy, family, home or correspondence, as well as to the protection of this right.⁹⁰ Legislation authorizing the stop and search of persons must set clear parameters to determine when such interference is permitted and those responsible for its implementation.⁹¹ Those that are involved in the stop and search of persons must ensure that the stop and search is done pursuant to a legal authorization to do so.⁹²
46. States must also ensure that stops and searches are not arbitrary.⁹³ Interferences may be justified to protect public order, public safety or national security, especially in the light of the threats posed by terrorism. At the same time, States should exercise restraint on their use and the principle of reasonableness should be respected. For example, a stop and/or search conducted on the basis of vague legislation and regulations should be considered unreasonable, as it leaves the official with an overly wide margin of discretion that may lead to abuse. Similarly, a stop or search that extends beyond the necessary time and scope, in light of the specific circumstances of the case, should be considered unreasonable and thus an arbitrary interference with the right to privacy.
47. The effectiveness of stops and searches in countering terrorism to protect public order, public safety or national security should also be considered when designing these measures. Ineffective measures may result in an arbitrary interference

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.⁹⁴

1. The law that provides for stop and search powers should ensure that the discretion conferred on the individual law enforcement official to choose who to stop and search is sufficiently circumscribed and subject to adequate legal safeguard against abuse in order to avoid arbitrariness, including discriminatory practices and a risk of misuse against demonstrators and protestors exercising their rights to freedom of expression, assembly and association. The law enforcement official carrying out the stop and search should therefore be able to demonstrate the existence of a reasonable suspicion or cause or to subjectively suspect something about the person being stopped and searched.
 - A reasonable suspicion or cause could include specific intelligence that the individual is concealing an object, such as a weapon, or inconsistencies in an individual's responses to questions posed by a police agent.
 - Stops and/or searches which may result in a violation of the right to privacy when conducted without reasonable cause may include: emptying the contents of a person's bags or briefcases; opening a vehicle's glove compartments or trunk; opening a person's correspondence while searching his/her belongings; reviewing and/or copying a person's phonebook.
2. Where national legislation explicitly provides for powers to stop and search in the context of counter-terrorism operations within specific geographic areas or security zones (blanket stop-and-search powers):
 - The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that the proportionality requirement in the limitations test to the right to privacy raises questions about whether blanket stop-and-search powers in designated security zones are truly necessary in a democratic society. Also, a regional human rights court⁹⁵ has found that the absence of any obligation on the part of a law enforcement officer to show a reasonable suspicion rendered it difficult, if not impossible, to prove that the power was improperly exercised and a violation of the right to privacy.
 - It is recommended that the discretion conferred on the individual law enforcement official to choose who to stop and search is sufficiently circumscribed or subject to adequate legal safeguards against abuse. In particular, the law enforcement official carrying out the stop and search should be able to demonstrate the existence of a reasonable suspicion or to subjectively suspect something about the person being stopped and searched. The sole requirement that the search must be for the purpose of looking for articles which could be used in connection with terrorism—a very wide category which could cover many articles commonly carried by people in the streets—should not be considered sufficient. The law enforcement officer would need to have grounds for suspecting the presence of such articles.
 - It is recommended that the authorization for these stops and searches be narrowly circumscribed. At a minimum, the authorization must:

- Be necessary to prevent acts of terrorism. The assessment must be based on an actual, not merely hypothetical, terrorist threat. The authorization should specify the grounds for the use of these special stop-and-search powers, such as the existence of specific intelligence relating to the area, the existence within the area of particularly vulnerable sites (e.g. airports, train stations, government buildings) or the fact that special events will take place within the defined area (e.g. demonstrations, large gatherings).
- Specify the geographic extent of the authorization (e.g. a specific building or a site; an area within a clear boundary such as within a specific radius of a building, or marked by roads or rivers). Where possible, a map should be used and be easily accessible by all law enforcement officers involved in the operation.
- Specify clear temporal limitations. The authorization should be subject to renewal only after an evaluation that the threat continues to exist, rendering the powers necessary.
- Only be used in the context of a specific terrorist threat, to support a counter-terrorism operation. Where stops and searches are necessary for other reasons, such as to maintain public order, or where the threshold for the use of these special powers is not met, other legal grounds should be used and the stops and searches must strictly comply with them.

49. *Counter-terrorism measures, such as stopping of persons, shall not arbitrarily or unlawfully interfere with freedom of movement.*
50. Freedom of movement involves a set of rights, including the right to move freely within the whole territory of a State. This right is available to all persons “lawfully within the territory” of the State, whether they are nationals or aliens.⁹⁶ Freedom of movement must not be made dependent on any particular purpose or reason for the person wanting to move or stay in a place.⁹⁷
51. Freedom of movement may be restricted or temporarily suspended, subject to the strict compliance of substantive and procedural requirements of international human rights law.⁹⁸ Measures related to the stopping of persons result, by their very nature, in a restriction to freedom of movement. Therefore, when designing and implementing these counter-terrorism measures, decision makers and those managing law enforcement officials must ensure that law enforcement officials act pursuant to a legal authority,⁹⁹ and that these measures are required to protect public order, public safety or national security.¹⁰⁰
52. Only stops that are necessary to achieve their protective function are legitimate. Additionally, there must be specific reasons to stop a person. Such specific reasons include that the person fits a given description; that the person is attempting to enter or go through a building or infrastructure that requires special protection; that there is a random stop policy in place, based on specific national counter-terrorism legislation; and that the person is stopped in that context.

53. Whenever a stop is conducted, State agents must be able to provide the reasons¹⁰¹ to the person being stopped in an understandable way. Citing legislation or broad reasons, such as national security alone, is insufficient.
54. The design and implementation of counter-terrorism measures related to the stop of persons must be proportional to the legitimate aim sought. States must take into account that the stop of persons may in some cases infringe upon other human rights also protected under national law, such as the right to privacy, human dignity, personal liberty, presumption of innocence and a range of economic, social and cultural rights. The infringement of any human rights through a stop may be decisive for the evaluation of whether a restriction to the freedom of movement has been permissible.¹⁰² Whenever a State official stops a person beyond a reasonable time, without proper justification, such restriction to freedom of movement becomes disproportional and may amount to deprivation of liberty.

As stops and searches may seriously impact on a range of economic, social and cultural rights, State agents must ensure that any proceedings relating to a stop are carried out expeditiously.¹⁰³ The duration of a stop should be minimized as much as possible. States must take into account the particular circumstances under which stops are implemented to ensure to the greatest possible extent that stops and searches do not:

- Disproportionately limit a person's passing to and from a place of residence, work or market, or any other publicly accessible location.
- Unduly interfere with a person's participation in cultural life or association with their families, including when a person lives away from the family home.¹⁰⁴
- Impede access to land, water and other natural resources, since this may significantly impact the life of individuals and family units and may have a devastating socio-economic impact on communities.¹⁰⁵
- Hinder persons from attending full school and work days and gain access to social services or medical treatment, particularly in emergency cases and the cases of pregnant women.¹⁰⁶

Placing a maximum time on the duration of a stop may be seen as a good practice.

55. *The implementation of counter-terrorism measures related to the stopping and searching of persons should be professional and transparent and subject to oversight and judicial scrutiny.*
56. The practical implementation of counter-terrorism measures related to the stopping and searching of persons should be professional and transparent and subject to oversight and judicial scrutiny.¹⁰⁷ Those responsible for the design and management of these measures should therefore establish mechanisms to let individuals complain if they believe their human rights have been violated. All complaints should be addressed promptly, investigated with due diligence and if substantiated, those responsible should be punished.¹⁰⁸ Additionally, the implementation

- of these counter-terrorism measures should be subject to judicial review and oversight, with effective remedies for the violation of rights and freedoms.¹⁰⁹
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 Through such training, the personnel should be made aware of human rights that may potentially be affected by a stop or search and trained in their role in the promotion and protection of human rights.¹¹⁴ Training programmes and materials should be easily readable and provide case-analysis examples. The effectiveness and accuracy of training programmes and materials should be periodically evaluated and revised programmes and materials should be made available whenever necessary.¹¹⁵

The following principles and standards should apply to all law enforcement officials:

- Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.¹¹⁶
- Effective mechanisms should be established to ensure internal discipline and external control and the effective supervision of law enforcement officials.¹¹⁷
- Law enforcement officials who have reason to believe that a violation of domestic law has occurred, or is about to occur, shall report the matter. Provisions shall be made for the receipt and processing of complaints against law enforcement officials by members of the public. The existence of the provisions shall be publicized.¹¹⁸ Investigations into violations shall be prompt, competent, thorough and impartial.¹¹⁹
- Superior officers shall be held responsible for abuses if they knew or should have known of their occurrence and did not take action.¹²⁰

It is recommended that command and supervisory officials:¹²¹

- Issue clear standing orders and provide regular training on the protection of human rights of all persons who come into contact with the police or other law enforcement officials.
- Issue a clear statement of policy, and corresponding orders, requiring full disclosure and the cooperation of all officials with both independent and internal investigations.
- Provide entry-level and on-the-job training for all officials, emphasizing the human rights aspects of police work.
- Highlight the key role of law enforcement officials in the protection of human rights. Public outreach campaigns are one method.

Trust and cooperation between the police and the communities they serve are key. It is recommended that police officials:

- Become familiar with the community they serve. This can include meeting with leaders and representatives of various ethnic communities, speaking to minority group members to listen to their needs, thoughts and suggestions, and, becoming sensitive and responsive.
- Participate in foot patrols and community service activities in ethnically diverse neighbourhoods.
- Participate in inter-ethnic relations training programmes.

It is recommended that command and supervisory officials may:

- Organize in-service training to sensitize police to the importance of good inter-ethnic relations and fair, non-discriminatory law enforcement.
- Issue clear orders on appropriate comportment, language and attitudes vis-à-vis various minority groups.
- Evaluate recruitment, hiring and promotional policies to ensure fairness among and inclusion of various groups.
- Actively recruit members of various minorities and groups underrepresented in the police service.
- Establish mechanisms to continuously receive the complaints, thoughts and suggestions of members of ethnic, racial, religious and linguistic minority groups in the community.
- Adopt community policing strategies.
- Punish discriminatory, insensitive or otherwise inappropriate professional behaviour.
- Involve the community in identifying problems and concerns.
- Coordinate policies, strategies and activities with other Government agencies and with non-governmental organizations.

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, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found between society’s interest and the individual’s rights under art. 7 of the Covenant.”)
- 5 International Covenant on Civil and Political Rights, arts. 2(1), 26 and 4(1); Universal Declaration of Human Rights, arts. 2(1) and 7; European Convention on Human Rights, arts. 1 and 14, Protocol 12; American Convention on Human Rights, arts. 1(1) and 24; African Charter on Human and Peoples’ Rights, arts. 2 and 3(1). See also International Convention on the Elimination of All Forms of Racial Discrimination; Committee on the Elimination of Racial Discrimination, General recommendation XIV on art. 1, para. 1, of the Convention; Human Rights Committee, General comment No. 18

(Non-discrimination). See also Report of the Committee on the Elimination of Racial Discrimination (A/57/18, chap. XI.C), statement on racial discrimination and measures to combat terrorism, paras. 4-6; International Law Commission, “Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries”, 2001 (United Nations, 2008), commentary to art. 26, para. 5; 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. 41; and A/HRC/10/3/Add.2, para. 28 (“Compliance with the principle of non-discrimination, as established in a number of international human rights instruments, is crucial for effectively countering terrorism ...”); Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman (E/CN.4/2005/103), paras. 72-73 (“The duty of States to respect and ensure to all persons subject to their jurisdiction rights without discrimination of any kind” as “a fundamental precept of human rights law”).

- 6 Universal Declaration of Human Rights, art. 2(1); International Covenant on Civil and Political Rights, art. 26 and also art. 4(1) (providing that any derogating measure must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin); see also Committee on Economic, Social and Cultural Rights, General Comments No. 20 (Non-discrimination in economic, social and cultural rights), para. 32. See also Human Rights Committee, General comment No. 29: art. 4 (Derogations during state of emergency), para. 8 (emphasizing that this aspect of art. 4 “must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant”); American Convention on Human Rights, art. 27; European Convention on Human Rights, art. 15.
- 7 General Assembly resolution 60/288, annex. Pillar I, preambular paragraph (“We resolve to undertake the following measures aimed at addressing the conditions conducive to the spread of terrorism, including but not limited to ... ethnic, national and religious discrimination ... while recognizing that none of these conditions can excuse or justify acts of terrorism”).
- 8 General Assembly resolution 34/169, annex. Code of Conduct for Law Enforcement Officials, art. 2 and its commentary, providing that such officials must “maintain and uphold the human rights of all persons”, including the right to non-discrimination. See also General Assembly resolutions 66/171, preambular para. 6 (“Reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group”); Security Council resolution 1963 (2010), second preambular paragraph (“Reaffirming also that terrorism cannot and should

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, para. 67, which “[c]alls upon States to ensure that any measures taken in the fight against terrorism are implemented in full respect of all human rights, in particular the principle of non-discrimination ...”).

- 9 International Covenant on Civil and Political Rights, art. 12 (“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 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, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country.”); Universal Declaration of Human Rights, arts. 9 and 13; European Convention on Human Rights Protocol 4, arts. 2-4; European Convention on Human Rights Protocol 7, art. 1; American Convention on Human Rights, art. 22; African Charter on Human and Peoples’ Rights, art. 12. See also Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement).
- 10 Human Rights Committee, *A. R. Coeriel and M. A. R. Aurik v. The Netherlands*, Communication No. 453/1991 (CCPR/52/D/453/1991) (1994), para. 10.2.
- 11 International Covenant on Civil and Political Rights, art. 17 (“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”); 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).
- 12 See report of the Special Rapporteur (Ben Emmerson) on the “Promotion and protection of human rights and fundamental freedoms while countering terrorism”, (A/HRC/22/52), paras. 14 et seq.
- 13 See
 - The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, hereinafter “The Siracusa Principles” (E/CN.4/1985/4), annex, paras. 10 and 16 (“10. Whenever a limitation is required in the terms of the Covenant to be necessary, this

term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant art. of the Covenant, (b) responds to a pressing public or social need, (c) pursues a legitimate aim and (d) is proportionate to that aim”; and “16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.”);

- Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993 (CCPR/C/58/D/550/1993) (1996), Individual Opinion by Elizabeth Evatt and David Kretzmer, co-signed by Eckart Klein (concurring), para. 8 (“The power given to States parties under art. 19, paragraph 3, to place restrictions on freedom of expression, must not be interpreted as license to prohibit unpopular speech, or speech which some sections of the population find offensive. Much offensive speech may be regarded as speech that impinges on one of the values mentioned in art. 19, paragraph 3 (a) or (b) (the rights or reputations of others, national security, ordre public, public health or morals). The Covenant therefore stipulates that the purpose of protecting one of those values is not, of itself, sufficient reason to restrict expression. The restriction must be **necessary** to protect the given value. This requirement of necessity implies an element of proportionality. The scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect. It must not exceed that needed to protect that value.” (original emphasis));
 - Human Rights Committee, *Marqués de Morais v. Angola*, Communication No. 1128/2002 (CCPR/C/83/D/1128/2002) (2005), para. 6.8 (“The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”).
- 14 International Covenant on Civil and Political Rights, art. 12(3). See also art. 13 concerning the expulsion of aliens on national security grounds; art. 14(1) concerning exclusion of the press from a trial; art. 19(3)(b) concerning limitations on the freedom of expression; art. 21 concerning freedom of assembly; and art. 22(2) concerning freedom of association. As this applies to the International Covenant on Economic, Social and Cultural Rights, see also art. 8(1) concerning trade unions.
- 15 “The Siracusa Principles” (E/CN.4/1985/4), annex, paras. 22-23 and 33.
- 16 “The Siracusa Principles” (E/CN.4/1985/4), annex, para. 11.
- 17 “The Siracusa Principles” (E/CN.4/1985/4), annex, para. 29 (“National security is capable of being invoked to justify the limitation of rights only where taken to protect the existence of the nation or its territorial integrity or political independence

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 terrorism, Robert Goldman (E/ CN.4/2005/103), para. 9, where the Independent Expert refers to the potential to derogate from certain rights, emphasizing that “The ability of States to derogate from rights under these instruments is governed by several conditions which are in turn regulated by the generally recognized principles of proportionality, necessity and non-discrimination”.
- 19 See report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism (A/HRC/16/51), paras. 28 and 32, which proposes a model definition of the offense of terrorism and incitement to terrorism.
- 20 Report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism (A/HRC/16/51), para. 16.
- 21 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 also Human Rights Committee, General comment No. 8: art. 9 (Right to liberty and security of persons).
- 22 International Covenant on Civil and Political Rights, art. 9(2)-(5). See also Human Rights Committee, General comment No. 8: art. 9 (Right to liberty and security of persons). See also International Covenant on Civil and Political Rights, art. 16

- (“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 (1980), paras. 92-93; European Convention on European Rights, *Engel and others v. The Netherlands*, Application Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72 (1976), paras. 58-59. See also Human Rights Committee, *Ismet Celepli v. Sweden*, Communication No. 456/1991 (CCPR/C/51/D/456/1991) (1994), para. 9.2; European Commission on Human Rights, *Hojemeister v. Germany* (unreported) (1983); European Commission on Human Rights, *X v. Germany*, 8819/79, 24 DR 158 (1987), p. 161.
 - 25 European Court on Human Rights, *Guzzardi v. Italy*, Application No. 7367/76 (1980), paras. 92-93.
 - 26 European Court on Human Rights, *Guillan and Quinton v. the United Kingdom*, Application No. 4158/05 (2010).
 - 27 European Court on Human Rights, *Foka v. Turkey*, Application No. 28940/95 (2008), paras. 78-79.
 - 28 International Covenant on Civil and Political Rights, art. 9(1). See also Human Rights Committee, General comment No. 8: art. 9 (Right to liberty and security of persons).
 - 29 International Covenant on Civil and Political Rights, art. 15. See also Fact Sheet No. 32 (*Human Rights, Terrorism and Counter-Terrorism*) of the Office of the United Nations High Commissioner for Human Rights, pp. 39 *et seq.*
 - 30 International Covenant on Civil and Political Rights, art. 9(1).
 - 31 See e.g., Human Rights Committee, *A. v. Australia*, Communication No. 560/1993 (CCPR/C/59/D/560/1993) (1997), para. 9.4; Human Rights Committee, *Spakmo v. Norway*, Communication No. 631/1995 (CCPR/C/59/D/631/1995) (1999), para. 6.3; Human Rights Committee, *van Alphren v. The Netherlands*, Communication No. 305/1988 (CCPR/C/39/D/305/1988) (1990), paras. 5.6-5.8; Human Rights Committee, *Mr. C v. Australia*, Communication No. 900/1999 (CCPR/C/76/D/900 (1999) (2002), para. 8.2; Human Rights Committee, *Mr. Omar Sharif Baban et al. v. Australia*, Communication No. 1014/2001 (CCPR/C/78/D/1014/2001) (2003), para. 7.2. See also report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering

- terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism (A/HRC/16/51), paras. 36-38, and United Nations High Commissioner for Refugees, Detention Guidelines (“Guidelines on the applicable criteria and standards relating to the detention of asylum seekers and alternatives to detention”), 2012.
- 32** International Covenant on Civil and Political Rights, art. 4. See also Human Rights Committee, General comment No. 29: art. 4 (Derogations during a 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..
- 33** Human Rights Committee, General comment No. 29: art. 4 (Derogations during a state of emergency), para. 16. See also E/CN.4/2005/103), para. 37; Human Rights Committee Concluding Observations, Israel (CCPR/C/79/Add.93), para. 21 (“the Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. ... The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention.”); Report of the Working Group on Arbitrary Detention (A/HCR/7/4), para. 67, in which it stated, concurring “with the legal analysis by the Human Rights Committee in its general comment No. 29 ... that, in addition to those enumerated in article 4, paragraph 2 of the [International Covenant on Civil and Political Rights], certain other rights are non-derogable even during a state of emergency, such as the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention. In the view of the Working Group these guarantees represent peremptory norms of (customary) international law so that they are also binding on States which are not parties to the Covenant.”; Report of the Human Rights Committee, *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40)*, vol. I, annex XI, its “Recommendation submitted by the Committee to the Subcommission on Prevention of Discrimination and Protection of Minorities concerning a draft third optional protocol to the International Covenant on Civil and Political Rights”, para. 2 (“The Committee is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency. Furthermore, the Committee is of the view that the remedies provided in art. 9, paragraphs 3 and 4, read in conjunction with art. 2, are inherent to the Covenant as a whole.”).
- 34** See Human Rights Committee, General comment No. 16 art. 17 (Right to privacy), para. 8.

- 35 International Covenant on Civil and Political Rights, arts. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”) and 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”); Universal Declaration of Human Rights, art. 5; European Convention on Human Rights, art. 3; African Charter on Human and Peoples’ Rights, art. 5. See also United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1-16; Human Rights Committee, General comments No. 20: art. 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment); and No. 21: art. 10 (Human treatment of persons deprived of liberty).
- 36 International Covenant on Civil and Political Rights, art. 4. See also Human Rights Committee, General comment No. 29: art. 4 (Derogations during a 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.
- 37 Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 8 (“Effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched”); Committee against Torture, Concluding Observations, Argentina (CAT/C/CR/33/1) (2004), para. 7(l) (“Take appropriate steps to guarantee full respect for the dignity and human rights of all persons during body searches, in full compliance with international standards”).
- 38 General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 2 (“In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”); Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (CAT/C/HKG/CO/4) (2009), para. 10, hereinafter, Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region (2009) (recommendations a and b) (“The HKSAR should: a) ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with art. 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided; b) establish precise and strict guidelines regulating the strip searches conducted by all law enforcement officials, including those from the Immigration and Correctional Services Department”).

- 39 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendations a and b).
- 40 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region (2009), para. 10.
- 41 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation a).
- 42 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 19(b).
- 43 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation a).
- 44 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation b). See also Inter-American Commission on Human Rights, Report No. 38/96, Case No. 10.506 (Ms. X and Y v. Argentina), paras. 81-82.
- 45 Inter-American Commission on Human Rights, Report Nos. 38/96, Case No. 10.506 (Ms. X and Y v. Argentina), paras. 81-82 (stating that when no control is in place, even in the presence of clear and precise legislation and guidelines, this measure “is liable to being employed in circumstances when it would be unnecessary, used as a form of intimidation, and/or otherwise abused”).
- 46 Universal Declaration of Human Rights, preamble and art. 1.
- 47 Ibid.
- 48 General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, arts. 1 and 8.
- 49 General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 2.
- 50 Universal Declaration of Human Rights, art. 2(1); International Covenant on Civil and Political Rights, art. 26 and also 4(1); International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Committee on Economic, Social and Cultural Rights, General Comments No. 20 (Non-discrimination in economic, social and cultural rights), para. 32; General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, arts. 1 and 2.
- 51 International Covenant on Civil and Political Rights, art. 10; Convention on the Elimination of All Forms of Discrimination against Women; arts. 4(2) and 12(2); Convention on the Rights of the Child; arts. 37 and 40; General Assembly resolution 40/133, Standard Minimum Rules for the Administration of Juvenile Justice, Part 1, rules 1-8.

- 52 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation c) (“Seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and should be performed by trained health personnel and with due regard for the individual’s privacy and dignity.”). See also Inter-American Commission on Human Rights, Report No. 38/96, Case No. 10.506, Ms. X and Y v. Argentina, paras. 73-80.
- 53 Human Rights Committee, General comment No. 16 art. 17 (Right to privacy), para. 8 (“Persons being subjected to body search by State officials or medical personnel acting at the request of the State, should only be examined by persons of the same sex.”); Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation c). See also Inter-American Commission on Human Rights, Report No. 38/96, Case No. 10.506, Ms. X and Y v. Argentina, para. 84.
- 54 See also the Basic Human Rights Reference Guide “*Security Infrastructure*”, paras. 19 *et seq.*
- 55 Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 18 (A/57/18)*, chap. XI, sect. C, statement on racial discrimination and measures to combat terrorism, paras. 4-6.
- 56 The presumption of innocence, a non-derogable right, requires that “no guilt can be presumed until the charge has been proved beyond reasonable doubt”. See International Covenant on Civil and Political Rights, art 14(2); American Convention on Human Rights, art. 7(1)(b); European Convention on Human Rights, art. 8(2); African Commission on Human and Peoples’ Rights, art. 14(2). See also Human Rights Committee, General comment No. 13: art. 14 (Administration of justice) para. 7; International Covenant on Civil and Political Rights, art. 4; Human Rights Committee, General comment No. 29: art. 4 (Derogations during a state of emergency), paras. 11 and 16. 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. 29.
- 57 States have an obligation to guarantee the protection of the law against the intentional impairment to honour and reputation by untrue allegations. While honour tends to relate more to a person’s subjective opinion of himself or herself, reputation tends to relate more to judgment of that person by others. See International Covenant on Civil and Political Rights, art 17; American Convention on Human Rights, art. 11; European Convention on Human Rights, art. 8. See

- 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 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban Declaration and Programme of Action) (A/CONF.189/12), Declaration, para. 94; 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. 40. See also Committee on the Elimination of Racial Discrimination, General recommendation XXX on discrimination against non-citizens, para. 12; Committee on the Elimination of Racial Discrimination, General recommendation XXIX on art. 1, paragraph 1, of the Convention (Descent), para. 18; Committee on the Elimination of Racial Discrimination, General recommendation XV on art. 4 of the Convention, para.3.
- 59 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. 33 (“‘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. Profiles can be either descriptive, i.e. designed to identify those likely to have committed a particular criminal act and thus reflecting the evidence the investigators have gathered concerning this act; or they may be predictive, i.e. designed to identify those who may be involved in some future, or as-yet-undiscovered, crime ...”). See also report of the former Special Rapporteur on human rights while countering terrorism, Martin Scheinin: Australia: Study on human rights compliance while countering terrorism (A/HRC/4/26/Add.3), para. 52 (taking note of a definition used by a Member State’s Customs Service, i.e. “a filtering process involving a single or cluster of indicators that, when grouped together, present the characteristics of a high-risk passenger or consignment”).
- 60 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. 33 (“... In the view of the Special Rapporteur, profiling is, in principle, a permissible means of law-enforcement activity. Detailed profiles based on factors that are statistically proven to correlate with certain criminal conduct may be effective tools better to target limited law-enforcement resources”). See also report of the former Special Rapporteur human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Australia: Study on human rights compliance while countering terrorism (A/HRC/4/26/

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 effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping”. In addition, 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. 36, which highlights the use of terrorist profiling based on national or ethnic origin and religion in the context of immigration controls; para. 40 in which the former Special Rapporteur on human rights while countering terrorism highlights the relevance of the principle of non-discrimination to different forms of terrorist profiling and notes his concern that “profiling based on stereotypical assumptions may bolster sentiments of hostility and xenophobia in the general public towards persons of certain ethnic or religious background”; para. 42, in which the former Special Rapporteur refers to the various international and regional human rights bodies which have highlighted the risk of discrimination presented by law-enforcement efforts to counter terrorism. For additional information, see paras. 53-55. See also A/HRC/6/17/Add.3, para. 45, which the former Special Rapporteur has also noted that it is a significant problem in certain regions of the world that the religious affiliation of persons is wrongly confused with the identification of such persons as potential terrorists. Finally, see General Assembly resolutions 62/159, preambular para. 8, and 63/185, ninth preambular paragraph (... “measures used in the fight against terrorism, including the profiling of individuals ... must be in compliance with the obligations of States under international law, including international human rights law, international refugee law and international humanitarian law”).
- 62 See Human Rights Committee, General comment 18 (Non-discrimination), para. 13: “... not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”. Human Rights

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 preparing a terrorist act. The situation is different, however, in the case of preventive counter-terrorism efforts that are not intelligence-led. While profiles used for such efforts may include behavioural or psychological characteristics, the Special Rapporteur is of the view that they may not be based on stereotypical generalizations that certain ethnic or religious groups pose a greater terrorist risk than others.”).
- 66 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 (“... The situation is different, however, in the case of preventive counter-terrorism efforts that are not intelligence-led. While profiles used for such efforts may include behavioural or psychological characteristics, the Special Rapporteur is of the view that they may not be based on

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

Offenders, 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 are insufficient to achieve these objectives. In any event, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. 10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident. 11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged; (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”). See also Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication 11/45 (1982), paras. 13.2 and 13.3.
- 74 See “Basic Principles” principle 5(a); General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, art. 3. See also Human Rights Committee, *Concluding Observations, Israel (CCPR/CO/78/ISR)*, para. 15 (“The State party should not use ‘targeted killings’ as a deterrent or punishment. The

State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.”). See also Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication 11/45 (1982), paras. 13.2 and 13.3 (“In the present case it is evident from the fact that seven persons lost their lives as a result of the deliberate action of the police, that the deprivation of life was intentional. Moreover, the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions. There is no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned. Moreover, the victims were no more than suspects of the kidnapping which had occurred some days earlier and their killing by the police deprived them of all the protections of due process of law laid down by the Covenant. In the case of Mrs. Maria Fanny Suarez de Guerrero, the forensic report showed that she had been shot several times after she had already died from a heart attack. There can be no reasonable doubt that her death was caused by the police patrol.”) In the Committee’s view, the actions of the Colombian police were disproportionate and resulted in the violation of the right to life of Ms. Guerrero. Report to the General Assembly of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/61/311, paras. 33-45.

- 75 See “Basic Principles” principles 5 and 7.
- 76 See “Basic Principles” principle 8.
- 77 See “Basic Principles” principle 4.
- 78 See “Basic Principles” principles 4 and 5.
- 79 See “Basic Principles” principle 9.
- 80 Report to of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/61/311, para. 41.
- 81 See “Basic Principles”, principle 10. See also Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication 11/45 (1982), paras. 13.2 and 13.3; Human Rights Committee, *Concluding Observations, Israel* (CCPR/CO/78/ISR), para. 15; Human Rights Committee, *Klaus Dieter Baumgarten v. Germany*, Communication 960/2000 (CCPR/C/78/D/960/2000) (2003), para.

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 the right to freedom of opinion and expression, *Frank La Rue* (A/HCR/23/40), para. 24 et seq.
- 86** Human Rights Committee, General comment No. 16: art. 17 (Right to privacy).
- 87** International Covenant on Civil and Political Rights, art. 17. Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), paras. 1, 3-4, 6 and 9 (“1. art. 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee, this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this art. require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right. ... 3. The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on

the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant. 4. The expression “arbitrary interference” is also relevant to the protection of the right provided for in art. 17. In the Committee’s view, the expression “arbitrary interference” can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. 6. The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner, and through which organs, persons concerned may complain of a violation of the right provided for in art. 17 of the Covenant. States should, in their reports, make clear the extent to which actual practice conforms to the law. State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases. ... 9. States parties are under a duty themselves not to engage in interferences inconsistent with art. 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.”). See also E/CN.4/2005/103, paras. 66-70.

- 88 Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 3.
- 89 Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 4. See also Human Rights Committee, *Nicholas Toonen v. Australia*, Communication No. 488/1992 (CCPR/C/50/D/488/1992) (1994), para. 8.3 (The Human Rights Committee “interprets the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case”).
- 90 International Covenant on Civil and Political Rights, art. 17. See also Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), paras. 1, 6 and 9.
- 91 Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), paras. 3 and 8 (“Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis.”). See also Human Rights Committee, *Antonius*

- Cornelis Van Hulst v. The Netherlands, Communication No. 903/1999 (CCPR/C/82/D/903/1999) (2004), para. 7.7.
- 92 International Covenant on Civil and Political Rights, art. 17(1); Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 3; Human Rights Committee, Antonius Cornelis Van Hulst v. The Netherlands, Communication No. 903/1999 (CCPR/C/82/D/903/1999) (2004), para. 7.3 (stating that “... in order to be permissible under art. 17, any interference with the right to privacy must cumulatively meet several conditions set out in paragraph 1, i.e. it must be provided for by law, be in accordance with the provisions, aims and objectives of the Covenant and be reasonable in the particular circumstances of the case”).
- 93 International Covenant on Civil and Political Rights, art. 17(1); Human Rights Committee, General comment No. 16: art. 17 (Right to privacy), para. 4. See also Human Rights Committee, Nicholas Toonen v. Australia, Communication No. 488/1992 (CCPR/C/50/D/488/1992) (1994), para. 8.3; Human Rights Committee, Canepa v. Canada, Communication No. 558/1993 (CCPR/C/52/D/558/1993) (1997), para. 11.4 (“arbitrariness within the meaning of art. 17 is not confined to procedural arbitrariness, but extends to the reasonableness of the interference with the person’s rights under art. 17 and its compatibility with the purposes, aims and objectives of the Covenant”); Human Rights Committee, Rafael Armado Rojas Garcia v. Colombia, Communication No. 687/1996 (CCPR/C/62/D/687/1996) (2001), para. 10.3 (an interference to the right to privacy “should be, in any event, reasonable in the particular circumstances.”).
- 94 International Covenant on Civil and Political Rights, art. 4; Human Rights Committee, General comment No. 29: art. 4 (Derogations during a 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. See also E/CN.4/2005/103, para. 67.
- 95 European Court of Human Rights, Case of Gillian and Quinton v. the United Kingdom, Application No. 4158/05, 12 January 2010, paras. 83-86.
- 96 International Covenant on Civil and Political Rights, art. 12(1); Universal Declaration of Human Rights, arts. 9 and 13; European Convention on Human Rights, Protocol 4, arts. 2-4; European Convention on Human Rights, Protocol 7, art. 1; American Convention on Human Rights, art. 22; African Charter on Human and Peoples’ Rights, art. 12. See also Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), paras. 4-5.
- 97 Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), para. 5.

- 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, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”). See also Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), paras. 2, 11-15, 18; Human Rights Committee, *Ismet Celepli v. Sweden*, Communication No. 456/1991 (CCPR/C/51/D/456/1991) (1994), para. 9.2 (“... bearing in mind that the State party has invoked reasons of national security to justify the restrictions on the author’s freedom of movement, the Committee finds that the restrictions to which the author was subjected were compatible with those allowed pursuant to art. 12, paragraph 3, of the Covenant.”); Human Rights Committee, *Mrs. Samora Karker, on behalf of her husband, Mr. Salah Karker, v. France*, Communication No. 833/1998 (CCPR/C/70/D/833/1998) (2000), para. 9.2 (“... The State party has argued that the restrictions to which the author is subjected are necessary for reasons of national security. In this respect, the State party produced evidence to the domestic courts that Mr. Karker was an active supporter of a movement which advocates violent action. It should also be noted that the restrictions of movement on Mr. Karker allowed him to reside in a comparatively wide area. Moreover, the restrictions on Mr. Karker’s freedom of movement were examined by the domestic courts which, after reviewing all the evidence, held them to be necessary for reasons of national security. Mr. Karker has only challenged the courts’ original decision on this question and chose not to challenge the necessity of subsequent restriction orders before the domestic courts. In these circumstances, the Committee is of the view that the materials before it do not allow it to conclude that the State party has misapplied the restrictions in art. 12, paragraph 3.”).
- 101 Human Rights Committee, General comment No. 27: art. 12 (Freedom of movement), para. 15 (“States should ensure that any proceedings relating to the

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-Cziffra 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, para. 58; Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination against non citizens, para. 11; Committee on the Elimination of Racial Discrimination, General Recommendation XXIX on art. 1, paragraph 1 of the Convention (Descent), para. 8; Committee on the Elimination of Racial Discrimination, General Recommendation XVII on the establishment of national institutions to facilitate implementation of the Convention, para. 1 (d); Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978, art. 6(3); Committee on the Elimination of Racial Discrimination, Concluding observations, United States of America (CERD/C/USA/CO/6), 2008; 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. 5 (b); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène (E/CN.4/2003/23).
- 111 Committee against Torture, Concluding Observations, Hong Kong Special Administrative Region of China (2009), para. 10 (recommendation b).
- 112 See Basic Human Rights Reference Guide “*Security Infrastructure*”, paras. 46 *et seq.*
- 113 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), para. 38.
- 114 See “Basic Principles”, paras. 18-20; Committee on the Elimination of Racial Discrimination, General Recommendation XXX on discrimination against non-citizens, para. 21; Committee on the Elimination of Racial Discrimination, Concluding observations, United States of America (CERD/C/USA/CO/6), 2008; Committee on the Elimination of Racial Discrimination, General Recommendation XIII on the training of law enforcement officials in the protection of human rights, paras. 2-3.

- 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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