



# United Nations Security Council Counter-Terrorism Committee

## Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States

### Executive summary

The nature of the global terrorist threat has continued to evolve since 2016, compelling Member States to adapt their policies and approaches to address new challenges and existing gaps in their counter-terrorism measures. Those challenges include the evolution of the foreign terrorist fighter (FTF) threat; the rising threat of terrorism in conflict areas; the emergence of new terrorist methodologies; the growing internationalization of **terrorist attacks on the basis of xenophobia, racism and other forms of intolerance**,<sup>1</sup> and most recently, the impact of the COVID-19 global pandemic.

### Global threat outlook

Although many of these challenges are global, terrorism has continued to affect States, regions, and subregions differently.

The **North Africa** region continues to face threats from terrorist groups affiliated with Al-Qaida in the Islamic Maghreb (AQIM); the Islamic State in Iraq and the Levant (ISIL), also known as Daesh); and FTFs who travelled to Iraq or the Syrian Arab Republic. The undetected return of FTFs to their countries of origin following ISIL's territorial defeat poses additional security challenges. Moreover, lone actors and small cells have carried out a number of deadly attacks in recent years in several North African States and have proven difficult to detect.

In **East Africa**, Al-Shabaab (which pledged allegiance to Al-Qaida in 2012) remains the most active terrorist group, conducting attacks primarily in Somalia, but also in neighbouring States. It remains highly adaptable, and its indirect fire attacks against aircraft and airfields increased in 2021. Since 2016, Al-Shabaab has also committed significant, complex and deadly attacks outside Somalia, including in Kenya. Recruitment and radicalization activities are ongoing concerns.

Since 2016, **Southern Africa** has seen a dramatic increase in terrorist activity, notably in northern Mozambique and along Mozambique's border with Tanzania. As of June 2019, ISIL-associated

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<sup>1</sup> While the Security Council has not established an internationally agreed terminology regarding this threat, the Counter Terrorism Committee noted, in its previous documents, that many of the Member States recently assessed by the CTC have referred to terrorist acts committed by such individuals and groups through a range of different terminologies.



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elements operating under the banner of Islamic State Central Africa Province (ISCAP), began to claim responsibility for violent attacks in the area.

**West Africa** faces an extremely high terrorist threat. The dramatic increase in terrorist activity in the subregion is primarily due to two groups: Jama'at Nusrat al Islam wal Muslimeen (JNIM) and the Islamic State in the Greater Sahara (ISGS). Although the territorial presence and activity of Al-Qaida and its affiliates (particularly Al-Qaida in the Islamic Maghreb (AQIM)) was initially limited to the extreme north of Mali, it has now expanded across large areas of Burkina Faso, Mali and Niger. The growing strength of ISIL in West Africa has compounded the terrorist threat and contributed to the deteriorating security situation in the subregion.

**Central African** States face multiple terrorist threats. Boko Haram's terrorist activity has spread from its original area of operation in north-eastern Nigeria into the entire Lake Chad Basin region, affecting the Far North region in Cameroon and Lake Chad Province in Chad. Boko Haram has splintered into two main groups (one of which, Islamist State West Africa Province (ISWAP), is directly affiliated with ISIL), and a third group, Ba Koura. Collectively, they remain major threats for States located around the Lake Chad Basin.

Violence perpetrated by other armed groups, including in Chad, Democratic Republic of the Congo and the Central African Republic, continues to pose a threat to the overall stability of this subregion.

The **South-East Asia** region has been infiltrated by ISIL-inspired FTFs, and local terrorist groups continue to be inspired by, and pledge allegiance to, ISIL. This subregion remains a source, transit point and destination for ISIL fighters, as well as for militants connected to, inter alia, the Abu Sayyaf Group (ASG), Al-Qaida, and Jemaah Islamiyah.

In **South Asia**, the overall threat level remains high, with several States suffering attacks since the previous global survey. Many Al-Qaida and ISIL-affiliated terrorist groups (including, the Taliban, Al-Qaida in the Indian Subcontinent (AQIS), and the Islamic State in Iraq and the Levant - Khorasan (ISIL - K)) are active in the subregion. Much of the terrorist activity in the subregion appears to be ISIL-inspired, if not directed (although ISIL has claimed credit for some attacks, despite a lack of evidence to substantiate its claims).

**Central Asia** continues to face significant security challenges, including due to its proximity to regions marked by terrorist activity, illicit drugs and arms trafficking, vulnerability to terrorist propaganda and recruitment, and risks associated with widespread reliance on alternative money remittances. Although there has been a relatively limited number of terrorism-related attacks or incidents in Central Asia in recent years, the number of terrorist attacks carried out by Central Asians outside the region has increased. Returning and relocating FTFs are also a concern.



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Ten of the 12 Member States of **Western Asia** have been affected by terrorist attacks. The fragility of the political and security situation in some of the States continues to warrant vigilance. ISIL remains an active terrorist threat within the borders of some States of this subregion, including States experiencing a fragile political and security situation. ISIL views that most of those States should observe a stricter interpretation of religious teachings. The proximity to the armed conflict in the Syrian Arab Republic and the activities of various terrorist organizations continue to greatly exacerbate the terrorist risk to Western Asia, owing in part to the continued displacement of people from Iraq and the Syrian Arab Republic, causing continued cross-border security concerns and significant political and economic tensions for States located in this subregion.

Although the **East Asia** subregion was believed to be largely untouched by the conflicts in Iraq and the Syrian Arab Republic, reports indicate that ISIL and affiliated groups did recruit individuals from this subregion as FTFs.

The terrorism risk to States of the **Pacific Islands** subregion is low, owing to their isolated geographic location, transport limitations, their small size and populations (factors that limit anonymity), and their relatively small financial and commercial sectors. No State of this subregion has experienced a terrorist attack.

The **Central America** subregion faces challenges relating to violence and corruption stemming from organized crime and drug trafficking. Even though the terrorist threat remains low, States of the subregion have continued to strengthen their counter-terrorism efforts, primarily within the framework of the Inter-American Committee against Terrorism of the Organization of American States (OAS/CICTE). Recent evidence indicates that criminal organizations may be adopting tactics **similar to those** associated with terrorist organizations and that new trends and cells inspired by violent extremism conducive to terrorism have surfaced in the subregion.

In the **Caribbean**, terrorism remains a low probability, high-impact threat. Governments of the subregion are aware of the evolving and decentralized threat posed by international terrorist groups, including ISIL and Al-Qaida. The risk of recruitment to terrorism and radicalization to violent extremism conducive to terrorism, the volume and accessibility of terrorist propaganda, and the potential for exploitation of many States' banking systems and informal economies to fund terrorist networks remain sources of concern. Moreover, because of its geography, this subregion is vulnerable to maritime criminal activity, including the smuggling of drugs; small arms and light weapons (SALW); people; and chemical, biological, radiological or nuclear (CBRN) materials.

All **South American** States have recognized the threat posed by terrorism — despite the general perception that the terrorist threat to the subregion is low — and have gradually introduced measures to prevent terrorist acts and the movement of terrorists across borders. Nonetheless, the subregion remains vulnerable to terrorism financing; transnational organized crime; the illicit cross-border movement of funds, arms and people; and other threats potentially linked to terrorism.



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Small numbers of South American nationals are known to have travelled to the conflict zones of Iraq and the Syrian Arab Republic in support of ISIL.

Most States of **Eastern Europe** have a comparatively low level of risk, but some smaller-scale attacks or plots have occurred. The threat level in the Russian Federation has decreased in recent years. The risk of terrorist attacks **on the basis of xenophobia, racism and other forms of intolerance** is a growing threat across the subregion. States of this subregion located on both sides of the eastern border of the Schengen area have a risk of being used as transit States for illicit movements of people, weapons and cash. In 2020, Heads of the CIS Member States adopted the Programme of Cooperation of the CIS Member States in Strengthening Border Security at External Borders for 2021-2025.

States of the **Western Europe, North American and other States** group have continued to suffer from a steady rate of terrorist attacks over the past five years. **Australia, Canada, New Zealand and the United States** have also experienced terrorist activity since the previous global survey. The risk profile is not evenly spread, however. Some States (e.g., Australia, France, Germany and the United Kingdom) have experienced a disproportionately high level of incidents. Nevertheless, smaller-scale or less-frequent attacks continued to occur throughout Western and Central Europe, including in Austria, Belgium, Finland, the Netherlands, Norway and Sweden.

All States of this group face varying, but increasing challenges posed by terrorist **attacks on the basis of xenophobia, racism and other forms of intolerance**. This threat is becoming increasingly organized and transnational. Recent trends indicate the increasing prevalence of “lone actor” attacks. There is also a low residual risk of terrorist attacks resulting from historical sectarian divisions. However, these conflicts (although not fully resolved) are typically being addressed through political means.

**South-East Europe** has been largely free of terrorist attacks in the five years since the previous global survey, and its risk is low compared to that of other European subregions. There remains the underlying risk that this subregion remains attractive to those seeking to transit between the European Union and conflict zones. Other continued risks in this subregion include relatively high levels of organized crime and arms trafficking and their potential linkages to terrorism.

### **Responses of the Security Council and Member States**

In response to the rapidly evolving terrorist threat, the Security Council has adopted a number of targeted resolutions — notably including resolutions 2395 (2017) and 2396 (2017) — which identify a number of required responses and associated challenges.

The need to develop **comprehensive and integrated national strategies** to ensure an effective and holistic approach in countering terrorism is one of the key issues addressed by the Counter-



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Terrorism Committee Executive Directorate (CTED) within the framework of its dialogue with Member States on behalf of the Counter-Terrorism Committee. Since the previous survey, CTED has identified an increase in the number of Member States taking steps to develop a broader counter-terrorism approach, including by engaging a wider range of governmental stakeholders, beyond law enforcement agencies.

Pursuant to Council resolutions 2178 (2014), 2322 (2016), 2396 (2017) and 2462 (2019), Member States have accelerated the review of their existing **legislative and administrative frameworks** and, where necessary, enacted new measures to incorporate the requirements of the relevant Council resolutions into domestic law. However, despite this progress, the degree to which the relevant offences have been codified varies and continues to require careful monitoring.

In assessing and monitoring legislative developments in Member States, the Committee and CTED have frequently identified shortcomings relating to domestic **definitions of terrorism** and terrorism-related offences. The Committee has recommended that States adopt a clear and precise definition of terrorism that corresponds to the requirements of the international counter-terrorism instruments to which they are parties and, the relevant resolutions of the Security Council, and is consistent with other relevant international law obligations, norms and standards, including international human rights law, as applicable. The Committee has also noted that definitional shortcomings can undermine international cooperation in the fight against terrorism.

A number of Council resolutions, including resolutions 1373 (2001), 2178 (2014) and 2396 (2017), stress the need for Member States to ensure effective **criminal justice** responses to terrorism. Because effective prosecution of counter-terrorism cases relies on specific skills and expertise, States' investigative, prosecutorial and judicial authorities must develop ways to deal with the increasing complexity of such cases. Most States visited by the Committee continue to experience difficulties in their efforts to implement these requirements, including with respect to their use of intelligence information in a criminal justice context and international cooperation in criminal justice matters (mutual legal assistance, extradition, and international cooperation in gathering and using digital evidence in terrorism cases).

In addressing the evolving risks posed by foreign terrorist fighters, Security Council resolutions 2178 (2014) and 2396 (2017) establish requirements for States to develop and implement comprehensive and tailored **prosecution, rehabilitation and reintegration** (PRR) strategies. Many States that are affected by terrorism (including the FTF phenomenon) have yet to develop and/or implement comprehensive PRR strategies. In some cases, the relevant measures are implemented on an ad hoc basis, which may result in the allocation of insufficient structural, financial, and human resources. The adoption of ad hoc measures in the absence of an overall strategy creates the risk that States will adopt and implement ineffective measures at the domestic level. CTED's analysis has identified a widespread need to strengthen coordination between criminal justice actors and other relevant stakeholders in this regard.





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In designing PRR-related laws, policies and measures, only a few States have conducted meaningful public consultations that include all relevant stakeholders, in particular communities most affected by terrorism. Inclusive and participatory law and policymaking on often sensitive PRR issues will promote the legitimacy and thereby the effectiveness of the resulting measures.

Member States also face considerable challenges in their efforts to develop and implement measures aimed **at preventing and countering terrorism in the context of armed conflict**. Armed conflicts (in particular, those of a protracted nature) and the resulting violence, instability, and breakdown of rule-of-law institutions act as drivers of violent extremism that may lead to terrorism. Such conditions can render individuals and communities vulnerable to recruitment, including through the exploitation of deep-rooted grievances caused by the conflict and the often-associated governance and accountability gap. Moreover, conflict-related institutional, social and economic vulnerabilities may also significantly undermine counter-terrorism efforts and impair their long-term sustainability.

The Security Council has regularly stressed that Member States' efforts to prevent and combat terrorism and violent extremism must comply with their obligations under international law, including **international humanitarian law**. The Council has also underlined that counter-terrorism strategies should aim to ensure sustainable peace and security and that respect for international law is essential to the success of counter-terrorism efforts. The associated obligations are particularly relevant in the context of addressing the FTF phenomenon.

Terrorism and violent extremism can be significant contributing factors to humanitarian crises, including complex emergencies resulting from a combination of natural and man-made elements, such as severe climatic disasters and armed conflict. Emergencies of this nature require a swift and effective humanitarian response that is delivered in a neutral, independent and impartial manner. Terrorist activity also endangers humanitarian actors and can undermine humanitarian action. ISIL and other terrorist groups have declared aid workers "legitimate targets" and called on their followers to "fight" humanitarian organizations.

In their efforts to guarantee the **criminal accountability** of FTFs, States' criminal justice systems have been required to investigate, prosecute and adjudicate conduct perpetrated thousands of miles away, often in conflict zones experiencing a breakdown of rule-of-law institutions and the proliferation of armed non-State actors. Effectively prosecuting related conduct perpetrated in conflict zones requires the use, consistent with internationally recognized fair trial standards, of non-traditional types of information and evidence, including e-evidence, open source and social media intelligence, and information collected or obtained from conflict zones, including by military actors. This presents significant challenges for many States which, if left unaddressed, may lead to impunity and denial of justice to victims of terrorism and to society more broadly.



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**Terrorists and terrorist groups continue to raise** funds through, inter alia, abuse of legitimate enterprises and non-profit organizations, exploitation of natural resources, donations, crowdfunding, and the proceeds of criminal activity, including kidnapping for ransom, extortion, illicit trade and trafficking in cultural property, trafficking in persons, drug trafficking and the illicit trade in SALW. These funds are moved not only by “traditional” means, such as formal banking systems, financial institutions, money service businesses or informal financial networks and cash-couriers, but also through the use of emerging payment methods such as prepaid cards, mobile wallets or virtual assets.

Member States have increasingly introduced amendments to their countering the financing of terrorism (CFT) legislation to address the requirements of the relevant Council resolutions, recommendations made by the Counter-Terrorism Committee pursuant to its country assessment visits, and mutual evaluations and follow-up processes of the Financial Action Task Force (FATF) and the FATF-style regional bodies (FSRBs). However, many of the newly adopted or amended CFT laws and mechanisms are not used consistently or fully. Many States continue to require technical assistance, training and related equipment in this area and should establish platforms for the sharing of effective practices and useful experiences.

As States continue to strengthen their CFT legislation and operational measures, there is considerable debate as to the extent to which those measures **might impact purely humanitarian activities**, including in conflict zones with active terrorist activity. The COVID-19 pandemic has also raised additional concerns regarding the potential impact of CFT measures on emergency responses.

Member States’ implementation of resolution 1373 (2001) has been greatly enhanced by their establishment of dedicated **law enforcement** counter-terrorism units and their training of specialized counter-terrorism officers to investigate terrorist acts. A significant number of States have also developed this capacity using computerized tools, establishing watch lists and databases, cross-checking criminal files, and expanding information-exchange systems.

Member States have made some progress in enhancing counter-terrorism law enforcement and security cooperation and coordination, with the support of inter-agency information-sharing functions or fusion cells. Member States have also adopted their national law enforcement plans of action to prevent and combat terrorism and strengthened international cooperation, including by extending access to the I-24/7 global police communications system of the International Criminal Police Organization (INTERPOL).

**Effective control of maritime, land and air borders** is essential in countering terrorism because it represents the first line of defence against the cross-border movement of terrorists, illicit goods and cargo. However, the considerable length of many States’ borders, the complex terrain that they



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often traverse, the increasing presence of unofficial border crossing points (BCPs), and the use of broken travel pose significant challenges to Member States in this regard.

Member States have also continued to confront the threat posed by terrorist **exploitation of the Internet and other information and communication technologies (ICTs), including social media**, to commit terrorist acts and to facilitate a wide range of terrorist activities, including incitement to violence, radicalization, recruitment, training, planning, collection of information, communications, preparation, and financing. Terrorists and terrorist groups **motivated by xenophobia, racism and other forms of intolerance** are taking advantage of technological advances to adapt their operational methods, whether by consolidating traditional techniques for disseminating propaganda and violent narratives, sourcing weapons and other support, or developing new techniques.

The use of **technologies for terrorist purposes** — including artificial intelligence, content moderation, and digital/e-evidence — is an issue of growing concern to practitioners, policymakers and researchers in the context of the increasing use of technology in terrorism and counter-terrorism.

The Security Council continues to affirm that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international **human rights** law, international refugee law, and international humanitarian law. The Committee has therefore continued to address relevant human rights issues in its assessments of States' implementation of resolution 1373 (2001). This is important, not only in the context of States' legal obligations but also because respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures and are an essential part of a successful counter-terrorism effort. The Executive Directorate's analysis and research demonstrate that some States have implemented measures to enhance the consistency of their counter-terrorism laws and policies with their applicable international legal obligations. However, CTED's overall assessment is that most States have not done enough in this critical area.

The Security Council recognizes that terrorism and violent extremism have a differential impact on the human rights of women and girls and that, in turn, counter-terrorism strategies may have a differential impact on women, including on women's human rights and women's civil society organizations. Since the adoption of Security Council resolution 2242 (2015), a growing number of Council resolutions on terrorism have integrated **gender considerations**, including on issues such as PRR; countering terrorist narratives; and addressing the links between terrorism, trafficking in persons, and conflict-related sexual violence.





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## I. Introduction

1. The present survey was prepared by the Counter-Terrorism Committee Executive Directorate (CTED) pursuant to the request of the Security Council, contained in its resolution 2395 (2017), that it updates the previous survey (S/2016/49), issued in January 2016.

2. Section I of the survey provides an updated overview of the trends identified in the previous global survey, draws attention to new and emerging trends, and addresses potential emerging threats.

3. Section II provides an assessment of the implementation of Security Council resolution 1373 (2001) and relevant resolutions<sup>2</sup>, broken down by region and subregion. It should be noted that the subregional divisions used for the survey do not necessarily reflect the economic and political groupings used by the United Nations or other international and regional organizations. Section II also provides an overview of trends, risks and recommendations, as well as an analysis of the implementation of 1373 (2001) and other relevant resolutions in each subregion. It additionally includes references to specific States that have made notable progress in certain areas. The fact that other States are not mentioned should not be understood to reflect negatively on their implementation efforts.

4. Section III sets forth the general standards and recommended practices that should be put in place by States to give effect to the provisions of resolution 1373 (2001) and also addresses general global trends in the implementation of the resolution in key thematic areas. This section might be of particular interest to the general reader as it provides a more holistic picture of how the international community, in the broadest sense, has progressed in dealing with the challenge of terrorism since the adoption of the resolution.

5. The survey focuses on the major thematic areas addressed by resolution 1373 (2001): counter-terrorism legislation, countering the financing of terrorism, law enforcement, border control, and international cooperation. It also takes into account the need to protect human rights in countering terrorism and take the gender perspective into account, as relevant to the requirements of resolutions 1373 (2001), 2178 (2014) and other relevant resolutions adopted by the Council since the publication of the previous global survey, in 2016. At the conclusion of each subsection, the survey provides a summary of some of the priority recommendations that the Committee has made to Member States since the previous survey to strengthen their implementation of resolution 1373 (2001) in each region or thematic area. CTED hopes that these

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<sup>2</sup> Including resolutions 1373 (2001), 1456 (2003), 1617 (2005), 2178 (2014), 2242 (2015), 2309 (2016), 2322 (2016), 2331 (2016), 2341 (2017), 2354 (2017), 2396 (2017), 2462 (2019) and 2482 (2019).



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recommendations will also be useful for other international organizations and bilateral donors working in the field of counter-terrorism.

6. Prepared by CTED experts on the basis of their professional judgement of the information available as of February 2021, the survey relies on data compiled on the basis of information and updates provided by Member States to the Committee; reports on visits to Member States (States (CTED has conducted 168 visits to 109 Member States between 2005 and 2020 on behalf of the Committee)); the outcomes of national and regional workshops; and information provided by international, regional and subregional organizations. The data are also recorded in the Detailed Implementation Survey (DIS) prepared by CTED for all 193 United Nations Member States.

## II. Global outlook

7. Since 2016 the nature of the terrorist threat has continued to evolve, compelling Member States to continue to adapt their policies and approaches to address newer challenges and existing gaps in their counter-terrorism measures. While many of the issues that were a priority for States in 2016 remain concerns in 2021, such as foreign terrorist fighters, the nature of that threat has changed. Terrorist groups have also adapted their methodologies to the changing environment, not least the global COVID-19 pandemic. For many States, a significant trend is the growing internationalisation of groups motivated by racism, xenophobia and related intolerance and the growth of violent attacks motivated by racist or ethnically motivated hatred, often focused on migrants or refugees. For States seeing this trend, it is a significant development to adjust law enforcement and security resources to focus on the potential for the terrorist threat to come from domestic sources.

### 1. The growing internationalization of the threat of groups motivated by racism, xenophobia and related intolerance

8. An increasingly transnational phenomenon, terrorist groups motivated by **xenophobia**, racism, and related intolerance have emerged, which draw on a range of interconnected and overlapping international networks, ideas, and personalities. In recent years, several large-scale attacks conducted by such **groups**, notably in the West (e.g., Christchurch, New Zealand in March 2019; El Paso, United States in August 2019; Halle, Germany in October 2019; and Hanau, Germany in February 2020) have demonstrated the severity, scale, and operational reach of this type of loose movement. They have contributed to an increase in the lethality and frequency of racist and xenophobic terrorist attacks, often conducted by lone actors.

9. Increased membership in groups **motivated by xenophobia, racism and related intolerance** – which are grounded in a belief in racial and cultural superiority and virulent xenophobia – is a growing cause of concern.



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10. Although there are distinct differences in the operational methods used by ISIL/Al-Qaida and their affiliates, on the one hand, and groups motivated by racism, xenophobia and related intolerance, on the other, there are also certain similarities, relating in particular to the use of technology, motivational factors driving recruitment, and certain operational tactics. Like ISIL/Al-Qaida and their affiliates, groups motivated by racism, xenophobia and related intolerance also use online platforms, including gaming platforms, to radicalize, raise funds through crowdsourcing or donations, plan and coordinate operations, and disseminate propaganda (including manifestoes and livestreaming attacks). **Their** online content often contains anti-immigrant, racist, xenophobic and anti-Government rhetoric, fuelled by a perceived sense of victimhood, dispossession, as well as sentiments supporting cultural hegemony.

11. Terrorists and groups motivated by racism, xenophobia and related intolerance use both mainstream and smaller online platforms (including various social media channels) and the dark web, thus making it increasingly difficult for private-sector technology companies to comprehensively detect and address their activities. Even though some of the bigger technology companies have taken steps to contain (and in some cases de-platform or ban) specific terrorist individuals and groups, their response to **online** content **used by these groups**, which is even more challenging as some of it could be considered protected by freedom of expression, have been significantly less urgent and comprehensive in comparison. Moderation of such content across smaller platforms has proven to be challenging.

12. There are many synergies between misogyny and violent extremism conducive to terrorism and terrorism. **Terrorist** narratives and propaganda often include the promotion of traditional gender roles, subjugation of women, anti-women tropes, and a fear of feminism and multiculturalism, aimed at fuelling recruitment and radicalization. Despite the existing misogynistic worldview promoted by these groups, women play a critical role as supporters and members.

13. There is limited, but growing, information to suggest that individuals associated with groups motivated by racism, xenophobia and related intolerance have travelled to join armed conflicts outside national borders, from a wide range of States (mostly in Europe), getting combat training, expertise in weapons handling, and battlefield experience. Although there is incomplete data on the scale of this phenomenon (including the proclivity of such individuals for future violence), individuals returning from foreign conflicts can (regardless of their motivations ) create challenges upon their return to their States of origin, with respect to reintegration, rehabilitation and future recruitment.

14. Although Member States have developed numerous policies and measures to counter the flow of FTFs associated with ISIL/Al-Qaida and their affiliates, they have given more limited attention to individuals associated with groups motivated by racism, xenophobia and related



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intolerance. Many Member States face challenges in their criminal prosecution of offences committed by groups motivated by racism, xenophobia and related intolerance) owing to the lack of such designation, which means such groups cannot be tried under existing terrorism statutes. Moreover, the focus of hate crimes legislation under which the perpetrators are often tried tends to be narrow. The lack of designation also prevents prosecution for membership of a terrorist organization and makes material/ financial support prosecutions more complex.

15. Groups motivated by racism, xenophobia and related intolerance have spread mis/dis-information, fake news, and conspiracy theories, mostly through online channels, to further their agenda and increase social polarization. In the context of the global COVID-19 pandemic, groups motivated by racism, xenophobia and related intolerance have sought to advance conspiracy theories by recycling prejudices and narratives to frame the current crisis and further advance their attempts to radicalize, recruit, and inspire attacks. Groups motivated by racism, xenophobia and related intolerance will continue to exploit conspiracy theories and mis/dis-information as they seek to build new relationships to expand their influence.

### **2. Terrorist adaptation to the COVID-19 pandemic**

16. Since its emergence in 2020, the COVID-19 pandemic has presented Member States with a wide array of potential and actual challenges — distinct in nature, intensity, and impact — and represents a constantly evolving threat with actual and potential impacts across the policy spectrum, including counter-terrorism. Because the pandemic is ongoing, evidence upon which to gauge the impact and implications of the pandemic on terrorism and countering terrorism and violent extremism conducive to terrorism is still inchoate and somewhat preliminary.

17. However, CTED's ongoing analysis suggests that terrorists continue to seek ways to exploit pandemic-related social restrictions, economic downturns, and political instability to expand their influence. Analysis of this issue also makes clear that some States have diverted resources, including counterterrorism resources, to aid their pandemic response and that social restrictions continue to limit the capacity of civil society and other non-State counter-terrorism and CVE actors.<sup>3</sup> Decreases in funding caused by the economic impact of COVID-19 also risk leading to a retrenchment in counter-terrorism operations, security assistance, and capacity-building.

18. Quarantine requirements and limited in-person gatherings have provided reduced opportunities for terrorists to carry out attacks, thereby leading to a decline in attacks and casualties (especially in non-conflict areas). It is likely that this trend will continue, at least until these restrictions are lifted.

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<sup>3</sup> <https://www.un.org/sc/ctc/wp-content/uploads/2020/06/CTED-Paper%E2%80%9393-The-impact-of-the-COVID-19-pandemic-on-counter-terrorism-and-countering-violent-extremism.pdf>  
[https://www.un.org/sc/ctc/wp-content/uploads/2020/12/CTED\\_Paper\\_The-impact-of-the-COVID-19-pandemic-on-counter-terrorism-and-countering-violent-extremism\\_Dec2020.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2020/12/CTED_Paper_The-impact-of-the-COVID-19-pandemic-on-counter-terrorism-and-countering-violent-extremism_Dec2020.pdf)





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19. However, no such trend has been observed in conflict areas, where pandemic related restrictions have been harder to implement. The February 2021 report of the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and the Taliban and associated individuals and entities highlights the rising threat of terrorism in conflict areas, where the pandemic has inhibited law and order much more than it has the activities of terrorist groups.<sup>4</sup> The Monitoring Team notes that “ISIL continues to emphasize the “divine punishment of arrogance and unbelief” narrative regarding the pandemic that it adopted in March 2020, and to exhort followers to attack the enemy while counter-terrorist defences are supposedly weakened.<sup>5</sup> The political and economic impacts of the pandemic will continue to impact the drivers of violent extremism conducive to terrorism, which in turn is likely to increase long-threats across the counter-terrorism infrastructure.

20. In the long term, pandemic-related social isolation and rising economic tensions could have the effect of exacerbating existing grievances, especially in regions with weak State institutions. Moreover, restrictions that incorporate State overreach and suppression of dissent can potentially worsen social isolation and political turmoil. In some States, pandemic-related policies and emergency measures have faced criticism from civil society for failing to be human-rights compliant.

### **3. The evolution of the foreign terrorist fighter threat**

21. The foreign terrorist fighter (FTF) phenomenon remains a significant counter-terrorism challenge for the international community. Although military operations brought ISIL's territorial control to an end by early 2019, FTFs numbering in the low thousands persisted within the core conflict zone. Outflows of foreign terrorist fighters from Iraq and the Syrian Arab Republic were at a low, although Member States have continued to raise concerns regarding the release or escape of ISIL fighters from detention, according to the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities in February 2021.<sup>6</sup>

22. FTFs also remain capable of motivating, inspiring, and directing those who did not travel to conflict zones to carry out small-scale attacks close to home. The Monitoring Team assessed that inspired attacks were the principal source of low-casualty attacks away from the conflict

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<sup>4</sup> S/2021/68

<sup>5</sup> S/2021/68, p.5

<sup>6</sup> Twenty-seventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities (S/2021/68), p.7



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zones.<sup>7</sup> FTFs also remain capable of reinforcing connections with ISIL affiliates worldwide. Developing comprehensive and effective mechanisms to address the issue of FTF returnees, relocators, and so-called “frustrated travellers” therefore remains a top priority for Member States and the international community. The thousands of FTF family members currently remaining in Iraq and the Syrian Arab Republic also presents new security, humanitarian, and human rights challenges.

23. In response to these challenges, Member States have introduced major changes to their counter-terrorism architecture, thereby impacting a wide range of policy areas. The adoption of several further Security Council resolutions and the issuance of a number of other key documents have enabled the United Nations to ensure the coherence of its response to terrorism, coordinate the response of the international community, and guide Member States in their counter-terrorism efforts. Some recent Council resolutions have included requirements pursuant to Chapter VII of the Charter of the United Nations aimed at, inter alia, strengthening Member States’ abilities to identify and monitor returning FTFs and their family members; preventing further FTF travel; and developing a comprehensive response to the situation of FTF returnees and relocators.

24. The actual number of FTF returnees and relocators since 2016 has been low, in part due to the death or internment of many FTFs in conflict zones and in part due to decisions to settle and integrate in the region. Many States have also taken domestic measures to prevent FTF **travel and to control or prevent their return**, strip individuals of citizenship, revoke residence permits or deny consular services (i.e., the issuance of passports and other travel documents). Determining which returnee or relocator continues to pose a threat or intends to carry out attacks remains difficult.

25. Several Member States have conducted reviews of their national criminal justice frameworks, policies, and strategies and introduced new legislation, especially where joining a foreign terrorist group was not an existing criminal offence. However, those new laws cannot be applied retroactively. Gathering the evidence required to ensure the meaningful prosecution of FTF returnees or relocators, including electronic evidence and evidence collected in the conflict zones remains an enormous challenge for States, especially as relevant information must comply with applicable evidentiary standards.

26. Prosecutors in some States of the European Union have brought charges in ongoing cases against returning FTFs for war crimes, crimes against humanity, and genocide, in addition to terrorism-related offences, in accordance with international legal standards. This demonstrates that it is possible to prosecute returning FTFs based on cumulative charges, thereby increasing the



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possibility of imposing sentences, if found guilty, commensurate with their conduct (and providing a model for prosecutions in other States).

27. Some States have argued that the prosecution of FTFs should take place in the jurisdictions where their alleged crimes were committed, while other States have raised practical and legal concerns with such an approach in lieu of repatriation and appropriate domestic prosecution. The detention of FTFs and associated persons has been conducted by several entities – including national law enforcement agencies in Iraq and groups such as the Syrian Democratic Forces (SDF) in the Syrian Arab Republic – with varying legal and judicial outcomes. There are significant human rights concerns relating to the deprivation of liberty by a non-State actor, including with respect to the legal basis for, judicial oversight of, and treatment in detention. Although it is essential to comply with procedural guarantees, including with respect to due process and fair trial guarantees, some States continue to struggle in their efforts to ensure these procedural guarantees and uphold the integrity of the judicial process.

28. In this context, FTFs and their associated family members in displaced persons camps comprising mostly of women and children, with suspected links to United Nations-listed terrorist groups, have endured dire humanitarian conditions, made worse by the COVID-19 pandemic, and are at risk of continued violence, exploitation, and potential radicalization to terrorism. This situation has profound security and human rights implications. Thousands of FTF and their family members remain in the camps. The continued detention of thousands of minors (and especially of boys held with adult males) in the Syrian Arab Republic remains a matter of concern. Although there is broad acceptance that these children are primarily victims, there are many challenges in handling their situation, including whether States repatriate them, such as the absence of bilateral agreements on mutual legal assistance; procedures to engage with non-State actors (including the SDF, which administers most of the camps that house such children); lack of consular services; **age of criminal liability** and challenges in determining parentage and nationality. Despite these challenges, a small number of States have **voluntarily** repatriated all or most of their minor nationals.

29. **The Security Council highlights that women associated with FTFs may have served in many different roles, including as supporters, facilitators or perpetrators of terrorist acts,**

#### 4. Countering violent extremism conducive to terrorism

30. Terrorist groups have continued to exploit the Internet and other information and communications technologies (ICTs) to plan, organize, radicalize and recruit, fundraise, and disseminate propaganda, as well as for other operational purposes. Most States continue to face challenges with terrorist and violent content online, in disrupting terrorism financing and



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prosecuting individuals for financing terrorist organizations and engaging in other illicit funding activities.

31. Understanding the motivations that lead an individual towards radicalization to violence is a complex task, but it is essential to effective counter-terrorism policy development. The narratives and discourses used by terrorist groups to attract supporters, including both men and women, and advance their agenda must be countered at all levels.

32. A related concern is that Member States of several subregions continue to experience challenges in their efforts to curb the spread of violent extremism within prisons. Although recidivism rates after terrorism-related offences remain consistently low, States are concerned at the forthcoming release of terrorist prisoners, and the potential for them to radicalize members of the community and pursue fundraising, recruiting, and operational activities for terrorist groups.

### 5. The threat of new terrorist methodologies

33. A consistent threat faced by the international community is the evolution of terrorist methodologies, which continuously adapt to evade security measures. Against the backdrop of continued rapid technological advancements, there is a possibility that nefarious actors might adapt technologies and exploit vulnerabilities within existing systems and critical infrastructures that are connected through cybertechnologies as well as gain access to weapons of mass destruction (WMD). One such example was the use of a 3D-printed, self-manufactured gun for the attack carried out in Halle, Germany in 2019 by a lone actor **on the basis of xenophobia, racism and other forms of intolerance**. The attacker sought to inspire others to imitate his tactics, raising concerns that other lone actors could seek to develop, access, and use improvised weapons to commit their attacks.

34. Most analyses of the capabilities of terrorist actors suggest that instances such as the attack in Halle, and the use of rudimentary Unmanned Aircraft Systems (UAS, or “drones”) by ISIL,<sup>8</sup> are isolated cases. Such groups (and individuals motivated by them) currently lack the operational, technological, and logistical capabilities required to successfully use artificial intelligence (AI) and emerging technologies to carry out large-scale attacks.

35. However, as the use of technology by these groups for radicalization, recruitment, to spread mis-/disinformation on virtual platforms (including gaming platforms), and for financing illicit activities will continue to grow technological innovations become ever more integrated into counter-terrorism responses, such as machine learning and AI. Challenges can arise from concerns

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<sup>8</sup> Twenty-seventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities (S/2021/68), p.7



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relating to data privacy and surveillance and the need to balance the competing needs of security and privacy.

### III. Regional outlook

#### Africa

##### North Africa

(Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia)

#### A. Terrorism trends

##### 1. Risks

36. North Africa continues to face multiple kinds of terrorist threat. One is characterized by the presence of terrorist groups that are affiliated with Al-Qaida in the Islamic Maghreb (AQIM) or the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh) on the territory of several North African States. The impact of these groups, however, appears to be relatively limited in terms of the number of attacks and resulting casualties, as well as their different capacities in comparison with that of terrorist groups in other regions of Africa. The Secretary-General's Twelfth report on the threat posed by ISIL noted, for example, that ISIL – Libya has continued to decline, but continued to have a presence in the south of the country, as well as “sleeper” cells in some northern coastal towns. In Egypt, furthermore, Ansar Bayt al-Maqdis (which pledged allegiance to ISIL in 2014) had an active presence in north-eastern Sinai and continued to carry out attacks, but its capacity may be more local and the extent of its links to ISIL core are not clear. Al-Qaida in the Islamic Maghreb (AQIM) “continues to atrophy in Algeria, with its centre of gravity moving steadily towards the Sahel.”<sup>9</sup> Nevertheless, the different groups carry out deadly attacks on a regular basis in their respective areas of operation, primarily targeting State authorities (and military and security forces, in particular), but have also targeted civilians from Western States.

37. The second threat emanates from the thousands of FTFs who had travelled to Iraq or the Syrian Arab Republic and whose return, since the territorial defeat of ISIL, pose additional security challenges to the region. Those FTFs are trained, battle-hardened and radicalized and may represent a direct security challenge. Their presence, without appropriate prosecution, rehabilitation, and reintegration also risks radicalizing to violence further communities or groups

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<sup>9</sup> Twenty-seventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities (S/2021/68), 3 February 2021.





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(even though there has so far been little evidence of the involvement of returned FTFs in terrorist activity in North Africa).

38. The third threat is related to “lone actors” and small cells present in the subregion that have carried out deadly attacks in recent years in several North African States and have proven difficult to detect. In one State, two individuals suspected of being members of a terrorist cell were arrested for plotting to infect members of the security forces with COVID-19.

39. The unstable political and security situation in Libya represents a significant vulnerability for the entire region, presenting an ongoing risk for the continued presence of terrorist groups which, although weakened in recent years, remain a threat. The presence of strong and increasingly deeply rooted terrorist groups in some Sahelian States that border the region, coupled with general insecurity and weak State institutions including border controls, is also a major concern.

40. In the longer term, ongoing political, social and economic tensions across the region continue to undermine the necessary institutions that provide governance, justice and the delivery of the core services and pillars of an effective democratic society. Weak institutions could open up further opportunities for terrorist groups. Growing protests from populations, as well as the perceived lack of attention to grievances, could weaken authorities and make them more vulnerable to terrorist activity. Restrictions in place to address the COVID-19 pandemic have caused further social unrest in certain parts of North Africa. It will be important to mitigate the risk posed by the long-term economic and social consequences of the pandemic, which are likely to compound pre-existing challenges relating to limited economic opportunities and vocal opposition to Governments and potentially having a worsening impact on violent extremism conducive to terrorism and radicalization in the subregion.

### **B. Implementation of resolution 1373 (2001) in North Africa**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

41. In contrast to 2016, most States of this subregion currently implement strategies to address terrorism and violent extremism. Two States have formalized these strategies in a specific guiding document and designated a coordinating agency to implement it. Three States do not have a formal document, but implement a coherent counter-terrorism approach in practice, coordinating implementation of multiple components of their counter-terrorism response. The latter approaches, however, appear to be largely limited to government agencies and lack a detailed action plan and engagement with non-governmental constituencies. They also rarely include sub-strategies to prosecute, rehabilitate and reintegrate returning FTFs, which are important requirements in light of the potential impact of returning FTFs.



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### (b) Risk assessment

42. Although two North African States do not appear to conduct systematic assessment of the terrorist threat and risks on their soil, the law enforcement agencies of four States appear to do so at least to some extent. Some States have chosen to create specific inter-agency units that are responsible for these assessments, among other tasks. Others have entrusted an existing law enforcement agency with the responsibility of carrying out these assessments, sometimes tasking them with coordinating with other agencies in order to collect or circulate information.

### 2. Addressing enablers of terrorism

#### (a) Recruitment

43. All States of this subregion have introduced legislative provisions that enable them to address recruitment to terrorism (marking an improvement since 2016). Four have adopted legislative provisions that criminalize the recruitment of terrorists, and the two that do not criminalize behaviours (e.g., inciting or provoking) that are close to recruiting.

#### (b) Financing of terrorism

44. In contrast to 2016, all North African States now criminalize terrorism financing as a standalone offence. Five States criminalize it even if the funds have not been used to commit a terrorist act. All appear to cover the financing of both an individual terrorist and a terrorist organization (even though this is implicit in national legislation in three States). All States but one enable a designated authority to freeze terrorist funds without delay. This represents a significant improvement since 2016. Nevertheless, operationalization has lagged behind. Only two States appear to have frozen terrorist assets pursuant to resolution 1373 (2001). All States but one have established a fully functional financial intelligence unit (FIU) with satisfactory staffing, training and equipment **with a view to strengthening their framework to prevent and counter the financing of terrorism, in line with FATF standards**. However, based on the limited numbers of STRs that they receive in relation to terrorism financing and the limited number of transactions forwarded to prosecution services, those FIUs do not appear to engage in significant CFT activity. All six States are members of the Middle East and North Africa Financial Action Task Force (MENAFATF).

45. In five States, the border authorities do not appear to have the legal authority to stop or restrain currency and bearer negotiable instruments (BNI) suspected to be related to money-laundering or terrorism financing (whether because they do not have this power or because additional conditions (e.g., making a false declaration to customs agents) need to be met for them to exercise it. Progress has been made with respect to assessing the terrorism-financing risk to the non-profit sector. Two States have completed such an assessment, and a third is currently conducting an assessment.



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### (c) **Firearms**

46. Even though five States have criminalized illegal trafficking of small arms and light weapons including firearms, the related acts of illicit manufacturing or alteration of firearms or the illicit obliteration of their markings are not yet criminalized by five States. Despite the African Union's campaign to "Silence the Guns" and the risks associated with the presence of uncontrolled firearms in the subregion, little progress has been achieved in this area. Five States have not updated their legislation to address this area.

### 3. **Opportunity and border security**

#### (a) **Passenger screening**

47. Four North African States, immigration services are connected to INTERPOL databases through the MIND or FIND systems. This marks significant progress since 2016 (even though the levels of use and effectiveness of these connections seem to vary). Although no functional API (or PNR) system is yet in place in the subregion, there has been some improvement. The authorities of four States receive passenger manifests or passenger information in advance (even though if this does not happen on a systematic basis). In the absence of a proper legal and institutional framework, including dedicated targeting centres/passenger information units, the capacity to detect potential terrorists at the border varies greatly. One State has targeting teams in place and sends lists of terrorists including FTFs to border posts. Another has the main terrorist intelligence agency present at border posts. Similarly, there is a marked variance with respect to States' capacity to detect fraudulent documents at the border, including with respect to the capacity to verify biometric identifiers.

48. Most States collect and store the data related to entry/exit of persons crossing the border, but rarely capture and check biometric information, such as fingerprints. Several States have developed cooperation with other States to strengthen the security of their borders (mostly with partners in the subregion or in Europe). No State has specific procedures in place to prevent the granting of refugee status to a terrorist, but three conduct security-related screenings of asylum-seekers in partnership with UNHCR, and two allow UNHCR to do so.

### 4. **Bringing terrorists to justice**

#### (a) **Planning and preparation**

49. Most States continue to rely on general legislative provisions on accomplice liability for serious offences in order to criminalize preparatory and accessory acts rather than criminalizing them as standalone offences. However, five States criminalize specific manifestations of support for terrorist acts. In addition, four States prosecute preparatory or accessory acts that are conducted on their territory with the aim of committing terrorist acts abroad.



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### **(b) Capacity to investigate and prosecute**

50. In contrast to the previous survey, all North African States have assigned terrorism cases to a single, designated prosecution office, allowing for the building of expertise. In all but one State, those offices are dedicated to terrorism cases and have acquired significant experience in the prosecution of terrorism cases. Given the level of cases, the level of human and technical capacity could nonetheless be reinforced in some States. Special investigative techniques are available for the investigation of terrorism cases in all States. The techniques most frequently provided for in national legislation are interceptions of communications and undercover operations.

51. However, there are limited effective and independent mechanisms in place for the oversight of law enforcement agencies in North Africa. Most States have now established human rights bodies with a mandate that includes looking into the work of law enforcement agencies to varying degrees, but their effectiveness has not been demonstrated. United Nations human rights bodies have continued to express concern for violations of human rights in custody and in detention.

### **(c) Rule of law**

52. In five States, the definition of a terrorist act uses overly broad or vague language that could be used to criminalize acts well beyond those envisaged by international counter-terrorism instruments, such as nonviolent demonstrations or political dissent. All States of this subregion have adopted special laws that confer specific powers on law enforcement in terrorism cases (e.g., home searches outside regular hours and extended custody periods). Only one State places some of these provisions under a sunset clause.

53. Criminal procedure in terrorism cases restricts the rights granted to suspects during criminal proceedings in all North African States. By means of exceptions to regular criminal procedure, four States allow extended periods of custody before suspects must be brought before a judge and make it possible to delay access to counsel in custody. Four States, however, provide for the presumption of innocence in their legislation and maintain the principle of public trials in terrorism cases.

## **5. Activating international cooperation**

### **(a) Effective mutual legal assistance and extradition**

54. Two States have developed and made publicly available guidelines on domestic procedures relating to MLA and extradition in order to inform foreign authorities about the requirements that must be met to obtain assistance or extradition. This improvement has occurred over recent years. Only two States have enshrined the “extradite or prosecute” principle in their national legislation.



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### (b) Ensuring effective exchange of information and intelligence

55. Half of North African States have conducted bilateral cooperation in investigations in terrorism cases (often with European States but also increasingly with other States of this subregion). Some of this cooperation has taken place in relation to major, high-profile terrorist attacks and involved crime scene management and forensics.

### Priority recommendations

- Improve the effectiveness of the reporting system, such as taking steps for FIUs to effectively conduct their core functions with respect to CFT and raising the awareness of entities subject to the obligation to report suspicious transactions.
- Assess the CFT risk and vulnerabilities with respect to NPOs in **particular in order to Prevent and suppress the financing of terrorist act**, paying due attention to the freedom of association.
- Strengthen rule of law-based and human rights-compliant investigations and prosecutions.
- Strengthen the use of INTERPOL databases and improve connectivity at border posts.
- Implement API systems and conduct border controls based on risk assessment to detect movement of suspected terrorists.

### East Africa

(Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan, Uganda, United Republic of Tanzania)

#### A. Terrorism trends

##### 1. Risks

56. Al-Shabaab (which pledged allegiance to Al-Qaida in 2012) remains the most active terrorist group in East Africa, conducting attacks primarily in Somalia, but also in neighbouring States. It remains highly adaptable, and its indirect fire attacks against aircrafts and airfields increased in 2021. There appears to have been a decline in the use of vehicle-borne improvised explosive devices (IEDs) in late 2020 and early 2021, but the use of person-borne IEDs increased.





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Assassinations of clan elders and government and security officials, claimed by the Al-Shabaab, intensified during the 2020-2021 electoral period in Somalia.

57. Since 2016, Al-Shabaab has also committed significant, complex and deadly attacks outside Somalia, including in Kenya (e.g., the attack on the DusitD2 hotel complex on 15 January 2019, which resulted in the deaths of over 20 civilians). Recruitment and radicalization are ongoing concerns, particularly in Kenyan counties located closest to Somalia, such as Lamu and Mombasa.

58. Al-Shabaab has long positioned itself as a viable alternative to the Federal Government of Somalia and Federal Member States. It controls a significant amount of territory, promotes effective security, operates an efficient administration, and is, for many, the “justice provider of choice”. The group has sought to take advantage of gaps in government responses to the COVID-19 pandemic by advancing a calibrated message designed to invoke fear and retribution, on the one hand, and promoting itself as the appropriate authority to deal with the virus, on the other hand. It has reportedly established a pandemic prevention committee and a care facility in its Jilib headquarters and has held information sessions with local communities.

59. ISIL in Somalia has continued to conduct low-scale attacks, alongside recruitment and training. It also serves as the logistical centre for ISIL’s Central Africa’s Province (ISCAP), has provided ideological guidance to ISCAP, and has supported travel of trainers and tactical operatives to the Democratic Republic of the Congo and Mozambique (see Central Africa and Southern Africa regional outlooks, below). On 14 October 2020, 14 days before the Tanzanian presidential election, ISCAP conducted its first cross-border attacks into Tanzania.

60. The overall stability of the subregion has evolved significantly due to the 9 July 2018 peace agreement between Eritrea and Ethiopia. In November 2018, the Security Council lifted sanctions, including an arms embargo, that had been imposed on Eritrea since 2009. At the end of 2020, however, long simmering ethnic tensions led to the eruption of conflict in Ethiopia’s Tigray region and, according to UNHCR, resulted in new displacements (with more than 50,000 asylum seekers crossing over the border into Sudan from November 2020 to February 2021).<sup>10</sup>

61. The 11 July 2019 deposition of President Omar Hassan Ahmad al-Bashir of Sudan launched the current transitional period in which Sudanese institutions and governance structures are being transformed. The Sovereignty Council (composed of civilian and military representatives) will lead the State until elections are held.

62. It is expected that the ongoing transition in Sudan will help to enhance regional cooperation and security. There have been anecdotal reports that Sudanese nationals have become associated with Boko Haram (although not in large numbers). Moreover, it is the active armed groups present

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<sup>10</sup> <https://news.un.org/en/story/2021/01/1081422>.



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in Darfur that continue to complicate the security dynamics in Sudan.<sup>11</sup> In January 2021, escalating inter-communal violence resulted in scores of deaths and injuries, as well as the displacement of nearly 50,000 persons in West Darfur, threatening a deterioration in the security situation of the subregion following the withdrawal of United Nations/African Union Hybrid Operation in Darfur (UNAMID).

63. Across the subregion, allegations of significant human rights violations, including arbitrary detentions and extrajudicial killings by security forces (whether in the context of counter-terrorism operations or, more recently, the enforcement of COVID-19 restrictions), continue to undermine public confidence and efforts to develop effective counter-terrorism and CVE partnerships. States of the subregion have also restricted access to the Internet and allegedly limited the right to assembly and peaceful process during electoral periods.

64. States across the subregion face vulnerabilities including difficulties associated with regulation of the predominantly cash-based economy. The recent increase in the use and flow of mobile payments may also present significant risks that are not yet well understood. In view of the subregion's well-established migration routes, conflict displacements (within and across borders) and ubiquitous human trafficking networks, there is a need for enhanced border security. Border officials, porous, ungoverned areas continue to pose a challenge to State authorities. Several States that are either enduring or recovering from conflict face challenges in their efforts to stem the large-scale proliferation of SALW.

### **B. Implementation of resolution 1373 (2001) in Eastern Africa**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

65. The five States of the East African Community (EAC), plus one other (Rwanda, Kenya, South Sudan, Tanzania, Uganda (plus Burundi)) have adopted a regional counter-terrorism strategy. However, it is unclear how or whether the strategy would be operationalized at the national level. In 2018, with the support of the United Nations, the Intergovernmental Authority on Development (IGAD)<sup>12</sup> adopted a regional strategy for preventing and countering violent extremism, which is implemented by the IGAD Centre of Excellence for Preventing and Countering Violent Extremism (ICEPCVE), located in Djibouti City. One State of the subregion (Tanzania) is also a member of the Southern African Development Community (SADC), which has adopted a regional counter-terrorism strategy and action plan (see Southern Africa regional

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<sup>11</sup> Progress was made with the signature, on 3 October 2020, of a peace agreement between the transitional Government and two major armed groups active in Darfur. Nevertheless, there was an uptick in violence after the longstanding United Nations/African Union Hybrid Operation in Darfur (UNAMID) came to an end on 22 December 2020, S/RES/2559(2020).

<sup>12</sup> IGAD is composed of eight States (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Somalia, and Uganda).



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outlook, below). Another State of the subregion (Rwanda) is also a member of the Economic Community of Central African States (ECCAS), which has adopted a regional strategy to combat terrorism and the proliferation of small arms and light weapons, as well as an action plan (see Central Africa regional outlook, below).

66. At the national level, no State appears to have adopted a comprehensive and integrated counter-terrorism strategy. One State has developed a coordinated approach to countering terrorism, premised upon its National Security Policy, but has not yet formalized that approach into a unified, written strategy. Four States have adopted comprehensive national P/CVE strategies. This reflects progress since 2016. One State has pioneered the adoption of county-level P/CVE action plans, which are well aligned with the national strategic framework, while also prioritizing actions that respond to needs identified at the local level. Another State has made a commitment to drafting its national P/CVE action plan, requesting support from the United Nations in this regard.

### **(b) Risk assessment**

67. All States of the subregion collect security-related information through various channels. However, that information is not consistently shared among the various relevant agencies. Very few States appear to routinely conduct threat assessments and produce dedicated terrorism risk assessments. One State has tasked two different law enforcement agencies with the issuance of such assessments. Four States have established national coordination mechanisms aimed at enhancing their response to terrorism. Intelligence agencies keep the relevant national coordination mechanisms updated on relevant terrorist threats and risks. One State appears to task the national coordination mechanism with producing risks assessments. Another State has established a dedicated counter-terrorism task force consisting exclusively of security and law enforcement agencies (including via a dedicated counter-terrorism unit), each of which conducts its own terrorism risk assessments and shares them with the other security agencies. To enhance the collection of information on which to base those risk assessments, one State has also established counter-terrorism focal points within non-security agencies.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

68. Five States criminalize recruitment to terrorism and/or in support to a terrorist organization. One State criminalizes recruitment to terrorism, although exclusively in connection with the commission of a certain terrorist act.<sup>13</sup> Despite having adopted dedicated counter-terrorism legislation, two States do not appear to specifically criminalize recruitment to terrorism, although

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<sup>13</sup> One State criminalizes recruitment for the commission of a terrorist act involving the release of toxic substances into the air, soil or water.



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one criminalizes the “procurement of persons” [sic] to terrorist organizations. The remaining three States do not criminalize recruitment to terrorism in their respective Criminal Codes.

### **(b) Financing of terrorism**

69. All States except one criminalize the financing of terrorism as a standalone offence in their domestic laws. Four of those States do not explicitly state in their laws whether terrorism financing would be criminalized even if the funds were not used to commit, or attempt to commit, a terrorist act. Seven States do not yet clearly state in their laws whether terrorism financing would be criminalized even if funds could not be linked to a terrorist act. Three States have not explicitly stated whether terrorism financing would encompass the financing of an individual terrorist, as well as of a terrorist organization.

70. All States but three have introduced laws that establish a mechanism providing for the freezing of terrorist assets pursuant to resolution 1373 (2001). This reflects progress since 2016. Of those eight States, one does not specify whether the assets can be frozen without delay. One other State has established the possibility to freeze assets in law but lacks the implementing regulations to enable the funds to be frozen without delay. One State publicly announced the freezing of assets pertaining to individuals connected to Al-Shabaab.

71. All States of the subregion have legislated on the establishment of autonomous FIUs. However, the FIUs of five States are not yet fully operational. This severely limits the exchange of financial intelligence within the subregion. Of the remaining six FIUs, limited staffing capacity, insufficient budget, and lack of specialized training on terrorism financing also hamper effective operationalization of the FIUs. (This is reflected in the overall low level of STRs that deal specifically with terrorism financing. One State reports that it received only 11 terrorism-financing STRs between 2012 and 2017.) At least three FIUs have reportedly signed MoUs with other FIUs in the subregion and beyond. One FIU has reportedly acquired specific software to analyse STRs.

72. The border authorities of all but three States have been given the legal authority to stop and restrain currency or BNI suspected to be related to terrorism financing. Only two States have assessed or reviewed the terrorism-financing risk to their NPO sectors within the framework of their respective 2016 AML/CFT National Risk Assessments (NRAs). Both States consider the risk to be “medium low”. One State assessed only the risk of money-laundering. The remaining eight States have not yet conducted an assessment. This undermines the ability of the States of this subregion to identify the subset of NPOs most vulnerable to terrorism financing within their jurisdiction. It also undermines the ability of States to adopt tailored, risk-based measures to curtail the possible abuse of the NPO sector for terrorism-financing purposes, in accordance with FATF Recommendation 8. Six States are members of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and three States are members of the MENAFATF. One other



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State noted that it had become an observer to the ESAAMLG and expected to achieve full membership soon).

### (c) Firearms

73. Ten States of the subregion have signed the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2004), drafted under the auspices of the Eastern African Police Chiefs Cooperation Organization (EAPCCO) and entered into force in 2005. The Nairobi Protocol directs States to criminalize certain conduct and to promote cooperation between intelligence, law enforcement and border officials. It also led to the establishment of the Regional Centre for Small Arms and Light Weapons.<sup>14</sup>

74. At the national level, four States criminalize the illicit manufacturing, trafficking and alteration of firearms, as well as the illicit obliteration of their markings. Four States have not yet criminalized either the alteration of firearms or the obliteration of their markings. One State has not criminalized the illicit manufacturing of firearms, and another State has not criminalized the trafficking of firearms. One State appears not to have criminalized any conduct pertaining to the illicit manufacturing, trafficking and alteration of firearms, or the illicit obliteration of their markings.

### 3. Opportunity and border security

#### (a) Passenger screening

75. Although all States of the subregion have access to the INTERPOL I-24/7 system through their respective INTERPOL NCBs, no State appears to connect frontline officers to the relevant INTERPOL databases (including, inter alia, the Stolen and Lost Documents (SLTD) database and Red Notices) and the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. Two States connect their major airports to the Personal Identification Secure Comparison and Evaluation System (PISCES). Land and maritime border posts across the subregion continue to lack adequate personnel, basic infrastructure, equipment and connectivity. As a result, there continue to be significant gaps in the capacity of immigration personnel to detect fraudulent travel documents at the border (particularly in view of the continued use of paper-based entry/exit protocols and lack of access to the SLTD database).

76. Two States are beneficiaries of the UN Countering Terrorist Travel Programme, which has already provided with a road map for the implementation of API and PNR capability in those two States. One additional State has developed an API system to be used exclusively in connection

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<sup>14</sup> <https://recsasec.org/who-we-are/>.





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with its national flag carrier. The remaining eight States are considering updating their systems to develop API capabilities.

77. All but two States have ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. All but three States have enacted laws aimed at regulating a refugee-status determination (RSD) procedure. Only one State explicitly codifies in its counter-terrorism law that the relevant Minister may refuse refugee status, having regard to the interests of national security and public safety, and based on reasonable grounds to believe that the person has committed or was involved in the commission of a terrorist act. The legislative frameworks of the remaining seven States include provisions that could be interpreted to exclude individuals who have planned, facilitated or participated in a terrorist act.<sup>15</sup> However, concerns remain with respect to States' actual capacity to carry out the requisite analysis to effectively exclude said individuals. This is especially true of States that receive high volumes of asylum seeker requests. Two States have empowered their intelligence agencies to work closely with their frontline authorities in screening (and clearing) asylum seekers with respect to security-related concerns. One State has conferred prima facie refugee status to nationals from a neighbouring State without an individual RSD process.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

78. All but three States have criminalized preparatory and/or accessory acts in their relevant counter-terrorism legislation. Where the terrorist act is intended to be committed against other States or their citizens outside the State's territory, prosecution is not explicitly excluded in States' legislation. Nonetheless, only one State explicitly allows the prosecution of preparatory acts conducted on its territory with the aim of committing a terrorist act abroad. Another State criminalizes the commission of a terrorist act outside its territory if said offence prejudices the interests or the economy of the national or social security of the State. A further State criminalizes attempts to disturb, (...) by violence, the internal political order or security of a foreign State.

79. One State criminalizes conspiracy to commit any criminal act. Other States criminalize conspiracy to commit a terrorist offence. Six States criminalize support for terrorist acts. However, there is no uniform clarity or precision in the definition of "support" (which may include references to, inter alia, "instigation", "moral assistance", "handover of documents", "counselling", or "harbour"). One State criminalizes soliciting support to commit terrorist acts.

##### **(b) Capacity to investigate and prosecute**

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<sup>15</sup> Via reference to, inter alia, serious non-political offences, acts contrary to the purposes and principles of the African Union, crimes against peace, atrocity crimes and/or gross violations of human rights.



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80. Even though terrorism investigations and prosecutions have resulted in terrorism-related convictions in four States of the subregion, there are persistent gaps in the specialized capacity of investigators and prosecutors to handle complex terrorism-related cases. Three States have established dedicated counter-terrorism prosecutorial units, leading to the development of certain specialized skill sets. One State has located such a unit not only in its capital city, but also in relevant counties/provinces where the terrorist threat is present. The challenges faced by such units include, for one State, under-staffing, as well as lack of control over funds to be used for the protection of witnesses. For another State, the challenges are of an operational nature, including securing the cooperation of witnesses, as well as difficulties associated with the gathering of evidence in the aftermath of a terrorist attack. One State noted the low investigative capacity of its police force.

81. One State has established a dedicated, independent police oversight mechanism which provides for civilian oversight of law enforcement agencies and consideration of public complaints of police misconduct. All but two States have established national human rights institutions that also have the authority to receive complaints of police misconduct. However, few of those institutions appear to have the ability to conduct on-site visits to places of detention. Another State has established both an ombudsman and a national human rights institution. In another State, the national human rights institution does not yet appear to be functional.

82. Human rights cells/desks and disciplinary committees have been established in the law enforcement agencies of several States of the subregion. One State allows for complaints about police misconduct to be submitted directly online to the police force. Despite the formal establishment of these various mechanisms, United Nations human rights mechanisms continue to express concerns at allegations of police misconduct and at the limited number of investigations or prosecutions pursued in connection with such allegations (including in connection to counter-terrorism efforts).

### **(c) Rule of law**

83. The definition of terrorist offences continues to be a concern throughout the subregion. Broad, open-ended language is generally used to define terrorist intent. This may lead to the criminalization of non-violent acts of protest or dissent, including speech. Some terrorist offences lack clarity or precision in their terms. This may lead to their application to acts beyond those envisaged by the relevant international counter-terrorism instruments. In general, poorly defined provisions may pose challenges in terms of meeting the burden of proof in court and may also impede international cooperation. One State's legislation includes a clause that specifies that an act committed in pursuance of a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act as long as it was not intended to do harm.



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84. Although constitutional safeguards regarding liberty and fair trial have been provided for by all States of the subregion, United Nations human rights mechanisms continue to express concerns at the failure to enforce them. Seven States of the subregion provide for a period of 48 hours for a terrorist detainee to be brought before a judge (or a prosecutorial agency). In some cases, this period either can be extended or is simply not respected. Three States provide for a period of 24 hours, either in the constitution or in the counter-terrorism law. One State allows for a five-day period during which detainees may be lawfully held in police custody. In one State, civilians accused of terrorist offences are tried in military courts. United Nations human rights mechanisms have also expressed concern at the lack of independence accorded to some courts and at limitations imposed upon public hearings and/or trials and on access to defence counsel throughout the criminal justice process.

85. Two States empower designated security officers to search premises, without a warrant, to prevent the commission of a terrorist act. One State authorizes the relevant minister to give direction to communication service providers (CSPs) (including telecommunication service providers (TSP) and Internet Service Providers (ISPs)) for the purpose of preventing the commission of a terrorist act. Another State also empowers the relevant minister to designate a security officer who has the right to intercept the communications or to otherwise conduct surveillance (including electronic surveillance) of terrorist suspects without judicial authorization. A third State instructs its Cabinet Secretary to make regulations to allow for the national security organs to intercept communications for the purpose of detecting, deterring and disrupting the commission of a terrorist act. None of these powers is subject to sunset clauses.

86. The counter-terrorism legislation of four States provides for the use of a range of SITs (including interception of communications and electronic surveillance). A third State provides a basis for doing so in its general criminal procedure law. One State regulates a set of SITs within its Computer Crimes Act, which addresses terrorism-related computer crimes. Two States legislate the use of SITs (including, inter alia, the use of controlled delivery and the monitoring of bank accounts) in their respective AML/CFT laws.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

87. All but one State of the subregion has established a legal framework allowing for MLA and extradition. One State explicitly provides that, once it becomes a party to a counter-terrorism convention, that convention becomes the foundation of extradition arrangements, depending on certain conditions. Two other States allow for the provision of MLA and extradition in relation to terrorism financing but do not clearly extend the application of this provision to all terrorism-related offences. Another State provides for extradition in the case of terrorism financing but has not yet ratified any of the 19 international counter terrorism instruments (even though it has criminalized terrorism financing).



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88. Since 2016, two States have developed publicly available guidelines on domestic laws and procedures, but those guidelines are limited to MLA. One of those States has successfully requested MLA and the extradition of suspects from EAC States in the context of terrorism-related investigations. Comoros participates in a Regional Justice Platform which also includes France, Madagascar, Mauritius and Seychelles and has developed a manual on how to submit MLA and extradition requests to those States.

89. One State has introduced the principle of *aut dedere aut iudicare* with respect to all offences, including terrorism-related offences, and another State has specifically enshrined the principle in its counter-terrorism legislation. A further State appears to have enshrined the principle only in connection with its terrorism-financing offence. The remaining eight States do not appear to have enshrined the principle in their respective domestic frameworks.

### **(b) Ensuring effective exchange of information and cooperation**

90. One State specifically notes in its counter-terrorism legislation its ability to cooperate with other States in conducting investigations. All States of the subregion are members of EAPCCO, established in 1998 as a regional practical response to the need to join in police efforts against transnational and organized crime. Recently, EAPCCO established a Regional Counter-Terrorism Centre of Excellence to enhance the skills of individual criminal justice practitioners in detecting, preventing and investigating terrorism activities; increase success and effectiveness in cross-border operations; enhance police legitimacy across the subregion; and produce quality research and intelligence counter-terrorism products. One State (Tanzania) is also a member of the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO).

91. Three States have participated in joint operations supported by the INTERPOL Terrorist Network Sub-Directorate and Integrated Border Management Task Force (e.g., Operation Simba, carried out in March 2019, which aimed to strengthen border controls and focused on the use of INTERPOL databases at border points (not yet the regular practice in the States of the subregion). Operation Simba II was carried out in March 2020<sup>16</sup>).

### **Priority recommendations**

- Ensure terrorism legislation is defined clearly and precisely and that preparatory and accessory acts and acts intended to support commission of a terrorist act are legislated in accordance with the principle of legality.

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<sup>16</sup> <https://www.interpol.int/en/How-we-work/Border-management/I-EAC-Project>.



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- Operationalize asset freezing regimes prescribed by resolution 1373 (2001) and sensitize reporting entities to their obligation to report suspicious transactions related to terrorism financing; provide training, adequate staff, budget and analytical software resources to FIUs; develop risk-based approach to relevant NPOs under FATF definitions.
- Strengthen weapons and ammunition legislation, criminalizing full range of firearms-related offences; update and digitize firearms registries.
- Enhance collection, timely sharing of intelligence, including financial intelligence, in a human rights-compliant fashion, within and beyond national borders; extend access to INTERPOL databases to frontline officers; provide specialized training to immigration and customs officers on use of databases.
- Develop border-management strategies that ensure coherence and clearly define the relevant agencies' roles and responsibilities; develop API and PNR capabilities within comprehensive legal, administrative and institutional framework, incorporating privacy and data protection safeguards.
- Enhance the capability of investigators and prosecutors in handling of complex counter-terrorism cases, including terrorism-financing cases; develop and implement robust witness-protection programmes, including protection for criminal justice officers.
- Operationalize independent oversight of intelligence and law enforcement agencies by ensuring, inter alia, that national human rights institutions are adequately resourced; strengthen efforts to investigate and prosecute police misconduct within framework of terrorism-related investigations.
- Ensure laws allow cooperation with other States in respect of full range of terrorist offences and application of *aut dedere aut iudicare* principle on terrorist offences.



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(Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe)

## A. Terrorism trends

### 1. Risks

92. In comparison with other African subregions, Southern Africa has had relatively limited exposure to threats posed by international terrorist groups. Since 2016, however, the subregion has seen a dramatic increase in terrorist activity, notably in northern Mozambique and along Mozambique's border with Tanzania. As of June 2019, ISCAP, the most recent ISIL affiliate to emerge in Africa, began to claim responsibility for violent attacks in the area. In his Twelfth report on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2021/98), the Secretary-General notes that "non-State armed groups in Mozambique identifying with ISCAP presented an increasingly cohesive and capable threat, conducting indiscriminate and retaliatory attacks in the northern Province of Cabo Delgado". The report also draws attention to the operations of ISCAP in the Democratic Republic of the Congo (see Central Africa regional outlook, below) and to reported links between ISCAP and ISIL in Somalia (see Eastern Africa regional outlook, below). ISCAP has also been active in promoting its activities on social media and *al-Naba*, its weekly newsletter. In October 2020, on social media, ISCAP claimed two attacks in Mozambique, concurrently with its first cross-border incursion into Tanzania in the run-up to Tanzania's presidential elections (see Eastern Africa regional outlook, below). Mozambique has arrested nationals of the Democratic Republic of the Congo, Somalia, Tanzania and Uganda in connection with the attacks taking place in Cabo Delgado.

93. The subregion has long been exploited as a transit point for terrorists and as a base for planning, training and terrorism financing operations. Owing to the predominantly cash-based economy, one of the subregion's main vulnerabilities is the financing of terrorism activity. Although States have made progress in the area of countering the financing of terrorism, the overall counter-terrorism legal and operational framework remains largely untested. Before 2017, States had not been required to face direct attacks on their soil and had therefore focussed primarily on addressing development-related challenges. Significant climatic events have also increased stress on institutional responses. The fact that wealth deriving from natural resources and raw earth materials has not greatly benefitted local communities has added to feelings of disenfranchisement and marginalization.

94. The subregion continues to contend with (transnational) organized crime (e.g., drug trafficking, human smuggling and trafficking, illegal arms trade, illegal wildlife trade and poaching), as well as corruption. Long and porous land and maritime borders are difficult to secure and they expose States to exploitation by terrorist and organized crime groups. The subregion must





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also deal constantly with significant movements of persons, including mixed and irregular migration, labour migration and displacement due to conflict and natural disasters. Owing to instability and natural disasters, the number of refugees and displaced persons has risen significantly. UNHCR reported in 2019 that the subregion hosts close to 534,000 people of concern. At the end of December 2020, UNHCR noted that there were 530,000 displaced persons in the four provinces of Northern Mozambique alone, with the total continuing to rise daily. Even though most States of this subregion have an RSD system in place, its overall capacity and resources are struggling to cope with the significant movement of persons and the steep rise in the number of refugees. Furthermore, the 2005 SADC Protocol on the Facilitation of Movement of Persons is not yet in force.

95. Concerns about movements of persons, potential vulnerabilities of asylum systems, and the impact of high cash flows are further compounded by the proliferation of SALW in the subregion. Legislation and controls on arms and ammunition are mostly outdated, and operational capacity is low. According to the UNODC Global Study on Firearms Trafficking 2020, higher volumes of firearms are being trafficked into the SADC region. These factors, combined with heavy-handed security measures to mitigate the spread of the COVID-19 pandemic, could further exacerbate tensions and feelings of marginalization, thereby contributing to radicalization or recruitment. In some States, CSOs and local media have alleged excessive use of force (including shootings, beatings, teargassing and water bombing) by the army and police against individuals suspected of violating pandemic lockdowns. COVID-19 restrictions have also exposed the lack of basic services, education and job opportunities.

96. It is essential to address these risks in order to limit the subregion's vulnerability and strengthen its response and resilience to terrorist threats. However, institutional capacities and resources are already stretched. Since the beginning of the COVID-19 pandemic, the SADC has taken 10 regional coordinated actions to contain the spread of the virus and mitigate its social and economic impacts. Several of those measures will help strengthen regional cooperation in preventing terrorism. Those measures included disaster-risk management measures, including an agreement among SADC member States to establish national emergency operations centres and the adoption of Guidelines on Harmonization and Facilitation of Cross-Border Transport Operations. However, key subregional structures, such as the SADC/INTERPOL Early-Warning Centre, are not yet fully operational. The 2015 SADC Counter-Terrorism Strategy and Action Plan has not yet been fully operationalized.

### **B. Implementation of resolution 1373 (2001) in Southern Africa**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**



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97. Since 2016, very few States have developed a national comprehensive integrated counter-terrorism strategy and action plan. However, elements of a national comprehensive counter-terrorism strategy can be found in national strategies to fight money-laundering and terrorism financing. Eight States of this subregion have adopted a national AML/CFT strategy. Only one has operationalized its comprehensive, integrated national counter-terrorism strategy. In addition, one State has adopted a regional counter-terrorism strategy that provides for cooperation with other key partners beyond the region to complement and strengthen existing bilateral and multilateral ties and make a meaningful contribution to global efforts to prevent and combat terrorism.

### **(b) Risk assessment**

98. Only one State has developed the capacity of its law enforcement to conduct regular threat and risk assessments relating to terrorism. The SADC/INTERPOL Early-Warning Centre was established to compile strategic assessment and analysis of data collected at the regional level, facilitate the sharing information between States on major issues posing threats to the security and stability of the subregion, and propose ways and means to prevent, combat and manage such threats. However, the Centre is not yet fully operational in relation to conducting terrorism-related threat and risk assessments.

99. Seven States have conducted national risk and threat assessments in relation to money-laundering and terrorism financing. However, they provide only a limited picture of the full threat and risk landscape from the law enforcement perspective on financial aspects. The failure of law enforcement authorities to conduct frequent national risk assessments represents a significant vulnerability.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

100. Ten States of the subregion have criminalized recruitment to terrorist groups, either in specific counter-terrorism legislation or in their criminal codes. Some States have also introduced provisions to criminalize incitement and conspiracy to terrorist acts. Ten States adhere to the rule of law principles in terrorism cases, but the inclusion of vague and broad definitions in their legislation could result in misapplication. In most cases, provisions are untested because of the limited adjudication of terrorism cases.

### **(b) Financing of terrorism**

101. All States have now introduced criminalization of the financing of terrorism as a standalone offence. Eight States also criminalize both the financing of an individual terrorist and the financing of a terrorist organizations. Even though four more States have introduced legislation to freeze



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assets pursuant to resolution 1373 (2001) since the previous survey, the asset-freezing frameworks of all States of the subregion remain largely untested.

102. All States have established a functional, independent FIU. However, the capacity and resources of the FIUs to effectively analyse STRs and the number of terrorism financing-related STRs received vary significantly across the subregion. Although the customs authorities of half of the States of the subregion have the legal authority to stop or restrain currency and BNI suspected of being related to money-laundering and terrorism financing, there is only limited understanding and analysis of the threat posed by the cross-border currency transportation for terrorism-financing purposes. Only two States have conducted a review of their respective NPO sectors to assess their related vulnerability. One of the priorities of the ESAAMLG operational plan to counter the financing of terrorism is a regional review of the terrorism-financing risks of States' NPO sectors. All States of this region are members of the ESAAMLG and South Africa is also a member of the FATF.

### **(c) Firearms**

103. Legislation to regulate SALW, including firearms and ammunition across the subregion remains outdated. Thus, not all States criminalize the illicit manufacturing, trafficking or alteration of firearms or the illicit obliteration of their markings in their legal framework, and the level of operationalization and enforcement of those frameworks also varies greatly. Only three States have fully implemented the related international requirements in their legal frameworks. All States but one appear to have a limited capacity to intercept and report trafficked firearms.

### **3. Opportunity and border security**

104. All States of the subregion are members of INTERPOL, but there is limited available information on the connectivity at frontline border posts to the INTERPOL SLTD database and the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. Six States have established watch lists. One State has implemented a comprehensive screening process through its API system and another is in the process of doing so. No State is currently engaged on PNR. The large degree of variation in the implementation and in technical capacity of border-management systems limits effective cross-border cooperation and leaves the subregion vulnerable. Most States of this subregion have introduced an RSD system and adopted specific legislation in relation to refugees. However, it is unclear whether the subregion can cope with the significant increase in refugee flows. The 2005 SADC Protocol on the Facilitation of Movement of Persons, aimed at strengthening harmonization of State laws and immigration practices, is not yet in force.

### **4. Bringing terrorists to justice**

#### **(a) Planning and preparation**



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105. Although the legislation of seven States provides for criminalization of preparatory and accessory acts, only four States can prosecute preparatory or accessory acts where the aim is to commit the act against another State. Three States criminalize planning, preparation and contribution of a terrorist act as autonomous offences. Eleven States criminalize conspiracy, aiding and abetting or other forms of participation to terrorism acts. Only one State does not specifically criminalize acts of planning, preparation and supporting of terrorist acts as autonomous offences.

### **(b) Capacity to investigate and prosecute**

106. The capacity and resources of the subregion to investigate and prosecute terrorist acts remain limited. Only one State has developed a specialized prosecution unit within its National Prosecution Authority. One State has developed inter-agency arrangements which support a coordinated criminal justice response to terrorist attacks. Through this mechanism, dedicated (though not specialized) public prosecutors have worked with security agencies to collect information, including interviewing victims. Similarly, the use of SITs remains limited. Most States have the legal authority to intercept communications, but this technique has been used in terrorism investigations by only one State.

### **(c) Rule of law**

107. All States of the subregion have established oversight of law enforcement mechanisms. However, the effectiveness and independence of those mechanisms varies significantly. All States enshrine rule of law principles in their Constitutions and other relevant legislation (e.g., Police Act). Five States have established a police commission, and eight States have established a national human rights institution. In many States of the subregion, specific counter-terrorism legislation continues to include vague and broad terminology which, in the absence of the adjudication of terrorism cases, could be misused or improperly applied, thereby unnecessarily limiting human rights principles such as freedom of association and freedom of expression. The legislation of four States includes precise and comprehensive definitions of terrorist acts.

## **5. Activating international cooperation**

108. International cooperation is facilitated through the adoption of the SADC Protocol on Extradition, which entered into force in 2006. However, the SADC Protocol on Mutual Legal Assistance has not yet entered into force, owing to an insufficient number of ratifications. Two States lack a specific law relating to MLA. Ten States have adopted specific national legislation to enable both extradition and MLA. The implementation and use of those legal instruments vary in effectiveness (mostly because of specific requirements and conditions that need to be fulfilled in the application of the law). In 2016, only one State had incorporated the *aut dedere aut iudicare* principle into its national legislation. Since 2016, one other State has done so.



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109. Three States have published guidelines on procedures relating to MLA. Only one State has conducted a significant number of terrorism-related investigations. One State has also engaged in bilateral cooperation with neighbouring States in the sharing of forensic data. Another State has engaged in bilateral cooperation with other States in investigations relating to drug trafficking and organized crime cases. At the subregional level, bilateral cooperation is facilitated through SARPPCO.

### Priority recommendations

- Develop comprehensive, integrated counter-terrorism strategies.
- Strengthen capacity to conduct comprehensive threat assessments and share information at the national and regional levels.
- Increase knowledge and awareness of the risks of terrorism financing in general as well as in relation to the risk of terrorism financing in the NPO sector specifically and conduct a review of their NPO sectors to identify the subset that is most at risk for terrorism financing.
- Strengthen the capability of law enforcement and criminal justice officials to operationalize their counter-terrorism legislation based on a human rights-based approach.
- Enhance information-sharing and the use of, and connectivity to, INTERPOL databases at the frontlines.
- Strengthen international cooperation and fully implement the principle *aut dedere aut iudicare* as well as ratify and operationalize of the relevant instruments (e.g., the SADC Protocol on Mutual Legal Assistance).

### West Africa

(Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo)<sup>17</sup>

#### A. Terrorism trends

##### 1. Risks

110. West Africa faces an extremely high terrorist threat. The presence of terrorist groups has increased significantly in recent years. The dramatic increase in terrorist activity in the subregion

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<sup>17</sup> Cabo Verde is also included in the Central Africa Regional Outlook.



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is primarily due to two groups: Jama'at Nusrat al Islam wal Muslimeen (JNIM) and the Islamic State in the Greater Sahara (ISGS).<sup>18</sup> The territorial presence and activity of Al-Qaida and its affiliates, particularly Al-Qaida in the Islamic Maghreb (AQIM) was initially limited to the extreme north of Mali. However, it has now expanded across large areas of Burkina Faso, Mali and Niger and elsewhere. In 2017, Iyad Ag Ghali announced the creation of Jama'at Nusrat al Islam wal Muslimeen (JNIM),<sup>19</sup> which merged Ansar Eddine, Al-Mourabitoun and the Sahara branch of AQIM (and later the Macina Liberation Front) to form a formidable block.

111. The growing strength of ISIL in the subregion has compounded the terrorist threat and contributed to the deteriorating security situation in the subregion. The ISGS<sup>20</sup> group was established in 2015 by Adnan Abu Walid al-Sahraoui, who had split from the Al-Qaida affiliated Al-Mourabitoun, with a pledge of allegiance to the ISIL core. Operating in Burkina Faso, Mali and Niger, as well as in the Liptako-Gourma region, ISGS has mounted a number of deadly attacks, killing both civilians and soldiers. According to reports, violence associated with ISGS doubled in 2020.<sup>21</sup>

112. Despite the two groups' initial intent to avoid direct conflict (and even certain indications of coordination), clashes between ISGS and JNIM increased in mid-2019, ultimately leading to outright and bloody confrontations. Although ISGS was weakened by its violent competition with JNIM in 2020, it is believed that its leadership and core command structures remain intact. However, links between ISGS and the Islamic State West Africa Province (ISWAP) have apparently strengthened, raising concern that these two deadly ISIL affiliates may expand their area of operations across the Sahel. It is thought that JNIM and ISGS may also expand their operations to coastal States, including on the Gulf of Guinea.

113. In the Lake Chad Basin, the strongest ISIL affiliate in Africa, the Islamic State in West Africa Province (ISWAP), remains dominant. ISWAP has its origins in Boko Haram. In 2015, under pressure from the Nigerian military and the African Union-mandated Multinational Joint Task Force (MNJTF)<sup>22</sup>, Boko Haram expanded its area of operations from north-eastern Nigeria into the region surrounding the Lake Chad. In March of that year, Abubakar Shekau, then leader

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<sup>18</sup> According to the Africa Centre for Strategic Studies on Terrorism, the number of violent events in the Sahel linked to JNIM and ISGS increased dramatically from 147 events in 2017 to 999 in June 2020: [African Militant Islamist Groups Set Record for Violent Activity – Africa Center for Strategic Studies](#). The 2020 Global Terrorism Index noted that, for 2019, the largest increase in deaths from terrorism occurred in Burkina Faso (where the number of deaths rose from 86 to 593). This increase was mainly due to the activities of ISGS, JNIM and the Burkina Faso branch of Ansar al-Islam (<https://visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-web-1.pdf>).

<sup>19</sup> The Security Council Committee established pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities listed Jama'at Nusrat al Islam wal Muslimeen (JNIM) as a terrorist entity on 4 October 2018 (QDe.159)

<sup>20</sup> The Security Council Committee established pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities listed ISGS as a terrorist entity on 23 February 2020 (QDe.163).

<sup>21</sup> <https://africacenter.org/spotlight/islamic-state-in-the-greater-sahara-expanding-its-threat-and-reach-in-the-sahel/>.

<sup>22</sup> The MNJTF is mandated by the African Union Peace and Security Council under the political leadership of the Lake Chad Basin Commission.





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of the group (which had achieved global infamy for the kidnapping of 276 schoolgirls from Chibok in 2014) pledged allegiance to then ISIL leader Abu Bakr al-Baghdadi. Boko Haram thus took up the banner of ISWAP. Within a year, Abu Musab al-Barnawi (the son of Boko Haram's founder) and others split from Shekau. Their faction retained the title of ISWAP, and Shekau's faction reverted to the name of Jama'atu Ahlis-sunna Lidda'awati (JAS).

114. In 2019, a third faction, Ba Koura<sup>23</sup>, emerged (reportedly allied to Shekau). Ba Koura has conducted attacks in the Far North of Cameroon and the Diffa region of Niger. The name *Boko Haram* is commonly used to refer to either of these three groups. Boko Haram has remained resilient to military operations and is capable of perpetrating sustained significant terrorist activity in the subregion. Studies have revealed a remarkable degree of viciousness in the modus operandi of Boko Haram (which has deliberately exploited stereotypes by employing the highest rate of female and child suicide bombers of any terrorist group), as well as a disregard for principled targeting and efforts to minimize civilian casualties.<sup>24</sup> These tactics have been more commonly associated with Shekau. ISWAP, by contrast, has often nurtured more positive community relations by providing goods and services to rural populations that have not received many benefits from their own State. In December 2020, the Prosecutor for the International Criminal Court, concluded her preliminary investigation into Boko Haram, found a reasonable basis to believe that war crimes and crimes against humanity had been committed by the group.<sup>25</sup>

115. The vulnerabilities that have contributed to the rise of terrorism in the subregion are still prevalent. There remain several areas where the absence of State presence and services allow terrorist groups to penetrate more easily, and certain regions are effectively under their control. Limited governance structures and low functioning judicial institutions make it difficult for the State to provide basic justice or relief to victims of terrorist attacks, let alone provide other types of support. The economic situation in many States, already weak, has been put under additional stress by measures imposed to combat the COVID-19 pandemic, further compromising subsistence lifestyles that depend on freedom of movement. Historically disenfranchised communities continue to be excluded from political processes. Many States of the subregion are in the lowest bracket on the UNDP Human Development Index.

116. States' efforts to address the above vulnerabilities and combat terrorism are constrained by limited resources and capacity. Political instability has also undermined States' ability to develop and sustain effective responses. Porous and vulnerable borders remain a key concern.<sup>26</sup> The illicit

<sup>23</sup> Ba Koura is not listed by the Security Council Committee established pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities.

<sup>24</sup> Warner, Jason and Hilary Matfess, "Exploding Stereotypes: the Unexpected Operational and Demographic Characteristics of Boko Haram's Suicide Bombers", Combating Terrorism Center at West Point, United States Military Academy (August 2017).

<sup>25</sup> <https://www.icc-cpi.int/nigeria>.

<sup>26</sup> Examples of border incidents include the May 2019 kidnapping of two French tourists and the killing of their local guide in Pendjari National Park in Benin on the border with Burkina Faso; the attack by unidentified individuals on a border checkpoint in May 2019 at Koury (a Malian town near the border with Burkina Faso); and the attack of 11 June 2020 on a military post in Côte d'Ivoire near the border with Burkina Faso.



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flow of arms throughout the Sahel, driven by past and recent conflicts, ensures widespread availability to terrorist groups.<sup>27</sup> Armed groups, intercommunal violence, banditry and organized crime further destabilize many West African States. Individual and group alliances remain highly fluid. In both the Sahel and the Lake Chad Basin, terrorist groups take advantage of unresolved local conflicts to fuel discontent and exploit local grievances to gain legitimacy and support among certain communities. Migration and population flows also complicate the security landscape. The situation in central Sahel, including in Burkina Faso, Mali and Niger, has continued to deteriorate rapidly, as thousands of people from Burkina Faso seek refuge in Mali and Niger. The deteriorating security context in Mali has in turn led to increased internal displacement. Tension caused by the October 2020 elections in Côte d'Ivoire led to population displacement. Since 2019, insecurity in Nigeria caused by armed banditry and terrorist groups has forced over 70,000 Nigerians to seek refuge in Niger's Maradi region.<sup>28</sup>

117. These vulnerabilities are common across most of the subregion. Most States in which terrorist activity has been limited share borders with States in which terrorist activity is high. They are therefore also at risk of being targets of terrorism or terrorism financing. Their populations being recruited to terrorism and their territories are being used as safe havens. States have made efforts to counter the terrorist threats, including by pooling military efforts. The MNJTF in the Lake Chad Basin has achieved some success but has been unable to translate that success into sustainable gains. The G-5 Sahel Joint Force, endorsed by the African Union and supported by the United Nations, has struggled to become fully operational and continues to be the target of complex attacks (including the attack of 29 June 2018 against its headquarters in Sévaré, Mali, which led to the suspension of the FC-G5S operations until January 2019). It has made some progress as its operations (which began in November 2017 and have so far focused on the Liptako-Gourma area) have increased in scale and duration. However, its operational impact remains to be seen. The G-5 Sahel Joint Force has strengthened its cooperation with the French-led Operation Barkhane,<sup>29</sup> which sometimes operates together with G-5 Sahel units. Operation Barkhane is, in turn, being reinforced by the European Union joint Task Force Takuba.

### **B. Implementation of resolution 1373 (2001) in West Africa**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

118. Even though the Economic Community of West African States (ECOWAS) adopted a Political Declaration and Common Position against Terrorism in 2013, only three States of the subregion have adopted a national counter-terrorism strategy. This represents a marginal

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<sup>27</sup> Secretary-General's sixth biennial report on small arms and light weapons (S/2019/1011).

<sup>28</sup> UNHCR, West and Central Africa Regional Update, May – June 2020, <https://data2.unhcr.org/en/documents/details/77665>.

<sup>29</sup> Operation Barkhane succeeded Operation Serval (which had been deployed to Mali in January 2013).



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improvement from 2016. In addition, six States appear to have taken steps towards the development of such a strategy. Four of those States that have also tasked an existing inter-agency counter-terrorism committee or well-identified ministry to draft one. The existing strategies do not, however, appear to include comprehensive approaches on the PRR of individuals associated with terrorist groups. One State has developed a national P/CVE policy framework and action plan that incorporates reference to PRR, but its comprehensive operationalization continues to be a challenge. Civil society was involved in designing the strategy of one State (see Central Africa Regional outlook and regional spotlight: prosecution, rehabilitation and reintegration of individuals associated with Boko Haram in the Lake Chad Basin, below).

### **(b) Risk assessment**

119. Only three States conduct regular assessments of the terrorist threat and risk to their territory. In view of the extent of the terrorist threat to the subregion, such assessments are essential to risk mitigation. A further four States have established intelligence agencies in charge of assessing security threats, but do not appear to produce systematic, specific assessments on terrorism with actionable information. Another State has established an intelligence unit that does not appear to have conducted assessments. In most States of the subregion, the terrorist threat is assessed by central intelligence or law enforcement agencies. In one State, it is assessed by the law enforcement unit specifically in charge of investigating terrorism cases.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

120. In view of the significant presence of active terrorist groups in West Africa, addressing terrorist recruitment is key. Eight States have legislative provisions in place to criminalize terrorist recruitment. Among those that do not, three have introduced provisions that criminalize related behaviour such as inviting to or soliciting support for an act of terrorism. Other States (some of which are heavily affected by terrorism) do not criminalize terrorist recruitment. Even though terrorist recruitment by an individual or group can sometimes be prosecuted on the basis of other provisions (e.g., providing support for terrorism), not all acts of recruitment are covered. Prosecutions may fail, depending on the interpretation of the legislation.

### **(b) Financing of terrorism**

121. Legislation to counter the financing of terrorism is relatively robust in West Africa. In 2015, the West African Economic and Monetary Union (WAEMU) adopted a revised directive on AML/CFT, which has been domesticated by most States. All West African States provide for a standalone offence of terrorism financing. All but two States criminalize terrorism financing even if the funds have not been used to commit a terrorist act. All but four States enable the freezing of suspected terrorist funds without delay. The legislation of eight States addresses the financing of



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both an individual terrorist and a terrorist organization. This represents an improvement since 2016. In contrast, only two States explicitly criminalize terrorism financing even if the funds cannot be linked to a specific terrorist act.

122. Nevertheless, effective implementation of these provisions has lagged behind. Only one State has frozen terrorist assets pursuant to resolution 1373 (2001), as the result of a request from two foreign States. All States except one have established an FIU. Although all FIUs of the subregion appear to have a dedicated budget and a dedicated, trained multidisciplinary staff, significant disparities exist between their operational capacity and level of activity. In two States, the FIU analyses STRs manually. One State has developed its own analytic information technology. The number of terrorism financing STRs that are referred to prosecution services remains low, as do the number of CFT investigations. Some progress has been registered since 2016 with respect to assessments or reviews by States of the terrorism-financing risk to their non-profit sector. Two States have conducted such reviews since 2016, and two more have conducted NRAs on terrorism financing which included some analysis of the non-profit sector. In all States but two, border authorities have the legal authority to stop or restrain currency and BNI suspected of being related to money-laundering or terrorism financing. All States of this region are members of the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), an ECOWAS institution.

### **(c) Firearms**

123. Despite the entry into force of the 2006 ECOWAS Convention on Small Arms and Light Weapons, few changes appear to have been made in this area since 2016. Only four States have comprehensive firearms legislation that criminalizes the illicit manufacturing, trafficking or alteration of firearms or the illicit obliteration of their markings. Thirteen States criminalize the illicit manufacturing and trafficking of weapons, but not their alteration or the illicit obliteration of their markings.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

124. In addition to using PISCES, two States have adopted the Migration Data and Information Analysis System (MIDAS) provided by the International Organization for Migration (IOM). Two States use Securiport border management technologies at international airports. Nonetheless, manual data registration at land border posts remains the norm, and the extension of INTERPOL I-24/7 access to land and border posts remains insufficient. This undermines information-sharing and hampers security checks of persons crossing the borders. This represents a critical vulnerability in the subregion. In addition to those in place since 2016, additional joint border posts have been established by three States. Under the ECOWAS Transport and Transit



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Programme, key border posts have been selected for transformation into joint border posts for joint and simultaneous controls.

125. Although no functional API system is yet in place in the subregion, five States receive assistance from the United Nations Countering Terrorist Travel programme on API/PNR implementation. Four States sporadically receive passenger manifests or advance passenger information. The capacity to detect potential criminals and terrorist suspects, including FTFs, at the border remains limited. Six States have increased their technological capacity to detect fraudulent travel documents, but only at international airports. Screening of persons at land border posts remains sporadic.

126. All States but one have established national RSD procedures and mandated a specialized body to carry out those procedures. The national legislation of a large majority of States excludes persons who have committed a serious non-political crime from being eligible for refugee status. At least four States conduct background checks within the RSD procedure in order to prevent abuse of the system by individuals who have committed or have been involved in a criminal act including terrorist activities.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

127. Only five States have criminalized the organization, planning and preparation of a terrorist act as an autonomous offence. Similarly, only four have criminalized the travel or facilitation of travel of FTFs, equipment or financing. Since 2016, four additional States have criminalized the recruitment, receipt or provision of training, inside or outside the State, to commit acts of terrorism.

##### **(b) Capacity to investigate and prosecute**

128. Since 2016, three additional States have established specialized counter-terrorism judicial or prosecutorial units, marking a step forward in the commitment of those States to handle terrorism cases. Two further States have established counter-terrorism specialized investigative units. However, the magistrates and investigators working in those units continue to lack the specialized skills required to handle the growing number of cases with pre-trial detainees (currently in the hundreds). Furthermore, in three States where the terrorist threat is acute because of the deteriorating security situation across their territories, large areas remain beyond the physical reach of the counter-terrorism specialized investigative units, which are based in the capital with little means to deploy to the scene of the attacks. To overcome these challenges, international support has been critical. In one State, international partners facilitate the travel of investigators and magistrates from the capital to the regions to collect evidence, complete investigations, and hold hearings in the cases of most alleged suspects, thereby helping to bring justice closer to the population. In another State, prosecutors depend on international support to be able to travel to





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access the case files and detainees held in military custody far from the capital. Progress has been achieved in several States, where larger volumes of cases (and also higher-profile and more complex cases) have been processed. Nevertheless, concerns continue to be raised about those processes and about the slow pace of justice in general.

129. Ten States permit the use of specialized investigative techniques in terrorism cases. These techniques include various types of electronic surveillance and the interception of private communications, controlled deliveries, undercover investigations, and lifting of confidentiality of bank records. Three States impose no limits on the duration or scope of such measures in order to mitigate their potential misuse and ensure their proportionate use in accordance with international human rights standards.

130. Across the subregion, limited progress has been made in the fight against impunity with respect to allegations of human rights violations (i.e., summary executions, enforced disappearances, torture, ill-treatment and arbitrary arrests) committed by national and regional forces in the context of counter-terrorism operations. In States where military forces are heavily involved in the response to terrorism, human rights violations (e.g., extrajudicial killings, burning down of houses and the disproportionate use of force by security and defence forces) as part of counter-terrorism operations are reported on a regular basis. In Mali, the Truth, Justice and Reconciliation Commission held two rounds of public hearings to allow victims to testify but without establishing accountability for specific actions or alleged crimes. The International Commission of Inquiry on Mali mandated to investigate allegations of abuses and serious violations of international human rights law and international humanitarian law committed in Mali between 2012 and 2018 presented its final report in June 2020, documenting many cases of murder, rape and other serious abuses committed against civilians and persons *hors de combat* by defence and security forces and recommending that the perpetrators be brought to justice (S/2020/1332). Concrete steps should be taken to enhance respect for human rights in counter-terrorism operations while ensuring accountability for violations and abuses.

131. For those nine States that have set up a national human rights institution, six have been accredited “A” status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. In Mali, the military tribunal in Mopti (which has jurisdiction over the country’s northern regions) held its first-ever hearings during the month of November 2020, sentencing six soldiers to various terms of imprisonment (S/2020/1281).

132. Several States are in the process of establishing or digitalizing existing criminal databases. One State has developed a computerized criminal database used by both the National Police and the National Gendarmerie. In the remaining four States, information-sharing among law enforcement agencies remains limited by the lack of interoperability among the manual databases maintained by each agency.





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### (c) Rule of law

133. Most States have introduced into their legislation broad definitions of terrorism which could lead to overly broad application of the law. Two additional States have adopted a special law on terrorism. In contrast to the previous survey, most States allow for the use of exceptional criminal procedures (i.e., extended custody and expanded powers to search and seize premises at any time) in terrorism offences. None of those provisions is subject to a sunset clause. In practice, respect for key principles of human rights, either in terrorism cases or in criminal cases continues to be generally lacking. United Nations human rights bodies have raised concerns at the failure to guarantee the rights of the defendant (i.e., in respect of lengthy periods of pre-trial detention, failure to bring detained persons before a judge within 48 hours of arrest, and failure to inform detainees of the reasons for their arrest and the charges brought against them). Limited access to a lawyer during investigations and the limited number of legal aid defence lawyers precludes many defendants from obtaining legal counsel and has led to the absence of legal representation in terrorism cases.

### 5. Activating international cooperation

#### (a) Effective mutual legal assistance and extradition

134. With the support of their international partners, States of the Sahel have continued to strengthen their cooperation within the Judicial Regional Platform of Sahel Countries created in 2010. A technical committee composed of dedicated Platform focal points and G5 Sahel experts has been set up to explore ways to strengthen cooperation between the G5 regional organization and the judicial cooperation mechanism. Standardized forms to facilitate the drafting of requests for MLA and extradition and their harmonization at the subregional level are available on the Platform's website.

#### (b) Ensuring effective exchange of information and intelligence

135. In December 2015, the States of the G5 Sahel (Burkina Faso, Chad, Mali, Mauritania and Niger) have joined forces to establish the G5 Sahel Security Cooperation Platform (*Plateforme de Coopération en Matière de Sécurité*, PCMS) with the aim of increasing the exchange of police information and the production of criminal analysis. During 2020, because of the travel restrictions imposed as a result of the COVID-19 pandemic, UNODC enabled the representatives of PCMS to connect virtually and continue to set up a standardized information exchange system. In September 2017, the Accra Initiative was launched as a cooperative and collaborative security mechanism by Benin, Burkina Faso, Côte d'Ivoire, Ghana and Togo. The initiative is based on three pillars: information- and intelligence-sharing; training of security and intelligence personnel; and conducting joint cross-border military operations to sustain border security. A number of joint military operations have already been conducted by Benin, Burkina Faso, Côte d'Ivoire, Ghana and Togo in their border areas.



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136. Between its establishment in July 2017 and March 2020, the FC-G5 Sahel conducted 24 operations,<sup>30</sup> resulting in the neutralization or arrest of terrorists and traffickers, the seizure or destruction of assets (including vehicles, weapons and ammunition), as well as the destruction of logistical depots and facilities used to manufacture IEDs (S/2020/1074).

### Priority recommendations

- Adopt and effectively implement comprehensive national strategies that include all relevant stakeholders.
- Increase effectiveness of CFT efforts by raising awareness of certain regulated sectors, providing training in CFT investigations, operationalizing their asset-freezing mechanisms, and analysing the terrorism-financing risks to, and other vulnerabilities of, NPO sectors.
- Strengthen procedural guarantees applicable to the implementation of SITs.
- Amend legislation to ensure terrorist acts are clearly and precisely defined by national legislation in accordance with the principle of legality, including all offences that allow the prosecution and punishment of the acts of planning, preparation and support as autonomous offences.
- Establish or strengthen independent, dedicated and effective mechanisms for the oversight of law enforcement agencies.
- Improve connectivity at border posts to INTERPOL I-24/7 system and promote systematic use of INTERPOL databases, including via sharing relevant data with INTERPOL to enhance cooperation among border-management services and with foreign counterparts; upgrade infrastructures to provide electricity to all land border crossings and provide them with the Internet connection necessary for the systematic collection of biometric information and biographical information.

### Regional spotlight: The use of evidence collected by the military in States of the Sahel (Burkina Faso, Mali, Niger)

#### 1. The use of military-collected evidence in bringing terrorists to justice

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<sup>30</sup> Status report: Office of the High Commissioner for Human Rights (OHCHR) Project supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework, 1 May 2018–31 March 2020 (5 August 2020). [https://www.ohchr.org/Documents/Countries/Africa/G5Sahel\\_Report\\_E\\_Final\\_05.08.2020.pdf](https://www.ohchr.org/Documents/Countries/Africa/G5Sahel_Report_E_Final_05.08.2020.pdf).



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### (a) Context

137. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), more than 6,600 civilians have been killed in Burkina Faso, Mali and Niger since October 2019, making 2020 the deadliest year for civilians in the Central Sahel.<sup>31</sup> Since 2013, with the deployment of France's *Operation Serval* in northern Mali, concerted military efforts have been critical to combating terrorism. However, despite the increasing pressure of military operations, these groups have not been fully contained. They have demonstrated resilience, adaptability and capabilities that have enabled them not only to endure, but also to expand (see also West Africa Regional outlook). It is clear that a military approach alone cannot address the challenges posed by (and exposed by) the evolving terrorist threat. In order to sustain the gains achieved through military successes, efforts must be made to ensure justice for victims and communities. Moreover, those efforts must be subject to oversight, in order to strengthen public confidence in the legitimate use of force, and should be consolidated through strengthened good governance and service delivery.

### (b) Basis

138. In its resolution 1373 (2001), the Security Council decides that Member States shall 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. Both the Council and the General Assembly consider that the promotion of effective rule of law-based criminal justice responses to terrorism is a central component of an effective counter-terrorism approach. Council resolution 2396 (2017) calls on Member States to share best practices and technical expertise "with a view to improving the collection, handling, preservation and sharing of relevant information and evidence [. . .] including information obtained in [. . .] conflict zones" in order to ensure the ability to prosecute. In December 2019, the "United Nations Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences" were issued within the framework of a CTED-led project developed by the Working Group on Criminal Justice, Legal Responses and Countering the Financing of Terrorism of the United Nations Global Counter-Terrorism Coordination Compact Task Force. The guidelines are based on international law, including international humanitarian law and international human rights law, as well as on Member States' practices. Recognizing that the role of the military in civilian criminal justice processes should be exceptional,<sup>32</sup> the guidelines address practical issues such as ensuring the chain of custody of information collected by the military to be used as evidence and promoting cooperation between the military and criminal justice authorities. They also acknowledge the sovereignty of Member

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<sup>31</sup> Global Centre for the Responsibility to Protect, "More than 6,600 people killed in attacks in Burkina Faso, Mali and Niger since October 2019", <https://www.globalr2p.org/Stater/niger/#:~:text=According%20to%20the%20UN%20Office,civilians%20in%20the%20Central%20Sahel>.



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States with respect to these issues, as well as the importance of domestic policy and legal frameworks<sup>33</sup> (see also legislation and criminal justice thematic outlook, below).

### (c) Challenges

139. Ensuring accountability for crimes of terrorism committed in the Sahel requires effective cooperation between two very different institutions which have at their core separate mandates and distinct cultures. It also requires military and criminal justice institutions to develop sufficient familiarity with each other and to agree on the need to coordinate and cooperate. In the Sahel, the prosecution of terrorism cases continues to be significantly challenged by the difficulty of collecting admissible evidence to secure a conviction. The role of the military in enabling effective criminal justice responses to terrorism has been put to the test in some States of the region, where terrorist organizations have taken advantage of remote and ungoverned spaces to carry out their operations. In such cases, the military is the first (and sometimes only) responder to terrorist attacks. As a result, the military (although not trained, equipped, or necessarily legally mandated to do so) has found itself in the unusual position of having to assume a number of tasks that are typically entrusted to law enforcement officials. Those tasks include detaining suspects and collecting information and then transferring both the suspects and the information to the judicial authorities. This raises potential human rights concerns relating to, *inter alia*, the prohibition of torture and arbitrary detention, and the right to a fair trial (see also West Africa regional outlook). Too often, these cases fail during the judicial process owing to insufficient information relating to the suspect or the circumstances of his or her initial capture or simply because the available information is not accepted as admissible evidence for a variety of reasons (e.g., human rights violations, contamination in the chain of custody, or insufficient documentation).

140. With the help of increased resources and the increased specialization of investigating and judicial units in charge of terrorism cases,<sup>34</sup> three Sahel States have successfully completed terrorism cases.<sup>35</sup> However, a growing number of suspects remain in pre-trial detention for extended periods of time beyond the time frames prescribed by the law. One State has processed significant numbers of terrorism cases (with hundreds of cases being dismissed by the prosecution

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<sup>34</sup> Specialized judicial units that have nationwide authority and include a specialized investigation units have now become operational in Burkina Faso, Mali and Niger (in Burkina Faso the Specialized Judicial Unit (PJS) and its Specialized Investigation Brigade (BSIAT); in Mali the Specialized Judicial Unit (PJS) and its Specialized Investigation Brigade (BIS); in Niger the Specialized Judicial Unit (PJS) and its Central Office for Combating Terrorism (SCLCT).

<sup>35</sup> In Mali, “[a]s at 3 December, the 2020 criminal trial session of the Bamako Court of Assizes had tried 45 terrorism-related cases, in which 62 defendants were found guilty, including 49 in absentia, with sentences ranging from 10 years to the death penalty and 20 accused acquitted. [...] The session brings to 142 the number of terrorism suspects tried since the Specialized Judicial Unit became operational in 2017, leading to 113 convictions and 29 acquittals. The Specialized Judicial Unit brought to trial a series of high-profile cases during the reporting period, including the trial of three suspects in relation to the two terrorist attacks in Bamako in 2015, against a restaurant and a hotel. On 28 October, the suspects were found guilty and sentenced to death. The Unit also brought to trial on terrorism charges 15 suspects, including Souleymane Keita, the suspected leader of a terrorist group, the Khalid ibn al-Walid Brigade, affiliated with Ansar Eddine.” Report of the Secretary-General on the situation in Mali (S/2020/1281) of 28 December 2020).



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or investigating judge or resulting in acquittals at trial years after suspects were arrested by the military and placed in pretrial detention). The main reason for these outcomes was the paucity of information available with respect to the reason or circumstances for the initial capture or arrest by the military. Law enforcement units charged with investigating the cases long after their initial detention were unable to find additional evidence. Pursuant to its 2018 assessment visits to three States of the Sahel, the Committee recommended that efforts be made to strengthen cooperation between the military and law enforcement investigative units and ensure the development of effective communication. The Committee also recommended that the three States ensure that the military develop standard operating procedures for securing and managing crime scenes and make more systematic use of existing template forms aimed at collecting key information to be quickly transmitted to investigative units.

### 2. Progress

141. The States of the Sahel have made efforts to increase cooperation between the military and criminal justice authorities. On 2 March 2018, the Chief Justices of the Supreme Courts of six Sahel States (Burkina Faso, Chad, Mali, Mauritania, Niger, Senegal) adopted a set of recommendations on the role of Supreme Courts in countering terrorism, which underline the need for the military personnel to “systematically prepare a report on the circumstances of the arrest, written by a judicial police officer such as the provost marshal or, failing that, by the most senior member of the military present at the scene”.<sup>36</sup> The use of a form to ensure that key information is collected by the military and transferred in a standardized format was pioneered by one Sahel State (where the investigating unit in charge of terrorism cases designed such a form for the use of military units). That State is currently developing standard operating procedures (SOPs) setting out actions that the military should take with respect to the capture and detention of terrorist suspects or the collection and preservation of information, which could be admissible in courts.<sup>37</sup> These efforts involve the cooperation and approval of three key ministries (Defence, the Interior and Justice).

142. At the regional level, in the context of developing of the Lake Chad Basin Commission’s Regional Stabilization, Recovery and Resilience Strategy of Areas in the Lake Chad Basin Affected by Boko Haram Activities, the Multinational Joint Task Force (MNJTF), together with the military and criminal justice authorities of LCB States, developed a form in 2018 to assist the military to record and collect basic information to be transmitted to the appropriate authorities.<sup>38</sup>

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<sup>36</sup> “In addition to identifying information, such a report could specify, for example, whether the suspect was alone or was captured as part of a group, whether he was armed or not, what weapon was found in his possession, whether the weapon was hot, whether he resisted, whether he was already in possession of a weapon, whether he was already in possession of a weapon, and whether he had a weapon in his possession at the time of his arrest. wounded during his capture. A digital photograph or video of the person on the place of his arrest could be taken”. <https://www.ahjucaf.org/page/les-cours-supr%C3%AAs-membres-de-l%E2%80%99ahjucaf-dans-la-lutte-contre-le-terrorisme>.

<sup>37</sup> With the support of UNODC and the United States.

<sup>38</sup> The engagement was organized by UNODC and CTED, together with the LCBC and the African Union, and supported by other United Nations entities.





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Subsequently, the MNJTF, supported by the African Union, adopted SOPs on the reception, detention, transfer and handover (to national authorities) of persons associated with Boko Haram (August 2019). Similarly, the G5 Sahel Joint Force and its Police Component has embedded the principle of closer cooperation between the military and law enforcement into its framework and strategic concept of operations. The Police Component of the G5 Sahel Joint Force was established to ensure the judicialization (i.e., through the prosecution of perpetrators of terrorism and organized crime arrested by the G5 Sahel Joint Force) of the military operations conducted by the Joint Force and to ensure respect for human rights and applicable international humanitarian law in the fight against terrorism.<sup>39</sup>

### 3. Limits and continued challenges

143. Member States of the Sahel region are currently processing thousands of cases through their respective criminal justice systems with extremely limited resources and with the additional challenge of having to bring to justice individuals suspected of having committed crimes thousands of kilometres away from the capitals where most judicial and investigative resources are based. Thus far, only one State has successfully deployed units of its specialized investigative units to regions closer to the areas in which military operations are conducted. Similar deployments are being planned or are underway in other Sahel States.

144. States' codes of criminal procedure designate officials who can act as judicial police and are entrusted to collect, handle, preserve or share information to be used as evidence in criminal justice proceedings. In compliance with those procedural norms, three States have established provost brigades to ensure the deployment of members of the gendarmerie, as judicial police, to work alongside the military. However, in practice, the deployment of these provost brigades has not been as systematic as envisioned, thus leaving the military to directly engage in the collection, handling, preservation and sharing of information. Further capacity-building and practical tools and training will be required to ensure that the military can accomplish these tasks. One State has initiated legislative amendments in order to ensure that the military has the legal capacity to engage in the collection of information and that the evidence collected is admissible.

145. At the regional level (as conceptualized by the Member States of the G5 Sahel), the Police Component consists of the Gendarmerie provost brigade and specialized investigation units with national jurisdiction in all five States (Burkina Faso, Chad, Mali, Mauritania and Niger). The integration of the provost brigade into (or its location in proximity to) the Joint Force battalions has been gradual "partly due to a lack of common understanding among some actors, including

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<sup>39</sup> As of August 2020, The FC-G5S was composed of seven military battalions deployed to the G5 Sahel States across three sectors. It consisted of 4,208 soldiers, including 15 women, and 476 personnel the Police Component, including 27 women. OHCHR Project supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework 1 May 2018–31 March 2020 (5 August 2020), [https://www.ohchr.org/Documents/Countries/Africa/G5Sahel\\_Report\\_E\\_Final\\_05.08.2020.pdf](https://www.ohchr.org/Documents/Countries/Africa/G5Sahel_Report_E_Final_05.08.2020.pdf).





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the military and police, on the mandate and role of the Provost corps in military operations”.<sup>40</sup> Thus, it is essential to reach an understanding on the roles of the Police Component and the provost brigade. The definition of the Police Component’s doctrine (i.e., the mandate, roles, responsibilities, structure and functioning of the Police Component generally and, more specifically, the mandate of the Provost brigade and the national Specialized Investigation Units) and of its SOPs, directives and guidelines remains under discussion.<sup>41</sup> The Defence and Security Committee of the G5 Sahel Joint Force is developing a directive on the duties and role of the judicial police.<sup>42</sup>

146. It is not clear how effectively the MNJTF has operationalized its SOPs and whether implementation has been translated into stronger relations with the judicial authorities. In any event, the national militaries of LCB States (like those of the Sahel) continue to play a dominant role in the fight against Boko Haram. There is a need for strengthened cooperation between the relevant national institutions.

### **Regional spotlight: Prosecution, reintegration and rehabilitation of individuals associated with Boko Haram in the Lake Chad Basin (Cameroon, Chad, Niger and Nigeria)**

#### **1. Comprehensive and tailored prosecution, rehabilitation, and reintegration strategies: context, basis and challenges**

147. The Boko Haram terrorist group (see also West Africa regional outlook) has been active in the Lake Chad Basin (LCB) for over 10 years and, according to some sources, has been responsible for the deaths of over 40,000 people,<sup>43</sup> the displacement of over three million IDPs, and over 300,000 refugees.<sup>44</sup> Boko Haram has proven to be resilient to the increasing military pressure applied by LCB States and the Multinational Joint Task Force (MNJTF), which is a military force,

<sup>40</sup> Status Report: OHCHR Project supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework, 1 May 2018–31 March 2020 (5 August 2020), [https://www.ohchr.org/Documents/Countries/Africa/G5Sahel\\_Report\\_E\\_Final\\_05.08.2020.pdf](https://www.ohchr.org/Documents/Countries/Africa/G5Sahel_Report_E_Final_05.08.2020.pdf).

<sup>41</sup> “[T]he Force is developing doctrine for its Police Component under the leadership of the Police Adviser, in collaboration with OHCHR, UNODC, MINUSMA UNPOL and EU-RACC. This doctrine aims to capture the mandate, roles, responsibilities, structure and functioning of the Police Component, and the mandate of the Provosts, and the national Specialized Investigation Units. It is expected to further clarify the relations between the Provosts, the national Specialized Investigation Units and the Police Adviser.” Status Report: OHCHR Project supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework, 1 May 2018–31 March 2020 (5 August 2020), [https://www.ohchr.org/Documents/Countries/Africa/G5Sahel\\_Report\\_E\\_Final\\_05.08.2020.pdf](https://www.ohchr.org/Documents/Countries/Africa/G5Sahel_Report_E_Final_05.08.2020.pdf).

<sup>42</sup> The draft directive includes tasks such as securing and fixing the crime scene (with the support of the Joint Force units); preserving evidence; seizing equipment (weapons, ammunition, telephones, vehicles, computers, chemicals and all other materials deemed useful to the investigation); making initial arrests and conduct hearings with any persons captured or victims of incidents involving the FC-G5S; identifying and interviewing witnesses as required; undertaking any other action necessary for the collection of evidence and the continuation of the investigation (photographs of the premises, fingerprinting of captured or killed persons or seized objects, etc.); drawing up reports of the acts accomplished; transferring to the Specialized Investigation Units the reports, the persons captured and the elements of evidence obtained and seized.

<sup>43</sup> Armed Conflict Location & Event Data Project (ACLED), <https://acleddata.com/crisis-profile/boko-haram-crisis/>, accessed on 9 February 2021.

<sup>44</sup> UNHCR, <http://data2.unhcr.org/en/situations/nigeriasituation>, accessed on 9 February 2021.



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authorized by the African Union, consisting of units from LCB States and Benin. Boko Haram continues to commit attacks against civilians and military in all four LCB States. Over the past few years, thousands of individuals associated with Boko Haram have ended up in the custody or control of national authorities. Some have apparently surrendered, while others have been captured or arrested during military operations. Across the Lake Chad Basin, whole communities have been, and continue to be, deeply affected by all these events. Kidnappings and forced recruitment (and subsequent forced marriages) are also common. A deep sense of insecurity, resulting from ongoing attacks, a militarized environment, lack of livelihood and limited mobility, has become almost the norm. Views differ on the most effective approach to dealing with the many resulting challenges.

148. The Security Council has advanced comprehensive, whole-of-Government and whole-of-society approaches. Council resolution 2178 (2014) creates the requirement to develop prosecution, rehabilitation and reintegration (PRR) strategies for FTFs. In 2017, the Council applied aspects of the requirement to the Lake Chad Basin (resolution 2349 (2017)) and then fully developed comprehensive and tailored PRR as a multidimensional approach and requirement (resolution 2396 (2017)). These Security Council requirements were incorporated at the regional level into the Lake Chad Basin Commission's 2018 Regional Strategy for the Stabilization, Recovery and Resilience of the Boko Haram-affected Areas of the Lake Chad Basin Region (RSS). More specifically, they were incorporated into its sub-strategy, which is detailed in a "Pillar Paper" on screening, prosecution, rehabilitation and reintegration (SPRR), which is the applicable framework for all persons "associated with" Boko Haram. The phrase *associated with* here denotes persons for whom the authorities have some responsibility or authority and whom the authorities believe had some contact with Boko Haram, without presuming or prejudging the nature of their relationship with the group. The "screening" phase is explicitly included in SPRR in order to direct individuals to the appropriate treatment or support.<sup>45</sup> As specified in the LCBC/African Union Pillar Paper, the phrase *associated with* should therefore be distinguished from its use in the context of a disarmament, demobilization and reintegration (DDR) programme, where it refers to a person with some form of support capacity for an armed group. Most importantly, SPRR is not limited to persons suspected of having committed a terrorist offence. Rather, it is a comprehensive approach to dealing with all persons associated with Boko Haram, particularly those who are in custody and including those persons who require rehabilitation support in a non-criminal justice context.

149. The relevant authorities are confronted at the outset with the difficult challenge of how to handle and treat persons whom they believe have been associated with Boko Haram and who may have committed a terrorist offence, or be a victim, or both. There are tremendous pressures on this delicate decision-making process. Those pressures relate to time, circumstances, resources, and limited knowledge and are exacerbated by the number of persons involved and the potential risks of making a certain decision. Moreover, the military (which is at the forefront of efforts to counter Boko Haram through use of force) often has the first responsibility for handling persons who

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<sup>45</sup> The relevant requirements of the Security Council refer to an "individual assessment".



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surrender or who are captured. The military is also the institution with the greatest numbers. Difficult questions therefore immediately arise (e.g., whether the military is legally competent to take such decisions, who is legally competent if it is not, and how should the laws, rules and policies in place be amended to ensure that the military can be integrated into the SPRR process. This question applies to the military in LCB States, and also to the MNJTF. With the assistance of the African Union, the MNJTF has adopted standard operating procedures (SOPs) to guide the MNJTF in the reception, detention, transfer and handover (to national authorities) of persons associated with Boko Haram in compliance with international law, particularly international human rights standards (August 2019). One State has also done the same.

150. The efforts of various national-level institutions and authorities in this regard have the following objectives: to combat Boko Haram by military force and address insecurity; degrade Boko Haram's capacity by encouraging "defections"; prosecute suspected terrorists; reinforce disengagement; provide psycho-social and livelihood support to victims; and address the socio-economic concerns of affected communities to pave the way for community reconciliation. However, even though all these objectives are legitimate and important, they have been often pursued with a singular focus and without a comprehensive, strategic approach. There is thus a risk that different parts of Government may adopt measures that focus too narrowly on certain aims that are of priority to them, with insufficient consideration of their repercussions for others. Individual decisions to prosecute, rehabilitate or reintegrate should be taken as part of a comprehensive system in order to support a sustainable response that fully respects international human rights law. This is particularly important in view of the diverse and complex relationships and experiences that individuals may have had with Boko Haram. Decisions about who can or should be rehabilitated in the first instance, for example, cannot be taken in isolation from decisions about who can or should be prosecuted. This presents a number of challenges, not the least of which is the need to mobilize a comprehensive approach in view of the number of potential stakeholders (some local and others national) who are not accustomed to working together.

151. Lake Chad Basin States have made progress towards the development of SPRR strategies, but they have not reached the stage at which comprehensive strategies have been fully articulated and the challenges encountered by individual approaches have been addressed. In addition, SPRR must be tailored to specific contexts, experiences and circumstances, with particular attention being paid to factors relating to gender and age.<sup>46</sup> Gender analysis should not be limited to understanding an individual's relationship with Boko Haram or experience of trauma and conflict (which may be strongly influenced by his or her sex), but also seek to understand how gender stereotypes affect the development and delivery of effective approaches. The involvement of key stakeholders in the entire SPRR process should be reinforced through the embedding of specific partnerships with entities having specialized expertise (including NGOs) in certain programmatic settings (e.g., rehabilitation efforts in prisons or reintegration support in communities). Approaches

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<sup>46</sup> The empowerment and inclusion of women and youth is the focus of Pillar 9 of the Regional Stabilization Strategy.



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must also conform to international standards relating to children, including juvenile justice standards, and be guided by the best interests of the child. In States of the Lake Chad Basin (whose populations are among the world's youngest), tensions may arise based on age-related assumptions and cultural perceptions.

### **2. Progress**

152. Two States have taken steps towards developing a comprehensive PRR strategy by creating bodies responsible for coordinating the handling of individuals associated with Boko Haram who have surrendered to the authorities. Those bodies include representatives of multiple ministries and agencies (both local and national) that can play a role at one or several stages of the PRR process. Two States have established a framework or policy document that underlies the process. This helps strengthen coordination of the various stakeholders involved.

153. Three States have made significant progress towards establishing a process to screen individuals and orient them towards the appropriate path (whether prosecution, rehabilitation or reintegration). This is the first step in implementing an SPRR process and addresses the fundamental question of how to distinguish those who should be criminally investigated or prosecuted from those who may be eligible to participate in non-criminal justice-based rehabilitation and reintegration programmes. It is essential to achieving a comprehensive strategy because it cements the relationship between the various steps of the PRR process and brings coherence to the system. However, screening brings a number of challenges. Some of those challenges relate to leadership, others are operational in nature and relate to areas such as the identification of individuals associated with Boko Haram who have directly returned to communities; access to multiple communities: the sheer volume of persons to be screened; extended deprivation of liberty of persons subjected to the screening process: and the lack of a clear legal basis for the deprivation of liberty. The same three States have designated specific entities to conduct screening and make orientation decisions. Two States have entrusted this responsibility to entities that were already playing an important role in addressing terrorism (and the case of one State were requested to involve other stakeholders in the process). The third State created a dedicated body. The relevant authorities continue to develop criteria to ensure consistency in the orientation of cases and have made efforts to comply with the requirement that perpetrators of terrorist acts must be brought to justice (in accordance with resolution 1373 (2001)). However, inconsistencies in their approaches continue to be observed.

154. At the national level, the same three States have taken steps to address the conditions that should be met for an individual to be deemed eligible for reintegration. In two States, individuals are directed to reintegration support only after they have been determined to be eligible (usually following participation in a rehabilitation programme, but sometimes directly after contact with the authorities, if the person concerned is deemed not to require rehabilitation). In the third State, some individuals are directed to reintegration support via a similar pathway, while others are



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simply released after they have been “cleared” by security actors or the criminal justice system to return to communities in accordance with the law. Efforts are underway to clarify these processes and to establish agreed criteria.

### **3. Limits and continued challenges**

155. Not all the building blocks for a comprehensive PRR approach are in place. There is therefore a need to strengthen the links between the various components involved. In one State, the handling of individuals associated with Boko Haram has been largely informal and has fallen on the shoulders of local communities (with minimal involvement, if any, from national authorities). This places tremendous strain on already limited resources and could lead to the development of approaches that vary significantly from community to community (including the risk that perpetrators of serious terrorist offences may not be held accountable owing to the limited involvement of State authorities).

156. In one State, the role played by the criminal justice system with respect to the PRR coordinating body is neither clearly recognized nor consistent at the screening phase (even though the prosecution service is the only body empowered to decide whether or not to charge). In another State, however, justice authorities regularly participate in the initial stages of decision-making.

157. In all four States, rehabilitation and reintegration support is primarily reserved for those individuals who have surrendered. In two States, arrested individuals are excluded from rehabilitation support and systematically prosecuted. In the other two States, a small rehabilitation programme has been developed in the prison system, but it has limited capacity. Conversely, individuals who surrender are not always carefully screened and are often exempted from prosecution without careful scrutiny because they are no longer seen as a threat despite Security Council and regional requirements.

158. These conceptual gaps are compounded by the significant practical challenges posed by the high volume of individuals associated with Boko Haram who need to be processed. Institutions lack ready capacity and the required specialized skill sets. The lack of physical infrastructure also presents challenges. Any progress brings the further complication of attracting international scrutiny and criticism (whether or not justified). A further challenge derives from the limited level of regional coordination. Even though significant efforts have made (under the leadership of the LCBC, in particular) to produce guidance aimed at ensuring coherence between the four different national approaches, inconsistencies between the approaches remain (as do legal questions as to their effect). The criteria applied by national authorities to determine who is prosecuted or not do not appear to have been harmonized. This could, inter alia, motivate persons to choose to surrender in one State rather than the other, based on anticipated leniency. In one State, around half of those individuals who surrendered to the authorities are nationals of another State. Further, no systematic or agreed process appears to be in place to ensure that decisions made in one State would be





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recognized in the others, thereby putting individuals at risk of being processed in more than one State.

159. The Lake Chad Basin States have made progress towards ensuring that PRR strategies and measures are appropriately tailored to gender and age, as well as an individual's particular experiences, in accordance with Council resolution 2396 (2017). In one State, unaccompanied minors who surrender are extracted from the PRR process as soon as the initial screening stage and are sent to a dedicated centre, in partnership with UNICEF, prior to being returned to their family. Accompanied minors remain with their families in the camps in which returnees are screened and rehabilitated, but receive dedicated care (also in partnership with UNICEF). As part of its reintegration efforts, one State offers professional training specifically to youth and women in communities hosting individuals formerly associated with Boko Haram.

160. However, the tailoring of approaches also requires that decisions on the handling or treatment of persons be taken on an individual basis and be both gender sensitive and age appropriate. Decisions made during screening and with respect to prosecution have sometimes been made on the basis of the category to which the person belongs. Notwithstanding examples to the contrary, women, girls and young boys are routinely considered as *prima facie* victims, and adolescent boys and men as likely offenders.<sup>47</sup>

#### **4. Components of PRR**

##### **(a) Prosecution**

161. Comprehensive PRR strategies require that a determination be made of who should or should not be prosecuted in accordance with the Security Council requirement that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts be brought to justice.

162. Owing to the broad scope of counter-terrorism legislation in all four States of the subregion, most adults associated with Boko Haram could have committed a terrorist offence, even where they have not directly participated in acts of violence. All four States have introduced legislation that criminalizes support for terrorist groups, in relatively broad terms. Consequently, the vast majority of the thousands of adults associated with Boko Haram (including those who collaborated with Boko Haram while their village was occupied by the group) might have committed an offence considered to be serious under domestic criminal laws. To further complicate the situation, many persons are somewhere along the victim-offender spectrum and their relations with Boko Haram cannot be neatly categorized. A person may have become associated with Boko Haram as a result of his or her abduction, but subsequently have committed an offence. States' criminal laws do not

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<sup>47</sup> See CTED, Note to the Security Council on Gender and Boko Haram, 25 June 2018.





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explicitly provide ways to address these complexities, except for general provisions concerning offences committed under duress.

163. The challenges of securing evidence (or even sufficient information upon which to base a decision) is also a major concern. In the Lake Chad Basin, most arrests are made by the military, which is not trained to secure information that can be relied on as evidence in court. The military, moreover, often operate in environments in which it is particularly difficult to do so. The SOPs established by one State<sup>48</sup> and by the MNJTF, combined with open communication lines between the military and criminal justice actors, may go a long way towards remedying this. Without sufficient information and evidence to anchor the screening process, the relevant authorities are faced with very difficult choices.

164. Whether through policy or law, all four States have provided for the possibility of deciding to exempt from prosecution some individuals associated with terrorist groups who surrender to the authorities. Public communications by Governments have also promised leniency to persons who surrender to the authorities, but do not address the process or the details. Notwithstanding public messaging however, treatment following surrender has sometimes been less forgiving, resulting in long periods of detention without decisions on criminal charges, rehabilitation or release. One State has adopted legislation enabling persons associated with Boko Haram to be exempted from prosecution provided that they have not committed crimes against humanity, genocide, war crimes, or other serious offences. Another State has passed a decree creating a committee tasked with reintegrating former Boko Haram members who have surrendered. Although this has helped guide decisions relating to PRR, careful implementation of these provisions is necessary to ensure coherence with the commitment to bring terrorists to justice.

### **(b) Rehabilitation**

165. In two States, prison rehabilitation programmes in prisons (though small) have been developed for individuals associated with Boko Haram and for other inmates, without specific tailoring. In both States, it appears that only a minority of terrorist inmates have undergone these programmes. The availability, timing and relevance of these programmes are also relevant, as many terrorist suspects spend prolonged periods of time in pre-trial detention.

166. With respect to individuals associated with Boko Haram who have surrendered, three States have taken steps to organize their rehabilitation following a screening process (as described above). They have established dedicated centres to host such individuals and undertake rehabilitation efforts in order to prepare them for re-entry into society. In general, persons who are arrested or captured are not considered for these programmes. One State has introduced a regulation precisely defining the goals and functions of the centre, which is dedicated to individuals who voluntarily left Boko Haram and has already hosted hundreds of such individuals

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<sup>48</sup> Another State is currently in the process of doing so.



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(of whom many were foreign nationals, women and children). The rehabilitation process involves learning a trade, psychosocial counselling, civics training, literacy lessons, and a course on religion aimed at promoting religious tolerance. It is delivered by national authorities in partnership with CSOs. It should be noted that individuals who had been detained and later discharged or acquitted have also undergone professional training at a dedicated centre.

167. Questions of legality are raised by the use of these types of rehabilitation centre, which host individuals in quasi-custodial settings in which freedom of movement is controlled and persons are not free to leave. Without further clarification in law, the status of such programmes is unclear. Safeguards should be put in place to ensure that participation (and presence at the facility) is lawful.

168. Moreover, it remains unclear whether participation in a rehabilitation programme entails some sort of immunity from prosecution. Some authorities may have encouraged such perceptions (intentionally or not) in their public messaging, but have not addressed the legal questions that arise in doing so. Since many of the individuals involved have crossed borders and are detained in a State different from that of their nationality, the question of whether or not decisions to rehabilitate (and not prosecute) will be recognized by the other States is critical. Thus far, no Lake Chad Basin State appears to have reached an agreement with another to address the treatment of their nationals or to recognize respective programmes (although ad hoc decisions have been made, in a number of cases, to accept graduates of rehabilitation programmes from one State for resettlement in another). The Regional Stabilization Strategy's call for regional cooperation and alignment of standards and approaches could address some of these questions.

### **(c) Reintegration**

169. All four States appear to have taken at least some steps towards the reintegration into the community of individuals who have surrendered, with the support of international partners. In the one State in which no systematic screening or rehabilitation support appears to take place, communities that host returnees are nevertheless offered some support (e.g., psychosocial assistance and referrals to doctors for individuals suffering trauma) by international partners. Dialogue between those returning to the community and community leaders aimed at easing tensions is also offered with a view to facilitating the community's acceptance of returning individuals and increasing the chances that their reintegration will be smooth.

170. Reintegration also poses significant short-term and long-term challenges, which include the difficulties involved in reintegrating individuals into communities that continue to face terrorist attacks or are subject to recruitment campaigns or reject such individuals as being tainted or subject them to revenge attacks, as well as the community's perception that such individuals have benefited from unfair, favourable treatment. To address the latter concern, some States have adopted an approach that involves supporting both the individuals and the communities. This



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support is intended not only to ease the reintegration of individuals, but also to benefit communities in general and offset conditions that may have been conducive to radicalization or recruitment to terrorism. Strategic communication is also key in preparing individuals' return to communities, ensuring that communities become essential and willing partners in reintegration efforts, and giving the community the confidence that the individuals concerned have been effectively scrutinized, do not need to be prosecuted, or have been rehabilitated. Reintegration support should also be inclusive of victims and other vulnerable populations to succeed and should be closely associated with community-based restorative justice processes.

### Central Africa

(Angola, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe)<sup>49</sup>

#### A. Terrorism trends

##### 1. Risks

171. The States of the Central Africa subregion face distinct terrorist threats. Boko Haram's terrorist activity has spread from its original area of operation in north-eastern Nigeria into the entire Lake Chad Basin region, affecting the Far North region in Cameroon and Lake Chad Province in Chad. Boko Haram has splintered into two main groups (one of which, the Islamic State West Africa Province (ISWAP), is directly affiliated with ISIL) and a third group, Ba Koura.<sup>50</sup> Collectively, they remain major threats for States around the Lake Chad Basin (see also West Africa Regional outlook).

172. In April 2019, the newest ISIL affiliate, the Islamic State Central Africa Province (ISCAP), claimed responsibility for its first attack in the Democratic Republic of the Congo. Since then, ISCAP has increasingly strengthened. In 2020, ISCAP's operations featured "sophisticated tactics and capabilities" and ISCAP "deployed advanced capabilities during several attacks in Beni and other locations in North Kivu and Ituri Provinces".<sup>51</sup> The aim of ISCAP's successful October 2020 attack on Kangbaya central prison in Beni was to free some 200 ISCAP "operatives and enablers".<sup>52</sup>

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<sup>49</sup> Cabo Verde is also included in the West Africa Regional Outlook.

<sup>50</sup> The Security Council Committee established pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities listed Jama'atu Ahlis-sunna Lidda'awati (Boko Haram) (QDe.138) on 22 May 2014; Abubakar Mohammed Shekau (QDi.322) on 26 June 2014; and the Islamic State in the West Africa Province (ISWAP) (QDe.162) on 20 February 2020, as a splinter group of Boko Haram.

<sup>51</sup> Twelfth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2021/98).

<sup>52</sup> Ibid.



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ISCAP also poses a significant threat in northern Mozambique (see Southern Africa regional outlook) and the links with ISIL in Somalia (see Eastern Africa regional outlook).

173. Violence perpetrated by other armed groups, including in Chad, the Democratic Republic of the Congo and the Central African Republic, continues to pose a threat to the overall stability of this subregion.<sup>53</sup> Armed violence in Central Africa continues unabated, with persistent threats posed by internal and cross-border armed groups challenging the subregion's stability.<sup>54</sup> In the Central African Republic, violence by armed groups further weakened political stability and security conditions, despite the ceasefire imposed pursuant to the 2019 Political Agreement for Peace and Reconciliation in the Central African Republic.<sup>55</sup>

174. The largely informal nature of the economies of this subregion, the predominance of cash, and the limited oversight of economic sectors and of non-profit organizations remain sources of concern. Border controls remain insufficient to detect and prevent movement of criminals, including terrorist suspects and cross-border trafficking in arms. Illicit arms flows throughout the Central African region and the widespread availability of SALW and their ammunition have continued to sustain terrorists and organized armed groups operating in the subregion.<sup>56</sup> Illicit trafficking in natural resources and the risk that terrorist groups would infiltrate and take advantage of gold- and other mineral-producing areas should be closely monitored. The increasing number of human rights violations (including conflict-related sexual violence) attributed to national defence and security forces risks further fuelling the population's distrust of defence and security forces. The humanitarian situation remains a source of serious concern and has been aggravated by the COVID-19 pandemic.<sup>57</sup>

### **B. Implementation of resolution 1373 (2001) in Central Africa**

#### **1. From Prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

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<sup>53</sup> The situation in Central Africa and the activities of the United Nations Regional Office for Central Africa (S/2020/1154).

<sup>54</sup> The situation in Central Africa and the activities of the United Nations Regional Office for Central Africa (S/2020/1154).

<sup>55</sup> Political Agreement for Peace and Reconciliation in the Central African Republic, signed in Bangui on 6 February 2019 (S/2019/145).

<sup>56</sup> Report of the Secretary-General, *Small arms and light weapons* (S/2019/1011).

<sup>57</sup> It is estimated that, in 2021, 2.8 million Central Africans (more than half of the population) will require humanitarian assistance [Office for the Coordination of Humanitarian Affairs, Central African Republic: Situation Report, 9 February 2021, <https://reports.unocha.org/en/country/car/>] and 12.5 million people will require humanitarian assistance in the Lake Chad Basin [OCHA, Humanitarian Snapshot, Lake Chad Basin, [https://reliefweb.int/sites/reliefweb.int/files/resources/20201123\\_LCB\\_humanitarian%20snapshot\\_en%20covid.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/20201123_LCB_humanitarian%20snapshot_en%20covid.pdf), OCHA, Central African Republic: Situation Report, 9 February 2021, <https://reports.unocha.org/en/country/car/>]. In the Lake Chad Basin, the spill over of Boko-Haram violence to Cameroon and Chad has had devastating effects on food security and livelihoods. [The situation in Central Africa and the activities of the United Nations Regional Office for Central Africa (S/2020/1154)] Central Africa has also witnessed a sharp increase in incidents directly affecting humanitarian workers.



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175. In the period since 2016, one State has developed a national counter-terrorism strategy; two States are in the process of doing so. At the regional level, significant progress has been made. On 30 July 2018, the Heads of State and Government of the Economic Community of Central African States (ECCAS) (Angola, Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of the Congo, São Tomé and Príncipe) and the Economic Community of West African States (ECOWAS) adopted the Lomé Declaration on Peace, Security, Stability and the Fight against Terrorism and Violent Extremism, in which they committed to strengthening cooperation on peace and security issues. On 30 August 2018, at a ministerial conference of the Lake Chad Basin Commission, Cameroon, Chad, Niger and Nigeria adopted the Regional Strategy for the Stabilization, Recovery and Resilience of the Boko Haram-affected areas of the Lake Chad Basin (see also regional spotlight: prosecution, reintegration and rehabilitation of individuals associated with Boko Haram in the Lake Chad Basin). Additionally, on 30 July 2020, the Regional Strategy to Combat Terrorism and the Proliferation of Small Arms and Light Weapons in Central Africa and its Action Plan was endorsed by the Heads of States and Government of the ECCAS. Efforts towards the development of national comprehensive and integrated counter-terrorism strategies and their Action Plans should be aligned with those regional agreements.

### **(b) Risk assessment**

176. In the cases of four States existing national intelligence services are mandated to conduct assessments of threats to national security that encompass threat and risk assessments relating to terrorism. It is not clear whether these are shared with law enforcement agencies. Three States have established dedicated units to conduct systematic assessment of the terrorist threat. Law enforcement agencies do not appear to conduct either threat or risk assessments.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

177. Only three States specifically criminalize recruitment to commit acts of terrorism, and two States have adopted provisions aimed at criminalizing the establishment or founding of a terrorist group. Pillar I of the 2020 ECCAS Regional Strategy to Combat Terrorism and the Proliferation of Small Arms and Light Weapons in Central Africa explicitly requires States to put in place measures to “[p]rotect populations and eliminate recruitment by terrorist groups in the Central African region.”

### **(b) Financing of terrorism**

178. Although progress has been made since 2016 and the regional CFT framework has been strengthened through the adoption of Central African Economic and Monetary Community (CEMAC) Regulation No. 1/2016, there remains a lack of capacity to fully implement the CFT





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framework at the national level. CEMAC member States (Cameroon, Central African Republic, Chad, Equatorial Guinea, Gabon, Republic of the Congo) and the Democratic Republic of the Congo have adopted Regulation N°1 CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and Financing of Terrorism and Proliferation in Central Africa. The Regulation is of direct and immediate application in all States concerned, replacing Regulation No. 2/10 of 2 October 2010. CEMAC's revised Regulation No.1/16 includes a definition of the terrorism-financing offence that conforms to article 2 (1) of the 1999 "Terrorist Financing Convention" and now covers both the financing of an individual terrorist or of a terrorist organization. Although article 9 of CEMAC Regulation No. 1/2016 does not explicitly state that terrorism financing is criminalized even if the funds cannot be linked to a specific terrorist act and for any purpose, article 9 (d), which criminalizes the provision of "support to a terrorist or a terrorist group", makes clear that no link is required. Article 9 incorporates treaty-based offences and acts intended to cause death or serious bodily harm, with a terrorist purpose. Only one of the remaining four States has adopted legislation that criminalizes terrorism financing in accordance with the recommendations of FATF. All States except one can proceed to freeze funds without delay, including funds covered by the CEMAC's asset-freezing provisions, but most States have not operationalized or made use of the relevant asset-freezing mechanism under resolution 1373 (2001).

179. Although all States but one have established an FIU, most of the FIU's (eight) do not have financial autonomy and suffer from a lack of resources, including specialized software to analyse STRs. Only one State has undertaken an assessment of terrorism financing risk of the NPOs sector that provides information on financing origins and forms; sectors affected; and geographic distribution of projects. CEMAC Regulation No.1/16 gives the competent authorities the power to seize cash or BNI that are likely to be connected to terrorism financing, for a period no longer than 72 hours. In addition to CEMAC States, two other States have similar enabling legislation. Seven States of the region are members of the Task Force on Money Laundering in Central Africa (*Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale* (GABAC)), which is also a CEMAC body. One State is a member of the ESAAMLG and one State that is not a member of any FSRB has observer status with ESAAMLG. One State is a member of the GIABA.

### (c) Firearms

180. Only two States have updated their legislation regulating SALW, and only two States have established a regulatory framework that includes provisions on the illicit alteration or illicit obliteration of firearms' marking. Following ratification by Angola, the 2010 Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly (Kinshasa Convention) entered into force on 8 March 2017. On 7 December 2018, ECCAS, UNOCA and UNREC launched a joint project for the implementation of the Kinshasa Convention, which is also intended to support ratification of the Convention by the two remaining States of this subregion.





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### **3. Opportunity and border security**

#### **(a) Passenger screening**

181. States of this subregion continue to possess very limited capacity to effectively control their borders and prevent terrorists' mobility. Access to INTERPOL databases has not generally been extended beyond the INTERPOL NCBs to the frontline. There remains a need for most States to strengthen the capacity of their respective NCBs in order for them to gain effective access to key databases relevant to their work and ensure essential connectivity to INTERPOL resources. All States of this subregion participate in the INTERPOL I-ONE project. For the five States equipped with a computerized travellers' immigration entry/exit management system, those systems are located mainly at international airports. Land and sea border control posts (BCPs) continue to rely on manual, paper-based systems. The implementation of API and PNR systems remains partial and marginal. In the cases of two States that do have access to passenger manifests, the available information and technology do not support API and PNR systems. A visa-free circulation policy was approved by all CEMAC States in 2017. However, for freedom of movement to be fully implemented, CEMAC States must introduce biometric ID technology and ensure regional coordination between police and security forces. The States members of the International Conference on the Great Lakes Region (ICGLR) (Angola, Burundi, Central African Republic, Republic of the Congo, Democratic Republic of the Congo) cooperate on the implementation of a regional programme of action which, inter alia, provides for the joint management of border security, efforts to combat transnational crime, and counter-terrorism.

182. Effective implementation of national refugee laws providing for RSD procedures remains lacking. In seven States, there remains a lack of implementation mechanisms that would put in place fair and effective asylum procedures while ensuring that individuals who have planned, facilitated or participated in a terrorist act are denied asylum.

### **4. Bringing terrorists to justice**

#### **(a) Planning and preparation**

183. Only three States criminalize preparation, support and planning of terrorist acts as autonomous offences. Two other States rely on the interpretation given to the general offence of "attempt to commit a terrorist act" in order to criminalize preparatory and accessory acts. One State specifically enables the prosecution of preparatory acts conducted on its territory with the aim of committing a terrorist act abroad.

#### **(b) Capacity to investigate and prosecute**

184. The capacity of the prosecution services to handle complex terrorism cases remains limited. Only two States of this subregion have experience in handling such cases. In one State, counter-



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terrorism offences are still defined under the Military Criminal Code. In another, specialized units have exclusive competence over the investigation, prosecution and trial of acts of terrorism. In addition to CEMAC regulation No. 2/10, five States have adopted specific provisions allowing for the use of SITs inter alia, interception of communications, undercover operations, surveillance and house searches) in terrorist investigations. Conditions of authorization and review of those techniques vary. It is not known to what extent those SITs have been used or tested by the authorities. The sharing of information among law enforcement agencies appears to be rather limited. Law enforcement authorities do not have direct access to databases held by relevant agencies. Additionally, the lack of computerized databases limits timely inter-agency sharing of information.

185. Across the subregion, there continues to be a lack of independent mechanisms responsible for receiving and investigating complaints of human rights violations committed by law enforcement officials, contributing to a climate of de facto impunity in most States of the subregion. Of the five States that have set up a national human rights institution, only two have been accredited “A” status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

### (c) Rule of law

186. The States of the subregion have made legislative progress since 2016. All States but one have now criminalized terrorist offences within their national legislation, with that one State maintaining the offence under its military code. However, definitions of the offences are often broad or contain open-ended language. This raises the risk that they may be wrongly applied to acts beyond those addressed in the international counter-terrorism instruments or to non-violent speech or protest. One State has expressly excluded acts of peaceful protests from falling under acts of terrorism. In April 2020, another State abolished the death penalty for acts of terrorism. In their ongoing dialogue with Member States of this subregion and elsewhere, United Nations human right bodies continue to raise concerns regarding alleged incidents of arbitrary arrest and detention, extended periods of police custody in excess of the prescribed period and pre-trial detention in the absence of legal guarantees, incommunicado detention, and detention of civilians in military custody by defence and security forces for persons suspected of having committed crimes against the security of the State. Shortcomings in the administration of justice have been observed in general, including the lack of independence of the judiciary and insufficient numbers of trained judges, prosecutors and lawyers, and their uneven geographical coverage of the territory compounds access to justice.

187. Six States apply exceptional criminal procedures in terrorism offences (i.e., extended custody, home searches at any time), but none of those provisions is subject to a sunset clause.

### 5. Activating international cooperation



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### (a) Effective mutual legal assistance and extradition

188. Since 2016, no State has developed publicly available guidelines on national laws and procedures to facilitate the processing of MLA or extradition requests. Only two States incorporate the obligation to prosecute in the event that the State refuses to extradite a suspected terrorist. The principle *aut dedere aut iudicare* is established in article 164 of CEMAC Regulation No.01/2016, but this article is limited to terrorism financing.

### (b) Ensuring effective exchange of information and intelligence

189. There is limited information available regarding bilateral cooperation between States in terrorism-related investigations. Three States are part of the International Conference on Peace, Security, Democracy and development in the Great Lakes Region, which has adopted a regional programme of action that, inter alia, provides for the joint management of border security, efforts to combat transnational crime, and counter-terrorism. Two States have incorporated into their legislation the possibility for national authorities to set up joint investigation teams. The counter-terrorism legislation of one State encourages the establishment of bilateral or multilateral mechanisms for the exchange of judicial and operation information on the activities or movement of terrorists.

### Priority recommendations

- Assess terrorism financing risk to NPOs in cooperation with non-profit sector, using FAFT definitions; better protect vulnerable NPOs from terrorism-financing abuse, while recognizing fundamental principle of freedom of association.
- Review and revise legislation to ensure definitions of terrorist acts are clear and precise and do not apply to acts beyond those envisaged by international counter-terrorism instruments; strengthen procedural safeguards for defendants in counter-terrorism investigations and prosecutions incorporating due process rights.
- Update and implement legislative frameworks on control of illicit weapons and ammunition.
- Enhance oversight of law enforcement agencies through establishment or strengthening of national human rights institutions by allocating adequate resources and powers of investigation to existing institutions to ensure compliance with the Paris Principles.
- Ensure connectivity of land and border posts to the INTERPOL I-24/7 system; promote use of INTERPOL databases and sharing of national information to enhance cooperation,



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among national border-controls and law enforcement services, and with foreign counterparts.

### Asia

#### Pacific Islands

(Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu)

#### A. Terrorism trends

##### 1. Risks

190. No State of the Pacific Islands subregion has experienced a terrorist attack. The terrorism risk to States of the subregion is considered to be low, owing to their isolated geographic location, transport limitations, their small size and populations (factors that deters anonymity), and their relatively small financial and commercial sectors. Pacific Island States have porous maritime borders and limited capacity to manage their territorial waters. They are also vulnerable to cybersecurity threats. Although there is no current indication that FTFs are being recruited from any of the Pacific Island States or receiving training or other logistical support from the subregion, the States of the subregion are nevertheless vulnerable to potential use as a haven for terrorist activity, owing to their major resource constraints, which hinder the implementation of required control measures in many areas of counter-terrorism.

191. Little information is available to determine the overall institutional or operational approach taken by Governments with regard to countering terrorism or overseeing counter-terrorism activities. Governments of the subregion generally appear to regard the terrorism threat as low and consequently devote limited law enforcement resources primarily to the investigation of other crimes. Nonetheless, the States of the subregion have made good progress in implementing a variety of counter-terrorism measures in compliance with resolution 1373 (2001). They have enacted counter-terrorism legislation and made efforts to further strengthen subregional coordination and cooperation, especially in the maritime context.

192. Although crime levels are low in most Pacific Island States, incidents of transnational organized crime (including trafficking in drugs and counterfeit goods, human trafficking, illegal fishing, and environmental crimes) have been detected throughout the subregion. In addition, the COVID-19 pandemic and its effects on tourism (the mainstay of many economies of the subregion) may provide opportunities for criminal and terrorist organizations and individuals to exploit the subregion's vulnerabilities, particularly for money-laundering and terrorism-financing purposes. States of the subregion have strengthened law enforcement measures to combat transnational



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crime, and those measures could be adapted for counter-terrorism purposes if necessary. Several initiatives have been undertaken to raise financial institutions' awareness of their reporting requirements pursuant to national AML/CFT legislation.

### **B. Implementation of resolution 1373 (2001) in the Pacific Islands subregion**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

193. Of the 12 States of the Pacific Islands subregion, only Fiji has adopted a counter-terrorism strategy. Adopted in 2010, the strategy is based on three pillars: preparedness, response and recovery. However, it is unclear to what extent the strategy is integrated across all its government agencies. In October 2018, Samoa introduced a national security policy that identifies border security, natural disasters and climate change, cybersecurity, and two aspects of human security as the main threats to its security and stability. Papua New Guinea has taken steps to create policies and strategies to deal with four major areas, all of which could be components in a comprehensive and integrated counter-terrorism strategy.

##### **(b) Risk assessment**

194. Although Fiji and Samoa have conducted risk assessments of their respective financial sectors with respect to terrorism financing, only Samoa has conducted a terrorism-specific risk assessment. States that participate in the Pacific Transnational Crime Network (PTCN) and its Coordination Centre (PTCCC) likely conduct threat and risk assessments relating to organized crime.

#### **2. Addressing enablers of terrorism**

##### **(a) Recruitment**

195. Ten States of the subregion have introduced legislative provisions that enable them to address recruitment to terrorism by criminalizing the recruitment of a person to be a member of a terrorist group or to participate in a terrorist act. This marks a small improvement since the previous survey. The legislation of one State criminalizes only recruitment to a proscribed terrorist organization.

##### **(b) Financing of terrorism**

196. Only one Member State has no legislation on terrorism financing. The other 11 States have criminalized terrorism financing as a standalone offence. Eight States have criminalized terrorism financing even if the funds cannot be linked to a specific terrorist act, and nine criminalize it even if the funds have not been used to commit, or attempt to commit a terrorist act.



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197. The legislation of nine States covers the financing of both an individual terrorist and a terrorist organization. No State has fully established and implemented an effective mechanism for freezing assets without delay as required by resolution 1373 (2001), and no State has frozen assets pursuant to resolution 1373 (2001). Several States have, however, introduced asset-freezing legislation, as well as some form of system to freeze suspected terrorist funds.

198. No State has a fully functional FIU with satisfactory staffing, training and equipment. Although the majority of States have introduced adequate legislative provisions governing the power, functions and operations of their FIUs, most FIUs lack the human and other resources to ensure full functionality, and several are not considered to operate independently of their Governments. Many FIUs of this subregion receive technical assistance and support to strengthen their capacity to conduct financial analysis and to process and disseminate reports. Several FIUs are applying for membership in an intergovernmental group of FIUs.

199. The border authorities of 10 States of the subregion have been given the legal authority to stop or restrain currency and BNI if an officer suspects it to be related to money-laundering or terrorism financing. In most States, the law is linked to the definitions of “serious offence” or “unlawful activity”. In Fiji, Palau, Samoa and the Solomon Islands, the law specifically cites terrorism financing. Progress has been made since the previous survey with respect to assessing the terrorism-financing risk to the non-profit sector. Five States have reviewed their NPO sectors as part of their NRAs. Marshall Islands began its NRA process in 2018, and Tonga is in the process of finalizing its first NRA. Nine Member States are members of the Asia/Pacific Group on Money Laundering (APG) and three Member States which are not members of any FSRB have observer status.

### **(c) Firearms**

200. Eleven States have to some extent criminalized the illegal trafficking of firearms, the related acts of illegal manufacturing, the illicit manufacturing or alteration of firearms or the illicit obliteration of their markings. The States of the subregion are all parties to the Nadi Framework, which commits its members to implement legislative measures that criminalize the illicit manufacturing, trafficking, sale and possession of firearms, ammunition and other related materials. Only Fiji, Nauru and Palau are signatories to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (“Firearms Protocol”).

### **3. Opportunity and border security**

#### **(a) Passenger screening**





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201. Only three of the Pacific Island States are not yet members of INTERPOL. This represents considerable progress since the previous survey. Services and training are still being introduced in the newest three INTERPOL member States, and use of the I-24/7 system and other data tools is not yet widespread. Only one State of the subregion is known to have extended available INTERPOL database tools and watch lists to frontline immigration and border-control authorities, and no State is known to have established effective capacity to screen travellers at ports of entry using the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List and INTERPOL Red Notices. Nine States are members of the Commonwealth, allowing visa-free entry for citizens of States participating in that community agreement.<sup>58</sup> No State uses API or PNR systems, but four States (Marshall Islands, Nauru, Tuvalu and Vanuatu) have introduced legislation requiring that inbound air and sea craft give advance notice and information on all passengers and crew. Fiji has formally adopted the ICAO Traveller Identification Programme (ICAO TRIP) Strategy, and most States have introduced legislation criminalizing the use of fraudulent travel documents.

202. Some States of the subregion are beginning to use automated systems and are creating databases to provide a more systematic means of recording the movement of passengers. Marshall Islands has installed the IOM MIDAS Border Management System at most of its international air and seaports, thereby providing for the capability to collect, process, store and analyse traveller information in real time. Another State has developed a Border-Management System database. Four States are known to require travellers to fill in arrival and departure cards, and two States require visas for all incoming non-citizens. Only a few States are able to record and store data of travellers entering and exiting their borders.

203. The border-control and law enforcement agencies of most States cooperate with their counterparts in other Pacific Island States and also cooperate closely with like agencies in Australia, New Zealand and the United States to enhance border security, share information, combat the use of fraudulent travel documents, and identify and prevent the travel of terrorists. Three States have entered into Compacts of Free Association with the United States and coordinate closely with the United States on security issues

204. Because this subregion is not a typical destination for refugees and persons seeking asylum, few States have introduced laws or processes for granting asylum or refugee status. Only Marshall Islands and Palau have introduced legislation specifically stating that it shall not grant refugee status or provide asylum to any terrorist or alleged offender. Nauru and Papua New Guinea have established legal frameworks for persons claiming refugee status and asylum that require the provision of identification and any other information required by the Government and would prevent the granting of asylum to a person known to have planned, facilitated or participated in a terrorist act. However, concerns have been raised at the manner in which the two States treat

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<sup>58</sup> Commonwealth members include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.



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asylum seekers processed on behalf of another State. The Government of Fiji works closely with UNHCR to fulfil its obligations pursuant to the 1951 Refugee Convention.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

205. Eleven States of the subregion have established jurisdiction to prosecute acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. However, in view of the lack of terrorism proceedings throughout the subregion, State practice is uncertain in this regard. Marshall Islands, Palau, Solomon Islands and Vanuatu do specifically criminalize preparing and planning for terrorism and/or a terrorist act, but the other eight States rely on general legislative provisions on accomplice liability for serious offences to criminalize preparatory and accessory acts, rather than criminalizing them as standalone offences. Eight States criminalize such acts as solicitation or conspiring to commit terrorist acts or other forms of supporting terrorist acts.

##### **(b) Capacity to investigate and prosecute**

206. No State of the subregion has tried a terrorism case. Although the national prosecution offices of most States do appear to have the authority to handle complex terrorism cases, there is insufficient information to determine whether they have the capacity and technical means. Since most Pacific Island States have small populations and frequently staff their attorney-general's offices and judicial offices with experts from foreign States, it is likely that they would not have the necessary human resources or expertise. Law enforcement agencies do make use of SITs, but mostly in relation to transnational organized crime cases.

207. Fiji's police force includes a dedicated Cybercrime Investigations Unit, staffed by trained investigators and technical officers, to perform computer and mobile forensics. The Government plans to acquire police forensic document examination equipment and IT equipment. The Marshall Islands Police Department includes an Undercover Investigation Division and the law authorizes the use of undercover surveillance and electronic surveillance and audio recording. Listening devices to intercept communications, access to postal articles, and search-and-entry powers are in use in Papua New Guinea, and optical surveillance devices and wiretapping to intercept and record private communications are permitted in Samoa. Vanuatu's Police Commissioner can authorize undercover operations, surveillance warrants, and controlled delivery of property for specified offences.



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208. Although most Member States maintain criminal databases, and law enforcement agencies participating in the Pacific Transnational Crime Network (PTCN)<sup>59</sup> and contributing to the Pacific Transnational Crime Coordination Centre (PTCCC) will have access to data submitted to the PTCN through its various Transnational Crime Units (TCUs). Interoperability and information-sharing between law enforcement, border control, customs, FIUs and other agencies with counter-terrorism mandates differ by State, though most States in this subregion are able to share information with national and regional counterparts.

209. There appears to be some form of independent or civilian mechanism in place for the oversight of law enforcement agencies of most Pacific Island States. Eight States of the subregion have established Ombudsperson's Offices (whether through legislation or pursuant to their Constitutions). However, two of those Offices have been vacant for several years. Four States have not established Ombudsperson's Offices, but two States have set up commissions to hear complaints against leaders and public servants.

### (c) Rule of law

210. One State has not adopted any counter-terrorism legislation, has not specifically criminalized terrorist acts, and has not defined terrorist acts in its criminal or other legislation. Only three States have defined terrorist acts in strict accordance with the international counter-terrorism instruments and have included exclusions for advocacy, protest, demonstration and dissent. The other eight States either use overly broad or vague language that could be used to criminalize acts well beyond those envisaged by the international counter-terrorism instruments or place limitations on terrorist acts by stating they must involve "serious" damage, bodily injury, risk or disruption (without defining parameters for "serious").

211. The Constitutions of all the Pacific Island States provide for the protection of human rights and the rule of law (inter alia, prohibiting arbitrary arrest and detention, upholding rights to a fair and public trial, and providing for the presumption of innocence until proven guilty). There is no State practice with regard to criminal procedure in terrorism cases, but there is no reason to suspect that States would disrespect the rule of law.

212. However, the counter-terrorism legal frameworks of four States do contain provisions granting special powers for detention without criminal charge. The counter-terrorism legislation of Kiribati, Nauru and Tonga empowers designated officials to order a non-citizen to leave and remain outside the State where there are reasonable grounds to suspect that the person has been or will be involved in the commission of a terrorist act. A person against whom such an order is made may be detained, without filing criminal charges, for seven days, or longer as needed, in order to arrange their removal from the State. Marshall Islands has similar legislation, but the initial period

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<sup>59</sup> The PTCN provides a police-led proactive criminal intelligence and investigative capability to combat transnational crime in the Pacific through a multi-agency and regional approach.



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of detention is 48 hours (which may be extended by court order for an additional seven days, without the need for the filing of criminal charges against the person). The legislation of Marshall Islands also permits such detention to be enacted to prevent a person from interfering with an investigation relating to suspected terrorism. The extended period of time for removal is logical, considering the geographical location of Pacific Island States and the limited number of flights and passenger ships servicing them, but the existence of such administrative powers (even though never utilized) raise some concern.

213. Papua New Guinea has adopted special laws that confer specific powers on law enforcement officers in terrorism cases, allowing the State to designate prohibited and restricted areas, in which police can make arrests without warrants when terrorism is likely. However, the designation of such areas shall not exceed three months.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

214. All 12 States of the subregion have enacted extradition and MLA laws. Although no State of the subregion has developed separate guidelines for their domestic laws and procedures, the extradition and MLA laws of all States of the subregion contain clear provisions for rules and procedures, and the laws are made publicly available. Improvements could be made with regard to publicizing the names and contact information of the relevant staff of central authorities. Nine States are part of the Commonwealth's cooperation in criminal matters between States such as the "Harare Scheme"<sup>60</sup> for MLA and the "London Scheme"<sup>61</sup> for Extradition. Eleven States have enshrined the "extradite or prosecute" principle in their national legislation. The remaining State has neither criminalized terrorism, nor all the offences set forth in the international counter-terrorism instruments. The same State has set limitations on what is considered a national crime. Its jurisdiction to prosecute crimes committed outside its borders is also limited.

#### **(b) Ensuring effective exchange of information and intelligence**

215. Although the States of the subregion cooperate among themselves and cooperate closely with Australia, New Zealand, and the United States in areas relating to transnational and organized crime, money-laundering, fraud, and other criminal activities, they are not known to have conducted bilateral cooperation in investigations relating to terrorism cases with foreign authorities. Most States of the subregion have established a Transnational Crime Unit<sup>62</sup> that works through the PTCN to share information and engage in law enforcement cooperation. In Vanuatu,

<sup>60</sup>[https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf)

<sup>61</sup>[https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf)

<sup>62</sup> The network has expanded to consist of 28 locally staffed Transnational Crime Units (TCU) located within 20 Pacific Island States. The Pacific Transnational Crime Coordination Centre (PTCCC), based in Apia, Samoa, performs the central coordination role of managing, enhancing, and disseminating law enforcement intelligence products produced by the PTCCC.



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police officers have been seconded to the Australian Federal Police and to Fiji and Samoa, through the PTCN. Vanuatu also has an agreement with the United States on maritime security, including for investigations and other forms of cooperation. Several States sent police officers and troops to the Solomon Islands as part of the Regional Assistance Mission to Solomon Islands (RAMSI), which officially ended in June 2017.

### **Priority recommendations**

- Develop comprehensive and integrated national counter-terrorism strategies and effective mechanisms to implement them, as required by Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015).
- Improve effectiveness of CFT legislation and institutions, to include by providing capacity building for FIUs and supervisory and regulatory bodies, and by amending asset-freezing mechanisms to be in compliance with resolution 1373 (2001).
- Strengthen the capability of border control and customs officers to effectively screen persons and baggage crossing their borders to prevent terrorist travel and the illicit cross-border movement of funds, to include methods of enhancing the identification of fraudulent travel documents, the identification of potential terrorist travellers, counterfeit currency identification, intelligence-led risk analysis, and passenger screening.
- Strengthen use of INTERPOL databases and watch lists and, where possible, extend connectivity to all agencies involved in countering terrorism and transnational organized crime, as well as to frontline officers dealing with border security.
- Implement API/PNR systems and conduct border controls based on risk assessment in accordance with relevant ICAO standards and recommended practices and the requirements of Security Council resolutions 2396 (2017) and 2482 (2019), with full respect for human rights and fundamental freedoms.
- Ensure that all special administrative procedures and powers for detention and expulsion be conducted in accordance with the principle of non-refoulement and other human rights requirements.

### **South-East Asia**

**(Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, Viet Nam)**



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### A. Terrorism trends

#### 1. Risks

216. Since the previous global survey, ISIL has continued to lose territory in Iraq and the Syrian Arab Republic and has become more active in South-East Asia. ISIL-inspired FTFs have infiltrated the region and local terrorist groups continue to be inspired by, and pledge allegiance to, ISIL. South-East Asia remains a source, transit point and destination for ISIL fighters, as well as militants connected to, inter alia, the Abu Sayyaf Group (ASG) (also known as the Islamic State East Asia Province), Al-Qaida, and Jemaah Islamiyah.

217. ISIL leaders endorsed the jihad declared on the island of Mindanao in the southern Philippines in 2016 and encouraged fighters unable to reach the Syrian Arab Republic to instead travel to the Philippines. Governments of the region expressed strong concern that ISIL would attempt to use the southern Philippines as a gateway to establish a foothold in South-East Asia. In May 2017, FTFs affiliated with ISIL and militants associated with the ASG and the Maute Group (also known as the Islamic State of Lanao) attacked and occupied sections of the lakeside town of Marawi, on Mindanao. Clashes with government forces erupted, leading to a five-month siege that devastated Marawi City. Following the siege, the Philippine Government established the autonomous local Muslim government in Mindanao and is making efforts to involve ex-terrorist groups. However, opposing militants continue to remain active in the southern Philippines, where they have perpetrated and attempted terrorist acts. The ASG has continued to operate out of the Philippines' southern islands, conducting kidnap-for-ransom and other attacks against maritime interests in the Sulu-Celebes Sea and Eastern Sabah region.

218. ISIL claimed responsibility for attacks in Indonesia, Malaysia and the Philippines from 2016 to 2019. Governments of South-East Asia have expressed concern about continued support for ISIL and affiliated groups of this subregion and the region's attraction for FTFs. Military officials from the Philippines, Malaysia, and Indonesia have all noted the potential for FTFs to flow easily between Indonesia, the Sabah region of Malaysia, and the Mindanao Island area of the Philippines, as it is difficult to prevent the flow of militants across the Sulu-Celebes Sea and porous maritime borders. Indonesia, Malaysia and the Philippines have been working to enhance their cooperation at all levels under the Trilateral Cooperation Arrangement signed in 2016. 219.

Since 2016, pro-ISIL groups and individuals have continued to carry out mass casualty attacks, focusing on "soft" targets, including places of worship and hotels, **as well as attacks against** law enforcement, and national government interests. In addition, the increase in the number of women becoming involved with ISIL and its affiliates, including in carrying out suicide bombings, continues to be a concern.

220. Governments are also concerned about the terrorism threat posed by the potential return of nationals from States of this subregion who travelled to support ISIL in the Syrian Arab Republic





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and Iraq. As of January 2021, a number of FTFs from South-East Asia have returned to their home States or relocated to other States of this subregion. The risk of radicalization and recruitment in detention and correctional facilities is high in the South-East Asia subregion and many States are experiencing significant problems relating to overcrowding in prisons exacerbating that risk.<sup>63</sup> Additionally, a number of prisoners previously incarcerated on terrorism charges have already or are approaching the end of their sentences, and pose a threat upon their release.<sup>64</sup>

221. Governments of South-East Asia have noted that terrorist recruitment in the subregion has mostly been carried out through peer-to-peer interactions, rather than through online platforms. Recruitment has declined during the COVID-19 pandemic (the online recruitment efforts of ISIL in Malaysia have showed a sharp decline during this period). Governments are aware, however, that local terrorist groups may be repositioning themselves behind the scene owing to COVID-19-related restrictions and are alert to the potential for a surge in new local terrorist groups once restrictions are fully lifted. One trend observed in South-East Asia is ISIL's change in emphasis from recruiting fighters and resources for its campaign in the Middle East to encouraging local groups to conduct copycat attacks and exploiting local grievances to incite terrorism.

222. The rapid increase in the availability and use of the Internet in the States of South-East Asia has facilitated an increase in the spread of terrorist-related propaganda via the Internet and the abuse of social media platforms to share **terrorist** narratives and incite violence. **Terrorist** groups often use social media to gain sympathy by portraying allegedly unfair treatment by the authorities. The **misuse** of social media to spread **terrorist** propaganda surged in the Philippines following the Mindanao siege, with terrorist groups using online platforms to brand themselves, spread misinformation, and raise funds. Law enforcement agencies of all the States of this subregion (especially those in the Philippines, Malaysia, Indonesia and Singapore) have been monitoring the online activities of known terrorist groups and extremist militants. Some States have established specialized units and agencies. The Royal Malaysia Police (RMP) have established a counter-messaging centre, and both the Philippines National Police (PNP) and the Department of Justice of the Philippines have established cyberunits and an office for addressing cybercrime.

### 3. **Regional spotlight: “Whole-of-society” approach to countering terrorism and violent extremism conducive to terrorism in South-East Asia**

223. Paragraph 32 of resolution 2396 (2017) underscores the importance of a whole of government approach and recognizes the role civil society organizations can play, including in the health, social welfare and education sectors in contributing to the rehabilitation and reintegration of returning and relocating foreign terrorist fighters and their families, as civil society

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<sup>63</sup> According to discussions with Member States during recent visits.

<sup>64</sup> Abu Bakar Ba'asyir is an Indonesian spiritual leader of Jemaah Islamiyah who masterminded the 2002 Bali Bombing and was released from prison in January 2021.



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organizations may have relevant knowledge of, access to and engagement with local communities to be able to confront the challenges of recruitment and radicalization to violence. All States of this subregion are aware of the importance of adopting a “whole-of-society” approach in countering terrorism and the value of engaging with, and including, relevant stakeholders across Government, civil society and the private sector.

224. States of this subregion have established ties with the private sector and set up public-private partnerships (PPP) in a range of critical areas (e.g., air and maritime security and the protection of critical infrastructure and “soft” targets). States have also developed PPP to address both the preventive and investigative aspects of CFT. For example, Malaysia has established an AML/CFT training centre for government officials and employees of financial institutions. In 2020, Malaysia launched the MyFINet initiative (involving the Central Bank, police, customs, and 18 reporting institutions) to facilitate information-sharing between law enforcement agencies and reporting institutions aimed at strengthening the detection and investigation of terrorism financing. In 2017, Singapore established the AML/CFT Industry Partnership (ACIP) between the Central Bank, the police, and private financial institutions to encourage and enhance case-specific investigative collaboration. Singapore also recently set up a 24/7 Task Force (which includes money remittance companies) to conduct investigations into terrorist attacks. Indonesia’s FIU is introducing an information-sharing platform for law enforcement agencies and the private sector in 2021 to help prevent terrorism financing.

225. Indonesia, Malaysia and the Philippines have also formed PPP with CSPs located in the subregion to take action against online terrorist activities such as online propaganda, recruitment, incitement and fundraising. In 2018, Indonesia co-hosted the South-East Asian subregional meeting on counter-terrorism (attended by several United States-based CSPs), which focused on cooperation between Governments and technology companies to tackle online terrorist propaganda. Several large CSPs have since established dedicated resources (including teams of legal professionals located in regional or national offices) to facilitate law enforcement cooperation and handle requests for content takedown, content preservation, and digital evidence. Overall, although steps need to be taken to ensure the protection of freedom of expression and privacy, there has been significant progress in this subregion with respect to cooperation between Governments and the private sector to counter terrorist exploitation of the Internet.

226. A number of States have been enhancing their risk assessment ability by creating think tanks and research institutes or forming relationships with universities to integrate academia into government policy. The Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT), located in the Ministry of Foreign Affairs of Malaysia, has been conducting in-depth research on youth in relation to countering terrorism. The Government of Malaysia also cooperates with the International Islamic University of Malaysia (IIUM) in this area. Singapore has created the International Centre for Political Violence and Terrorism Research (ICPVTR) within the S. Rajaratnam School of International Studies (RSIS) at Nanyang Technological University.



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227. Some States of South-East Asia are working closely with local communities and non-governmental actors in countering violent extremism leading to terrorism. Several States have developed national action plans and promote a whole-of-society approach that involves community and religious leaders, academia and educators, business owners, health and social workers, women's and youth groups, and a range of CSOs, in areas such as prevention, detection, rehabilitation and reintegration. The Association of South-east Asian Nations (ASEAN) has adopted the ASEAN Plan of Action (PoA) to Prevent and Counter the Rise of Radicalization and Violent Extremism 2018-2021 and the Work Plan of the ASEAN PoA 2019-2025 (Bali Work Plan), which set out priority areas, activities and outcomes for government agencies to strengthen legislation, enhance good governance, improve law enforcement measures, and expand partnerships to support a whole-of-society approach throughout the region.

228. SEARCCT has organized nationwide youth programmes on “building community resilience” and has partnered with an Australian university to strengthen engagement between Governments and CSOs across South-East Asia. As a preventive strategy, Indonesia's National Counter-Terrorism Agency has recruited hundreds of youths nationwide to be “Ambassadors of Peace”. Indonesia works with a CSO to train school teachers to identify the drivers of radicalization to terrorism and several States are developing community-based warning systems to help detect persons who may be vulnerable to radicalization or recruitment to terrorism.

229. All States of this subregion are aware of the need for disengagement, rehabilitation and reintegration programmes. Some States have focused on countering the spread of violent extremism as and when conducive to terrorism and establishing terrorist deradicalization programmes in prison settings. (Prison overcrowding approaches nearly 600 per cent in several States of the subregion.) Two States have recently constructed new maximum-security prisons to hold terrorist prisoners separately from the rest of the prison population. Aware that terrorist prisoners will eventually serve their sentences and be released into society, most States of this subregion have created rehabilitation and reintegration programmes. In several States, these programmes begin as institution-based treatment, then follow a multi-disciplinary approach involving correctional offices and community stakeholders. For example, Singapore's Religious Rehabilitation Group (RRG) — a volunteer organization consisting of Islamic scholars and teachers — has successfully assisted Singapore's Prison Service in counselling detainees radicalized to violence. In Indonesia, CSOs have provided prison staff with training in managing terrorist inmates. Community stakeholders are expected to play active roles in the reintegration of released terrorist prisoners (as are the rehabilitated prisoners themselves). Both Indonesia and the Philippines have had success in deradicalizing terrorists via their rehabilitation and reintegration programmes and have employed rehabilitated former terrorists to help rehabilitate and reintegrate others. Governments of South-East Asia have recently intensified efforts to implement a whole-of-society approach for post-release, community-based treatment.



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230. As the number of CSOs working with Governments on CVE has increased, States of this subregion have begun to develop tools to catalogue the work of CSOs and provide platforms to help coordinate their roles and activities. The Philippines, for example has developed a roster of CSOs and international organizations and, in 2019, established a Country Support Mechanism to coordinate Global Community Engagement and Relief Fund (GCERF) funding for CVE programmes. Indonesia has also mapped existing CVE activities and created a partnership platform between the Government and community stakeholders to avoid duplication and facilitate more effective coordination. The effectiveness of the whole-of-society approach to countering terrorism and violent extremism conducive to terrorism has been proven, and the Committee recognizes the good practice of collaborative PPP relationships and successful cooperation between Governments and CSOs in South-East Asia.

### **B. Implementation of resolution 1373 (2001) in South-East Asia**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

231. Malaysia and Singapore have adopted comprehensive and integrated counter-terrorism strategies and action plans and have improved their coordination mechanisms; The Philippines adopted its National Action Plan on Preventing and Countering Violent Extremism (NAP-P/CVE) in 2019 and Indonesia issued a Presidential regulation in January 2021 on its NAP-P/CVE that leads to terrorism 2020-2021. Over the past five years, they have acknowledged the importance of “whole-of-Government” and “whole-of-society” approaches and have been making concerted efforts to implement such methodologies, involving a range of stakeholders (e.g., government agencies, civil society and the private sector) in the development of strategies and policies concerning counter-terrorism and other areas of governance.

##### **(b) Risk assessment**

232. The law enforcement agencies of five States of the subregion are known to conduct comprehensive counter-terrorism risk assessments, as well as some sector-focused risk assessments (e.g., on airport security, critical infrastructure, terrorism financing and border control) in cooperation with relevant operational partners and depending on the threats and vulnerabilities of the States concerned. Collective efforts have been made to enable FIUs to conduct regional terrorism-financing risk assessments. Indonesia’s FIU leads an annual counter-financing of terrorism summit and works in close cooperation with the FIU of Australia. The FIUs of Australia, Indonesia, Malaysia, and the Philippines have established an FIU analyst exchange programme for the purpose of tracking terrorism financing.

#### **2. Addressing enablers of terrorism**

##### **(a) Recruitment**



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233. Since the previous survey, Indonesia introduced amendments to its counter-terrorism law in 2018 and the Philippines introduced a new counter-terrorism law 2020 and several States have amended their criminal codes to criminalize recruitment of members to a terrorist group. Nine of the 11 States of the subregion specifically and fully criminalize terrorist recruitment. The other two States can use existing general legal provisions to punish recruitment to terrorism.

### **(b) Financing of terrorism**

234. Over the past five years, all South-East Asian States have made great progress in countering the financing of terrorism. All States have criminalized the terrorism-financing offence as a standalone offence, and all States but two penalize the financing of both terrorist individuals and terrorist groups. All States are parties to the 1999 International Convention for the Suppression of the Financing of Terrorism and are active members of the Asia/Pacific Group on Money Laundering (APG).

235. All States of this subregion have introduced mechanisms to freeze terrorist assets and funds “without delay” in accordance with resolution 1373 (2001), but five States have not yet tested their mechanisms, and several are not able to implement this in practice. All the States of this subregion have established an operational FIU (of which seven are considered to be fully functional). The FIUs of seven States actively exchange information through an intergovernmental group to ensure efficient information-sharing. Several States have strengthened capabilities to analyse and investigate terrorism financing. Singapore recently established a 24/7 Task Force (which includes private sector entities and money remittance companies) to support terrorism-financing investigations in the context of a specific terrorist attack.

236. All States of this subregion have declaration or disclosure systems in place to detect cash and BNI at international airports. Six States empower the relevant authorities to stop and restrain currency and BNI in the event of a suspicion of terrorism financing.

237. Three States have reviewed their NPO sectors for terrorism-financing risks and have indicated their intention to conduct more detailed reviews. All States are members of the APG, and two States are also members of the FATF.

### **(c) Firearms**

238. The smuggling of SALW, including firearms, remains prevalent in some States of this subregion as a means of fundraising and weapons supply for local terrorist groups. In 2020, four States, acting in conjunction with INTERPOL, conducted a border security operation entitled “Maharlika III” to target terrorists and organized criminal groups, which resulted in the confiscation of more than 13,000 firearms with a value of more than one million euros and the





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arrest of an ASG member. In another State, efforts have begun to decommission former militants and weapons and plans to decommission 40,000 former combatants and weapons by 2022.

239. All States criminalize the illicit manufacturing, trafficking, illicit import and export of firearms, but only three Member States specifically criminalize the alteration of firearms or the obliteration of their markings. Several States are working to control access to firearms by law enforcement officials, following incidents in which firearms and radioactive materials went missing from government facilities and police officers were involved in terrorist attacks.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

240. Singapore has connected frontline immigration security screening process to the INTERPOL SLTD database and Red Notices. Although all the other States have access to INTERPOL I-24/7 databases and tools, some States have never checked travel documents against the SLTD database or Red Notices. Four States include both INTERPOL data and information from the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List in their national watch lists (which are available to frontline border control officers). One State has yet to set up electronic systems for scanning travel documents. States of this subregion are taking steps to improve the security and issuance of national travel documents by introducing biometric features and ensuring the integrity of breeder documents. All States but one issue e-passports. Five States are all participants in the ICAO Public Key Directory (PKD).

241. Three States implement iAPI and PNR, whereas two other States implement API and PNR at their major international airports; one State implements only iAPI. Five Member States have neither API nor PNR. In December 2020, one State signed legislation to adopt API and is currently a beneficiary of the UN Countering Terrorist Travel Programme. In the maritime domain, there is no standardized requirement for vessels to provide manifests or passenger lists, and most States do not implement API or PNR at their international seaports. Three States are members of the Commonwealth, allowing visa-free entry for citizens of States<sup>65</sup> participating in that community agreement.

242. All States have a system in place to record persons crossing their borders. Whereas some use sophisticated, real-time biometric systems to collect and store traveller entry/exit information, others have less rigorous systems in place. Two States have established electronic border control systems that are linked to the headquarters of several key department. One State uses the PISCES<sup>66</sup> system; another State operates a Border Management Information System (BMIS) at all ports and

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<sup>65</sup> Commonwealth Members include Bangladesh, India, Maldives, Pakistan, and Sri Lanka.

<sup>66</sup> A border-management tool based on biometrics supported by the U.S. Department of State's Terrorist Interdiction Program.





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records the biographical data of all travellers entering and exiting the State. Four States employ varying degrees of enhanced biometric systems at key points of entry.

243. Cross-border or intraregional cooperation in South-East Asia is hampered by stark differences in border-management capacities. ASEAN (which includes 10 States of this subregion) has stated that a shared regional border-management approach is required and that Member States must work together to respond to cross-border crime and security threats. Some steps have been taken to realize this goal. Most States have received training from or cooperated with foreign counterparts to enhance the capacity of border control officials to detect fraudulent travel documents, identify travellers who may pose security risks, and screen passengers.

244. Only three States are parties to the 1951 Refugee Convention and its 1967 Protocol. UNHCR works closely with in two States in determining refugee status. UNHCR is wholly responsible for RSD in three Member States that have no national asylum system in place. Two States do not accept asylum seekers or refugees. One State has established an RSD procedure which allows for thorough review of applicants, as well as appeal of first-instance decisions. Another State has put in place a system allowing it to determine refugee and asylum status and has recently amended its registration procedure to ensure that persons seeking shelter in Thailand are not members of terrorist groups.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

245. Two States revised their counter-terrorism laws in 2018 and 2020 respectively, introducing a number of new elements required by the relevant Security Council resolutions. Whereas three States specifically criminalize preparing and planning for terrorism and/or a terrorist act, the other eight rely on general legislative provisions on accomplice liability for serious offences to criminalize preparatory and accessory acts. Most States of this subregion criminalize solicitation or conspiring to commit terrorist acts or other forms of supporting terrorist acts. However, several States do not appear to cover preparatory or accessory acts conducted within their borders with the aim of committing terrorist acts against other States.

##### **(b) Capacity to investigate and prosecute**

246. Three States have established dedicated counter-terrorism units within both their police and prosecution services. Both countries have investigated and prosecuted a considerable number of terrorism cases, independently and also through bilateral cooperation. They maintain close investigative cooperation and have also established law enforcement, intelligence, military and diplomatic channels to engage with relevant entities in conflict zone States and neighbouring States to collect information about their own nationals who travelled in support of ISIL, Al-Qaida, and affiliated terrorist organizations. The capacity of States less affected by terrorism remains untested.



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247. The legislation of all States of South-East Asia specifically provides for the interception of communications with a court order in the investigation of terrorism cases. Some States provide for various restriction orders (including attaching an electronic monitoring device to a released terrorist suspect) with the court order. Other SITs, such as undercover operations, appear to be employed within the framework of voluntary investigations. Some States may use lengthy preventive or administrative detention periods during investigations and prosecution of terrorism cases to circumvent strict time restrictions provided for in the codes of criminal procedure. Wire-tapping, the recording of telecommunications, the interception of electronic and postal communications, and covert surveillance are all commonly authorized and utilized SITs in most States of the subregion.

248. A growing trend to authorize the involvement of the military in counter-terrorism operations has been noted in South-East Asia, reflecting the occurrence of high-risk terrorism situations. In 2018, one State introduced a new legal provision establishing the Military Joint Special Operations Command and allowing the involvement of the military in counter-terrorism operations. In 2016, another State established a task force (the subregion's first integrated security force for responding to terrorist threats), which consists of multiple law enforcement agencies and the military. In another State, the military of has been involved in, and led, several key counter-terrorism operations in 2017.

249. There appears to be some form of independent or civilian mechanism in place for oversight of law enforcement agencies in four States of the subregion, and limited review in a further two States. In Indonesia, a number of offices and commissions (including the National Ombudsman, the National Police Commission and the National Human Rights Commission) can provide external oversight mechanisms for police work. Timor-Leste has established the Office of the Ombudsman for Human Rights and Justice, which focuses in particular on the activities of its security services. In Thailand, police oversight is exercised through a system of parliamentary committee external oversight and internal police administrative oversight mechanisms.

### **(c) Rule of law**

250. States of the subregion have introduced varying definitions of terrorism into their legislation. Two States have clearly defined terrorist act in their legislation and one State follows model legislation. The other eight States either use overly broad or vague language that could be used to criminalize acts well beyond those envisaged by international counter-terrorism instruments. Four States have been reported by human rights entities for having used counter-terrorism measures to suppress political dissidents and human rights defenders.

251. With regard to criminal procedure in terrorism cases, all States follow a process in which terrorism offences are presented and tried at regular criminal courts. In accordance with the



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Constitutions of the States of the subregion, fair trials are guaranteed and defendants are presumed innocent until proven guilty. However, State practice with regard to arbitrary arrest and detention and other provisions have been found wanting in some cases. The United Nations Human Rights Committee has expressed concern that in one State a detained terrorism suspect could be held in police custody for up to 60 days, with extensions, without being brought before a judge. Another State has introduced legislation that undermines the guarantee of habeas corpus set forth in its Constitution and also allows for extended detention without charge in terrorism cases. It has also been noted that new counter-terrorism legislation being introduced by States of the subregion tends to allow for longer detention periods before indictment.

252. Seven States have introduced emergency laws or special laws to confer certain powers in certain circumstances to counter terrorism. However only one State<sup>67</sup> has an attached a sunset clause to its active special counter-terrorism powers. Three States of the subregion may utilize administrative detention to prevent suspected terrorist attacks and to detain terrorist suspects and violent extremists. One State is able to enforce detention for up to two years at a time, with indefinite extensions, in defiance of its established criminal procedure.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

253. All States of this subregion have made significant progress in the area of international judicial cooperation since the previous survey. In a landmark achievement in cross-regional MLA, the 2004 MLA Treaty Among Like-Minded ASEAN Countries was elevated to an ASEAN Treaty in April 2019. Additionally, a judicial cooperation network (the South-East Asia Justice Network for MLA (SEAJust)) was created in April 2020. As of February 2021, 10 States had joined the network, registering two contact points from their respective Central Authorities with the SEAJust Secretariat. SEAJust is designed as an open-ended network and is expected to expand its membership beyond the South-East Asia region. The drafting of a regional extradition treaty is also in progress, under the leadership of Singapore.

254. Cambodia, Lao People's Democratic Republic and Myanmar have enacted new laws on MLA and/or extradition since the previous survey. Ten States have adopted MLA laws and seven have adopted extradition laws. Five States have uploaded details of their procedures onto their government websites. All States of this subregion are able to provide MLA and extradition based on the international counter-terrorism instruments if there are no relevant bilateral or other treaties in place, but all States appear to allow cooperation only on a reciprocal basis. Three States are part of the Commonwealth's cooperation in criminal matters between States such as the "Harare

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<sup>67</sup> Malaysia provides for a sunset clause for an arrest without warrant under its Special Counter-Terrorism Law, which in 2017 was extended until 2022.



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Scheme"<sup>68</sup> for MLA and the "London Scheme"<sup>69</sup> for Extradition.

255. With respect to the *aut dedere aut iudicare* principle, it should be noted that only Cambodia and Thailand are legally obliged to refer cases to their prosecution authorities in the event that extradition is refused.

### (b) Ensuring effective exchange of information and intelligence

256. Some States have taken steps to improve information-sharing between law enforcement agencies, signing MOUs or creating other information-sharing arrangements, and three States have taken steps to enhance the capacity of counter-terrorism coordinating bodies to facilitate effective information exchange between government agencies.

257. All States of the subregion have established platforms to exchange information with foreign counterparts via regional bodies such as ASEAN; subgroup, the Association of Heads of Police of the ASEAN (ASEANAPOL); and INTERPOL, and through bilateral agreements. In 2018, six States in the region launched the "Our Eyes Initiative" to enable senior defence officials to exchange information on terrorism and violent extremism conducive to terrorism. Although several Member States engage in close cooperation with foreign partners in areas relating to transnational crime and other criminal operations, only one State is known to have conducted bilateral cooperation in investigations relating to terrorism cases with foreign authorities. This is because the legislation of most States of this subregion precludes integrated joint investigations with other States, owing to concerns relating to the protection of sovereignty.

### Priority recommendations

- Review and revise legislation to ensure definitions of terrorism-related offences are precise and in compliance with requirements of international counter-terrorism instruments to prevent misuse of terrorism legislation to suppress political dissidents and human rights defenders.
- Improve the investigation of terrorism-related cases by ensuring training and capacity-building for law enforcement officers, particularly in the identification and investigation of terrorism financing.
- Take action to prevent NPOs (including *madaris*) from being abused for terrorism-financing purposes, while safeguarding legitimate NPO activities.

<sup>68</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf)

<sup>69</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf)



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- Improve border security by introducing API or PNR systems at international air and seaports, with appropriate privacy and data protection safeguards, and by increasing and strengthening the screening of passengers, goods and cargo based on intelligence-led risk assessments.
- Increase efforts to recruit and retain women in law enforcement and border management; ensure training materials take into consideration range of roles played by women in terrorism as perpetrators, supporters, propagandists, victims, and partners in prevention.
- Establish, and ensure independence of, impartial and effective oversight mechanisms that can address individual complaints of misconduct by law enforcement, prosecutorial officers, and/or other government officials, particularly in States where the military is actively engaged in counter-terrorism efforts.
- Ensure that the rights of arrestees, detainees and defendants provided by law are implemented in practice, particularly with regard to due process, and that mass arrests and lengthy periods of detention without charge are not used as part of terrorism prevention policies.

### **South Asia**

**(Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka)**

#### **A. Terrorism trends**

##### **1. Risks**

258. While the levels of violence in some States of this subregion, notably Pakistan, have abated since the previous survey, this is not an overall trend and the terrorism threat level remains high in South Asia. A number of States have suffered attacks since the previous global survey. Many terrorist groups (including the Taliban, Al-Qaida in the Indian Subcontinent (AQIS), and the Islamic State in Iraq and the Levant - Khorasan (ISIL - K)), as well as Lashkar-E-Tayyiba, Jaish-I-Mohammed and Harakat Ul-Mujahidin continue to be active in the subregion,

259. Much of the terrorist activity in the South Asia subregion appears to be Al-Qaida and ISIL inspired, if not directed, and carried out by their regional affiliates or the terrorist groups inspired by them. Al-Qaida and ISIL and their affiliates have claimed credit for some attacks. Since the last survey (2016), India faced several cross-border terrorist attacks by these terrorist entities. On January 2, 2016, Jaish-e-Mohammed carried out a terrorist attack on an Indian Air Force Station in Pathankot, located in the northwest part of India, in which 7 security personnel were killed. On 25 June 2016, another terrorist group Lashkar-e-Taiba attacked an Indian security forces convoy



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in Jammu and Kashmir, killing 8 security personnel. On 18 September 2016, Jaish-e-Mohammed carried out, a heinous attack on an Indian Army brigade headquarters in Uri, in which 23 soldiers killed. On 14 February 2019, a convoy of vehicles carrying Indian security personnel on the Jammu–Srinagar National Highway was attacked by a vehicle-borne suicide bomber in which 40 Indian security personnel killed. The attack was carried out by Jaish-e-Mohammed<sup>70</sup>.

260. In July 2016, ISIL claimed responsibility for an attack that led to the highest death toll in any terrorist attack in Bangladesh. However, Bangladesh disputed the claim and stated that a banned, local extremist group, Jamaat-ul-Mujahideen, had been responsible and an investigation revealed that the attackers were all Bangladeshi nationals.

261. Sri Lanka experienced a series of attack in April 2019. Three luxury hotels in Colombo were attacked by suicide bombers and three churches in different cities were attacked during Easter service. More than 250 dead were killed and 500 wounded. The coordinated nature of the attacks, as well as the amount of explosives used and discovered afterwards, led Sri Lanka to conclude that the attacks had been pre-planned and well-financed. ISIL claimed credit for the acts, but Sri Lanka stated they had been perpetrated by radicalized individuals associated with the National Thowheed Jaamat (NTJ).

262. Maldives has also experienced ISIL-linked attacks. In February 2020, three foreign nationals were stabbed in Hulhumale. A local group, the “al-Mustaqim Media”, branded themselves as soldiers of ISIL in the Maldives and claimed responsibility for the stabbings. In April 2020, seven small boats were set on fire in the harbour of Mahibadhoo island in central Maldives. ISIL claimed responsibility, reportedly as retaliation against government investigations into extremism and drug trafficking. Radicalization and recruitment to terrorism remain issues of high concern in Maldives.

263. In the past five years, prior to July 2021, there have been many terrorist attacks throughout Afghanistan. Despite a political dialogue with the Taliban, the frequency of attacks by the Taliban and other groups active in Afghanistan has increased in the past year. Government officials, and especially those working in the justice sector, have been frequent targets. In February 2017, an ISIL suicide bomber attacked the Supreme Court, killing 21 people. In January 2021, two female judges working for the Supreme Court of Afghanistan were shot to death in Kabul, and in February 2021 another judge was assassinated in Jalalabad. Situation in Afghanistan remained evolving since August 2021, which also witnessed the suicide bombing at the international airport in Kabul.

264. Since the previous survey, terrorists and terrorist organizations in South Asia have relied predominantly on the Internet, particularly social media platforms, to recruit new followers and

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<sup>70</sup> <sup>70</sup> Lashkar-E-Tayyiba (QDe.118), Jaish-I-Mohammed (QDe.019) and Harakat Ul-Mujahidin (QDe.008)





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keep their members motivated. Some have migrated to the dark web and encrypted platforms, creating additional difficulties for investigators and law enforcement officials. In December 2020, the eleventh issue of the pro-ISIL web magazine “Voice of Hind” was released on numerous websites. The magazine is intended to appeal to Muslims in the Indian subcontinent and beyond. The magazine featured an article allegedly written by ISIL supporters in Maldives that stressed the importance of encouraging and planning attacks in the West, as well as attacks targeting Westerners in Maldives and the State’s military and police. The article also offered guidance on planning and claiming responsibility for attacks and argued that democracy and Islam are incompatible and provided justification for immolation as a form of execution.

265. Many States of this subregion have large, informal and cash-based economies which have made them vulnerable to terrorism financing. Some States of this subregion (e.g., Afghanistan) are known hubs for large-scale narcotics trafficking which poses special challenges with respect to CFT. Narcotics production and trafficking, and the current and potential revenue streams that they provide to terrorist organizations, further complicate the security situation because they sustain the synergies that link terrorist groups and organized criminal groups.

#### **4. Regional spotlight: Electronic evidence – increased use of and appreciation for the utility of e-evidence in South Asia**

266. Paragraph 21 of resolution 2396 (2017) encourages the enhancing of Member State cooperation with the private sector, in accordance with applicable law, especially with information communication technology companies, in gathering digital data and evidence in cases related to terrorism and foreign terrorist fighters.

267. The use of the Internet and social media is growing exponentially in South Asia. Officials investigating and prosecuting terrorism, organized crime and other serious criminal cases regularly confront the challenge of how to obtain electronic evidence in trying to prevent attacks and in bringing terrorists and other criminals to justice. Once suspects are apprehended, nearly all prosecutions depend, at least in part, on the use of electronic evidence, including location data, social media postings, text and email messages, and records of cell phone calls. This requires complete familiarity on the part of investigators, prosecutors and judicial officers with methods of collecting, preserving and analysing electronic evidence, as well with rules of admissibility for such evidence. Furthermore, in most instances in South Asia, electronic evidence will be located on servers in another State. This creates additional complications in obtaining and preserving such evidence.

268. At the time of the previous survey, police, prosecutors and judicial officers in South Asia had little or no capacity to use electronic evidence in their investigations and prosecutions. Although gaps remain in this area, increased attention has been paid to the importance of electronic evidence and considerable improvement has been made in this area.



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269. Prosecutors and police have gained experience and capacity in obtaining electronic evidence across borders through police-to-police cooperation; direct communication with service providers; and the MLA process. Practitioners have also become aware of the importance of timely requests for the preservation of electronic evidence directed at service providers and have begun to acquire familiarity with the requirements of major service providers.

270. As the capacity of police and prosecutors continues to improve in this area, it will be essential for judges and magistrates to familiarize themselves with the technical, operational and legal issues that arise with electronic evidence, as judges are charged with ruling on the admissibility of evidence and deciding other challenges which frequently arise in cases involving electronic evidence such, as the right to privacy. It is therefore recommended that States of this subregion include judges and magistrates in trainings and capacity-building activities involving electronic evidence.

271. Law enforcement personnel require significant resources and technical expertise to extract and analyse electronic evidence. Many smaller agencies and police departments lack adequate resources for the effective collection and analysis of such evidence. It is therefore recommended, that States of this subregion encourage the formation of partnerships between small agencies and departments with larger departments in the area which could provide common resources across departments and regions.

### **B. Implementation of resolution 1373 (2001) in South Asia**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

272. The previous survey noted that very few States of South Asia had implemented a fully comprehensive and integrated national counter-terrorism strategy. That implementation rate has improved with India, Afghanistan (as of July 2021), Bangladesh, and Pakistan now having adopted comprehensive and integrated counter-terrorism strategies. The remaining States have yet to adopt comprehensive and integrated strategies.

##### **(b) Risk assessment**

273. Two States regularly conduct frequent or focussed threat risk assessments. India's Ministry of Home Affairs conducts national risk assessments on terrorism and terrorism financing. Pakistan's National Counter-Terrorism Authority (NACTA) is responsible for conducting threat and risk assessments relating to terrorism. Several States of the subregion organize exercises and inter-agency dialogues which are aimed to assess risk and are considered to have been effective.



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### **2. Addressing enablers of terrorism**

#### **(a) Recruitment**

274. Although only two States of South Asia have enacted a specific offence covering recruitment into a terrorist group, three other States have introduced legislation criminalizing recruiting a person to conduct terrorist acts, and a further State can use general legal provisions on abetment and conspiracy to treat recruitment as an offence. Only one State criminalizes the recruitment of mercenaries.

#### **(b) Financing of terrorism**

275. States of this subregion have made good progress in countering the financing of terrorism since the previous survey. All States have enacted standalone offences covering the financing of terrorism in their national criminal legislation, and six States have criminalized the terrorism-financing offence in their domestic laws so that both the financing of an individual terrorist and a terrorist organization are covered. Four States have substantially updated their AML/CFT regimes in the past five years to comply with international standards. Although some national laws could benefit from technical amendments, such minor outstanding shortcomings in criminalization are being addressed through mutual evaluations and related follow-up processes of FATF and APG.

276. Awareness of the freezing requirement and its value in preventing acts of terrorism has been raised throughout the subregion since the previous survey. All States of this subregion have procedures for freezing terrorists' assets pursuant to resolution 1373 (2001), but the effectiveness of the freezing regimes varies. Four States have introduced legislation that sets forth procedures for freezing the property or funds of designated persons and entities ex parte and without delay, but States' implementation of these processes varies. Three States have noted that accounts and funds linked to designated individuals and groups have been frozen. India's Ministry of Home Affairs has issued a detailed procedure outlining the obligations of all persons in the implementation of targeted financial sanctions pursuant to resolution 1373 (2001). Nevertheless, the overall effectiveness of freezing regimes in South Asia has not improved materially since the previous survey, and most States of this subregion remain non-compliant with the freezing requirements of resolution 1373 (2001). In few geographies, listed terrorist entities continue to raise funds to finance terrorism through front organizations, including the abuse of non-profit organizations, through a variety of means such as charity, donations and crowdfunding

277. All States of this subregion have functioning FIUs, although some have been in operation longer and are significantly larger and more productive than others. For example, one State reported 65 STRs in one annual review cycle, whereas another State reported 1,436,340 STRs in the same one-year cycle. India's FIU is an autonomous organization whose processes are fully automated. Several FIUs are reported to be able to perform analysis and produce good quality intelligence products relating to terrorism financing, but some FIUs are not yet considered



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independent and several remain under-resourced in terms of staffing and equipment. The FIUs of some States would benefit from revised legislation to permit them to spontaneously share financial intelligence with law enforcement agencies and also allow law enforcement and other agencies to also directly request financial intelligence. Five States are active members of an intergovernmental group of FIUs, and one State is in the application process.

278. Four States of South Asia have the legal authority to restrain cash and BNI suspected to be related to money-laundering and terrorism financing. Two other States have introduced legislation providing that funds could be restrained if necessary. In one Asian State, the declaration system is insufficient for AML/CFT objectives and the customs authorities have no power to detain or seize cash or BNI related to suspected criminal activities. The duration that cash or BNI may be restrained ranges throughout the region, but in most cases the only for a temporary restraining of funds is authorized. Not all States of this subregion share information from declarations reflecting the cross-border movement of funds with their FIUs. India has incorporated the role of cash couriers in its national risk assessment. Pakistan conducted a sectoral risk assessment on cash smuggling in 2019 but for the majority of States in the subregion there remains a need to further strengthen the capacity of customs officers to identify, prevent and detect the illicit cross-border movement of funds via cash couriers.

279. Since the previous survey, three States of this subregion have undertaken an assessment of the risk of the NPO sector to terrorism-financing abuse. Pakistan assessed the terrorism-financing risk associated with NPOs in both its 2019 Terrorist Financing Risk Assessment (TFRA)<sup>71</sup> and 2019 National Risk Assessment (NRA) and has identified the subset of NPOs that fall within the relevant FATF definition.<sup>72</sup> India's Ministry of Home Affairs has conducted an NPO Risk Assessment in 2020 and 2021 as a thematic risk assessment element of its broader national risk assessment. Sri Lanka has also taken steps to update its assessment of its NPO sector by appointing a committee to review and amend existing NPO legislation. The committee has completed its discussions on a new NPO Sector Act. All States of the region are members of the APG, with India also being a member of the FATF.

### (c) Firearms

280. All States of the subregion except one State have introduced legislation prohibiting trafficking in SALW. A common shortfall, however, lies with the criminalization of the illicit alteration of firearms and the illicit obliteration of their markings. One State has introduced legislation that appears to empower the Government to control the transfer of weapons but does

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<sup>71</sup> Pakistan has taken a number of steps to assess its terrorism-financing risk since 2019, including conducting a Terrorist Financing Risk Assessment (TFRA), a September 2019 National Risk Assessment on money-laundering and terrorism financing, and a November 2019 confidential paper on "Transnational terrorism-financing threat profiles of key terrorist organizations. (APG 2020 follow-up report.)

<sup>72</sup> Pakistan's 2019 NRA confirmed that abuse of NPOs for terrorism-financing purposes continues to pose a significant threat, both domestically and externally. It stated that charities were a source of funds for almost all entities of concern and that terrorist organizations were known to use "front" NPOs, including registered charities.



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not explicitly criminalize the transfer of weapons. Since the previous survey, the enactment and implementation of legislation and regulations covering firearms in South Asian States has not changed significantly. Weapons trafficking in the subregion continues to be a problem.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

281. All States of this subregion are members of INTERPOL and all are connected via their NCBs to INTERPOL databases and tools. Some States have extended that connection to their frontline immigration and border-control authorities. For example, Sri Lanka's frontline immigration authorities have been linked to INTERPOL databases since 2012 and are able to check all arriving and departing passengers against the SLTD database, Red Notices, and the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List, in real time. At the time of assessment, Maldives was in the final stages of completing a long-term project to connect its national law enforcement agencies directly to INTERPOL criminal databases.

282. Border management in South Asia has improved since the previous survey, but gaps remain in several key areas. There is visa-free travel among the States of the subregion for citizens of member States of the South Asian Association for Regional Cooperation (SAARC), . India has updated and modernized its immigration records, passports and so-called breeder documents, which contributed to the improvement of border security in the region. Two States offer visa-upon-arrival for all travellers. Five States are members of the Commonwealth, allowing visa-free entry for citizens of States<sup>73</sup> participating in that community agreement. Although this is convenient for tourists, FTFs, terrorists and other criminals can also exploit visa-free arrangements and open borders to adopt evasive or broken travel patterns, thereby preventing officials from determining where a traveller has been prior to his or her arrival. In visa-free or visa-upon-arrival regimes, API and PNR systems may provide the only meaningful way to identify potential FTFs, terrorists and other criminals.

283. Member States of this subregion have significantly improved their implementation of API and PNR. As of the previous survey, India was the only State of this subregion to use an API system. Currently, one State has iAPI in force, and one is expected to implement it. Two other States implemented API in 2020 and 2021, respectively. One State introduced PNR in 2021 and the implementation of PNR is anticipated in two additional States. Three States have not yet introduced legislation requiring that API be implemented, and four States do not yet require PNR.

284. Other improvements to border control (including the strengthening of immigration records and travel documents) have been introduced in the subregion. For example, India has undertaken the considerable challenge of updating and modernizing immigration records, passports and

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<sup>73</sup> Commonwealth Members include: Bangladesh, India, Maldives, Pakistan, and Sri Lanka.





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breeder documents, and now issues ePassports and participates in the ICAO PKD. Pakistan has transformed its passport production system into a fully automated processing system that features a range of security measures to cross-check biographical data against national identification databases to ensure that passports are issued to their rightful owners. It also now issues ICAO-compliant MRTDs incorporating security features. Bangladesh has also launched a programme to replace over six million handwritten passports with ePassports and also now participates in the ICAO PKD. Maldives now issues ePassports. However, some States of this subregion continue to face challenges relating to the use of fraudulent identity and travel documents, and further steps need to be taken to secure the production of travel documents and update them through the addition of modern security and anti-forgery features. Border-control authorities of some States would benefit from training in the identification of fraudulent passports, as well as in the effective screening of passengers.

285. Although most States of this subregion have developed and use landing cards for incoming passengers (and, for a few States, departing passengers), only Maldives (which uses the PISCES system) is known to record and store the entry/exit of persons crossing its borders in an automated system. One State does not have a database system at its international airport and records are still maintained manually.

286. There remains a relative lack of border management cooperation in this subregion, partly owing to bilateral tensions that still prevent full cooperation in some cases. Some States have established bilateral relations with one another, and five States can participate in certain information protocols, as members of the Commonwealth. Many States of this subregion cooperate with States outside the region in capacity-building and training and to conduct border control and counter-terrorism exercises, particularly through the Shanghai Cooperation Organization. The SCO provides opportunities for South Asian States to share information to combat the use of fraudulent travel documents and identify and prevent the travel of terrorists. Additionally, all States of South Asia are members of SAARC and participate with the SAARC Terrorism Offences Monitoring Desk (STOMD), which serves as a central hub for collating, analysing, and disseminating information on crimes relating to terrorism, as well as exchanging expertise and strategies to combat terrorism and organized crime.

287. No State of this subregion has a nationally operated RSD procedure in place to prevent the granting or revocation of asylum to individuals involved in terrorist activity. Instead, States rely on close cooperation with UNHCR and related United Nations agencies to conduct refugee registrations and status determinations. Afghanistan is the only State of South Asia to have succeeded to the 1951 Refugee Convention and its 1967 Protocol, as of July 2021. According to UNHCR, Pakistan hosts one of the largest refugee populations in the world. However, the fact that it does not have a national legal basis to screen asylum seekers for the potential applicability of exclusion clauses enhances the possibility that Pakistan's generosity as a host to refugee communities may be abused by terrorists.





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### **4. Bringing terrorists to justice**

#### **(a) Planning and preparation**

288. Since the previous survey, the States of South Asia have been actively working to fully implement the legal aspects of resolution 1373 (2001). India and Maldives have substantially updated their counter-terrorism legal regimes and several States have taken steps to enact provisions implementing resolution 2178 (2014). Afghanistan has amended its Criminal Code since the previous survey, in part to facilitate the prosecution of terrorism offences. However, as at the time of the previous survey, most States of this subregion do not expressly criminalize acts of planning and preparation as autonomous offences (although they may have the ability to prosecute these acts by applying theories of accessorial and conspiracy liability). As a practical matter, this distinction has not meaningfully impacted the prosecution of the planning of, and preparation for, acts of terrorism. In certain geographies, UN designated terrorist entities and their affiliates, including those banned under domestic law in accordance with resolution 1373 (2001), operate publicly including through public rallies, and raising funds in support of terrorist activities. There are also instances, where affiliates/front of banned terrorist entities operate under different names and across borders.

#### **(b) Capacity to investigate and prosecute**

289. The previous survey noted that many States lacked the capacity to effectively investigate and prosecute the crimes of terrorism and terrorism financing. Most did not have the ability to rely on forensic evidence (which is critically important in the investigation and prosecution of, inter alia, terrorist bombings) because they either lacked forensic laboratories or sufficient human and technical resources to meet all investigative and prosecutorial needs. Overall, there has been improvement in this challenging and rapidly evolving area, which is critical to the prevention, investigation and prosecution of terrorist acts. Two Member States have improved and increased their use of forensic evidence, which is a powerful tool in terrorism investigations and prosecutions. Prosecution services in this subregion are staffed by skilled and motivated professionals who have greater access to forensic evidence than at the time of the previous survey. There has been a major improvement in the capacity of prosecutors and investigators to use electronic evidence in terrorism investigations and prosecutions.

290. Most States of this subregion empower multiple agencies (at the national and provincial levels), as well as the military, to investigate crimes of terrorism. Investigative capacity in this subregion remains hampered by insufficient coordination and communication among those agencies, as well as overlapping areas of responsibility and jurisdiction. Although three States of this subregion (India, Maldives and Pakistan) have recognized this gap and created national counter-terrorism coordinating agencies, there is room for further improvement in the sub-region.



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291. States of this subregion have improved their capacity to use SITs since the previous survey. Interception of communications and electronic surveillance are the most common forms of SIT and are used in five States.

292. Some States of this subregion have established some form of oversight mechanism for law enforcement agencies with a view to ensuring professionalism and respect for human rights in their counter-terrorism work. However, most oversight mechanisms are not legally and functionally independent (notably having reporting lines outside the police or military hierarchy) and lack the capacity to prosecute misconduct by law enforcement officers or to investigate and refer cases to an independent prosecutor. Numerous United Nations human rights mechanisms, including the High Commissioner, have noted numerous instances of police and security force abuses, including extrajudicial killings and torture.

### (c) Rule of law

293. The definition of terrorist acts in the legislation of numerous States of this subregion is overly broad with and applies to acts beyond the scope of the international instruments.

294. States of this subregion have experienced challenges in fully respecting the rule of law in terrorism cases. In one State of this subregion, suspected offenders have been subject to pre-trial detention without access to counsel and the opportunity for review of the detention by an independent judicial officer. In another State, the relevant authorities are permitted up to 180 days to provide the accused with the details of the offence charged. In some States, the right to judicial review of pretrial detention exists but because courts face extremely heavy caseloads the review is unduly delayed and suspects may not be informed of the charges against them until significant intervals may have passed.

295. Four States of this subregion have not introduced laws conferring emergency powers on authorities to counter terrorism. Three other States having emergency powers that are not subject to sunset clauses.

## 5. Activating international cooperation

### (a) Effective mutual legal assistance and extradition

296. Since the previous survey, States of this subregion have improved their subregional and international cooperation with respect to formal legal cooperation (e.g., MLA and extradition). Four States of this subregion have designated, or are in the process of designating, national central authorities for MLA and extradition. India, which designated its Ministry of Home Affairs as the central authority for mutual legal assistance and its Ministry of External Affairs as the central authority for extradition, updated its guidelines for mutual legal assistance in 2019 to enhance



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international legal cooperation. Five States are part of the Commonwealth's cooperation in criminal matters between States such as the "Harare Scheme"<sup>74</sup> for MLA and the "London Scheme"<sup>75</sup> for Extradition.

### **(b) Ensuring effective exchange of information and intelligence**

297. The subregional and international exchange of operational information by law enforcement personnel has somewhat improved since the previous survey. One reason for this is the formation of national counter-terrorism authorities (some of which have been formed since the previous global survey was issued) which serve to facilitate communication and cooperation with external partners. Good progress has also been made in the area of electronic evidence, which inevitably involves international cooperation for States of this subregion since all large ICT and social media companies are headquartered outside the region. There is, however, room for improvement in this area.

### **Priority recommendations**

- Amend terrorism offences to ensure all treaty-based offences are established as serious criminal offences in domestic law; that any relevant definition of a terrorist offence is clear and precise, and that legislation meets the requirements of the international counter-terrorism instruments; introduce new offences to criminalize full range of FTF-related preparatory acts and preventive offences required by resolutions 1373 (2001) and 2178 (2014).
- Strengthen regulations and mechanisms to freeze without delay the funds and other financial assets of persons who commit, or attempt to commit, or participate in, or facilitate terrorist acts, while also providing in an efficient system of designations pursuant to resolution 1373 (2001).
- Increase intelligence-sharing among police, military and intelligence officials, including by developing information and intelligence-sharing protocols; consider development of joint inter-agency task forces and a national counter-terrorism coordinating mechanism.
- Strengthen border management through coordinated management of porous and open borders – across national agencies and with regional and international partners, extending real-time access to the INTERPOL I-24/7 network to all border officials, and strengthening the adoption and implementation API and PNR, using the “single window” principle, with appropriate privacy and data protection safeguards.

<sup>74</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf).

<sup>75</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf).



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- Design and implement legal and operational measures to determine eligibility for refugee status and asylum.
- Enhance the capability of police, prosecutors and judges to obtain and handle electronic evidence (including the extraction and forensic analysis of evidence from electronic devices) and submit requests for MLA to obtain evidence from ISPs and social media companies.
- Establish effective, independent and impartial mechanisms for law enforcement and security forces with counter-terrorism responsibilities and provide personnel with training in human rights-complaint investigative and interrogation techniques.

### **Central Asia and the South Caucasus**

**(Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan)**

#### **A. Terrorism trends**

##### **1. Risks**

298. Central Asia continues to face significant security challenges, including because of its immediate proximity to regions marked by active terrorist activity, illicit drugs and arms trafficking, vulnerability to terrorist propaganda and recruitment, and risks associated with widespread reliance on alternative money remittances. Border protection and management in both Central Asia and the South Caucasus continues to be hampered by insufficient resources, difficult terrain and unresolved disputes, which also affect regional and international cooperation.

299. The United Nations currently lists three terrorist organizations active in Central Asia as being affiliated with ISIL and/or Al-Qaida: the Eastern Turkistan Islamic Movement, the Islamic Jihad Group, and the Islamic Movement of Uzbekistan. There have been a relatively limited number of terrorism-related attacks or incidents in Central Asia in recent years. However, the number of terrorist attacks carried out by Central Asians outside the region has increased. In 2017, Georgia conducted a large-scale counter-terrorism operation involving an individual listed by the United Nations as being affiliated with ISIL and/or Al-Qaida.

300. Most States of Central Asia and the South Caucasus have been affected by the FTF phenomenon, both as States of origin (for several thousands of fighters) and as transit routes. Fighters from these subregions were among the senior commanders of ISIL and the Al-Nusrah Front (and three are currently listed by the Security Council). In recent years, the phenomenon of returning and relocating FTFs has also become a concern.



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301. New radicalization risks relating to the pandemic should be closely monitored. In Central Asia,<sup>76</sup> radical religious communities have reportedly exploited the lack of social support provided by Governments to carry out recruitment and radicalization through charity, sport and educational activities. In the context of COVID-19-related closures of official places of worship, home-based religious gatherings have spread across Central Asia. Prisoners and labour migrants have been among the most vulnerable and most affected targets. It is estimated that around 80 per cent of Central Asians who were radicalized and joined terrorist or violent groups did so while living abroad, often illegally in States of labour migration destination. Those who were then forced to return to their States of origin (owing to loss of jobs during lockdown and economic recession and travel restrictions that prevented them from reaching conflict zones) represent a potential threat with respect to spreading radical **terrorist** ideology and organizing sleeper cells in Central Asia. Several dozen such individuals have been arrested since the beginning of the pandemic, accused of planning and preparing terrorist attacks in their home States. Many prisons in the subregion have become significantly overcrowded and prison conditions have worsened. Most in-person prevention and rehabilitation programmes have been suspended. The COVID-19 crisis also appears to have deepened ethnic tensions and contributed to an increased risk terrorist attacks on the basis of xenophobia, racism and other forms of intolerance.

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### **5. Regional spotlight: Central Asian nationals who previously travelled to Iraq and Syria to join ISIL/Daesh or who were born in the territory that was under ISIL/Daesh control**

302. Security Council resolution 2396 (2017) emphasized, inter alia, **that women and children associated with foreign terrorist fighters returning or relocating to and from conflict may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts, and require special focus when developing tailored prosecution, rehabilitation and reintegration strategies. It also stressed on** the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and underscored the importance of a whole of government approach including the role of the various sectors in contributing to the rehabilitation and reintegration of returning and relocating foreign terrorist fighters and their families. Furthermore, the resolution encouraged Member States to develop appropriate legal safeguards to ensure that prosecution, rehabilitation and reintegration strategies developed are in full compliance with their international law obligations, including in cases involving children. Four States of Central Asia and one State of the South Caucasus have proactively returned hundreds of their nationals, predominantly women and children, as well as transported children who were identified as born to their nationals in the territory which was under ISIL/Daesh control, from the Syrian Arab Republic and Iraq. Hundreds more have returned to Central Asia and the South Caucasus at their own initiative. Among the various challenges relating to repatriation efforts, those States have noted difficulties in identifying their citizens in the Syrian

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<sup>76</sup> See also CTED, *The impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism*, December 2020, pp. 5-6 (Central Asia).



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Arab Republic and Iraq and their locations in camps or prisons; negotiations with relevant State and non-State actors to obtain their release and safe passage; ensuring **accountability through prosecution, as well as the** abandonment of ISIL- tactics, influences and ideologies; deploying highly skilled rehabilitation professionals; ensuring safe living conditions and opportunities in the long term; as well as tackling stigmatization and discrimination within communities.

303. Where applicable, those suspected of participating in terrorist activity abroad have been prosecuted<sup>77</sup> and others are being provided with rehabilitation and reintegration services. Some Member States of the region are less stringent than others with respect to investigating and prosecuting their returnees and consider that most of their nationals who left for the conflict zones of the Syrian Arab Republic and Iraq were driven largely by misleading propaganda concerning ISIL's goals and activities, as well as the desire for financial gain, and have since been disillusioned and expressed disappointment and/or remorse. In many cases the authorities have found insufficient evidence of involvement in terrorist activity. Instead, they focus on certain monitoring measures, awareness-raising and counter-messaging campaigns among potentially vulnerable population groups. **Implementation of such measures should be consistent with Member States' obligations pursuant to Security Council resolutions 1373 (2001), 2178 (2014) and 2396 (2017) in relation to bringing terrorists to justice; preventing and criminalizing the travel of FTFs, its financing and recruitment for such travel; and developing and implementing appropriate PRR strategies for returning FTFs and their accompanying family members**

304. Although some of these States have prosecuted women Foreign Terrorist Fighters or associated with Foreign Terrorist Fighters for their involvement in terrorist activity (either committed abroad or after their return), others have granted amnesty in the context of voluntary return or refrained from prosecuting women on the assumption that they had been left with no choice but to follow their spouses abroad. One State has amended its legislation to allow for the pardoning of fighters who voluntarily return from Iraq or the Syrian Arab Republic and renounce foreign militant groups (with the possibility of keeping them on a watch list). **In addition to Member States' obligations related to accountability.** There is also a need to ensure that criminal justice processes are gender-responsive and avoid gender-based stereotypes.

305. In two Central Asian States, the practice has been to place returnees in rehabilitation centres, where they undergo various types of psycho-social rehabilitation and reintegration procedures (including medical, psychological, theological, and social assistance) and receive assistance with professional training, recovery and/or the issuance of new documents.

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<sup>77</sup> As of July 2020, 45 returnees (33 men and 12 women) under Operation Zhusan, conducted by Kazakhstan, had been arrested, convicted, and given sentenced for their involvement in terrorism.





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Kazakhstan,<sup>78</sup> has established 17 specialized centres in several regions of the State. Uzbekistan<sup>79</sup> has established a robust legislative framework, including its 2018 Law on Terrorism, which provides for a comprehensive approach to social rehabilitation. The effectiveness of these rehabilitation and reintegration efforts has yet to be assessed (especially with respect to the long term).

306. The families and communities who receive returnees, especially children, require continuous **follow up and** support from the relevant authorities or organizations aimed at addressing the returnees' long-term **situation and their** physical, psychological, emotional, and material needs. Failed reintegration efforts could lead to risks of re-radicalization, (second) victimization, transition to other forms of criminal and violent behaviour, new recruitments, and so forth. The challenges ahead require comprehensive, tailored and long-term PRR support and strategies for individuals associated with terrorist groups, including those repatriated from conflict zones.<sup>80</sup> Furthermore, since 2018, the office of Children's Rights Commissioner for the President of the Russian Federation managed to **return** 318 children from Syria and Iraq.

### **B. Implementation of resolution 1373 (2001) in Central Asia and the South Caucasus**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

307. The five States of Central Asia have taken steps to address terrorism in a comprehensive and integrated manner, notably through their engagement in the regional Joint Plan of Action to implement the United Nations Global Counter-Terrorism Strategy (JPoA), currently undergoing a 10-year review process following the completion of three stages.<sup>81</sup> Since 2016, all Central Asian States have developed new national counter-terrorism and CVE strategies and corresponding action plans, many with the support of international organizations. Most of these national strategies and action plans reflect a whole-of-Government approach and, to varying degrees, include elements of a whole-of-society approach. However, ensuring practical implementation and effective monitoring and evaluation continues to present challenges.

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<sup>78</sup> In 2019, Kazakhstan, with the assistance of several Member States, United Nations agencies and international organizations, conducted special operations (called "Zhusan" and "Rusafa") to repatriate its citizens from the conflict zones of the Syrian Arab Republic and Iraq, respectively. As a result, more than 600 Kazakh citizens (including 33 men, 156 women and 420 children (of whom 32 are orphans) were repatriated.

<sup>79</sup> In 2019, Uzbekistan carried out two special operations "Mehr-1" and "Mehr-2" (Kindness 1 and 2) to repatriate its nationals associated with FTFs from armed conflict zones. In May 2019, 156 citizens of Uzbekistan, mostly women and children (1 male, 48 women, 107 children), were brought back to Tashkent from the Middle East. In October 2019, a group of 64 children (39 boys and 25 girls), were also brought home from Iraq under operation "Mehr-2". In December 2020, under operation "Mehr-3", Uzbekistan repatriated 25 women and 73 children from camps in the Syrian Arab Republic. In 2018-2019, Uzbekistan (acting in close collaboration with foreign partners) repatriated 57 of its citizens (including 14 men, 9 women and 34 children) from Afghanistan.

<sup>81</sup> Phase III, launched in 2018, seeks to assist States of Central Asian to respond to emerging counter-terrorism and PVE challenges in the region, as well as to provide continued and coordinated United Nations system support to States of the region in implementing the JPoA.



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308. Armenia and Georgia have adopted comprehensive strategies. In Georgia, various stakeholders (including local authorities and civil society actors) are engaged in the strategy's implementation, and a standing body has been established to oversee implementation. Armenia has also developed and implemented a programme for implementation of its strategy. The third State of the South Caucasus included terrorism as one element of its overall national security strategy in 2007, but has not yet developed a comprehensive and integrated national strategy. The Committee has recommended that it do so.

### **(b) Risk assessment**

309. Most States of Central Asia and the South Caucasus have established national coordinating bodies for their counter-terrorism measures and threat assessments. Two States of the South Caucasus have established centres to collect and analyse information about terrorist threats, combining information received from domestic and international partners and disseminating threat assessments to relevant law enforcement agencies. One State also makes a non-classified version of its threat assessment document available to the public and reports annually to parliament. All agencies involved in countering terrorism also conduct their own individual risk assessments and analyses in accordance with their respective responsibilities. In cases where such assessments are not routinely shared with the relevant agencies in advance (including in several States of Central Asia), the efforts of those agencies to target their work and adjust their risk assessments may be undermined. In this regard, the Committee has recommended that States enhance information exchange.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

310. Georgia and Kazakhstan have introduced an explicit provision into their Criminal Codes penalizing recruitment for the purposes of organizing terrorist activity. Other States cover criminal responsibility for recruitment through a Criminal Code provision penalizing involving someone in terrorist activity, along with other provisions addressing training, organizing, or making public appeals for terrorism. In all Central Asian States the laws on counter-terrorism include "recruitment" in the definitions of terrorist activity.

### **(b) Financing of terrorism**

311. All States of Central Asia and the South Caucasus have criminalized terrorism financing as a standalone offence that covers both the financing of an individual terrorist and of a terrorist organization, including in the absence of a link to a specific terrorist act. Minor outstanding shortcomings in criminalization are addressed through the mutual evaluation and follow-up processes of the relevant FATF-style regional bodies.



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312. All States of the two subregions have established legal frameworks allowing, in principle, for the freezing of terrorist assets without delay. In practice, the speed with which the freezing measures in place pursuant to resolution 1373 (2001) are implemented depends on the grounds of designation or decision to freeze the assets. Kyrgyzstan has recently adopted legislation allowing reporting entities to freeze assets of listed persons directly, without a prior decision of the FIU, thereby significantly improving the implementation of such measures in terms of effectiveness and timeliness. In one South Caucasus State the obligation to freeze comes into effect immediately, and there is a notification requirement to bring the order to freeze to the attention of reporting entities promptly. In another South Caucasus State, however, the legal framework appears to allow for delays of up to 15 days. Four out of five States of Central Asia have frozen assets pursuant to resolution 1373 (2001) and actively cooperate on these matters through regional and bilateral channels. Two States of the South Caucasus have not yet frozen any assets pursuant to resolution 1373 (2001), and the third has only frozen a small amount (which is incongruous with the number of terrorism-related trials conducted and designations made).

313. The FIUs of all Central Asian States are fully functional and benefit from continuous training and support provided by international and regional organizations, as well as through the technical assistance coordination mechanisms of the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG). They are equipped with relatively modern software and automated processing of STRs and threshold transaction reports. At least two FIUs, however, have noted that their staffing is insufficient. One FIU (as of November 2017) had not received any STRs relating to suspicion of terrorism financing and had not conducted any financial investigation in that regard. In the South Caucasus, all three States have also taken significant steps towards strengthening their FIUs by enhancing human resources and providing updated software and data-mining tools. In Armenia, information exchange with other relevant authorities is conducted through a dedicated network, which provides the competent authorities with a secure and protected communications channel. Five Central Asian States are members of the EAG, and three States of the South Caucasus are members of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe.

314. All three States of the South Caucasus have provided their border authorities with the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. Although two Central Asian States have explicit legislation in place, it is not effectively implemented in practice and the customs authorities play no significant role in detecting or investigating terrorism financing. In two other Central Asian States, the customs authorities can act only upon receipt of the relevant information from law enforcement agencies or the FIU. In one Central Asian State, the declaration system is not equipped to address AML/CFT objectives, and the customs authorities have no power to detain or seize funds or BNI in the event of any suspected money-laundering or terrorism-financing activities. That State recently stated that it had initiated the drafting of amendments to its Customs Code to address the related deficiencies. In all



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five States, there remains a need to further strengthen the capacity of customs officers to identify, prevent and detect money-laundering and terrorism financing conducted via cash couriers.

315. The Governments of Armenia and Azerbaijan have conducted comprehensive assessments of the vulnerability of their NPO sectors to abuse for terrorism-financing purposes. One of those States conducts regular reviews and considers the risk to be relatively low because of the strict regulations in place on NPO registration and reporting. In the other State, the main considerations taken into account were the key characteristics of NPOs in the State, the regulations in place on their interactions with higher-risk States, and the absence of favourable conditions for terrorist activities and terrorism financing in that State. The third State has not yet carried out a standalone assessment of the terrorism-financing risk of its NPO sector. In Kazakhstan, the FIU conducts a biannual analysis of the vulnerability of the NPO sector to AML/CFT risk, with special attention to fighting sports, private boarding schools and orphans' homes, as well as religious schools. Two other Central Asian States have taken steps to assess or review the terrorism-financing risk to their non-profit sectors, either as a separate one-off exercise, or as part of the national AML/CFT risk assessment. However, they have not updated or followed-up on those initiatives. In the two remaining States, no assessment or review of the NPO sector with respect to terrorism-financing risks has been conducted.

### (c) **Firearms**

316. Whereas all Central Asian and South Caucasus States have criminalized the illegal manufacture or repair of firearms and spare parts, illegal purchasing, selling, stocking, trafficking, sending or carrying of firearms, ammunition, explosive substances and explosive devices, the Committee has recommended that they ensure that their legal framework, as well as relevant operational measures and controls, also cover illicit alteration of firearms and the illicit obliteration of their markings.

### **3. Opportunity and border security**

317. All three States of the South Caucasus have connected their immigration screening processes at the frontline to the INTERPOL I-24/7 SLTD database and Red Notices of suspected criminals and wanted persons, as well as the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. In Central Asia, national frontline immigration screening processes in four of the five States are not directly or fully connected to these sources. In most States of the subregion, the INTERPOL NCB has the only direct connection and controls the level of access to INTERPOL databases granted to local branches and other competent agencies. This is due partly to legislative impediments to the integration of such sources into national databases and partly to States' inability to afford the cost of maintaining the relevant network connections. However, Kazakhstan recently reported having implemented the Committee's recommendation in this regard and had integrated the relevant INTERPOL databases into its national integrated database (administered



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by the Ministry of the Interior), thus allowing all officers of law enforcement, investigative, and migration authorities to perform real-time online checks.

318. No State of Central Asia or the South Caucasus has completed the implementation of an API system, but most have taken steps in that direction, including through requests for technical assistance, comparative analysis of existing systems, creation of inter-agency task forces, and the initiating of legislative reviews and procurement processes. In some States, certain airlines voluntarily provide API, but there is no adequate legislative framework in place. Where applicable, the Committee has welcomed the progress achieved and encouraged the States concerned to actively manage and complete their implementation of an API/PNR system. The Organization for Security and Cooperation in Europe (OSCE) has been actively assisting Central Asian States in this area. At least one State has confirmed its willingness to receive assistance under the UN Countering Terrorist Travel Programme.

319. In Central Asia, border guards utilize existing risk analysis, profiling, and tip-offs received from law enforcement agencies of other States to identify individuals requiring greater scrutiny. In Georgia, risk analyses are issued monthly and shared with officials working at BCPs.

320. At least two Central Asian States can use INTERPOL databases to detect false documents. Uzbekistan uses its own software, which provides images, descriptions and security features of genuine travel and identity documents issued by other States and international organizations. One State of the South Caucasus has equipped its BCPs with mobile and stationary equipment (including passport readers and mini laboratories), as well as employees with training in travel-document examination. The Committee has assessed that another State of the South Caucasus could benefit from more advanced travel documentation equipment and specialized software. Two States of this subregion automatically record data on the entry/exit of persons crossing their borders. In Central Asia, there is insufficient information regarding the implementation of automated systems to record and store the entry and exit of persons crossing the borders, but at least two States use such systems at certain airports and BCPs.

321. All States of the two subregions have measures in place to cooperate with other States on border management, including through bilateral agreements with neighbouring States (providing for exchange of information and joint training) and cooperation with regional agencies. Regional counter-terrorism and border security efforts in Central Asia are coordinated, in particular, through the relevant structures of the Anti-Terrorism Center of the Commonwealth of Independent States (CIS-ATC), the Collective Security Treaty Organization (CSTO) and the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization (SCO RATS), including joint trainings and tabletop exercises. OSCE has supported the States of the region through, inter alia, training courses on the detection of forged documents and imposters. States of the region (especially those bordering Afghanistan) also receive a significant amount of international assistance in this area (including through UNDP IOM, and the Border Management in Northern Afghanistan





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(BOMNAF) and Border Management in Central Asia (BOMCA) initiatives). In the South Caucasus, permanent cooperation frameworks also include the European Border and Coast Guard Agency (Frontex), as well as global arrangements such as INTERPOL and WCO. Armenia and Georgia have concluded an agreement on border management facilitating cooperation between their respective State agencies.

322. All three South Caucasus States have RSD systems in place. In one State, this includes practical measures to fingerprint all asylum seekers and screen some asylum applicants against national and international databases where possible links with terrorism have been identified. In another State, fingerprinting and identification checks are made, and the assessment includes checks with the intelligence service and security agencies to identify any terrorism connections. The immigration authorities undertaking RSD procedure do not have access to international watch lists. The Committee has recommended that all asylum seekers be screened against the relevant databases upon initial registration of the asylum claim. In respect of one of the States of the subregion, the Committee noted that domestic legislation on refugee status expanded the bases of exclusion beyond those stated in the 1951 Refugee Convention. The Committee has underlined that, in all such cases, all counter-terrorism measures must be implemented in a manner consistent with international refugee law, including the 1951 Convention.

323. One State of Central Asia does not have a publicly available legal framework relating to RSD. Three States have introduced legislation specifying that involvement in terrorist activity is a ground for refusal of refugee status, and in one State such grounds are formulated more generally with references to national security. However, there is generally insufficient information regarding any practical measures in place to determine that asylum procedures are not misused by terrorists and/or for terrorist purposes. One State recently noted that there had been no cases in which applicants for refugee status had been suspected of involvement in terrorism. Owing to lack of capacity, background checks in that State do not include cross-checking of biometric data.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

324. All three States of the South Caucasus have legislation in place that makes it possible to prosecute any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. In most States of Central Asia, a crime committed on the territory of a State (thus triggering criminal prosecution pursuant to the national Criminal Code) is a crime that commenced, or continued, or was finalized within the territory of that State. A review of the relevant legal provisions of two Central Asian States did not make clear whether those provisions were sufficient to prosecute preparatory/accessory acts committed in those States with the aim of committing terrorist acts abroad, especially if such terrorist acts have ultimately not been committed. The Counter-Terrorism Law of Turkmenistan specifically provides for its jurisdiction to prosecute persons





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involved in terrorist activity, including in cases where terrorist actions are planned or carried out outside the State, but are detrimental to the interests of that State, as well as in other cases provided for in international treaties to which the State is a party.

325. Acts of planning, preparation and supporting of terrorist acts in Central Asia and the South Caucasus are typically prosecuted based on a combination of provisions of the general part of the Criminal Code on accomplice liability and provisions relating to specific terrorist offences. The Criminal Code of one Central Asian State explicitly covers preparation and other forms of support for terrorist acts. The counter-terrorism laws of most States of the two subregions also include organizing, planning and preparing a terrorist act in the definition of “terrorist activity”.

### **(b) Capacity to investigate and prosecute**

326. In Central Asian States, preliminary investigation of terrorism-related crimes is typically conducted by the national security authority, under the oversight of the Office of the Prosecutor-General responsible for overseeing compliance with national legislation by the law enforcement and investigative authorities responsible for implementing operational and investigative activities. The legislation of at least one State explicitly allows for preliminary investigations into complex or large criminal cases to be assigned to an investigation team that may include investigators from several agencies and may be led by a prosecutor. Kyrgyzstan recently introduced the function of investigative judge. Although four out of the five States have extensive experience in prosecuting terrorism cases (including several complex cases) there is limited information regarding the expertise, technical means and human resources of the relevant authorities. One State informed the Committee that it had conducted no terrorism-related investigations or prosecutions. The Committee has noted that a common shortfall in Central Asia is States’ lack of capacity to collect information and evidence in relation to crimes committed by their FTFs while in conflict zones abroad.

327. One State of the South Caucasus has established a designated unit for supervising the investigation and prosecution of terrorism offences and has taken steps to ensure that the unit has the necessary technical means and human resources. The Committee has encouraged that State to continue to strengthen those capacities to address the evolving terrorist threat. In the second State of the subregion, preliminary investigations in terrorism-related cases are undertaken by a specialized unit of the police. A unit in the Office of the Prosecutor-General that specializes in crimes against public safety oversees investigations, but does not participate in them. In the third State, a specialized prosecution unit exists, but seven other agencies are also authorized to investigate terrorism-related cases.

328. The legislation of all eight States authorizes law enforcement agencies to employ a range of SITs, including control of postal and telegraph messages and communications, wiretapping, data-mining in communication channels, controlled purchase or acquisition, and the use of overt



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or covert assistants. In general, permission to use SITs is not required for standard investigations (e.g., search of computer hardware). Justification and, typically explicit approval of the overseeing authority (in most States, the Office of the Prosecutor-General; in one State, the investigative judge) for the use of wiretapping or other intrusive measures conducted without alerting the subject of investigation must, however, be provided. Most States allow for exceptions in urgent cases relating to very serious crimes on the condition of ex post facto court authorization (South Caucasus) or subsequent determination/confirmation of legality by the competent prosecutor or investigative judge (Central Asia). One South Caucasus State requires that all information collected using SITs be destroyed after six months if it does not reveal useful information for the investigation.

329. During the period when the States of Central Asia were faced with large-scale outflows of FTFs, the Committee noted that the above techniques were not fully utilized in respect of departing FTFs and recommended the adoption of legislation on the use of SITs to facilitate the conversion of intelligence into evidence that is admissible in court, with particular reference to FTFs (including the use of information extracted from the Internet, including social media to trigger surveillance of suspected FTFs). With respect to at least one State of Central Asia, the United Nations Human Rights Committee has expressed concern at the absence of a clear legal framework regulating surveillance activities, including by the intelligence services, and at reports that the exit and entry into the State of individuals listed as being under State surveillance have been restricted.

330. All three States of the South Caucasus have established multiple mechanisms for oversight of law enforcement, including annual reporting to parliament, an internal oversight body within the security service, an independent body for the investigation of allegations of torture and related crimes committed by law enforcement, and a general mechanism for individual complaints against law enforcement. In one State, for example, the Internal Investigations Department of the Ministry of the Interior supervises compliance with the law, human rights and civil liberties in the execution of duties, and can conduct inquiries into complaints.

331. In Central Asian States, the Office of the Prosecutor-General oversees the legality and consistency of the actions of law enforcement agencies. In all five States, this is carried out through an independent authority, which includes dedicated departments for the protection of human rights. In this context, a prosecutor can oversee the legality of criminal investigations and operation-and-search activities; check the legality of detention; order the release of persons detained in violation of the applicable legislation; and cancel illegal or ungrounded decisions of the relevant investigator or subordinate prosecutor. Kyrgyzstan recently introduced new oversight functions for investigative judges, but those mechanisms have not been fully implemented. Most States also established have an Ombudsperson empowered to, inter alia, conduct unannounced inspections of places of detention and corrections, as a mechanism to prevent torture, in an advisory capacity. However, most of the Ombudspersons lack resources and independence.



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### (c) Rule of law

332. The counter-terrorism laws of most Central Asian States provide definitions of “terrorism” (referring to ideology, policy, or tactics of action), “terrorist activity” and “terrorist action”. States’ criminal codes define the crime of terrorism (or, in some cases, terrorist acts). The Committee has consistently cautioned Central Asian States against overly broad definitions of terrorist offences that could potentially apply to non-violent actions or threats thereof.

333. In two States of the South Caucasus, the Committee found that the definition of terrorist acts was sufficiently clear and precise. The Committee commended Georgia for its proactive and continuous review and amendment of its counter-terrorism legislation in light of international standards and the evolving terrorist threat. In the third State, the definition contains some vague elements, such as capturing acts that cause “socially dangerous consequences”.

334. The codes of criminal procedure of all Central Asian and South Caucasus States contain key guarantees pertaining to the rule of law. However, United Nations human rights mechanisms have expressed serious concerns regarding their practical implementation in criminal cases in most States of the two subregions (including, in some cases, with respect to reports of torture and ill-treatment of persons deprived of their liberty, lack of judicial independence, frequent use of coerced confessions as evidence in courts, obstacles to appealing a guilty verdict on its merits and limitations to access to a lawyer). These concerns could impact the treatment of terrorism cases. The Committee has encouraged all relevant States to continue their dialogue with the relevant United Nations mechanisms on these matters and to update CTED accordingly.

335. The counter-terrorism laws of all States of the two subregions provide for legal regimes that are applicable to certain counter-terrorism operations or zones, which give the relevant authorities a wide range of special powers. These include, for example, the authority to temporarily limit or suspend traffic or pedestrian movements and access to certain locations; remove vehicles and persons from certain locations, control IDs and take special identification measures; detain and transfer to competent authorities persons who have committed or attempted to commit acts aimed at interfering with legitimate counter-terrorism measures; freely enter residences and other premises and vehicles; and exercise increased powers to search persons. This counter-terrorism operation regime ceases when the danger is liquidated. There are otherwise no limitations (sunset clauses) on the duration of such operations,

### 5. Activating international cooperation

336. In all Central Asian States, procedures relating to MLA and extradition are set forth in the code of criminal procedure. Some States have provided brief convention-specific information for the UNODC-administered online directory. Two of the three South Caucasus States have developed and made publicly available guidelines on domestic laws and procedures relating to



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MLA and extradition in order to inform foreign authorities about the requirements that must be met to obtain assistance or extradition. The other State has made some information available via the website of the Council of Europe (although only in summary).

337. Kyrgyzstan has included an explicit provision in its counter-terrorism law stipulating that, in the event of refusal to extradite a foreign person or stateless person not permanently residing in the State who committed or is suspected of having committed a crime of terrorist nature, the person concerned shall be subject to criminal prosecution on the grounds and procedures stipulated by national legislation. In other States of the subregion, the principle *aut dedere aut iudicare* is reflected only partially or not at all. The two CIS Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed in Minsk in 1993 and in Chisinau in 2002, respectively, provide for the prosecution of the State's own nationals, as they cannot be subject to extradition.

338. In the South Caucasus, only Georgia has introduced domestic legislation that includes provisions to ensure that the *aut dedere aut iudicare* principle would be fully complied with in practice. The legislation of one other State of the subregion provides for prosecution in cases where extradition has been denied, but only as a discretionary ground at the request of the State seeking extradition (which is inconsistent with the mandatory nature of the rule).

339. Georgia and Kazakhstan have introduced specific legal frameworks for the establishment and functioning of joint investigation groups involving foreign authorities. The possibility of establishing international joint investigation groups is also provided for in the 1999 CIS Agreement on the Procedure of Stationing and Cooperation of Law Enforcement Agents in CIS States and in the Chisinau 2002 Convention. A draft agreement on the establishment and functioning of joint investigation groups in the territory of CIS States has been developed under the Interstate Programme on Joint Measures to Combat Crime. In most States, interaction with foreign authorities in the form of information exchange, consultations, and so forth is possible through informal bilateral cooperation. States have also successfully used the channels of the CIS Bureau on Coordination of Countering Organized Crime. States of both subregions have shared examples of having successfully conducted joint counter-terrorism operations involving law enforcement and border agencies. Armenia has reported cooperating in the investigation of a case involving alleged preparations for terrorist acts through the use of social media. Georgia recently became able to participate in joint investigative teams established by the European Union Agency for Law Enforcement Cooperation (Europol) pursuant to its Agreement on Operational and Strategic Cooperation.

### Priority recommendations

- Review and revise legislation in order to ensure that all offences set forth in the relevant international counter-terrorism instruments are adequately reflected in domestic law and



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that all definitions of the relevant terrorist offences are clear and precise to ensure that the requirements of the relevant recently adopted Security Council resolutions are fully reflected in revised counter-terrorism legislation, notably with respect to FTF travel and other offences committed by FTFs abroad.

- Enhance the tools available to reporting entities for the automated detection of suspicious transactions and transmittal of the relevant information to the FIU.
- Conduct regular reviews of their NPO sectors with respect to their vulnerability to abuse for terrorism-financing purposes and enhance outreach to the sector to raise its awareness of the relevant risks.
- Enhance the capability of law enforcement and prosecutors to collect data from digital sources, including encrypted data, data contained in mobile phones, and data located outside their jurisdictions, as well as training for the judiciary in dealing with digital evidence.
- Extend real-time access to the INTERPOL I-24/7 network to all border officials and law enforcement officers and actively utilize information contained in multilateral information systems such as INTERPOL diffusion notices and databases (including Nominal, SLTD, WSDM, Fingerprints database, iARMS, etc.).
- Actively manage the process of implementing API and PNR systems in order to ensure the effective collection, analysis, and dissemination of data.
- Enhance the use of biometric data for the crosschecking of suspects against relevant databases, including INTERPOL databases, and in performing background checks of asylum seekers as part of the RSD process.
- Strengthen efforts to further enhance cooperation on both operational and legal matters with Member States in, or neighbouring, the conflict zones in which FTFs are active.

### **Western Asia**

**(Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen)**



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### A. Terrorism trends

#### 1. Risks

340. The previous global survey noted that few States in Western Asia had recently endured prolonged conflict, but some had suffered considerably from terrorist activity. By 2020, terrorist attacks had affected 10 of the 12 Member States of this subregion. The fragility of the political and security situation in some of States continues to warrant vigilance. The previous survey also noted that proximity to the armed conflict in the Syrian Arab Republic and the activities of various terrorist organizations greatly exacerbated the terrorist risk to Western Asia. This continues to be the case, owing in part to the continued displacement of people from Iraq and the Syrian Arab Republic, causing continued cross-border security concerns and significant political and economic tensions for States located in this subregion. The porous and lengthy nature of many land borders and border-control weaknesses also continue to increase the subregion's vulnerability.

341. ISIL remains an active terrorist threat within the borders of some States of this subregion. It views most States of the subregion (which predominantly practice the Muslim faith) as States that should observe stricter interpretation of religious teachings. Hence, the threats directed towards ruling royal families in seven of the States of this subregion also continue to warrant vigilance. However, the national threat levels vary. In the case of those States with advanced economies and resources, the terrorism threats target their specific status, and this in turn is reflected in the budget allocations made for counter-terrorism programmes.

342. In six States, a significant foreign presence forms a major pillar of the labour force. Terrorist groups have issued statements threatening to carry out attacks in those States, particularly targeting Western citizens and interests, military compounds, oil, transportation and aviation, hotels, and shopping centres. Given the reliance on Western interests and labour in the economies of some of States of this subregion, these threats are taken very seriously, particularly as they have already materialized in some cases.

343. The large youth populations of most of the States of this subregion are very active online and are thus vulnerable to online radicalization. The exploitation of ICT, including social media, by terrorist groups represents a substantial challenge to Member States of Western Asia. The Secretariat of the Cooperation Council for the Arab States of the Gulf has taken steps towards the drafting of a comprehensive treaty on cyberterrorism. The 2010 Arab Convention on Combating Information Technology Offences does not fully cover all offences relating to the abuse of the Internet for terrorist purposes.

344. The previous survey noted that States of this subregion were among those most affected by the FTF phenomenon. Iraq and the Syrian Arab Republic remain the primary area for ISIL's exploitation, and ISIL also continues to exploit its capacity to remain in Member States





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characterized by limited stabilization and reconstruction prospects. ISIL's presence continues to fuel sectarianism and increase the intensity, duration and complexity of conflict in Western Asia. Many factors may have contributed to assisting States of Western Asia to address the emerging threats and challenges associated with FTFs. These include the fact that the phenomenon is not new to the subregion. Several of these States introduced legislative and operational measures two decades ago in their efforts to deal with "Arab Afghan" returnees in the aftermath of the war in Afghanistan. Also, all States of this subregion have introduced measures to implement resolution 1373 (2001) which can be used to address issues related to the FTF phenomenon.

345. States of this subregion have expressed concern at the increasing use of the Internet for terrorist purposes, including for the dissemination of terrorist propaganda and recruitment through popular social media networks. Access to the Internet has also increased in States of this subregion during the COVID-19 pandemic, giving terrorist groups a wider audience. Most States of this subregion recognize the threat posed by the dissemination of unchallenged narratives through social media and its impact on recruitment. Some States have enacted legislation and regulations on cybercrime and/or the use of the Internet for terrorist purposes, but these have proven insufficient to stem terrorist recruitment activities, particularly online.

### **B. Implementation of resolution 1373 (2001) in Western Asia**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

346. The previous survey noted that no State of this subregion appeared to have introduced a national comprehensive and integrated counter-terrorism strategy. Some progress has been made in this respect, as some Member States have since introduced draft counter-terrorism strategies, and others have shared those drafts with the United Nations system for comments. (The Committee considers this to be a good practice.) Others have broadened the range of stakeholders involved in the development and implementation of strategies (which is also considered a good practice). States of this subregion were encouraged to continue involve further sectors in the society, including academia, the media, the private sector and NGOs, to enhance the resilience of the population to terrorism.

##### **(b) Risk assessment**

347. No State of Western Asia conducts regular detailed and comprehensive terrorism threat assessments. Rather, most States have conducted, or are in the process of conducting, national terrorism-financing risk assessments. Although this allows for insights into the overall risks with respect to terrorist activities and highlights related vulnerabilities, it is insufficient to prevent all terrorist activities.



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### **2. Addressing enablers of terrorism**

#### **(a) Recruitment**

348. At the time of the previous global survey, few States had explicitly criminalized terrorism recruitment in their legislation. The remaining States continued to rely on general provisions in their respective criminal codes, criminalizing various forms of participation in terrorist organizations (which would encompass the act of recruitment).

349. States of Western Asia have not developed national strategies to prevent and suppress recruitment for the purpose of engaging in terrorist activities. Most States continue to invest efforts in law enforcement activities rather than devising comprehensive strategies to prevent recruitment.

#### **(b) Financing of terrorism**

350. All States of this subregion have enacted legislation criminalizing terrorism financing as a standalone offence but reports of the Middle East and North Africa Financial Action Task Force (MENAFATF) continue to contain recommendations for technical improvements to the drafting of those offences. In most States of this subregion, the offence covers the financing of an individual terrorist and of a terrorist organization.

351. The previous survey noted that, according to MENAFATF, no State of this subregion was fully compliant with the requirement to freeze terrorist funds without delay in accordance with resolution 1373 (2001). Shortfalls in legislative implementation remain in many States (although the Committee has noted that this requirement is currently being met by some States). The remaining shortfalls include the lack of a legal obligation to freeze assets; the absence of a dedicated designation mechanism process; and reliance on general mechanisms of criminal law such as seizure and confiscation of assets. Even though most States of this subregion have recently introduced measures aimed at freezing assets in accordance with resolution 1373 (2001), available information on statistics and case law indicates that States have yet to fully implement said measures. Even though faced with high risk of terrorism financing, most States of this subregion have not yet frozen any assets pursuant to resolution 1373 (2001). Some Gulf States have, however, reported doing so.

352. Most States of this subregion have set up sophisticated FIUs that are equipped with in-house software for the detection of STRs. The Committee commended Oman for developing advanced software that allows for the monitoring of all financial transactions in real time, with automated rules in place to flag transactions and patterns based on potential terrorism-financing typologies. Some States of the subregion have become more involved in the activities of MENAFATF. FIUs of the subregion have increased the level of human resources in recent years; introduced broad powers to query STRs and obtain additional information, including access to law



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enforcement databases; updated software and data-mining tools; and provided specialized training programmes to financial institutions, criminal justice officials, and customs and border officials to build capacity. The persistent shortfalls include the lack of trained human resources and IT tools, which hampers the efforts of FIUs to produce and implement strategic analysis on STRs. Eleven States of the region are members of the MENAFATF, with Saudi Arabia also being a member of the FATF. One State is not part of any FSRB.

353. Among the key gaps hampering the efforts of States of this subregion to disrupt the flow of funds is the inadequate sharing of information and intelligence. There remains no subregional platform or network to facilitate the exchange of comprehensive and timely information among law enforcement agencies and intelligence partners concerning financial flows that bypass financial institutions.

354. Almost all States of this subregion have undertaken some form of risk assessment regarding the vulnerability of their non-profit sectors to abuse for terrorism-financing purposes. Good practices identified in this context in Gulf States included Saudi Arabia, Qatar, Oman and the United Arab Emirates. Most have done so as a component of their overall national terrorism-financing risk assessments, but this does not allow for in-depth analysis.

### **(c) Firearms**

355. The previous survey noted that most States of this subregion had enacted legislation to regulate the possession and use of arms, but that only a limited number of these States had introduced explicit provisions regarding the manufacturing, storage, illicit obliteration of their markings or illicit alteration of firearms. This remains the case, with most States of this subregion justifying shortfalls in their criminalization of the alteration of firearms or the illicit obliteration of markings by the fact that they are not manufacturers of firearms. This shortfall was identified in the previous survey.

### **3. Opportunity and border security**

356. Some Gulf States of this subregion have in recent years developed into large-scale international air hubs, with considerable numbers of passengers and amounts of cargo transiting through their airports. Significant investment has also been made in the introduction of advanced measures, including effective use of technology, to protect borders and detect and prevent the movement of terrorists, including FTFs suspects. Those measures include the implementation of API and PNR systems. The United Arab Emirates State has upgraded to an iAPI system. Few other States of this subregion have an API system in place. Some are developing a PNR system, and some States have neither in place.

357. The previous survey noted that most States of this subregion had established a capable INTERPOL NCB. However, the extent to which the NCB uses INTERPOL tools and services



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varies. Several States have extended the INTERPOL I-24/7 database to frontline officers at official BCPs. However, not many States of this subregion have reported on the extent to which they populate INTERPOL databases through their respective NCBs. The Committee has noted that one State is a particularly active user of INTERPOL services and noted its good practice in being proactive in building up relationships with law enforcement and border management agencies with other States of other regions well in advance of an anticipated increase in foreign visitors.

358. Most States have not introduced adequate measures to ensure that frontline officers tasked with regulating the movement of persons across borders are provided with up-to-date information on a real-time basis to conduct effective evidence-based travel risk assessment and screenings to help to identify suspected terrorists. Some Gulf States have embarked on projects to fence off border sections that are at high risk of infiltration. Borders shared among Gulf States have benefited from safety and security afforded by the high level of coordination among law enforcement agencies. Most of these States have advanced mechanisms in place to record the entry and exit of persons crossing their borders, particularly through airports.

359. The Gulf States of this subregion continue to cooperate within the framework of the Cooperation Council for the Arab States of the Gulf, especially in sharing information and intelligence. Apart from bilateral arrangements, the remaining States of this subregion have not established a subregional platform that would allow for effective and expeditious exchange of information. States engage in bilateral border-management cooperation on a more informal basis and have yet to develop a more sustainable platform for cooperation.

360. No Member State of this subregion has RSD procedures or specific legislation in place to prevent the granting of asylum to an individual who has planned, facilitated or participated in a terrorist act. The Committee has reiterated the need for domestic legislation and framework in this area, to be applied in a manner consistent with the 1951 Refugee Convention. Few States of this subregion have borne a disproportionate burden of refugee and asylum seekers in recent years, despite its proximity to the conflict zones. UNHCR has expressed concern at the lack of formal screening methods or standard operating procedures in the RSD process.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

361. All States of this subregion have introduced legislation providing for the prosecution of any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. The legislation is not explicit in this respect, but arises instead through general extraterritorial principles of domestic criminal law applicable to terrorism offences.



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362. The previous survey noted that all States of this subregion used existing general provisions to criminalize complicity and preparation as serious crimes. Some had criminalized attempts to commit a serious offence, while very few had introduced specific provisions on the planning and preparation of terrorism-related offences. Most of the States of this subregion have since enacted standalone pieces of legislation to implement the relevant Security Council counter-terrorism resolutions and the regional and international instruments that they have ratified, thereby allowing them to criminalize specific terrorism-related offences. Others have instead introduced amendments to their criminal codes in order to align with international standards on countering and preventing terrorist acts. Some others, such as Oman, have argued that their existing legal framework is sufficient to cover most acts committed in relation to terrorism.

### **(b) Capacity to investigate and prosecute**

363. With regard to the capacity, expertise and technical means of prosecution offices in States of this subregion to investigate and prosecute terrorism cases, there is a disparity between legal competence and actual practice. The Office of the Prosecutor-General generally has the authority to handle criminal prosecutions in terrorist crimes, but very few States have demonstrated in practice that its prosecution service has the capacity, expertise, technical means and human resources required to handle complex terrorism cases, especially when they involve other jurisdictions. Some States of this subregion have suffered from terrorist acts only to a limited extent. Efforts have been made to strengthen capacities by requesting further training for judges and prosecutors in the prosecution of terrorism-related cases (in view of the increasing sophistication of terrorism-related crimes) and converting intelligence into evidence for terrorism prosecutions. For all States, further information regarding prosecution capacities is needed.

364. States of this subregion have provided for the use of multiple SITs in the investigation of terrorism cases (e.g., undercover operations; wiretapping; interception of communications; surveillance; phone-tapping; and accessing computer data). The relevant legislation does not always clearly stipulate the preconditions for the use of such techniques (e.g., minimum sanctions and reasonable grounds for suspicion that an act has been committed, as well as measures based on a reasoned written order, with prescribed minimum contents, issued by a judge upon a motion submitted by the prosecutor). Most States of this subregion have yet to invest in the training of investigators in terrorism-related investigations, including through the establishment of dedicated law enforcement units.

365. No State of this subregion has established oversight mechanisms that are functionally independent from the Government. Most States rely on the Office of the Prosecutor-General to either prosecute criminal misconduct by law enforcement officers or to investigate and refer cases to an internal disciplinary mechanism under the auspices of the Ministry of the Interior. In most States of this subregion, the role of the Public Prosecutor includes an oversight and/or supervisory



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role (even though few States have empowered the Public Prosecutor with the necessary tools to ensure proper oversight of law enforcement activity).

366. In most States of this subregion, the definition of terrorist acts is overly broad and not clear and precise, and thus risks applying to acts beyond those envisaged in the international counter-terrorism instruments. Common shortfalls in this regard include the use of overly broad or open-ended terms within the definition and the criminalizing of certain non-violent conduct that falls outside the scope of the relevant international instruments. One State in the Gulf has implemented the Committee's recommendations to review its legislation, which is Qatar and has redrafted its Law on Combatting Terrorism in 2019 to include a definition that is precise and appropriately focused on violent acts committed with terrorist intent.

367. States of this subregion have relied heavily on confession-based investigation and prosecution. Ensuring easy access to new technologies, particularly in Gulf States, would facilitate the development of SITs with a view to conducting evidence-based investigations and prosecution, with due respect for the rule of law and human rights. All States of the subregion are encouraged to pursue their dialogue with international human rights bodies in this regard and to keep the Committee informed about progress made in that regard.

### (c) **Rule of law**

368. International human rights mechanisms remain concerned at some counter-terrorism legislation and policies of States of this subregion, including with respect to reported cases in which counter-terrorism provisions have been used to silence and eliminate critics of the Government and certain sections of the population. In assessing due-process protections, the Committee and United Nations human rights mechanisms have identified a number of common shortfalls, including extended periods of detention before being brought before a judge; extended periods of pre-trial detention; delays or restrictions on access to counsel; failure to promptly inform detainees of their rights in a language they can understand; and use of incommunicado pre-trial detention, with resulting limits on access to counsel and on correspondence.

369. Some States of this subregion have introduced extended states of emergency laws conferring specific powers on certain authorities to counter terrorism and other forms of criminality. These laws relate, for example, to administrative control measures, including restrictions on movement, and expanded search powers for law enforcement agencies. In most cases, such laws do not appear to include sunset clauses.

### **5. Activating international cooperation**

370. Very few States have developed and made publicly available guidelines on domestic laws and procedures relating to MLA and extradition in order to inform foreign authorities about the





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requirements that must be met to obtain assistance or extradition via their relevant ministries' websites. The League of Arab States has established the Arab Judicial Network to enhance subregional cooperation on criminal matters, but not all States of this subregion have appointed a focal point.

371. The domestic legislation of States of this subregion does not ensure that the *aut dedere aut iudicare* principle provided for in the international counter-terrorism instruments will be fully complied with in practice. Relevant domestic laws permit referral of cases to the competent authorities for purpose of prosecution in certain circumstances, but do not make this mandatory. They also fail to stipulate that such referrals must take place “without undue delay”.

372. With respect to bilateral cooperation in terrorism investigations, it does not appear that all States of this subregion have conducted bilateral cooperation in investigations relating to terrorism cases. Even though they have signed bilateral arrangements, the States of this subregion have not established a subregional platform that would allow for effective and expeditious exchange of information. The Gulf States traditionally cooperate within the framework of the Cooperation Council for the Arab States of the Gulf, especially in sharing information and intelligence. Cooperation through the Council has recently been undermined by a disruption in regional relations, but efforts to restore cooperation are under way.

### Priority recommendations

- Amend terrorism offences to ensure treaty-based offences are established as serious criminal offences in domestic law and that any definitions of terrorist offences are clear and precise in order to comply with the principle of legality; introduce new offences to criminalize the full range of FTF-related preparatory acts and preventive offences required by resolutions 1373 (2001) and 2178 (2014); ensure evidence collected through SITs can be admitted as evidence in FTF-related cases while respecting international human rights law, in particular, the right to freedom of expression and the right to freedom from arbitrary or unlawful interference with privacy.
- Develop comprehensive and integrated counter-terrorism strategies and action plans that include significant roles for youth, families, women, religious, cultural and educational leaders and other concerned civil society groups.
- Strengthen legal, institutional and practical AML/CFT regimes, improving supervision and increasing the powers of supervisory authorities.
- Strengthen border management by extending INTERPOL databases to frontline border posts and by increasing investment in tools and equipment for monitoring and surveying borders.



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- Introduce API or PNR systems, with appropriate privacy and data protection safeguards, and take measures to prevent the forgery of travel and identity documents and consider issuing biometric travel documents.
- Increase cooperation between customs and border officials to strengthen the capacity to identify persons who may present risks of being cash couriers and identify potential ties to terrorism financing.
- Guarding against refoulement and ensure that measures taken to implement counter-terrorism resolutions are consistent with international human rights, refugee and humanitarian law.
- Include an explicit statement that for the purpose of extradition terrorist acts cannot be considered as political acts, and to introduce a prohibition on extradition for cases where there are substantial grounds for believing that the accused would be in danger of being subject to torture.
- Enhance the capability of law enforcement and security officials in the investigation of terrorism-related cases while ensuring respect for human rights and the rule of law.

### East Asia

(China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea)

#### A. Terrorism trends

##### 1. Risks

373. Only one State has experienced terrorist attacks since the previous survey, and two others have experienced terrorism in the past (whether carried by domestic groups or by groups with links to foreign terrorist operatives or organizations). Additionally, a number of East Asian nationals have lost their lives in terrorist attacks carried out abroad. China has experienced a number of attacks **by listed terrorist groups**, the most recent of which occurred in February 2017. China issued a national list of designated terrorists and terrorist organizations, which includes the Eastern Turkistan Islamic Movement (ETIM),<sup>82</sup> and several individuals and groups linked to it. Chinese

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<sup>82</sup> The continued existence of The Eastern Turkistan Islamic Movement (ETIM) ETIM is debated by some Member States while other Member States outline that it still operates and constitutes a terrorist threat. The organizations remains listed d as QDe.088 on the United Nations Security Council Consolidated List and on the ISIL (Da'esh) and Al-Qaida Sanctions List, approved by the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated



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interests abroad have also been specifically targeted. A suicide car-bomb attack was carried out against the Chinese Embassy in Kyrgyzstan in August 2016 and in 2018 several attacks were carried out in Pakistan (the last of which involved an attack by Balochistan separatists against the Chinese consulate in Karachi). States of this subregion have adopted policies of zero tolerance for terrorism and have enhanced their legislation and security institutions to actively prevent and combat terrorism.

374. The East Asia subregion was believed to be largely untouched by the conflicts in Iraq and the Syrian Arab Republic, but reports indicate that ISIL and affiliated groups had recruited individuals as FTFs. Nationals of States of this subregion have also been recruited by other terrorist organizations and there is concern at the potential return of FTFs to their home countries.. In view of the sophistication of the subregion's technological infrastructure, there are concerns that more young people may become victims of recruitment and all States have taken steps to counter the spread of terrorist propaganda online.

375. East Asia may face security challenge by the States in preparing and holding the forthcoming Olympic events. Even though the subregion has recent experience of hosting international sporting events, the subregion must continue to strengthen border security and cooperation in order to address the heightened security risk deriving from evolving terrorist threats. There is considerable room for improvement in cooperation and information-sharing between the States of East Asia.

### **B. Implementation of resolution 1373 (2001) in East Asia**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

376. Three States of the East Asia subregion have introduced a comprehensive and integrated counter-terrorism strategy. The Republic of Korea has adopted a strategy that focuses on six key areas (including security and human rights); China has adopted strategies to address domestic terrorism and threats from abroad, as well as specific strategies on law enforcement, cybersecurity, protection of critical infrastructure, and other key areas. Japan's Terrorism Action Plan identifies 16 necessary terrorism prevention measures. The three States have also created overarching government structures to address and coordinate counter-terrorism matters. Mongolia has also established a centralized body, the National Counter-Terrorism Coordination Council (NCTCC), which consists of a broad range of counter-terrorism agencies, defines counter-terrorism priorities and coordinates government prevention activities and responses.

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individuals, groups, undertakings and entities. Review pursuant to Security Council resolution 2368 (2017) was concluded on 24 November 2020.



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### **(b) Risk assessment**

377. Law enforcement and other security agencies of four States are known to conduct threat and risk assessments relating to terrorism. China's Counter-Terrorism Law stipulates that risk assessments of key potential targets should be conducted regularly. Mongolian law enforcement and border-control agencies have adopted risk-management methodologies. Two States conduct regular threat and risk assessments as part of their operational approach to security. These States have also conducted NRAs. Mongolia has conducted an NRA with respect to terrorism and proliferation, money-laundering, and terrorism financing. China has conducted a series of threat, vulnerability, and risk assessments for various portions of its financial sector and completed its first NRA in 2017. The Republic of Korea engages in an ongoing risk assessment process that has generated three NRAs. Japan conducted its first NRA in 2015 and issues related annual reports.

### **2. Addressing enablers of terrorism**

#### **(a) Recruitment**

378. All five States of the subregion have introduced some legislative provisions enabling them to address recruitment to terrorism. However, only one State has introduced legislation that is clear and specific in its criminalization of the recruitment of a person to be a member of a terrorist group or to participate in or conduct terrorist activities. Another State imposes a blanket ban on all forms of recruitment to terrorist groups. The legislation of one State only criminalizes only recruitment for a terrorist organization designated by the United Nations.

#### **(b) Financing of terrorism**

379. Four States have introduced legislation on terrorism financing. There is insufficient information to determine the efficacy of legislation in the fifth State. Four States have criminalized terrorism financing as a standalone offence even if the funds cannot be linked to a specific terrorist act and have criminalized terrorism financing even if funds have not been used to commit, or attempt to commit, a terrorist act. Four States cover the financing of both an individual terrorist and a terrorist organization. In general, States of this subregion have achieved a relatively high level of compliance with international CFT standards, and their regulatory frameworks and institutional capacities are generally strong.

380. Since the previous global survey, two States have established comprehensive mechanisms for freezing assets without delay, as required by resolution 1373 (2001). Two of the other three States have introduced asset-freezing legislation, as well as some form of system to freeze suspected terrorist funds. Three States have frozen terrorist assets, but only one has clearly frozen funds pursuant to resolution 1373 (2001).



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381. All five States have introduced legislative provisions governing the power, functions and operations of their FIUs. Four States have established a fully functioning FIU, with satisfactory levels of operations, staffing, training, and equipment. The fifth State has introduced legislation clearly stipulating the functions of the FIU, but no assessment of its effectiveness can be made and it is unclear to what extent this particular FIU is able to operate in an independent fashion. Three FIUs of this subregion are active members of an intergovernmental group of FIUs that ensures efficient information-sharing.

380. All five States require passengers to complete customs declaration forms. In two Member States, the border authorities have the legal authority to stop or restrain currency and BNI if an officer suspects it to be related to an offence, including money-laundering or terrorism financing. In two other States, the authorities are permitted to halt and restrain funds only in the event of non-disclosure or false declaration.

381. Since the previous survey, progress has been made with respect to assessing the terrorism-financing risk to the non-profit sector. China, Japan and Republic of Korea have included the review of their NPO sectors in their NRAs. One State is in the process of collecting data and intelligence for its NPO risk assessment and has already taken steps to build awareness of terrorism financing and related risks among NPOs. Four States of the region are member of the APG, three of which are also members of the FATF. One State is not part of any FSRB.

### **(c) Firearms**

382. All five States have taken some measures to criminalize the illegal trafficking of firearms, the related acts of illegal manufacturing, the illicit manufacturing or alteration of firearms or the illicit obliteration of their markings. One State, in particular, enforces strict controls in this area. Two States have signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Firearms Protocol), and two other States have ratified the Protocol.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

383. Only one State of this subregion is not a member of INTERPOL. The other four States have been INTERPOL members for over 30 years and have established functioning NCBs. Three States have full access to the INTERPOL I-24/7 global police communications system and related databases. Law enforcement officers utilize criminal database networks, perform criminal history checks, and can conduct background inquiries and biometric data comparisons in response to inter-NCB inquiries. United Nations Notices are also fully accessible. One State has extended access to INTERPOL I-24/7 databases to its national and border police, as well as to frontline immigration



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and border-security officers. Another State integrates INTERPOL information in real-time into its uniform database for immigration and border control. One State has not yet extended real-time information to its frontline officers and appears to use an older system, which requires the NCB to download and distribute INTERPOL information through its internal law enforcement network systems.

384. Four States of East Asia implement API and PNR, and two employ an iAPI system. One State requires neither API nor PNR. In three States, immigration and border security officers have access to API information; airline check-in agents at international airports in one State are also connected to an API system. In one State, API data is also linked to the customs automated information system to support risk management. All four States that implement API and PNR conduct risk assessments and threat targeting and conduct security operations to identify and prevent the movement of terrorists. One State operates a strict 24-hour border-control system, which carries out border-control risk assessments and prevents the crossing of terrorists and other threats identified as threats to national security. All five States have introduced legislation criminalizing the use of fraudulent travel documents, and immigration and border-control authorities take measures, including using high-performance machines, to check travel documents for authenticity.

385. Four States issue e-Passports, and these States have established appropriate controls over all travel-document application, adjudication and issuance processes (including ensuring the validity of birth, marriage and other identifying documents) and include sophisticated security features in their national identity and travel documents to prevent forgery. Three States are ICAO PKD participants.

386. The States of this subregion use automated systems to record the movement of passengers. Three States have created sophisticated biometric databases to record and store the personal details of foreign visitors. In one State, its Exit and Entry Administration Law authorizes the collection of biometric data at the border and its retention for 90 days. The immigration legislation of another State provides that all foreign travellers must register for their stay. One State is in the process of establishing a national network of civil registration and passport control. All States require travellers to fill in arrival and departure cards, and two States require visas for all incoming non-citizens. The other three States require visas only for citizens coming from States with which they do not have agreements for visa-free travel. In all cases where visas are required, visas must be applied for in advance of travel, and border-control authorities collect information and screen applicants against databases of known terrorists.

387. The border-control and law enforcement agencies of all States of East Asia cooperate with their counterparts in other States of the subregion (although some cooperate only with bilateral partners and cross-border neighbours and others cooperate more broadly). One State, for example, works closely with cross-border neighbours and through the Shanghai Cooperation Organization





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(SCO), as well as bilaterally with States which produce high numbers of inbound travellers. States in the subregion coordinate with their partners to enhance border security, share information, combat the use of fraudulent travel documents, and identify and prevent the travel of terrorists. Three States are known to regularly populate the INTERPOL SLTD database with information on stolen, lost and fraudulent travel documents, and two Member States are known to post liaison officers in foreign States to facilitate the exchange of operational intelligence and facilitate the passage of authentic travellers.

388. East Asia is not a popular destination for refugees and persons seeking asylum, but most States of the subregion have introduced some related legal provisions and two States have established processes for granting asylum or refugee status. Two States rely on close cooperation with UNHCR and related United Nations agencies to conduct refugee registration and status determinations. Three States have introduced legislation specifically stating that it shall not grant refugee status or provide asylum to any terrorist or alleged offender.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

389. Only two States have clearly provided for jurisdiction to prosecute acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. One State criminalizes acts of planning, preparation and supporting of terrorist acts as autonomous offences, ensuring clarity as to the meaning of those terms. Two other States criminalize the preparation of terrorist acts or crimes. One State has introduced provisions to combat planning and facilitating. In one State, criminalizes instigation and support and appears to rely on general legislative provisions on accomplice liability for serious offences to criminalize preparatory and other accessory acts, rather than criminalizing them as standalone offences.

##### **(b) Capacity to investigate and prosecute**

390. Two States have adjudicated complex terrorism cases and have criminal justice systems with appropriately trained prosecutors at all levels. One State has taken steps to strengthen its prosecution capacities, including through the establishment of specialized teams of prosecutors. One State has also made efforts to strengthen the related capacities of other Member States. Although the national prosecution offices of the other three States appear to have the authority to handle complex terrorism cases, in two cases there is insufficient information to determine whether they have the capacity and technical means.

391. The law enforcement and security authorities of this subregion have access to a range of special powers and special investigative techniques (SITs), as provided for by their respective counter-terrorism laws. Generally, video and electronic surveillance is permitted where there are indications that crimes are being planned or are ongoing. Photographic and biometric evidence can



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be taken, and wiretapping and covert surveillance may be authorized in certain circumstances. Interception of communications and access to postal articles, as well as search-and-entry powers, also appear to be authorized either by law or upon receipt of special authorization, depending on the State. In one State, counter-terrorism legislation grants specific permission to public security authorities to stop, search and investigate suspects. All five States of East Asia make heavy use of CCTV surveillance systems, which are monitored by police and security service personnel at all times. All States have also introduced biometric facial recognition technology as standard practice for collecting data and monitoring the public, to include foreign nationals and citizens.

392. There appears to be some form of independent or civilian mechanisms in place for the oversight of law enforcement agencies in three of States of this subregion. Only one State appears to have established an Ombudsperson's Office to deal with police and law enforcement matters, but other States have established Ombudspersons dealing with corruption and other matters. In China, State organs, judicial organs, and administrative authorities all have legal supervision functions, and the People's Congresses and their standing committees can supervise law enforcement agencies through a range of means (including by organizing investigations, accepting accusations and petitions from the public, and conducting inspections). Japan's National Police Safety Commission (NPSC) operates independently to supervise the National Police Agency, ensuring political neutrality and developing policies for police operations. The Republic of Korea's Counter-Terrorism Act provides for the appointment of one Human Rights Protection Officer, under the jurisdiction of the National Counter-Terrorism Committee (NCTC), to prevent abuses relating to counter-terrorism activities. Mongolia's Office of the Prosecutor-General was formerly given oversight of law enforcement agencies, but this no longer appears to be the case. There is no information available on oversight practices in one of the States, but a 2019 United Nations Human Rights Council report noted that law enforcement officials regard torture and ill-treatment as a way to secure confessions and punish detainees,<sup>83</sup> and the State has not established a national human rights institution.

### (c) Rule of law

393. Two States have defined terrorist acts largely in accordance with the international counter-terrorism instruments, but no State has provided exclusions for advocacy, protest, demonstration and dissent. Three States use overly broad or vague language that could be used to criminalize acts well beyond those envisaged by the international counter-terrorism instruments by making reference to activity that "undermines public security" or is conducted with "anti-State purposes".

394. In assessing due process protections, the Committee found that some key rule-of-law principles were not fully respected in terrorism cases by all States of this subregion. The shortfalls identified by the Committee and by United Nations human rights mechanisms include delays or

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<sup>83</sup> Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/HRC/40/66); Human Rights Council Fortieth session 25 February–22 March 2019.



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restrictions on access to counsel in terrorism cases; extended period of pre-trial detention; the taking of confessions without lawyers present; reports that the presumption of innocence, although stated in the law, is not always respected in practice; and concerns regarding the independence of the judiciary. In one Member State, for example, subjects can be detained in police cells for a period of up to 23 days, with limited access to a lawyer and without the possibility of bail.

395. The counter-terrorism legislation of all five Member States appears to grant added powers to certain authorities to counter terrorism. The legislation of one State grants authority for the collection of information relating to the finances, movement, and location of terrorist suspects, and the legislation of another confers broad powers on public security authorities to impose a range of restrictive measures against persons being investigated on suspicion of terrorism activities. One State has adopted additional counter-terrorism laws and regulations authorizing special powers. These special laws are not subject to sunset clauses.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

396. Four States of this subregion have enacted laws on extradition and MLA. Although no State appears to have developed separate guidelines on its related domestic laws and procedures, the extradition and MLA laws of all States of the subregion contain clear provisions on rules and procedures and are made publicly available. Greater efforts should be made to publicizing names and contact information of relevant staff in central authorities. Only one State clearly embodies the “extradite or prosecute” principle in its legislation (extending it to nationals, foreigners and stateless persons in all circumstance). In the remaining States, either application of the principle is limited to the crimes set forth in the international counter-terrorism instruments to which they are parties or the legislation does not specifically include the principle.

#### **(b) Ensuring effective exchange of information and intelligence**

397. China, Japan and the Republic of Korea have developed integrated counter-terrorism databases containing information/intelligence on terrorists/terrorist groups, national law enforcement data and information shared by foreign partners to which a range of law enforcement and security agencies can contribute and have access.

398. Even though four East Asian States cooperate with their bilateral and multilateral partners in areas relating to transnational and organized crime, money-laundering, fraud, and other criminal activities, only two States have conducted bilateral cooperation in investigations relating to terrorism cases with foreign authorities. One State, in particular, engages actively in bilateral and regional cooperation with Central Asian States via the SCO framework. As an observer State to the SCO, one State is able to participate in relevant joint international investigations and other forms of cooperation conducted through the SCO’s networks.



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### Priority recommendations

- Develop comprehensive and integrated national counter-terrorism strategies and effective mechanisms to implement them, in accordance with Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015).
- Review and revise legislation to ensure that definitions of terrorism contained in national laws are not overly broad or vague and that terrorist offences capture only intentional violent acts involving clear terrorist intent and do not criminalize peaceful assembly, non-violent protests, or legitimate expression of opinions or thought.
- Strengthen measures to counter the financing of terrorism including enhancing the capacity of FIUs, enhancing asset-freezing legislation in compliance with the requirements of resolution 1373 (2001) (including freezing without delay), and preventing the illicit cross-border movement of funds.
- Extend access to the INTERPOL I-24/7 to national law enforcement entities at all BCPs and police stations (where appropriate, integrating system into national systems), and strengthen use of and population of INTERPOL databases by law enforcement entities.
- Enhance border security by conducting border control and passenger screening based on intelligence-led risk assessments and enhancing API and PNR operational capability, including the ability to collect, use, process and protect API/PNR data in accordance with the relevant ICAO standards and recommended practices, and in accordance with resolutions 2396 (2017) and 2482 (2019).
- Ensure that surveillance, data collection and special restrictive measures implemented for counter-terrorism purposes are consistent with the relevant provisions of resolution 2396 (2017), comply with data-protection good practices and safeguards, and meet principles of necessity and proportionality; ensure they do not amount to discrimination, or arbitrarily or unlawfully interfere with privacy, family, home, or correspondence.
- Ensure that special powers, investigative techniques and restrictive measures are consistent with principles of legality, proportionality, and necessity; introduce safeguards to protect against racial, ethnic or other discriminatory profiling; consider limiting special powers granted to public security authorities and introducing clear and accessible procedures for affected persons to challenge use of such measures before a judicial authority.
- Strengthen respect for the right to a fair trial and due process, specifically in relation to the prohibition of torture and other cruel and inhumane treatment and punishment; also ensure



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that mass arrests and lengthy periods of detention without charge are not used as part of terrorism prevention policies.

### **Latin America**

#### **Central America**

**(Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama)**

#### **A. Terrorism trends**

##### **1. Risks**

399. Even though the terrorist threat remains low, the Central America subregion has for many years been forced to contend with violence and corruption stemming from organized crime and drug trafficking. States of the subregion have continued to strengthen their counter-terrorism efforts, primarily within the framework of the Inter-American Committee against Terrorism of the Organization of American States (OAS/CICTE). Some States have recently made new designations of terrorist groups. For example, Honduras announced the new designation of international terrorist organizations in January 2020.

400. States have focused their efforts on enhancing border security, preventing terrorism financing, enhancing law enforcement and sharing of intelligence and information, and strengthening criminal justice responses to terrorism. Mexico has continued to strengthen its law enforcement institutions in efforts to reduce violence. Since the discovery of ISIL-controlled (data) servers in Panama, States have also focused their efforts on strengthening cybersecurity. Strengthening protection of critical infrastructure such as the Panama Canal is also a priority. The Panama Canal Authority, acting with the support of regional and international partners, has been vigilant in its efforts to maintain a secure shipping channel.

401. Although several States have strengthened their counter-terrorism capacities, few have introduced comprehensive counter-terrorism legislation or established robust counter-terrorism legal frameworks. Most still have face challenges relating to corruption, weak government institutions, insufficient inter-agency cooperation, and lack of resources (all of which continue to impede progress in the subregion as a whole).

402. Since the previous global survey, the continued operational viability of powerful organized crime groups and drug cartels has led to a further upsurge in violence, erosion of the rule of law, and human rights violations. The steady stream of outward migration is driven by ongoing turmoil, particularly in Nicaragua and the Northern Triangle States of El Salvador, Guatemala and Honduras. The Central America region is a transit zone for cocaine flowing from



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South America to the United States. Both the Northern Triangle and the Southern Region are known to be the settings for significant levels of arms shipments, both within the subregion and to insurgency and criminal groups in States of South America.

403. States of the subregion are alert to the rising threats of extremism linked to groups motivated by racism, xenophobia and related intolerance, and other forms of violent extremism **conducive to terrorism**. There is no known operational activity linked to international terrorism in Central America but the perception that the terrorist threat is low could increase the region's vulnerability to terrorism recruitment and financing. There is recent evidence that criminal organizations may be adopting terrorist tactics and that cells have surfaced in the subregion. In 2019, the Nicaraguan National Police stated that it had dismantled two groups of criminals which had intended to carry out terrorist attacks in the departments of Chinandega, León and Masaya.

### **B. Implementation of resolution 1373 (2001) in the Central America region**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

404. No State of this subregion has developed a comprehensive and integrated counter-terrorism strategy or action plan as recommended in Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015). Three States have continued to implement national security strategies that include counter-terrorism as component and to stress the need for regional and international cooperation. In other States, efforts have been made to review compliance with the international counter-terrorism instruments, strategize implementation of Security Council resolutions on terrorism, gather data relating to government counter-terrorism measures, report on actions taken, and recommend new measures.

##### **(b) Risk assessment**

405. Although most States do not appear to conduct systematic assessments of the terrorist threat and risks, three States have established agencies for conducting assessments in the areas of prevention, intelligence detection, and investigation. For example, Mexico has established the Centre for National Intelligence in the Secretariat of Security and Citizen Protection, which is the lead agency for detecting, deterring, and preventing terrorist threats. In November 2018, Paraguay launched its National Intelligence System (consisting of the National Intelligence Council and the National Intelligence Secretariat), which will aid in assessing and preventing threats from terrorist groups and transnational criminal organizations. Belize conducts threat and risk assessments through its Joint Coordination Centre. Most States of this subregion have applied a risk-based approach to countering money-laundering and terrorism financing.

#### **2. Addressing enablers of terrorism**





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### (a) Recruitment

406. Three States of this subregion have introduced legislative provisions that enable them to address recruitment to terrorism. This marks an improvement since the previous global survey. Others have adopted more general legislative provisions that criminalize the offence of abetting commit terrorists acts. Two States are able to use the offence of illegal association.

### (b) Financing of terrorism

407. All States of this subregion have introduced a standalone CFT offence into their national criminal legislation. The offences of seven States cover the financing of both an individual terrorist and a terrorist organization. In six States, the terrorism-financing offence covers the financing of both an individual terrorist and a terrorist organization. Seven States have introduced regulations on the freezing of terrorist assets and have also established designated authorities. However, only one State has introduced legislation that would allow for asset-freezing pursuant to resolution 1373 (2001). Moreover, that system has not yet been tested. In several States, there is no specific procedure for domestic designations and delays in the administrative systems preclude freezing without delay. No State of this subregion appears to have frozen funds or investigated or prosecuted cases relating to terrorism financing. In 2017, Panama received a request from a third-party State to designate four persons related to international terrorist organizations included in its national list. Panama acceded to the request but did not locate any funds in the country.<sup>84</sup>

408. All States of the subregion have established FIUs, but there is considerable variation in their levels of capacity, funding, staffing, and output. Two States have established fully functioning FIUs (although one is significantly larger than the other) and five States have established the necessary legal frameworks and structure to operate. Most FIUs are independent, but most also require additional staff. Cooperation with similar FIUs through the Financial Action Task Force of Latin America (GAFILAT) and the Caribbean Financial Action Task Force (CFATF) appears to be reasonably efficient. The FIUs of all but one State of this subregion are active members of an intergovernmental group of FIUs, which ensures efficient information-sharing. Six States of the region are members of the GAFILAT, with Mexico a member of the FATF; two States are members of the CFATF.

409. The border authorities of only three States appear to have been given the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. In the remaining States, the border authorities either do not have this power or require other conditions (such as making a false declaration to customs agents). Only four States have conducted an assessment or review of the terrorism-financing risk to their non-profit sectors. One

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<sup>84</sup> Technically, no funds were frozen in this instance because none were located in Panama. It took Panama less than 48 hours to designate these individuals on their national list.



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State has developed a specific risk-based approach guide for non-financial sectors, which contains a chapter for NPOs that includes specific measures relating to sectoral registration and supervision practices. There is no indication that States have conducted outreach activities in relation to the vulnerabilities of NPOs to terrorism-financing abuse and risks.

### **(c) Firearms**

410. All States of the subregion have introduced restrictive legislation and regulations on control of firearms. Most criminalize the manufacture and illicit trafficking of arms, ammunition, explosives, and other related materials. A common shortfall across most States is the failure to criminalize the illicit obliteration of markings. In Mexico, all firearms in the possession of government armed and security forces are marked, at the time of manufacture, with information on the manufacturer, calibre, model, serial number, and State of manufacture. Mexico criminalizes the illicit manufacturing, trafficking or alteration and the illicit obliteration of their markings. In Costa Rica, the relevant authorities carry out recognized arms tracing and tracking procedures, employing ballistic fingerprinting technology to trace guns and ammunition. However, the availability and proliferation of illegal firearms of this subregion and the increasing links between organized criminal groups, violent gangs and terrorism remain a concern.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

411. Only one State appears to have fully connected its frontline immigration screening processes to INTERPOL I-24/7 databases and tools and can also screen in real-time against the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. In three other States, it appears that frontline staff at the main international airport and police in certain locations are able to make real-time checks against the INTERPOL SLTD database. Belize, for example, has established the Joint Intelligence Coordinating Centre, which collates intelligence on criminal matters from all government agencies and INTERPOL, disseminating it to relevant agencies and all ports of entry. In the remaining four States, information is shared with law enforcement agencies via the INTERPOL NCB. Several States are known to make only limited use of INTERPOL databases, despite the high volume of passenger traffic crossing their borders.

412. All States of this subregion have the capacity to screen travellers at their major international airports and most official land BCPs. Mexico strengthened its capacity to screen persons entering its territory in 2019 and is currently the only State of this subregion to implement both API and PNR systems. Six other States implement API, and the remaining State is taking steps to also implement API. Two States have authorized, but not implemented, the use of PNR. All States require visas for incoming passengers and Mexico also now requires visitors to



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submit information for an official Entry Immigration Form (“tourist card”)<sup>85</sup> in advance of arrival. However, two States (as members of the Commonwealth)<sup>86</sup> and three (as members of CARICOM)<sup>87</sup> allow visa-free entry for citizens of States<sup>88</sup> participating in those community agreements. Additionally, most Central American States have established visa-waiver programmes with various States outside the subregion. Four States are parties to the Central America-4 Free Mobility Agreement<sup>89</sup> (CA-4), wherein citizens of signatory States have free cross-border passage, and foreign nationals having entered one State are permitted to cross the land borders of other participating States without obtaining permits or undergoing checks at border points. Porous land and maritime borders between most States of the subregion further undermine the effectiveness of traveller screening.

413. There are some differences with respect to States’ capacity to detect fraudulent documents at the border. The border authorities of two States are known to have received training in the detection of fraudulent passports, and two States have installed equipment for detecting forged travel documents. Only Panama participates in the ICAO PKD.

414. The States of this subregion have also strengthened their national border-control systems and five States can record and store the entry and exit of persons crossing their borders in automated systems, whether through their own national system (two States) or through that of a regional body (three States). However, poor technical infrastructure has constrained the ability to reconcile entry and departure records in three States.

415. All States have measures in place to cooperate with other States to strengthen the security of their international borders. For example, Panama signed information-sharing agreements with Costa Rica and Colombia in 2019 to enable further cooperation to combat transnational criminal organizations. Panamanian security forces have also conducted operations with Costa Rica and Colombia to identify related routes and networks. One State, Mexico, has entered into agreements on border-control coordination with Belize, Guatemala and the United States.

416. All States of the subregion are members of OAS/CICTE, which promotes cooperation and provides training to Member States in countering terrorism. CARICOM States receive information on terrorist threats and potential terrorist travellers through the Joint Regional Communications Centre (JRCC) and Regional Intelligence Fusion Centre (RIFC) of the CARICOM Implementation Agency for Crime and Security, the General Secretariat of the Central American Integration

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<sup>85</sup> Possession of the Mexico Tourist Card is an entry requirement for all foreign nationals travelling to Mexico for the purposes of tourism, business, or leisure.

<sup>86</sup> Belize and Guyana.

<sup>87</sup> Belize, Guyana, and Suriname.

<sup>88</sup> Belize and Guyana maintain exceptions and require citizens of some Commonwealth States to obtain entry visas.

<sup>89</sup> The Central America-4 Free Mobility Agreement (CA-4) is a treaty signed in June 2006 between the Central American nations of El Salvador, Guatemala, Honduras, and Nicaragua establishing the free movement of their citizens across borders between the four signatory States without any restrictions or checks.



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System (SICA), and the Border Security Programme in Central America (SEFRO). The CICTE Secretariat actively supports States in their development and implementation of national and regional plans to strengthen maritime, customs and port security, inter-agency coordination and the exchange of information. Several States also participate in the GCTF Initiative on Maritime Security and Terrorist Travel Virtual Consultations on Global Implications of Terrorist Travel in the Maritime Domain.

417. Mexico has introduced specific legal measures to ensure that individuals who have committed a terrorist offence are not granted asylum or refugee status, and two other States have introduced laws that could be used to deny asylum to persons considered to have committed terrorism crimes. All States but one have a national refugee and/or asylum determination process, and all States cooperate with UNHCR. Most have undertaken efforts since the previous survey to improve their related legislation and procedures, specifically within the framework of the regional Quality Assurance Initiative. The main challenge remains the need to reduce processing times for asylum claims.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

418. Four States of the subregion criminalize the use of their national territory to commit or prepare terrorist acts against other States. The legislation of other States contains provisions on general preparatory or accessory terrorist acts, but nothing in particular concerning use of national territory to prepare terrorist acts against other States. Five States criminalize acts of planning, preparation and supporting of terrorist acts as autonomous offences.

##### **(b) Capacity to investigate and prosecute**

419. Some States of this subregion have developed the capacity to effectively prosecute complex criminal cases, but no State has established a specialized team for terrorist cases. Most States have a system in place to ensure the continuous training of prosecutors and have taken steps to strengthen their overall capacity to try cases. Mexico reorganized its Prosecutor-General's Office in 2019 in order to develop interdisciplinary investigation teams. Panama's Public Prosecutor's Office strengthened its structure through the creation of a specialized money-laundering and terrorist-financing unit in 2016. However, some States continue to be constrained by corruption; intimidation of judges, prosecutors and witness, and inefficiencies leading to long waitlists and case backlogs. In two States, the independence of the judiciary has been questioned.

420. All States of this subregion have introduced legislative provisions authorizing the use of special investigative techniques (SITs) by law enforcement and security services. Most are used only in the investigation of criminal cases and require approval at the judicial or Prosecutor-General level. Commonly authorized SITs include the use of audio-visual recording equipment;



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interception of communications; video surveillance; phone-tapping; use of informants; and covert surveillance. In 2017, the United Nations Human Rights Committee expressed concern at reports of one State's frequent use of its Special Act on Interception of Private Communications, which entails extensive monitoring of private communications.

421. Generally, oversight of law enforcement structures and security services is weak in the Central America subregion. Although six States have established some form of oversight mechanism for law enforcement agencies with a view to ensuring professionalism and respect for human rights in their counter-criminal work, two States have no oversight mechanisms in place. Seven States have received observations from the United Nations Human Rights Committee regarding measures deemed incompatible with international norms and standards.

### **(c) Rule of law**

422. Few States have defined “terrorism” and “terrorist acts” with sufficient clarity and precision so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments. With some exceptions, the definitions are very vague and could apply to people who are merely exercising their right to demonstrate. With respect to at least one State, the United Nations Human Rights Committee has also expressed concern at the trend towards the undue expansion of the notion of “terrorism” to include criminal acts generally committed by gangs and organized criminal groups.

423. The Constitutions and laws of all States of the subregion provide for the right to a fair public trial, the presumption of innocence, the right to be present at trial, and the right to counsel in a timely manner. They also provide for an independent judiciary. In practice, however, these norms are not met. With respect to some States, United Nations human rights mechanisms have also expressed concern at arbitrary arrests and detentions that continue to be used as a means to suppress dissent. Other reports have expressed concern that fundamental legal safeguards, particularly the right to be brought before a judge within the time limit set by law, are not respected and that instances of torture and ill-treatment targeting persons arrested for protesting and dissent continue to persist.

424. Only one State is known to apply exceptional criminal procedures relating to terrorism offences as defined in its terrorism law, and those procedures are not subject to sunset clauses. Another State has introduced special provisions for “crime-ridden areas” that empower the Minister for National Security to designate zones as “special areas” and confer extended powers of arrest and detention to police and security forces within those zones. Although originally designed in the context of criminal gangs, they could be applied to transnational criminal organizations and employed to contain terrorist activity.

### **5. Activating international cooperation**



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### (a) Effective mutual legal assistance and extradition

425. All Central American States are members of OAS/CICTE and parties to the Inter-American Convention Against Terrorism. They have also all ratified the Inter-American Convention on Mutual Assistance in Criminal Matters. Seven States are members of the Ibero-American Network for International Legal Cooperation<sup>90</sup> (IberRed). At the regional level, the Hemispheric Network for Legal Cooperation on Criminal Matters<sup>91</sup> contains a virtual library that offers legal information relating to MLA and extradition in the 34 active OAS member States. Two States have developed publicly available guidelines on domestic laws and procedures relating to MLA and extradition. Belize and Guyana take part in the Commonwealth's mechanisms for inter-State cooperation in criminal matters ("Harare Scheme"<sup>92</sup> for MLA and "London Scheme"<sup>93</sup> for extradition).

426. In the event that extradition is refused, all States of the subregion, are obliged to submit the case to their own judicial system for prosecution in compliance with the *aut dedere aut iudicare* principle.

### (b) Ensuring effective exchange of information and intelligence

427. Seven States of this subregion have established the legal basis to establish joint investigation teams (JITs). All eight States are members of the Network of Prosecutors against Organized Crime<sup>94</sup> (REFCO), and cooperate, including through JITs, against organized crime. Most States have cooperated bilaterally with other States of the subregion and with external partners to conduct investigations relating to transnational organized crime and drug crimes. For example, Panama and United States have created the Special Interest Alien (SIA) Joint Task Force, a bilateral mechanism for the sharing of information on known and suspected terrorists, and have cooperated on several cases. Panama also facilitated the multilateral investigation and elimination of ISIL-controlled computer servers found in Panama. As noted above, the three States that participate in the CARICOM Implementation Agency for Crime and Security are able to contribute to joint investigations led through that body; they also have access to data and other information shared between CARICOM Member States through the CARICOM Implementation Agency for Crime and Security (IMPACS). In 2019/2020, the CICTE Secretariat began to develop the Inter-American Counter-Terrorism Network (IACT), a flagship initiative that responds to the need expressed by OAS member States to facilitate operational information-sharing in real time to prevent and counter terrorism in the subregion. The IACT will become fully operational in 2021.

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<sup>90</sup> IberRed consists of the central authorities and points of contact of the ministries of justice, public prosecutor's offices, and judicial authorities of the 22 States that make up the Ibero-American Community of Nations, as well as the Supreme Court of Puerto Rico.

<sup>91</sup> <http://web.oas.org/mla/en/Pages/default.aspx>.

<sup>92</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf).

<sup>93</sup> [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_13\\_ROL\\_Schemes\\_Int\\_Cooperation.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf).

<sup>94</sup> REFCO provides a platform for cooperation between the Prosecutors' Offices of its member States (Belize, Costa Rica, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama).





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It will facilitate contact between established national focal points to expedite the exchange of information about potential terrorist threats with the goal of preventing incidents or attacks.

### **Priority recommendations**

- Develop comprehensive and integrated national counter-terrorism strategies and effective mechanisms to implement them as recommended in Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015).
- Review relevant legislation to ensure that it criminalizes acts of planning and of preparation as an autonomous offence.
- Introduce comprehensive terrorist asset-freezing regime that includes a designation mechanism with adequate due process safeguards and can be swiftly communicated to the private sector to identify and detect any funds or financial assets held by designated persons or entities.
- Ensure that competent authorities have the legal power to stop or restrain in-bound and out-bound currency and/or BNI suspected to be related to terrorism financing; strengthen information-sharing between the FIU, police and customs authorities to prevent the illicit cross-border movement of cash and BNI.
- Consider ratifying the Firearms Protocol and adopt and implementing a series of crime-control measures aimed to implement all aspects of the protocol.
- Ensure full use of, and access to, national counter-terrorism databases and all INTERPOL databases and tools for all law enforcement officials, particularly those beyond NCBs, to include entities at all BCPs, airports, customs and immigration posts, and police stations.
- Strengthen coordination and information sharing among Member States around diverse terrorist threats, taking advantage of mechanisms that exist for such purposes, including the OAS Inter-American Counter-Terrorism Network.
- Institute effective, independent and impartial mechanisms that can address individual complaints of misconduct by law enforcement or prosecutorial officers.
- Extend real-time access to the INTERPOL I-24/7 network to all border officials.
- Implement API and PNR systems and conduct border controls based on risk assessments to detect the movement of, and identify, known and suspected terrorists.



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- Strengthen respect for the right to a fair trial and due process, specifically in relation to the protection against unlawful and arbitrary deprivation of liberty; prohibition of torture and other cruel and inhumane treatment and punishment; and the right to a hearing without undue delay, including in the case of expulsion proceedings concerning foreign nationals.

### **Caribbean**

**(Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago)**

#### **A. Terrorism trends**

##### **1. Risks**

428. In the Caribbean subregion, terrorism remains a threat of low probability, but of potentially high-impact. Governments are aware of the evolving and decentralized threat posed by international terrorist groups, including ISIL and Al-Qaida. The risk of recruitment to terrorism and radicalization to violent extremism conducive to terrorism, the volume and accessibility of terrorist propaganda, and the potential for exploitation of the banking system and informal economies of many States to fund terrorist networks remain matters of concern. Moreover, because of its geography, the subregion is vulnerable to maritime criminal activity, including the smuggling of drugs, SALW, people, and CBRN materials.

429. In 2018, Trinidad and Tobago disrupted an ISIL-inspired plot to attack its carnival celebrations. In 2020, the Government of Jamaica extradited Sheikh Abdullah el-Faisal to the United States for recruiting and providing support to individuals seeking to commit terrorist acts. By the start of 2018, more than 200 FTFs from States of the Caribbean Community (CARICOM) had reportedly travelled to Iraq and the Syrian Arab Republic. The increased frequency of terrorist attacks on critical infrastructure and “soft” targets, including public spaces associated with tourism, major events and places of worship, globally, is a further matter of concern.

430. The transnational nature of terrorism creates the risk that States of the Caribbean region could be used for recruiting, training, planning and/or financing terrorist activities. The increased complexity of the possible links between terrorism and organized crime underscores growing challenge relating to the subregion’s capacity to investigate, prosecute and adjudicate terrorism cases and their links to transnational organized crime. The prevalence of illicit trafficking routes throughout the Caribbean Basin also raises the risk that organized criminal groups and violent gangs may be enlisted to facilitate the undetected departure and return of FTFs in the subregion.



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431. Although Member States of the subregion have strengthened their counter-terrorism capacities, there remain a number of challenges, including the lack of national counter-terrorism strategies and judicial and prosecutorial capacities; the limited use of SITs and witness-protection measures; shortcomings in forensic capacity; porous coastlines; lack of financial and human resources; and low capacity to counter online radicalization and violent extremist propaganda conducive to terrorism. In addition, the COVID-19 pandemic may provide an opportunity for terrorist organizations and individuals to exploit the region's counter-terrorism vulnerabilities.

### **6. Regional spotlight: border security (air, land and sea): the Caribbean**

432. The border-security-related obligations set forth in Security resolution 1373 (2001) require that Member States prevent the movement of terrorists or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents. The resolution also calls on all States to take the necessary steps to prevent the commission of terrorist acts; to intensify and accelerate the exchange of operational information; and to cooperate in preventing trafficking in arms, explosives and sensitive materials. Effective border management is of particular importance with respect to FTFs, as reflected in Council resolution 2178 (2014) and subsequently reaffirmed in Council resolution 2396 (2017), which include requirements for Member States to establish API systems and develop the capability to collect, process and analyse PNR data. In its resolution 2396 (2017), the Council decides that States shall develop watch lists or databases of known and suspected terrorists, including FTFs, for use by law enforcement, border-security, customs, military and intelligence agencies to screen travellers and conduct risk assessments and investigations, in compliance with domestic and international law, including human rights law. In addition, States are encouraged to share this information through bilateral and multilateral mechanisms. In its resolution 2482 (2019), the Council calls on States to strengthen border management to effectively identify and prevent the movement of terrorists, terrorist groups and transnational organized criminals working with them.

433. *Information-sharing, inter-agency coordination and cooperation.* Most frontline immigration authorities have access to national watch lists and alerts. Since the previous survey, two States (Jamaica and Trinidad and Tobago) have created central counter-terrorism databases that are accessible to relevant law enforcement agencies on a need-to-know basis. One State (Jamaica) has introduced a Directive aimed at ensuring the effective management of its counter-terrorism watch list. Three States (Bahamas, Jamaica, and Trinidad and Tobago) have established national inter-agency mechanisms to coordinate intelligence and joint strategic planning by all national law enforcement agencies and government departments. In general, States' criminal intelligence infrastructure (with respect to establishing and maintaining integrated counter-terrorism watch lists or databases, intelligence capacities, and IT equipment) varies significantly.

434. *International and regional cooperation and coordination.* The national border-management systems of most States of this subregion are supported by enhanced regional



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initiatives such as the Advance Passenger Information System (APIS), the CARICOM Integrated Border Security System (CARIBSEC), and the CARICOM Automatic Watch List System (CAWS). Since the previous survey, States have increased use of the CARIBSEC regional watch list to facilitate sharing and analysis of intelligence, including on stolen and lost about passports, criminal offences, and terrorist affiliations. All States of this subregion are members of INTERPOL and receive and share information regarding terrorism and other serious crimes through INTERPOL mechanisms, as well as through CARICOM systems (some of which have been expanded since 2016 to facilitate sharing and analysis of critical intelligence information and assessments). In 2018, INTERPOL established a Liaison Office within the Joint Regional Communications Centre (JRCC) of the CARICOM Implementation Agency for Crime and Security to support police cooperation in the subregion.

435. Since the previous global survey, States of this subregion have strengthened their cooperation and coordination on law enforcement and border-control measures, particularly within the framework of CARICOM and OAS/CICTE. In February 2018, the Caribbean subregion approved a common strategy to counter terrorism within CARICOM. The strategy calls on States to enhance information and intelligence capabilities, strengthen border controls, and advance coordinated and cooperative relationships between intelligence, security and law enforcement agencies nationally, regionally and internationally. To this end, the CARICOM Implementation Agency for Crime and Security and OAS/CICTE have continued to support States in their efforts to strengthen intelligence and information-sharing mechanisms on individual terrorists and FTFs, including in countering trafficking in SALW, joint training, and early-warning mechanisms.

436. CARICOM has been particularly innovative in establishing regional arrangements to share border-control infrastructure and traveller data. Notable mechanisms in this regard include the Implementation Agency for Crime and Security's two sub-agencies (the JRCC and the Regional Intelligence Fusion Centre (RIFC)), which serve to facilitate information and intelligence sharing with Member States and international partners. The RIFC works to enhance the sharing and analytical support of threat and risk assessments with national authorities and supports the JRCC in the area of border security. The JRCC analyses and screens API data received against regional and international watch lists populated by participating States, in conjunction with other traveller information such as API and PNR, to detect and interdict known or suspected terrorists. In 2018 alone, over sixty-three million passenger records were screened. Member States receive the information simultaneously through their immigration departments via the respective border-management systems. This structure has enabled national and regional law enforcement officials to undertake joint risk assessments and enhance targeting capacity. Engagement through the Implementation Agency for Crime and Security enables the participating States to reduce their costs and human resources.

437. All CARICOM States are fully compliant with the requirement of Council resolution 2178 (2014) on API and most have adopted legislation on the use of PNR pursuant to resolution 2396



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(2017). There is a need to ensure PNR operational capability, including the ability to collect, process and analyse PNR data, in furtherance of the relevant ICAO standards and recommended practices and in accordance with Security Council resolutions 2396 (2017) and 2482 (2019), including with respect to privacy and data-protection safeguards.

438. *Maritime security.* Maintaining secure maritime borders and policing sea and coastal areas is challenging for many States of this subregion. The difficulty of effectively patrolling vast marine spaces is often compounded by the lack of physical borders and checkpoints. Other challenges faced by most States of this subregion include the lack of financial and human resources, equipment and specialist skills, as well as the lack of intra-State and inter-State cooperation. Few States have established a comprehensive approach to maritime security in the counter-terrorism context.

439. Since the previous survey, States of this subregion have enhanced their measures to share information relating to cargo security and other customs matters. The Implementation Agency for Crime and Security has worked closely with all CARICOM States to facilitate their enactment of the Advance Cargo Information System (ACIS). Thus far, five States of this subregion (Antigua and Barbuda, Barbados, Dominica, Grenada, and Saint Vincent and the Grenadines) have enacted legislation on ACIS. CICTE has continued to actively support Member States in the development and implementation of national and regional plans to strengthen maritime, customs and port security, inter-agency coordination, and the exchange of information. It has also enhanced its participation in the GCTF Initiative on Maritime Security and Terrorist Travel Virtual Consultations on Global Implications of Terrorist Travel in the Maritime Domain. In coordination and collaboration with CTED, IMO and other strategic partners, CICTE has also continued to strengthen the capacities of customs and border-security agencies responsible for controlling the flow of goods and the means that transport them across land, air, and sea borders by fostering regional dialogue, strengthening technical and operational capacities (particularly as related to the inspection of cargo and containers) and promoting the exchange of information.

440. *Inter-American Counter-Terrorism Network.* In 2019, the CICTE Secretariat began to develop the IACT in response to the needs expressed by OAS member States to facilitate operational information-sharing in real time to prevent and counter terrorism in the subregion. This platform (which is similar to the 24/7 Network established by the Council of Europe) will be fully operational at the beginning of 2021 and will facilitate contact between established national focal points designated by each State to expedite the exchange of information concerning potential terrorist threats, with the goal of preventing incidents or attacks. OAS members from Central and South America will also have access to the platform.

### **B. Implementation of resolution 1373 (2001)**

#### **1. From prevention to rehabilitation**



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### (a) Comprehensive and integrated counter-terrorism strategies

441. Most Member States of the subregion have not yet adopted comprehensive and integrated national counter-terrorism strategies as recommended in Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015). In 2018, Trinidad and Tobago approved a comprehensive counter-terrorism strategy that focuses, inter alia, on deterring people from participating in or supporting terrorism, enhancing national counter-terrorism operational capabilities, and building national resilience following an attack. In the same year, Jamaica established a steering committee in its National Counter-Terrorism Forum to draft its National Counter-Terrorism Strategy, which reflects the provisions of the relevant Security Council resolutions and international counter-terrorism instruments. However, most States of the subregion continue to rely on national security strategies to address various types of crime rather than standalone counter-terrorism strategies that integrate law enforcement measures and address socio-economic, human rights, gender and rule of law components.

### (b) Risk assessment

442. Several States of this subregion appear to conduct terrorism threat and risk assessments. Not all States of this subregion have developed sufficient expertise on data-gathering, analysis, intelligence development, and dissemination. Most States receive threat data to support domestic and regional threat identification from the RIFC.

443. Since the previous survey, a few States of this subregion have created domestic institutions to prevent the commission of terrorist acts. For example, in 2019, the Bahamas adopted the National Crime and Intelligence Agency Act, which established the National Crime and Intelligence Agency to, inter alia, coordinate intelligence and joint strategic planning by all national law enforcement agencies and government departments.

## 2. Addressing enablers of terrorism

### (a) Recruitment

444. Most States have introduced legislative provisions to suppress the recruitment of terrorists and FTFs. Two States continue to rely upon general laws prohibiting criminal association, conspiracy, and support to terrorism. Other States have introduced laws that include recruitment for terrorism in their definition of “terrorist activities”. In one State, the scope of the terrorism-recruitment provision applies only to recruitment to become a member of a terrorist organization and does not cover recruitment of individuals to participate in a terrorist act as an autonomous offence. Since the previous survey, several States have introduced legislative schemes allowing executive or judicial proscription of groups as illegal terrorist organizations, and punishing subsequent recruitment for or participation therein as an offence. In 2018, Trinidad and Tobago created the





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offence of agreeing to recruit or recruiting a child to participate in the commission of a terrorist act as an aggravating circumstance.

### **(b) Financing of terrorism**

445. All States have criminalized terrorism financing as a standalone offence that covers the funding of both individual terrorists and terrorist organizations. Several States have introduced or amended asset-freezing legislation and systems to freeze terrorist funds without delay pursuant to resolution 1373 (2001). In practice, however, the effectiveness of freezing mechanisms in most States has not been tested and no funds have been frozen pursuant to resolution 1373 (2001). The FIUs of nearly all States are fully operational and have been given adequate human and financial resources. A few States have enhanced the capacities of their respective FIUs in relation to the receipt and analysis of STRs, the investigation of terrorism-financing offences, and international cooperation. Eleven States of the region are member of the CFATF and two are members of the GAFILAT.

446. Several States have enhanced coordination between the relevant authorities to identify and investigate cross-border transportation of cash or other BNI, resulting in a number of seizures. However, some States continue to lack the legislative basis for the competent authorities to stop or restrain currency and BNI that are suspected to be related to terrorism financing or that are falsely declared or disclosed. Since the previous survey, States have reviewed their legal frameworks relating to NPOs, considered the threat posed by NPOs in their NRAs, and enhanced their outreach to the sector. However, only a few States have conducted risk assessments to determine which NPO subsector is most vulnerable to terrorism financing.

### **(c) Firearms**

447. Most States to some extent criminalize the illicit trafficking and manufacturing of firearms, as well as the obliteration of official markings. Since the previous survey, several States have adopted or strengthened national legislation to make the possession, use and transfer of firearms and ammunition a serious criminal offence, including by increasing fines and penalties. However, despite numerous initiatives and mechanisms aimed at addressing the problems of armed violence, the subregion continues to be severely affected by the flow of illegal firearms and ammunition.

### **3. Opportunity and border security: passenger screening**

448. Most States have enhanced their use of the INTERPOL I-24/7 system (including Red Notices) and the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List, to screen international travellers entering their territory. Several States have also expanded access to INTERPOL MIND/FIND technology to frontline officers responsible for querying travel documents against the INTERPOL SLTD database. A few States, however, continue to either lack direct frontline access to, or make limited use of, INTERPOL databases, despite the volume of



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passenger traffic crossing their borders. Frontline officers rely on information either from the INTERPOL NCB or the JRCC.

449. All States of the subregion have introduced API and several have adopted or amended legislation to include PNR data. However, most States continue to lack operational capability, including the ability to collect, process and analyse PNR data in accordance with the relevant ICAO standards and recommended practices as required by Security Council resolutions 2396 (2017) and 2482 (2019). States have also strengthened the capacity of their national border-control systems to detect potential terrorists. Several States have introduced biometric passports containing embedded electronic chips and automated passport readers to detect forged or fraudulent travel documents. Other States have embedded security features such as watermarks in their national passports. Since the previous survey, immigration officers of several States have received training in fraudulent document detection.

450. Only a few States appear to record and store in an automatic system the entry and exit of persons crossing their borders. Jamaica has upgraded its immigration passenger entry-and-exit electronic record system to handle e-Passports and the increasing number of stored records and images. In other States, dated airport infrastructure has constrained the ability to reconcile entry and departure records.

451. All States of the subregion are members of INTERPOL and are able to share information with INTERPOL and other INTERPOL members through their NCBs. They also receive and share operational information with their counterparts in other CARICOM States and with the Regional Security System of the eastern Caribbean region. Information is regularly exchanged with Implementation Agency for Crime and Security and its sub-agencies (i.e., the JRCC and the RIFC). The JRCC is connected to the INTERPOL I-24/7 SLTD database and receives all Notices, as well as inputs from the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. All CARICOM States receive alerts from the JRCC. CARICOM has expanded the CARICOM Integrated Border Security System (CARIBSEC) to further facilitate sharing and analysis of critical intelligence information on, inter alia, stolen and lost passports, criminal offences and terrorist affiliations. It is unclear whether persons entering all States of this subregion are subject to screening based on local, CARICOM, and United Nations and INTERPOL watch lists.

452. Since the previous survey, Jamaica has introduced a Directive aimed at ensuring the effective management of its counter-terrorism watch list, as a guide for the relevant agencies, in particular immigration, border security and intelligence personnel with responsibility for counter-terrorism. A few States appear to share national watch lists of known and suspected terrorists, including FTFs, with relevant law enforcement and border officials to screen travellers and conduct risk assessments and investigations, in compliance with domestic and international law, including human rights law and data-protection safeguards.



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453. The challenge of establishing whether asylum seekers have been engaged in terrorist activities remains particularly complex in this subregion. Several States are parties to the 1951 Refugee Convention and its 1967 Protocol. However, few States have adopted legislation or administrative regulations on asylum or refugee status or established national asylum procedures. Only two States appear to conduct background checks on asylum seekers and check names against watch lists and regional and international crime databases. In most States, responsibility for ensuring that refugee status is not provided to an individual who has committed a terrorist act rests with UNHCR, which conducts registration and RSD.

### **4. Bringing terrorists to justice**

#### **(a) Planning and preparation**

454. There is increased recognition within the subregion that intervention against terrorist acts at the planning and preparation stage is critical. Several States criminalize the planning, preparation and supporting of terrorist acts as autonomous offences and have laws in place to criminalize planning and preparing terrorist attacks against other States or their citizens outside the State's territory. Most States punish offences that have been "committed", "attempted", "aided or abetted", "ordered", "directed" or "contributed to". Only a few States, however, define with sufficient precision the elements of illegal planning, preparation and support for a terrorist group or the commission of a terrorist act.

455. Since the previous survey, most States of the subregion have criminalized the full range of terrorist acts relating to FTF travel in accordance with resolution 2178 (2014), including travel for the purposes of the perpetration, planning, or preparation of, and or participation in, terrorist acts or the providing or receiving of terrorist training. Dominica and Trinidad and Tobago have also created new offences criminalizing travel without prior approval to any place designated as a "declared geographical area".

#### **(b) Capacity to investigate and prosecute**

456. The national prosecutors' offices of several States of this subregion have enhanced their training and resources in recent years to try complex criminal cases. Trinidad and Tobago has established the Anti-Terrorism Desk in the Office of the Attorney-General and Legal Affairs. In 2018, the Trinidad and Tobago Police Service arrested and charged a person for the first time under the amended Anti-Terrorism Act for inciting acts of racial violence by means of social media. In general, however, judicial and prosecutorial capacities and expertise to counter terrorist acts remains limited. United Nations human-rights mechanisms have expressed concerns regarding the administration of justice, including insufficient resources, a lack of magistrates and general understaffing that have led to lengthy trial delays and periods of prolonged pre-trial detention.



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457. Proactive law enforcement strategies and complex investigations often involve the use of SITs. Since the previous survey, several States have adopted legislation requiring the use of techniques such as electronic surveillance, undercover operations and controlled delivery. In most cases, SITs can be used as investigative tools subject to prior judicial authorization and supervision, but not for evidence-gathering purposes. Several States have updated their legislation to regulate the lawful interception of communications if clearly defined conditions are fulfilled. In most cases, electronic evidence/records are admissible as evidence in court proceedings and provide for a process for authentication.

458. Several States have established formal external oversight bodies that are intended to complement ministerial accountability and responsibility of police conduct. Other States have reviewed their law enforcement oversight capacity, but those reviews generally lack independence and effectiveness. United Nations human rights mechanisms have expressed concern in recent years over police misconduct and lengthy periods of detention in the subregion. Since the previous survey, the Bahamas and Jamaica have established parliamentary oversight committees that exercise domestic oversight functions of intelligence and law enforcement agencies. In 2020, Jamaica adopted its Data Protection Act, which established a Data Protection Oversight Committee to, inter alia, prevent arbitrary or unlawful interference with privacy.

### (c) **Rule of law**

459. Most States have defined “terrorism” and “terrorist acts” with sufficient clarity and precision so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments. Since the previous survey, Trinidad and Tobago has addressed the concern that counter-terrorism legislation might be employed to suppress political dissent or industrial actions. The scope of the definition contained in its Anti-Terrorism (Amendment) Act 2018 excludes an act committed in pursuance of a demonstration, protest or stoppage of work. Similar safeguards are contained in the national counter-terrorism laws of other States of this subregion. In 2020, Haiti issued the Decree for the Reinforcement of Public Security, which broadened the definition of terrorist acts to include acts such as robbery, extortion, arson and crowding or blocking public roads to obstruct movement. The new definition is currently incompatible with international human rights standards, however, and could be used against individuals engaging in social movements where damage to property is unwittingly incurred.

460. In most States of this subregion, persons charged with criminal offences, including terrorism-related crimes, are entitled to specific due process rights, including the right for all persons to be regarded as equal before the courts and tribunals; the right to be presumed innocent; the right to a hearing with due process guarantees; the right to be tried within a reasonable time and to be tried by a competent, independent and impartial court or tribunal; and the right to have a conviction and sentence reviewed by a higher court or tribunal in conformity with international human rights law. However, since the previous survey, United Nations human rights mechanisms



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have expressed concern that some detainees are held in excess of 48 hours without charge. In other States, a backlog in criminal court cases has resulted in periods of prolonged pre-trial detention. Several States of the region should continue to strengthen respect for the right to a fair trial and due process, specifically in relation to protection against unlawful and arbitrary deprivation of liberty, prohibition of torture and other cruel and inhumane treatment and punishment, and the right to a hearing without undue delay, including in the case of expulsion proceedings concerning foreign nationals.

461. The counter-terrorism laws of several States of this subregion allow for special criminal procedures, including the use of detention orders, to investigate and prosecute terrorism-related offences and the use of expanded powers of arrest or to search premises without a warrant. These special procedures are accompanied by appropriate safeguards, including judicial review of detention orders and maximum periods of detention. In most States, law enforcement must obtain judicial authorization to conduct electronic surveillance of private communications for criminal investigations, including in terrorism cases. In other States, the Minister for National Security may declare a certain area to be a “special area”, thereby conferring special powers on the police and security agencies, including extended powers to arrest and detain. States of this subregion have not established special or specialized chambers in their ordinary courts or special courts to deal with terrorism-related cases.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

462. States of this subregion have put in place legal frameworks and arrangements for MLA and extradition, including regional and subregional agreements. Few States, however, have developed guidelines on domestic laws and procedures relating to MLA and extradition and made publicly available in order to inform foreign authorities about the requirements that must be met to obtain assistance. States would also benefit from adopting mechanisms (e.g., the issuance of procedural manuals to relevant law enforcement, prosecutorial and judicial authorities) to allow for the dissemination of information to their domestic authorities on MLA law, practice and procedures and making requests to other States. At the regional level, the Hemispheric Network for Legal Cooperation on Criminal Matters contains a virtual library that offers legal information relating to MLA and extradition in the 34 active OAS member States.

463. If it is decided that a terrorist will not be extradited, all but one State can submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with its laws. In practice, challenges arise where evidence (including with respect to perpetrators, witnesses and victims) is located abroad. Several States have concluded bilateral or multilateral agreements or arrangements with respect to MLA, but only a few permit the use of joint investigations in the context of international and regional cooperation.



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### (b) Ensuring effective exchange of information and intelligence

464. Intelligence-sharing among law enforcement agencies of this subregion (and particularly between CARICOM States) is essential to effectively planning joint investigations and strengthening law enforcement cooperation in the Caribbean. Several States of this subregion have put in place legal frameworks and operational mechanisms, including informal arrangements, to carry out bilateral or multilateral cooperation in criminal matters relating to terrorism. One State arrested one of its nationals on an extradition warrant from another State on terrorism-related charges. Since the previous survey, Barbados and Trinidad and Tobago have signed a bilateral cooperation arrangement based on the specific example of travel relating to one specified terrorist through Barbados and back to Trinidad and Tobago. A watch list was also created to assess further movements.

### Priority recommendations

- Develop comprehensive and integrated national counter-terrorism strategies and effective mechanisms to implement them as recommended in Security Council resolutions 1963 (2010), 2129 (2013) and 2395 (2015).
- Introduce a comprehensive terrorist asset-freezing regime that includes a designation mechanism with adequate due process safeguards, the ability to freeze “without delay”, and ensures that freezing decisions are swiftly communicated to the private sector in order to identify and detect any funds or financial assets held by designated persons or entities.
- Ensure that customs officers receive specialized training in counter-terrorism financing, including human-rights compliant customer risk profiling and targeting, counterfeit currency identification, intelligence-gathering and fraud detection, including in partnership with airline and vessel operators.
- Regulate the activities of arms brokers and arms brokering.
- Ensure full use of, and access to, national counter-terrorism databases and all INTERPOL databases and tools for all law enforcement officials, particularly those beyond NCBs, to include entities at all BCPs, airports, customs and immigration posts, and police stations.
- Ensure PNR operational capability, including the ability to collect, use, process and protect PNR data in accordance with the relevant ICAO standards and recommended practices and the requirements of Security Council resolutions 2396 (2017) and 2482 (2019).





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- Establish legislation and necessary ICT capacity to collect, record, retain, search for, and use the entry/exit details of travellers crossing their borders, including processes for the handling of personal information (biographic and biometric) that comply with the right to privacy and data protection requirements.
- Develop an independent review or oversight body to oversee law enforcement and intelligence agencies, including national security legislation and practices, and consider establishing national human rights institution in accordance with the Paris Principles.
- Strengthen respect for the right to a fair trial and due process, specifically in relation to the protection against unlawful and arbitrary deprivation of liberty; prohibition of torture and other cruel and inhumane treatment and punishment; and the right to a hearing without undue delay, including in the case of expulsion proceedings concerning foreign nationals.

### **6. Regional spotlight: preventing terrorist groups from acquiring weapons through illicit trafficking in Latin America and the Caribbean**

#### **A. Context**

465. In its resolution 2117 (2013) — the first Security Council resolution to focus on combating the illicit trade in small arms and light weapons (SALW) — the Council recalls with concern the close connection between international terrorism, transnational organized crime, drugs trafficking, money-laundering, other illicit financial transactions, illicit brokering in SALW and arms trafficking. Subsequently, in its resolutions 2322 (2016) and 2370 (2017), the Council refers to the links between terrorism and organized crime, expressing concern that terrorists benefit and continue to profit from transnational organized crime, including from the trafficking of arms, persons, drugs and artefacts, and recognizing the indispensable role of international cooperation in crime prevention and criminal justice and that of fair and effective criminal justice systems as a fundamental basis of any strategy to counter terrorism and transnational organized crime. Similarly, in its resolution 2482 (2019), the Council expresses its concern that terrorists can benefit from organized crime, whether domestic or transnational, as a source of financing or logistical support, and recognizes that the nature and scope of the linkages between terrorism and organized crime vary depending on the context. The Security Council Guiding Principles on Foreign Terrorist Fighters: the 2015 Madrid Guiding Principles + 2018 Addendum (S/2015/939 and S/2018/117) provide practical tools and guidance for Member States to address the illicit trafficking in SALW.

#### **B. The threat in Latin America and the Caribbean**



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466. States of Latin America and the Caribbean have been disproportionately affected by the proliferation and availability of illegal firearms, their parts and components and ammunition. SALW are more frequently used in homicides in Latin America and the Caribbean than in any other region of the world. Four States of Latin America accounted for a quarter of all global gun-related deaths in 2017.<sup>95</sup> In the Caribbean subregion, more than 70 percent of homicide victims are killed by firearms each year.<sup>96</sup> The proliferation of firearms in the subregion has also intensified various internal conflicts in recent decades.

467. SALW enter the illicit market in the subregion through various channels, including diversion from the legal to the illicit market within and between States, and the ongoing recycling of firearms from past conflicts. Some of most pressing challenges include diversions from poorly secured stockpiles and the “ant-trade” (the smuggling of small quantities of weapons or their parts and components between bordering States). In view of the diversity and scale of arms and ammunition moving into and within the subregion, there is an urgent need for effective regulation and oversight.<sup>97</sup>

468. *Links between firearms, organized crime and terrorism:* States of Latin America and the Caribbean are aware of the threat posed by the evolving relationship between organized crime groups and violent gangs, on the one hand, and terrorist groups and individuals on the other. The threat is aggravated by the role played by illicitly trafficked and acquired firearms in the possible commission or financing of transnational organized crime and terrorist acts. Since criminals and terrorists rely to a large extent on weapons for their activities, the procurement of firearms is potentially a natural area of cooperation between the two types of actors. There is also an ongoing risk that terrorist and organized criminal groups could take advantage of States’ long and porous borders, limited human and financial resources, and competing financial and other priorities.

### C. Responses

469. *National and regional policies and strategies:* Countering illicit firearms trafficking and preventing criminal organizations and terrorist groups from acquiring and trafficking in SALW, their parts and components and ammunition requires that States develop comprehensive policies on firearms into wider anti-crime policies linked to national security. Several States have developed national security policies that refer to the threats posed by SALW but only a few (e.g., Colombia) make specific reference to the terrorism-arms-crime nexus. At the subregional level, the CARICOM Counter-Terrorism Strategy, the CARICOM Security Strategy, and the Declaration of the Americas (reference) draw attention to the possible links between transnational organized crime, illicit manufacturing of and trafficking in SALW, and terrorism.

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<sup>95</sup> UNODC, Firearms Study (2020).

<sup>96</sup> CARICOM Counter-Terrorism Strategy (2018).

<sup>97</sup> UNODC, Firearms Study (2020); Stockholm International Peace Research Institute, *ATT-related activities in Latin America and the Caribbean: identifying gaps and improving coordination* (2017).



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470. *Criminalizing certain offences and sentencing criteria:* comprehensive legal frameworks align with international instruments such as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (“Firearms Protocol”) and the United Nations Convention against Transnational Organized Crime are an important precondition for preventing and countering the diversion of, and illicit trafficking in, firearms and their illegal acquisition by criminal or terrorist groups. All States of the region have adopted legislative measures to prohibit the illicit trafficking and manufacturing of SALW, but only a few regulate brokering (including by requiring that brokers themselves be registered). Most States criminalize the illicit falsification, obliteration, removal or alteration of the unique markings prescribed in the International Tracing Instrument (ITI). Since the previous survey, several States have adopted or strengthened national legislation to make the illicit possession, use and transfer of firearms and ammunition a serious criminal offence, including by increasing fines and penalties. Few States, however, have adopted and enforced comprehensive legal and regulatory regimes, including integrated recordkeeping systems, that address the entire life cycle of firearms, their parts and components and ammunition.

471. The harmonization of legal frameworks among States and between national and regional laws and normative standards would help facilitate international cooperation in this area and prevent the risk that terrorists will exploit legal gaps. Within the Caribbean subregion, CARICOM adopted a Model Law on this subject in 2017. Since the previous survey, States of the region have continued to take steps to transpose the provisions of the Firearms Protocol into domestic legislation to support standardization in national legislation.

472. *Strengthening capacity for investigation, prosecution, detection and seizure of firearms:* The detection, investigation and prosecution of perpetrators of firearms-related crime is essential to effectively countering trafficking activities, particularly those involving transnational organized crime and terrorist groups. Several States of the region (including Brazil, Colombia, Jamaica, and Trinidad and Tobago) have established specialized firearms programmes or units within their law enforcement structures to centralize all firearms-specific matters, including tracing capabilities. Guatemala and Mexico have established specialized units in their prosecution services dealing specifically with firearms trafficking. Jamaica and Uruguay have established specialized criminal courts that have competence in matters of illicit firearms trafficking.

473. Since the previous survey, several States of the region have strengthened intelligence collection and analysis at the national, regional and international levels. Other States have strengthened the capacity of their law enforcement officials to detect and seize firearms, especially at land BCPs, through increased targeting and police and customs cooperation. In 2016, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) developed a practical tool and training programmes to improve the



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capacity of law enforcement and border-control officials who perform control and inspection functions at entry, exit and transit points in detecting illicit trafficking of SALW.

474. *Use of ballistic and forensic analysis:* To enhance the ability to investigate and prosecute arms-related crimes, some States have created forensic science laboratories to connect evidence from crime scenes to national, regional and international analysis mechanisms. At the subregional level, five CARICOM States utilize the Regional Integrated Ballistic Information System (RIBIN) to support criminal investigations. Thus far, four States of the subregion (Barbados, Belize, Jamaica and Trinidad and Tobago) have joined the INTERPOL Ballistic Information Network (IBIN), which enables States to conduct regional searches to detect firearms used in cross-border crimes and utilize information in the conviction of perpetrators.

475. *Marking, record-keeping and tracing:* Most States of the region mark weapons at the time of manufacture and import. However, only a few States have established and maintained firearms registries, including comprehensive records of seized, found and surrendered firearms, to effectively prevent and combat illicit firearms trafficking. Several States have established firearms tracing centres and national procedures to submit tracing requests, but most States continue to face challenges in their tracing efforts.

476. *Gender-responsive controls on SALW:* Illicit trafficking in SALW continues to facilitate a broad spectrum of activities that constitute violations of human rights in the subregion, including killing and maiming of children, rape, and other forms of sexual and gender-based violence.<sup>98</sup> At the time of the previous global survey, gender considerations had not yet been sufficiently integrated into policies regulating SALW. Since the previous survey, the United Nations Office for Disarmament Affairs (UNODA) and UNLIREC have published guidance materials on gender-responsive small arms control; provided capacity-building assistance to criminal justice officials of the region in integrating gender-sensitive perspectives into national arms control measures, and enhanced the technical capacity of women trained in specialized arms control measures, including firearms investigations.

477. *International, regional and subregional cooperation and information exchange:* Several States of the region continue to cooperate and share information on the seizure, confiscation, management and tracing of illicitly trafficked firearms, including in partnership with the National Tracing Center of the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). States also continue to submit tracing requests via the INTERPOL Illicit Arms Records and tracing Management System (iARMS). At the subregional level, the CARICOM Implementation Agency for Crime and Security has developed a Memorandum of Understanding for the Sharing of Ballistic Information under RIBIN, as well as SOPs for the Transmittal of Ballistic Evidence, to provide standardized guidelines for the submission of firearms evidence to Integrated Ballistics

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<sup>98</sup> UN-Women, *Spotlight Initiative* (2019), <https://mexico.unwomen.org/es/noticias.yeventos/articulos/2019/12/spotlight>.



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Identification System (IBIS) laboratories. The Working Group on Firearms of the Southern Cone Common Market (MERCOSUR) has established a network of specialists for the exchange of information, including experiences and practices in the marking of weapons of fire and ammunition.

### South America

(Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela (Bolivarian Republic of))

#### A. Terrorism trends

##### 1. Risks

478. Since the previous global survey, the South America subregion has continued to make good progress in preventing and countering terrorism, but significant challenges remain. Despite the general perception that the terrorist threat to the region is low, all States of the subregion recognize the threat posed by terrorism and have gradually introduced measures to prevent terrorist acts and the movement of terrorists across borders. Nonetheless, the region remains vulnerable to terrorism financing; transnational organized crime; the illicit cross-border movement of funds, arms and people; and other threats potentially linked to terrorism.

479. Porous borders continue to pose significant challenges relating to extreme violence and instability. The borders between Colombia, Ecuador and Venezuela continue to be the setting for security incidents. The Tri-Border Area (TBA) of Argentina, Brazil and Paraguay continue to be affected by various types of criminality, including the activities of insurgent and criminal groups, narco-trafficking, trafficking in arms and weapons, human smuggling, money-laundering and other crimes. In July 2019, Argentina, Brazil, Paraguay, and the United States formed an alliance to combat terrorism and other illicit activity in South America, focusing their activities on the TBA.

480. The States of South America are alert to the rising threats posed by **terrorism on the basis of xenophobia, racism and other forms of intolerance**. Some nationals of States of the subregion are known to have travelled to the conflict zones of Iraq and the Syrian Arab Republic in support of ISIL. Law enforcement authorities have made arrests of some of those individuals, and prosecutorial services have pursued charges under national counter-terrorism legislation. In Brazil, in July 2016, police arrested 12 members of a local pro-ISIL group suspected of planning to carry out terrorist attacks during the 2016 Rio Olympics, eight of which were sentenced to prison in May 2017 for their roles in plotting attacks, recruiting and promoting terrorism. In May 2018, Brazilian federal prosecutors charged a further 11 people<sup>11</sup> with planning to establish an ISIL cell in Brazil





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and attempting to recruit jihadists to send to the Syrian Arab Republic. Neither group was assessed to be officially linked to ISIL. In October 2016, Peru charged a suspected terrorist<sup>[2]</sup> with conspiracy to commit terrorism and document forgery. The individual was convicted in April 2017 on a forgery charge, but in October 2017, Peru's Judiciary ordered a further trial for the terrorism charges.

481. Some States have also recently made new designations of terrorist groups. Paraguay introduced a new designation of international terrorist organizations in August 2019, and Colombia adopted the full lists of terrorist organizations designated by the European Union and the United States in January 2020. Argentina designated Hezbollah as a terrorist organization on 18 July 2019, the 25th anniversary of the 1994 bombing of the Argentine Israelite Mutual Association (AMIA) headquarters in Buenos Aires. Domestic terrorism linked to insurgency groups has also continued in some States. Statistics from the Government of Colombia show an 11.5 per cent increase in domestic terrorist attacks from 2017 to 2018. Until recently, the National Liberation Army (ELN) and dissidents from the Revolutionary Armed Forces of Colombia (FARC) continued to operate and commit terrorist acts and crimes. In January 2019, an ELN militant detonated a vehicle-borne improvised explosive device (VBIED) inside Colombia's national police academy, killing 22 and injuring 87. In Paraguay, alleged elements of the Paraguayan People's Army (EPP) and the Armed Peasant Association (ACA), continued to conduct operations, including kidnappings and killings.

482. Other risks in this subregion remain consistent with those reported in the previous global survey. Those risks are compounded by increasing stresses stemming from non-terrorism-related causes linked to socio-economic and environmental vulnerabilities, institutional fragility, and organized crime. However, States have developed cybersecurity national strategies and developed specific initiatives to address cyberthreats. States have also engaged in discussions on the threat posed by violent extremism **conducive to terrorism** and the establishment of information-sharing networks.

### **B. Implementation of resolution 1373 (2001) in the South America region**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

483. Few States of this subregion have adopted comprehensive strategies to address terrorism and violent extremism **conducive to terrorism**. One State (Uruguay) is developing a comprehensive strategy. Peru has introduced the National Multisectoral Counter-Terrorism Policy (2019-2023), which serves as its national counter-terrorism strategy and reflects its awareness of the complexity of terrorism and its various manifestations at the national and international levels. Two States have designated a coordinating agency to analyse the national and regional counter-terrorism situation. Suriname has designated a National Counter-Terrorism Coordinator in the





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Bureau for National Security of the Cabinet of the President, tasked with coordinating security matters with foreign authorities and domestic stakeholders. Two States have introduced national security strategies that include counter-terrorism as an objective and stress regional and international cooperation. Most States have developed an AML/CFT strategy.

### **(b) Risk assessment**

484. Most States conduct some form of regular threat analysis and risk assessment, and their intelligence services are alert to the threat of terrorist attacks. Three States have established specific inter-agency units to conduct threat analysis and assessments. Cyberthreats are becoming increasingly sophisticated and complex and in some cases are outpacing the capacity of Governments and private organizations to respond. According to the CICTE Computer Security Incident Response Teams (CSIRT Americas), in the first half of 2020, more than 12,000 webpages were attacked in Latin America and the Caribbean, and 85 per cent of these portals were attacked through known vulnerabilities.<sup>99</sup> The websites and social media accounts of law enforcement agencies and military departments of several States have been hacked.<sup>100</sup>

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

485. Only four States of the subregion have criminalized recruitment. Some States continue to rely upon general laws prohibiting criminal association, training, organizing, instructing, and support for terrorism. In some cases, the perpetrator of the offence is considered either an accomplice to the crime by unlawful association or as a participant in crimes committed by an organized criminal group.

### **(b) Financing of terrorism**

486. All States of this subregion have criminalized terrorism financing as a standalone offence, and criminalization is almost fully consistent with paragraph 1 (b) of resolution 1373 (2001) and with article 2 of the 1999 “Terrorism Financing” Convention. All States but two criminalize the funding of individual terrorists and terrorist organizations.

487. Three States have introduced or amended asset-freezing legislation and systems to freeze terrorist funds without delay as required by resolution 1373 (2001). However, the designation of terrorists and the establishment of national lists continues to be a challenge for most States of the subregion. Two States lack the ability to conduct administrative freezing and instead rely on

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<sup>99</sup> CSIRTAmericas.org.

<sup>100</sup> The 2020 report “Cybersecurity: Risks, Progress and the Way forward in Latin America and the Caribbean” of the Organization of American States (OAS) and the Inter-American Development Bank (IDB) provides an in-depth analysis of the region’s cybersecurity capabilities, noting the need for States of the region to strengthen their capacities in this area.



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criminal and MLA procedures. In practice, the effectiveness of freezing mechanisms in most States of the subregion has not been tested. One State regularly tests its system but has not frozen funds; one State has frozen funds pursuant to its AML/CFT legislation; and one State has ordered an administrative freezing against persons accused of "State terrorism-related issues". However, there are no recent examples of funds having been frozen pursuant to resolution 1373 (2001). The FIUs of most States are operationally independent, with their own legal status, administrative autonomy and funds. Although all FIUs perform the core functions of an FIU, they are not all fully functional with respect to receiving STRs, performing analysis, and disseminating financial analysis to the competent authorities. Two FIUs lack the necessary IT equipment and software, and several are understaffed. However, there is a significant degree of cooperation and information exchange between the FIUs and the competent authorities, and many FIUs cooperate with counterparts outside the region. Two FIUs have provided training to other FIUs of the subregion. Nine FIUs in the subregion are active members of an intergovernmental group of FIUs that ensures efficient information-sharing. Eleven States of the region are members of the GAFILAT, with two also being members of the FATF; one State is member of the CFATF.

488. All States have enhanced coordination between relevant authorities to identify and investigate cross-border transportation of cash or other BNI, resulting in a number of seizures in recent years. Eight States have established the legislative basis for the competent authorities to stop or restrain currency and BNI that are falsely declared or disclosed. In some of those States, the relevant authorities are authorized to sanction persons who do not declare or falsely declare the entry or exit of the cash and BNI (with the fines equivalent to a percentage (varying by State) of the total of undeclared or falsely declared funds, without prejudice to the continuation of criminal actions in case of crime). Only four States have introduced clear laws empowering the border authorities to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing.

489. Since the previous survey, only some States of this subregion have undertaken an assessment of the risk of the NPO sector to terrorist-financing abuse. Implementation has generally improved in this area, but further steps need to be taken. Two States have reviewed their legal frameworks relating to NPOs, considered the threat posed by NPOs in their NRAs, and enhanced their outreach to the sector. No State of this subregion appears to have conducted a risk analysis that would identify the subset of NPOs that are most vulnerable to abuse for terrorism-financing purposes.

### **(c) Firearms**

490. Most States of the subregion criminalize the illicit trafficking and manufacturing of firearms, but only three specifically criminalize the obliteration of official markings. Since the previous survey, several States have adopted or strengthened national legislation to make the possession, use and transfer of firearms and ammunition a serious criminal offence, with increased



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finances and penalties. In September 2020, Bolivia deposited the instrument of accession to the 2001 Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition Protocol supplementing the United Nations Convention against Transnational Organized Crime (“Firearms Protocol”). Ten States of the subregion have ratified the Protocol, which aims to promote and strengthen international cooperation and develop cohesive mechanisms to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

### **3. Opportunity and border security**

#### **(a) Passenger screening**

491. All States of the subregion are members of INTERPOL and host an INTERPOL NCB. Seven States appear to have connected their frontline border control services to INTERPOL I-24/7 databases and tools, and several States have also expanded access to INTERPOL MIND/FIND technology to frontline officers with law enforcement responsibilities. INTERPOL global databases are linked to the Southern Cone Common Market (MERCOSUR) Security Information Exchange System (SISME), which connects the national databases of its member States and some other States, thereby enabling authorized users to simultaneously search both and thus avoid duplication and critical information gaps. A few States, however, continue to lack direct frontline access to, or make only limited use of, INTERPOL databases, despite the volume of passenger traffic crossing their borders. Frontline officers rely instead on information from the NCB (which can reduce the effectiveness of the checking process).

492. The States of the subregion generally have the capacity to effectively screen travellers at ports of entry, as well as to detect potential terrorists and the fraudulent use of passports. Most States require e-visas (or at least offer online visa applications), thereby strengthening intelligence used in the analysis of visa processing and advance scrutiny of incoming passengers. Five States of the subregion implement API and PNR systems; a further four States implement only API and do not yet require PNR; and a further two States have authorized (and are working to implement) API only. Only one State has not authorized either system. Most States still continue to lack the legal and operational capability to manage PNR data in accordance with the requirements of Security Council resolutions 2396 (2017) and 2482 (2019). Nine States of this subregion issue e-Passports containing biometric data, and five States participate in the ICAO PKD. Several States cooperate with the UNODC AIRCOP project<sup>101</sup> and have received training in the detection of false and stolen documents. MERCOSUR States have access to specialized operational regional working groups on the alteration of travel documents and other topics relating to terrorism prevention.

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<sup>101</sup> AIRCOP is a multi-agency project implemented by UNODC in collaboration with INTERPOL and WCO, aimed at strengthening the capacities of airports to detect and intercept drugs, other illicit goods and high-risk passengers, including FTFs, in States of origin, transit and destination, and disrupting criminal networks.



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493. Six States have established an electronic system to record and store the entry/exit of persons. Most States are working to improve their capacities to detect the fraudulent use of identity and travel documents,

494. Transnational law enforcement cooperation remains at the developmental stage, but States of the subregion do cooperate regionally through MERCOSUR and CICTE and engage in bilateral cooperation, particularly with bordering States and with other partners. Chile cooperate closely with its neighbours, and specific agreements have been between Peru and Bolivia, as well as between Argentina, Paraguay and Brazil for the TBA. Other subregional cooperation mechanisms have also been established, and many States cooperate with States of Central America, the Caribbean and North America in areas such as border control and immigration and the prevention of terrorism and transnational organized crime.

495. Most States of the subregion are parties to the 1951 Refugee Convention and its 1967 Protocol and have adopted legislation or administrative regulations to prevent the granting of asylum to those who have committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments, or who have committed a serious crime outside the State of refuge prior to admission as refugee or who have committed acts of terrorism or acts against the principles of the United Nations.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

496. Five States of this subregion have in place legislation providing for the prosecution of any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. In some other States, it is not entirely clear whether criminalization includes the planning or preparation of activities or acts aimed at the commission of terrorist offences against another State or its citizens or an international organization. Many States do not criminalize acts of planning, preparation and support of terrorist acts as autonomous offences.

##### **(b) Capacity to investigate and prosecute**

497. Except in the cases of five States, it is difficult to assess whether national prosecution offices have the authority, capacity, expertise, technical means and human resources to handle complex terrorism cases. The remaining seven States have not created specialized units for terrorist cases, but two States do have units that specialize in complex criminal cases and could potentially also handle terrorist cases. Chile has established the Unit Specialized in Money Laundering, Economic Crimes and Organized Crime (ULDDECO), which deals with terrorism cases. In Colombia, the Prosecutor-General's Office includes a specialized Counter-Terrorism Unit, staffed by prosecutors assigned in Bogotá and in regions of conflict throughout the State, which has



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developed considerable expertise in investigating and prosecuting acts of terrorism and insurgency, acting together with the Prosecutor-General's Technical Criminal Investigative Body, the Colombian National Police, and the military.

498. Most States of this subregion have many special investigative techniques (SITs) available for investigating terrorism cases, which are regulated by codes of criminal procedure and require approval at the judicial or Prosecutor-General level. Those techniques include, inter alia, use of audio-visual recording equipment; interception of communications; electronic surveillance; controlled circulation and delivery of criminal assets; undercover agents; use of special agents and undercover operations. In some States, however, criminal investigative techniques are not yet fully developed or adequately supported by IT tools such as surveillance devices, GPS localization or fingerprint database comparisons. In one State, SITs such as covert operations are permitted only for cases of drug trafficking and related offences (including money-laundering), not for terrorism. However, in most States, the SITs used for organized crime cases can also be applied in terrorist cases.

499. Almost all States have put in place some form of oversight of counter-terrorism measures taken by law enforcement. However, very few can be considered to have in place mechanisms that are fully effective and independent. Chile's National Institute for Human Rights (INDH) operates independently and effectively, issues public statements and an annual report, and proposes changes to government agencies or policies to promote and protect human rights. Uruguay has introduced into its Constitution reforms aimed at strengthening human rights protection and have given constitutional rank to international human rights treaties to which Uruguay is a party. Uruguay has also established the National Human Rights Institution (NHRI) and an Ombudsperson's Office. At least five other States have established an Ombudsperson's Office, but the related system have not yet been fully implemented. With respect to five Member States, United Nations human rights mechanisms have raised concerns at the slow progress of investigations into cases of torture, enforced disappearance and extrajudicial executions, and at the low number of criminal proceedings launched. Lengthy pre-trial detention is a major challenge, owing to inefficiencies within the judiciary, particularly in rural areas.

### (c) Rule of law

500. In most States of the subregion, the definition of terrorist acts is not sufficiently clear and precise, and risks applying to acts beyond those envisaged in the international counter-terrorism instruments. Common shortfalls in this regard include the use of overly broad or open-ended terms within the definition and the criminalization of certain non-violent conduct that falls outside the scope of the relevant international instruments. At least eight States of this subregion define the scope of terrorist offences in a vague and imprecise manner. Human Rights mechanisms have expressed repeated concerns in this regard.



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501. Although the Constitutions of most States of the subregion provide for an independent judiciary, United Nations human rights mechanisms, NGOs and other analysts have noted that the judiciary in some States often do not operate independently, are not consistently impartial, and are subject to political influence and corruption. However, the legislation of almost all States of the subregion provides for the right to a fair and public trial. All defendants are presumed innocent and have the right to be informed promptly and in detail of the charges and to a fair and public trial without undue delay. They enjoy the right to communicate with an attorney of their choice or have an attorney provided at public expense. However, State-provided attorneys often receive poor training. Human rights bodies have frequently denounced abuses in this regard.

502. At least six States have adopted special laws that confer specific powers on certain authorities to counter terrorism and do not appear to include sunset clauses.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

503. States of this subregion have in place legal frameworks and arrangements covering MLA and extradition, including regional and subregional agreements. Few States, however, have developed and made publicly available guidelines on domestic laws and procedures relating to MLA and extradition to inform foreign authorities about the requirements that must be met to obtain assistance. However, at the regional level, the Hemispheric Network for Legal Cooperation on Criminal Matters contains a virtual library that offers legal information relating to MLA and extradition in the 34 active OAS member States.

504. With respect to regional criminal justice cooperation, all but two States of the subregion are members of the Ibero-American Network for International Legal Cooperation (IberRed), which is made up of central authorities and points of contact from ministries of justice, public prosecutor's offices and judicial authorities of the 22 States that make up the Ibero-American Community of Nations, as well as the Supreme Court of Puerto Rico. Its aim is to strengthen the instruments of civil and criminal judicial assistance, as well as inter-State cooperation. In 2017, Argentina, Brazil, Chile, Colombia, Ecuador, Panama, Peru, Portugal, Dominican Republic, Mexico and Venezuela signed the Brazilian Declaration on International Legal Cooperation against Corruption, which involves the establishment of joint teams (bilateral and multilateral) acting with full technical autonomy.

505. In the event that a decision is taken not to extradite a terrorist, all but five States can submit the case without undue delay to their competent authorities for the purpose of prosecution, through proceedings in accordance with its laws. The fundamental purpose of this principle is to ensure that individuals who are responsible for particularly serious crimes are brought to justice, by providing for the effective prosecution and punishment of such individuals by a competent jurisdiction. In this way, and in order to prevent the commission of certain criminal behaviour and





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eliminate any risk of impunity, the principle of *aut dedere aut iudicare* has been incorporated into several multilateral conventions, to which most States are parties. States continue to face challenges, however, in gaining access to evidence located abroad and utilizing it within their own judicial systems.

### **(b) Ensuring effective exchange of information and intelligence**

506. Some States have taken steps to strengthen information-sharing between law enforcement agencies. Several States are increasingly integrating intelligence into law enforcement operations, and in four States law enforcement agencies themselves are becoming more involved in acquiring intelligence. Almost all States have established legal frameworks for Joint Investigation Teams (JITs). Little information is available about the use of the JITs in terrorist cases. In October 2020, the Federal Attorney-General's Office of Brazil and the Attorney-General's Office of Paraguay signed an agreement on the implementation of a JIT with the aim of investigating crimes of human trafficking, especially in the border region. In August 2017, the Attorneys-General of Argentina, Brazil, Chile, Paraguay, Peru and Uruguay signed a document expressing their interest in the establishment of JITs in the subregion. The JITs focus on organized crime but could be applicable to terrorist cases.

507. In 2019/2020, the CICTE Secretariat began to develop the IACT, a flagship initiative that responds to the needs expressed by OAS member States to facilitate operational information-sharing in real time to prevent and counter terrorism in the subregion. The IACT will become fully operational in 2021. It will facilitate contact between established national focal points to expedite the exchange of information about potential terrorist threats with the goal of preventing incidents or attacks. A number of subregional organizations also include counter-terrorism bodies which facilitate the sharing of relevant information between intelligence and security and law enforcement agencies.

### **Priority recommendations**

- Amend terrorism offences to ensure that all the treaty-based offences are established as serious criminal offences in domestic law and that any relevant definition of a terrorist offence is clear and precise in order to comply with the principle of legality.
- Consider ratifying the Firearms Protocol and adopt and implementing a series of crime-control measures aimed to implement all aspects of the protocol.
- Establish effective, independent and impartial mechanisms that can address individual complaints of misconduct by law enforcement or prosecutorial officers.
- Extend real-time access to INTERPOL I-24/7 to all border officials.



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- Amend legislation to include explicit prohibitions in their codes of criminal procedure on the use of statements as evidence if there is a risk that may have been obtained by torture, including those provided by another jurisdiction.
- Strengthen respect for the right to a fair trial and due process, specifically in relation to the right to a hearing without undue delay, including in the case of expulsion proceedings concerning foreign nationals.

### Europe and North America

#### Eastern Europe

(Belarus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, the Russian Federation, Slovakia, Ukraine)

##### A. Terrorism trends

###### 1. Risks

508. Since the previous survey, the overall level of terrorist attacks in Eastern Europe has been relatively stable. Most States of this subregion have a comparatively low level of risk, although some smaller attacks or plots have occurred, such as the 2016 bombing of a bus by a student in Wrocław. The threat level in the Russian Federation has decreased in recent years, however. ISIL had called for attacks during the 2018 FIFA World Cup, but no successful attack was carried out, possibly due to the Russian Government's preparations.<sup>102</sup>

509. The risk of violence or attacks from **violent** extremism conducive to terrorism and xenophobia is a growing threat across the region. This was noted in the 2016 global survey, and since that time groups motivated by racist, xenophobic or religious intolerance have continued to grow. In some States of this subregion, this trend was further fuelled by the significant spike in the number of asylum seekers fleeing conflict zones in the Middle East in 2015 and a corresponding increase in the intensity of the political debate on migration in Member States receiving large numbers of asylum seekers. The Committee has cautioned against becoming overly focused on the danger of terrorists mingling with legitimate asylum seekers, as it might distract attention from, and possibly heighten, the risks of **terrorist** attacks.

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<sup>102</sup> <http://nac.gov.ru/press-konferencii-i-brifingi/v-multimedijnom-press-centre-mia-rossiya-segodnya.html>

<http://nac.gov.ru/hronika-sobytyj/pyatnadcat-let-protiv-terrora.html>



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510. The States of this subregion on both sides of the eastern border of the Schengen area have a comparatively higher risk of being used as transit States for illicit movements of people, weapons and cash between the European Union and other States or conflict zones. These risks are mitigated by European Union efforts to build common border management standards accompanied by operational support from Frontex. With regards to non-EU Member States, in December 2020 Heads of the CIS Member States adopted the Programme of Cooperation of the CIS Member States in Strengthening Border Security at External Borders for 2021-2025. The objectives of the Programme are inter alia to consolidate the efforts of border agencies of the states of the CIS, as well as of international and regional organizations to counter current challenges and threats at the border areas, develop a regulatory legal framework and harmonize national legislation, as well as improve mechanisms for resolving crisis situations at the CIS external borders. The Programme envisages the creation of a unified system of information of the CIS border security agencies.<sup>103</sup>

### **B. Implementation of resolution 1373 (2001) in Eastern Europe**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

511. The previous global survey noted that only a few States had implemented a fully comprehensive and integrated national counter-terrorism strategy and that European Union States largely relied on the implementation of the 2005 European Union Counter-Terrorism Strategy, “Prevent — Protect — Pursue — Respond”. The previous survey encouraged European Union States to domesticate the Strategy in their own national contexts. Progress has been made in this respect. By 2020, five of the seven European Union members of this region had adopted comprehensive strategies (three of which had been updated at least once, one of which is currently under review, and one of which was newly adopted in 2019). Of the two States that have not adopted comprehensive strategies, both report that they follow the European Union strategy and both include terrorism in their national security strategies.

512. Of the non-European Union States of this subregion, three have adopted national counter-terrorism strategies and two have revised those strategies at least once (although the role played by civil society actors in designing and revising them is unclear). The remaining State has adopted a series of strategic documents on activities relevant to counter-terrorism, but not yet a comprehensive and integrated counter-terrorism strategy.

##### **(b) Risk assessment**

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<sup>103</sup>[https://cis.minsk.by/news/17411/prezidenty\\_stran\\_sodruzhestva\\_utverdili\\_programmu\\_sotrudnichestva\\_gosudarstv\\_%E2%80%93\\_93\\_uc\\_hastnikov\\_sng\\_v\\_ukreplenii\\_pogranichnoj\\_bezopasnosti\\_na\\_vneshnih\\_granich\\_na\\_2021%E2%80%932025\\_gody](https://cis.minsk.by/news/17411/prezidenty_stran_sodruzhestva_utverdili_programmu_sotrudnichestva_gosudarstv_%E2%80%93_93_uc_hastnikov_sng_v_ukreplenii_pogranichnoj_bezopasnosti_na_vneshnih_granich_na_2021%E2%80%932025_gody)



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513. All but one of the States of this subregion conduct terrorist threat risk assessments. In some of the smaller European Union States, in view of the overall level of threat, those assessments are not as frequent or focused as those conducted by other European States with higher threat profiles. Among the European Union States, two conduct terrorist threat assessments annually as a component of larger national security threat assessments, and one has conducted a one-off threat assessment at the political level, adopted by the national parliament. Outside the European Union three States have established designated coordinating bodies to analyse the current threat levels. In the Russian Federation, a designated body has been established during preparations for holding an international sports event to facilitate cooperation between domestic and international security agencies and provide security briefings. The Committee identified this as a good practice.

### **2. Addressing enablers of terrorism**

#### **(a) Recruitment**

514. Only three of the seven European Union States of this subregion have enacted a specific offence covering recruitment into a terrorist group. The four that have not done so consider that their offences covering participation in a terrorist group, or conspiracy or preparation with others to commit a terrorist act (including aiding and abetting offences) should also cover recruitment. Those offences, however, tend to be tied to the commission of a terrorist act (whereas the offence of recruitment should not be). Recruitment into, and participation in, a terrorist group should be criminal acts in themselves.

515. Three of the four non-European Union States of this subregion have in place legislative provisions to suppress the recruitment of terrorists. In each case these are offences specific to terrorism, distinct from general provisions of the Criminal Code. In the one State that does not have such legislation, recruitment to terrorism could be covered in part by general criminal law provisions on complicity.

#### **(b) Financing of terrorism**

516. All States of this subregion have included standalone offences covering the financing of terrorism in their national criminal legislation. The offences of all these States cover the financing of both an individual terrorist and a terrorist organization. This level of implementation represents significant progress compared to 2016, when the previous survey noted that “more than half” of the States of this subregion had implemented terrorism-financing offences, but even among those that had, “few States are largely in compliance with the requirements of paragraph 1(b) of resolution 1373 (2001)”. Although FSRBs continue to make some recommendations for technical improvements to the drafting of these offences, all States are now at least “largely compliant”.

517. The freezing of terrorist assets in the European Union States of this subregion is handled by a mixture of both national and Union law. Pursuant to this regime, decisions to freeze assets by



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the European Union Council pursuant to resolution 1373 (2001) are implemented without delay because they are immediately applicable in all European Union member States pursuant to European Council Regulation 2580/2001. This regime does not completely substitute for an autonomous domestic authority to freeze terrorist assets, however, because it has not been used to cover persons or entities inside the European Union or where a request for designation is put forward by another State. European Union member States need to have, therefore, their own domestic powers to freeze assets in addition to the European Union regime. The previous global survey noted that in some cases States lacked the complementary domestic legislation required for this and, more broadly, that very few States of this subregion were compliant in law and practice.

518. Legislative implementation in this respect has improved since the previous survey was conducted, but should be further strengthened. Four of seven of the European Union States of this subregion can freeze assets without delay. One State must complete internal procedures first, but considers that an interim power to block any transactions for 96 hours would bridge this requirement (this has not been tested). Only one State lacks a domestic asset-freezing power, remaining reliant on the European Union regime. Despite the overall improvement in legislative implementation, however, these powers are not yet being used, and European Union States of this subregion continue to rely fully on the European Union or the Security Council to identify the targets of asset freezes. No State has identified targets for designation under their domestic powers. Only one has identified assets belonging to persons identified on the United Nations or European Union lists and has frozen 12 million euros belonging to 109 legal persons and one natural person.

519. Of the non-European Union States of this subregion, half can freeze funds without delay. In one State, although the initial action is taken within one hour, there are a series of additional steps to be taken before funds are frozen, with the result that in practice the freezing of assets takes a number of weeks. In another, there are delays with respect to natural and legal persons which are not reporting entities. Only one State has frozen assets pursuant to resolution 1373 (2001); the other three have not yet reported taking any such measures.

520. All States have established functioning FIUs. They are also all adequately resourced and independent, and the Committee has found that in all States of this subregion they are also generally effective. Positive indicators include the use of advanced software and data-mining tools; extensive powers to query STRs and obtaining additional information, including access to law enforcement databases; the provision of analytical reports and to other State agencies; the regular provision of guidance and training to reporting entities; and strong cooperation with foreign FIUs. One State of the region is a member of the FATF, EAG and MONEYVAL, nine others are members of MONEYVAL and one is a member of the EAG.

521. European Union Regulation 2018/1672 (which will enter into force in June 2021) harmonizes declaration forms throughout the European Union for the cross-border movement of currency, develops common criteria and standards for cash-movement risks, and establishes a



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common system for the sharing of information on declarations, including a common European Union database. It gives European Union States a discretionary (but not mandatory) ability to restrain cash and BNI that might be linked to crime. Many of the European Union States of this subregion have amended their legislative powers to implement the Regulation. Five of the seven European Union States have granted border authorities the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. The length of time for which cash or BNI may be restrained ranges from 48 hours in one State to 30 days in another. In all cases, however, the power is a temporary restraint, and any seizure can be carried out only by the police or FIU, following an investigation. Concerns have been raised with respect to at least three States about whether border officials have adequate training and expertise to detect whether funds may be linked to terrorism financing and about their knowledge of risk indicators.

522. The previous global survey observed that only some States of this subregion had undertaken an assessment of the risk of their NPO sectors to terrorism-financing abuse. There has been an improvement in implementation in this regard, but there is still room for further improvement. All the European Union States of this subregion have undertaken some form of assessment of the non-profit sector concerning risk for terrorism-financing abuse. Three have done so, however, as a component of their overall NRA, rather than as a standalone assessment. This can imply lack of rigour. Only half of the non-European Union States of this subregion have assessed the terrorism-financing risk to their non-profit sectors. In addition to identifying vulnerabilities of the NPO sector and proposing mitigation measures, both those States had also assessed the applicable regulatory framework. One State had conducted some assessment of certain categories of NPOs, but without identifying the subset which fell within the FATF definition or identifying the nature of potential terrorist threats posed to the NPOs in question.

### **(c) Firearms**

523. In European Union States of this subregion, firearms regulations are developed and implemented at the regional level. Acquisition and possession of weapons and related matters, including marking of weapons, are regulated by Directive 91/477/EEC and Directive 2008/51/EC. In addition, Regulation (EU) No 258/2012 establishes export authorization, import and transit measures for firearms, their parts and components and ammunition, and requires European Union States to impose sanctions for violations. Since the previous global survey, the European Union has also adopted Regulation (EU) 2018/337, which establishes common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.

524. All European Union States of this subregion have implemented these obligations into domestic law, and criminalized the illicit manufacturing, trafficking or alteration of firearms. In four States, however, although Governments report that they have criminalized the illicit obliteration of firearms markings, these offences are not explicit, and greater legislative clarity is





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required. This weakness in implementation was also noted in the previous global survey, indicating a lack of progress on this issue.

525. Three of the four non-European Union States of this subregion criminalize the illicit manufacturing, trafficking, and alteration of firearms or the illicit obliteration of their markings. The remaining State did not appear to criminalize the illicit obliteration of markings.

### 3. Opportunity and border security

526. The previous global survey noted that only some States of this subregion had connected their immigration screening process at the frontline to the INTERPOL I-24/7 system, its SLTD database and Red Notices of suspected criminals and wanted persons, as well as the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List. Good progress has been made in this area, implemented through the European Union mechanisms. Most European Union States of this subregion use the Schengen Information System, which has been gradually strengthened and upgraded since 2016, and now provides INTERPOL data to its users. In two other States, border officials have some access to INTERPOL tools, but further information is required on the nature of the connectivity at all BCPs. In this respect, Poland models good practice, with a range of INTERPOL and Schengen tools integrated into its own frontline screening software. This enables automatic border checks against national, Schengen, and INTERPOL databases with a single search for all persons passing through BCPs.

527. With respect to API/PNR systems, the previous global survey noted that only a very few States used an API and/or PNR system to effectively screen travellers and detected terrorist suspects at ports of entry by air into the State. It also noted that only a few States appeared to record and store in an automated system the entry and exit of persons crossing air, land and sea borders. Progress in this area has been much more significant.

528. In the European Union States of this subregion, border security is governed by a range of European Union laws and regulations, including Directive 2004/82/EC, which requires States to introduce a national legal framework allowing PNR records for flights to and from the European Union to be processed by a national Passenger Information Unit (PIU), and Directive 2016/681, which requires that PNR data be made available to law enforcement agencies for the prevention, detection, investigation and prosecution of terrorist offences and serious crimes. In addition, European Regulation EC 2017/2226 establishes an entry/exit system to register entry/exit data for persons crossing the external Schengen<sup>104</sup> borders, which is expected to begin operation in 2022, and also requires that members of the Schengen area create their own entry/exit systems. Schengen area States (plus Ireland) are aided by the Schengen Information System (SIS), which is a database

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<sup>104</sup> The Schengen area includes most, but not all, Member States of the European Union, plus Iceland, Norway and Switzerland. (The European Union member States not participating are Bulgaria, Croatia, Cyprus, Ireland and Romania.) Participating States have removed BCPs between themselves and other Schengen area States.



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that enables border guards, as well as visa issuing and migration authorities, to enter and consult alerts on third-country nationals for the purpose of refusing their entry into or stay in the Schengen area. New functionalities are currently being added. In 2021 it will contain additional information on persons and objects involved in terrorism-related activities, improving the capacity of border authorities to detect terrorists at ports of entry to Schengen area States.

529. Consistent with these directives and regulations, all Schengen area States of this subregion have PNR systems in place. Most have not provided sufficient information for the Committee to properly understand their capacities to detect terrorists at BCPs or to detect fraudulent travel documents. The Committee did, however, develop a good understanding of Poland's capacities and concluded that its development of a comprehensive border control information system that centralizes a range of domestic and international identity checks into a centralized and user-friendly "single-window" format was a good practice. The system is backed by on-site expertise in document fraud. Only three of the Schengen area States of this subregion collect all entry/exit data. The others do so only through retention of API/PNR data, which does not cover land or maritime borders. These States, however, will need to begin recording entry/exit data by 2022 to comply with European Union legislation.

530. Three of the four non-Schengen States of this subregion also collect API, but do not yet have PNR systems in place. More information is needed regarding analytical capabilities to detect potential terrorists. With respect to the fraudulent use of identity and travel documents, two States are working to improve their capacities, including by equipping border officials with devices to verify the authenticity of travel documents or by providing access to some law enforcement authorities to INTERPOL materials on forged documents and forgery methods. The extent to which immigration authorities at border points can access these tools, however, is unclear. The Committee does not have information as to whether the non-European Union States of this subregion record and store the entry and exit of persons crossing their borders (e.g., by way of an automated system).

531. Inter-State cooperation on border-security issues in this subregion is high. European Union States have created the European Border and Coast Guard Agency (Frontex), which has become, since 2020, an operational agency. European Union States effectively share management of their borders with a multinational border force, which is governed jointly by participating States. Frontex itself has a long list of partnerships with national agencies and international bodies. There is also high levels of regional cooperation between members of the Commonwealth of Independent States (including through agreements on customs matters). Moreover, States have also established subregional groups that include States from both regional organizations (e.g., the Baltic Sea Region Border Cooperation Group, which provides for an information-exchange arrangement and joint operations between the border agencies of all States bordering the Baltic Sea). There are also a number of bilateral arrangements, including the Local Border Traffic Agreement between Poland and Ukraine, developed to facilitate local movements for inhabitants from both States. With



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respect to cooperation in customs matters, the Russian Federation's Federal Customs Service is linked to the Customs Enforcement Network (CEN), hosts the Regional Intelligence Liaison Office (RILO) for member States of the Commonwealth of Independent States (CIS), and has concluded a number of bilateral and multilateral agreements on mutual assistance in customs matters and cooperates actively in international customs operations.

532. The previous global survey noted that most States of this subregion had an RSD procedure in place that prevented the granting or revocation of asylum to individuals involved in terrorist activity. This remains the case, and all States of this subregion were assessed to have RSD procedures in place, as well as exclusionary provisions and procedures in place to prevent the granting of asylum to individuals where there are serious reasons for considering that they have planned, facilitated or participated in a terrorist act. It should be noted, however, that in one State the relevant domestic legislation departs from article 1F of the 1951 Refugee Convention, in that it limits exclusion to those who have "committed" the conduct in question (and not where there are "serious reasons for considering" (a lower standard of certainty)). In another State, the grounds for exclusion stated in domestic law are broader than those stated in article 1F of the Convention, and concerns have been raised regarding the quality of decision-making in the RSD process (notably with respect to the lack of reasoned decisions). The Committee cautioned one State against overstating the risks of terrorism from refugees and asylum seekers.

533. With respect to the availability of relevant expertise to properly assess the risks of abuse of the refugee process by terrorists, the Committee identified that some States of this subregion engage specialized security experts with training in counter-terrorism issues or expert knowledge of relevant conflict zones as part of the procedures in determining asylum status. The Committee lacks information, however, on the capacities of most States of this subregion in this respect.

534. The previous global survey noted that international human rights mechanisms and UNHCR had expressed a range of concerns about the refugee processes of nearly all States of this subregion. UNHCR continues to express concerns with respect to five States of this subregion. These concerns relate principally to allegations of refoulement and forced pushbacks from borders, as well as some limitations on access to asylum procedures depending on how the would-be applicant arrives at the border. A review of UNHCR submissions made to the Universal Periodic Review mechanism of the Human Rights Council, however, demonstrates ongoing dialogue between the Council and States of this subregion, as well as recognition of the progress being made in some States.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

535. Eight of the 11 States of this subregion have in place legislation providing for the prosecution of any preparatory or accessory acts that are conducted in the State with the aim of



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committing terrorist acts against other States or their citizens outside the State's territory. In Lithuania and Slovakia the legislation explicit in this respect. In the others, the possibility of prosecution arises through general extraterritorial principles of domestic criminal law applicable to terrorism offences. In the remaining three States it is unclear whether domestic criminal law allows for prosecution of such preparatory or accessory acts. In one case the lack of clarity arises from the fact that some of the terrorist offences as defined in domestic law appeared to be limited to acts seeking to influence authorities within that State only.

536. All seven European Union States of this subregion criminalize acts of planning, preparing and supporting terrorist acts, providing clarity as to the meaning of these terms (although in three of those States this is assured through general provisions of criminal law on accomplice liability, rather than with additional terrorism-specific offences). In three of the four non-European Union States of this subregion, acts of planning, preparing and supporting terrorist acts are not criminalized as autonomous offences with clarity as to the meaning of those terms. In one State, the Committee requested clarification regarding provisions that provided for exemption of liability where the individual involved in preparation later prevents the ultimate commission of the offence. In the second State, the Committee expressed concern at the overly broad definitions of the relevant offences. In the third State, there was a lack of clarity regarding criminalization of the planning of terrorist acts outside the context of terrorist organizations.

### **(b) Capacity to investigate and prosecute**

537. The previous global survey noted that in all States of this subregion the Office of the Prosecutor-General generally had the authority to handle criminal prosecutions in terrorist crimes, but that only one State had clearly demonstrated in practice that its prosecution service had the capacity, expertise, technical means and human resources required to handle complex terrorism cases. The survey noted that the remaining States had suffered from terrorist acts only to a limited extent. To a large extent, this assessment remains true. However, by 2020, eight of the 11 States of this subregion had prosecuted at least one case (even though the prosecuting body of only two States had established a dedicated unit focusing on terrorism cases).

538. In two States prosecuting their first cases, the Committee noted good practices with respect to the extensive inter-agency cooperation in building the prosecution case. In one of those States, however, United Nations bodies had raised concerns regarding the independence and impartiality of prosecutors.

539. All States of this subregion have multiple SITs available for investigating terrorism cases, regulated by codes of criminal procedure, police acts or similar legislation, and requiring approval at the judicial or Prosecutor-General level. They include the use of audio-visual recording equipment; interception of communications; video surveillance; phone-tapping; and use of informants. In several States, however, the Committee noted that the permissible duration of some



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of these measures was not always stipulated in the legislation. The Committee also noted that, with respect to seven States updated information was required on how the legal framework on SITs had been developed to reflect the increasing importance of digital evidence, the role of CSPs, and the legal safeguards in place to ensure compliance with human rights law. The Committee recognized as good practice the fact that Poland's Code of Criminal Procedure allowed for digital material to be used in the courtroom as evidence. It also noted that searches could be made of ISPs and entities running telecommunications businesses, and orders could be made by a prosecutor or court to for such entities to preserve evidence. The Committee also expressed concern, however, that in one State, the counter-terrorism legislation allowed for a greater level of electronic surveillance over foreign nationals than it did for citizens, creating a potentially discriminatory use of coercive powers.

540. The previous global survey noted that all States of this subregion had established some form of oversight mechanism for law enforcement agencies with a view to ensuring professionalism and respect for human rights in their counter-terrorism work. Depending on the legal system in use, the mechanisms take a number of different forms (whether a judicial body, a parliamentary body, a policing body, an Ombudsperson, Prosecutor-General or a combination of more than one). Only Slovakia, however, has established an oversight mechanism that is operationally independent of other law enforcement bodies and has the capacity to either prosecute criminal misconduct by law enforcement officers or to investigate and refer cases to an independent prosecutor. With respect to some States, United Nations human rights bodies have raised concerns that the relevant oversight entity lacked the financial resources required to fulfil its mandate. In two States United Nations human rights bodies have raised additional concerns regarding the lack of prompt, impartial and effective investigation into allegations of torture or ill-treatment, including in terrorism cases. Concerns have also been raised that in practice detainees do not have adequate access to safe and independent complaints mechanisms and that training on relevant human rights rules was not mandatory for all law enforcement officials.

### **(c) Rule of law**

541. The previous survey noted that, with respect to States of this subregion, concerns had been raised as to the clarity and precision of legislation criminalizing terrorist conduct. The survey recommended that all States monitor the application of those laws and revise them as necessary in order to bring them fully into line with the international counter-terrorism instruments, international human rights law, and rule of law standards. Progress has been made in this respect, although there remains room for improvement.

542. The Committee found that Estonia, Hungary, Lithuania and Slovakia have definitions of terrorist acts that are sufficiently clear and precise so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments (e.g., paragraph 3 of resolution 1566 (2004), or article 2, paragraph 1(b) of the 1999 International Convention for the Suppression of the Financing





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of Terrorism). The Committee noted, however, that one of those States had nonetheless been criticised by the United Nations Special Rapporteur on human rights and counter-terrorism for misusing the terrorism offence to prosecute a border-violation case.

543. In the other seven States, the Committee found that the definition of terrorist acts was not sufficiently clear and precise, and risked applying to acts beyond those envisaged in the international counter-terrorism instruments. A common shortfall in this regard included the use of overly broad or open-ended terms within the definition, such as acts that “harm the interests of the State”. A related flaw was the criminalization of non-violent conduct that falls outside the relevant international instruments. In its dialogue with the States concerned, one State noted that its broad definition was useful because it allowed the offence to respond to evolving terrorist methodologies. Although the Committee has noted the need to take into account evolving terrorist methods, it has nonetheless noted that the international instruments envisage the prohibition of acts or threats of violence and of terrorist offences that criminalize non-violent conduct go beyond the requirements of resolution 1373 (2001).

544. The previous global survey noted that, despite concerns raised by international human rights mechanisms, some States of this subregion do not fully uphold human rights in terrorism trials, including the right to be brought promptly before a judge following arrest, access to a lawyer, and the presumption of innocence.

545. In five of the 11 States of this subregion the key principles of the rule of law were not fully respected in terrorism cases. The shortfalls identified by both by the Committee and United Nations human rights mechanisms include delays or restrictions on access to counsel in terrorism cases; extended period of pre-trial detention; reports that the presumption of innocence, though stated in the law, is not always respected in practice; and concerns regarding the independence of the judiciary.

546. In the other six States, criminal procedures and due process protections did not contain any exceptions for terrorism cases. Nonetheless, the Committee did note in several cases that United Nations human rights bodies had expressed concerns about due process rights in general. In those cases, the Committee encouraged the State to continue its dialogue with the relevant bodies.

547. In Poland the Committee observed that the Code of Criminal Procedure contained rules for the use of classified material to be used as evidence in terrorism trials. Those rules ensured access to the material by the defence and allowed for the court to go into closed session when it was presented. Declassification rules were also provided for. The Committee noted that the inclusion of those rules allowed for the use of classified material while safeguarding the due process rights of the defence was a good practice.





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548. Four of the 11 States of this subregion have adopted special laws that confer specific powers on certain authorities to counter terrorism (providing, inter alia, for expanded powers to employ SITs), and none of those laws appear to include sunset clauses. Examples of this are the laws of two States that allow their law enforcement agencies to designate a zone of counter-terrorist operations, within which authorities have increased search powers and may restrict freedom of movement and public gatherings.

549. Of the remaining States, Hungary provides for its National Assembly to declare a “state of terrorist threat” allowing the Government to introduce extraordinary measures by decree and to suspend or derogate from the application of specific Acts. The declaration must be adopted by a two-thirds vote and must be for a defined period, but it can be extended by another two-thirds vote. (No such declaration has yet been made.) The same State’s Police Act allows the police to deploy priority security measures in the event of a terrorist act. These powers apply for 72 hours and may be extended for a further 72 hours if necessary. In Poland emergency police or military powers and the ability for the Government to undertake measures such as banning public gathering are activated by the national terrorist alert system. Although there are no automatic expiry dates provided for in the legislation setting out those special powers, the legislation does state that the alert levels shall be cancelled immediately once the threat or effects of the event that triggered the alert have been minimized. The other five States have not adopted laws that provide for additional or special powers to counter terrorism, beyond general laws allowing for martial law during states of national emergency or armed attack.

### **5. Activating international cooperation**

#### **(a) Effective mutual legal assistance and extradition**

550. The previous global survey noted that States that are members of the Council of Europe have published guidelines on domestic laws and procedures relating to MLA and extradition in terrorism cases on the Council’s website. Ten of the States of this subregion are members of the Council of Europe, and continue to do so (although for six of those States the information has not been updated for more than five years). Information about many other forms of judicial cooperation is also available on the website of the European Judicial Network. The Committee has noted that these are good practices for cooperation within the subregion, but has nevertheless recommended a more user-friendly approach to assist practitioners from jurisdictions outside the region. For jurisdictions less familiar with the relevant European institutions, it would be helpful if, in addition to the information on the Council of Europe website, legally accurate information was published in multiple languages, together with sample documents or templates, on the websites of the States’ ministries of justice.

551. With regard to the *aut dedere aut iudicare* principle provided for in the counter-terrorism conventions, it was found that only three of the 11 States of this subregion had domestic legislation to ensure that this principle would be fully complied with in practice. Shortfalls here included the



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fact that, although the relevant domestic laws permitted referral of cases to the competent authorities for purpose of prosecution in certain circumstances, they did not make this mandatory; domestic law did not stipulate that such referral must take place “without undue delay”; or the mandatory referral to the prosecutor applied only with respect to citizens. In two of the States in which the Committee did not find a clear obligation to submit a case to prosecution where extradition had been refused, the States concerned pointed to a general obligation on prosecutorial authorities to open proceedings in all cases where they are aware of a crime and there is jurisdiction. The Committee notes, however, that for the avoidance of doubt, explicit provisions should be included in extradition codes or codes of criminal procedure.

### **(b) Ensuring effective exchange of information and intelligence**

552. With respect to bilateral cooperation in terrorism investigations, it should be noted that seven of the 11 States had legislative provisions in place to facilitate such cooperation and that the relevant authorities of five States had practical experience in conducting joint operations with other States of this subregion.

### **Priority recommendations**

- Amend terrorism offences to remove elements that are overly broad or vague, and ensure that offences only capture intentional violent acts, where there is clear terrorist intent, and do not capture non-violent acts of protest or dissent.
- Ensure customs officials have the ability to restrain currency or BNI to ensure that restraint powers exist where there is a suspicion of money-laundering or terrorism financing, not just where there was a false declaration or failure to declare, and that the power applies irrespective of the amount.
- Engage in dialogue with UNHCR concerning its observations on laws on refugees and asylum, and ensure that measures taken to implement counter-terrorism resolutions are consistent with international human rights, refugee and humanitarian law.
- Ensure that there are effective, independent and impartial mechanisms that can address individual complaints of misconduct on the part of law enforcement or prosecutorial officers, and that these mechanisms are operationally independent of the bodies that are the subject of the complaints.
- Publish information and guidance for foreign jurisdictions on the legal requirements and procedures for making extradition and MLA requests, in multiple languages, and with sample documents, on the websites of their ministries of justice.



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- Strengthen cooperation with INTERPOL, specifically through more frequent sharing of the identity and biometric information of FTFs.
- Revise special investigative powers to ensure that they are not applied in a discriminatory manner and ensure that safeguards are in place to guard against racial, ethnic or other discriminatory profiling.
- Include explicit prohibitions on the use of statements as evidence if there is a risk that may have been obtained by torture, including those provided by another jurisdiction; introduce into legislation prohibition on extradition if there are substantial grounds for believing that the accused would be in danger of being subject to torture.

### Western European, North American and other States

(Andorra, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America)

#### A. Terrorism trends

##### 1. Risks

553. States of Western Europe have continued to suffer from a steady rate of terrorist attacks over the past five years. Australia, Canada, New Zealand and the United States have also experienced terrorist activity since the previous global survey. The risk profile is not evenly spread, however, and some States (e.g., Australia, France, Germany and the United Kingdom) have experienced a disproportionately high level of incidents. Nevertheless, smaller-scale or less-frequent attacks continued to occur throughout Western and Central Europe, including in Austria, Belgium, Finland, the Netherlands, Norway and Sweden. Additionally, many States of this subregion are acutely aware of the potential threat posed to their citizens abroad, as many have become victims of terrorism overseas.

554. Although the region's smaller States have a comparatively low risk profile, all States of this subregion to some extent face increasing challenges posed by groups and individuals motivated by **xenophobia, racism and other forms of intolerance**, which are becoming increasingly organized and transnational. Such actors have also sought to exploit COVID-19-related anxieties and grievances.<sup>105</sup> Recent trends indicate the increasing prevalence of "lone



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actor” attacks. There is also a low residual risk of terrorist attacks resulting from historical sectarian divisions, but these conflicts, although not fully resolved, are being addressed through political means.

555. At the time of the previous global survey, Western Europe was a significant source of FTFs, and almost 200 have travelled from Canada and over 100 from Australia. Many Governments in this grouping of States have expressed fears about large numbers of fighters returning to their home States following the territorial defeat of ISIL, bringing with them a risk of recruiting sympathizers to carry out domestic attacks. Only relatively small numbers have so far done so. In addition to the risks of returning fighters, there are a growing number of persons convicted of terrorist offences in the past who have concluded, or will soon conclude, their sentences. Some authorities in the subregion are concerned about the extent to which they still hold to their convictions.

556. Many States of this subregion are major financial or trading centres. Financial services and cross-border business to all parts of the globe make up a significant proportion of their economies. All States of this subregion, even those that face a low threat of suffering an attack, face risks that their financial or trading systems and relatively open economies could be exploited by terrorists to move money or weapons. Some of the smaller States of Europe have comparatively small Governments compared to the disproportionate size of their financial sectors, and their capacity to independently identify and freeze assets that may be linked to terrorist activity, outside sanctions imposed by the European Union or United Nations, has not been consistently demonstrated. This risk is partly mitigated by effective coordination and oversight of financial regulations and border management at the European Union level, resulting in harmonized rules and practice across the region (including in some cases non-European Union members).

### **B. Implementation of resolution 1373 (2001) in Western European States**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

557. The previous global survey noted that, with only a few exceptions, European Union States had not adopted comprehensive counter-terrorism strategies, preferring to rely instead on the European Union Counter-Terrorism Strategy and the European Union Strategy for Combating Radicalisation and Recruitment to Terrorism. The survey recommended that those States domesticate the Strategy and adopt national documents adapted to their national contexts. Significant progress has been made in this respect, and by 2021 more than half have adopted comprehensive counter-terrorism strategies which included Cyprus, Luxembourg, Netherlands and Sweden. Many of those strategies follow the model of the European Union Strategy, which is built on four pillars: prevention, protection, pursuit and response. Six of those States have revised their strategies at least once. Six States have established or designated coordinating bodies to



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oversee implementation of these strategies, while civil society was actively engaged in the revision of the strategy in only two cases.

558. For those States that do not have a formal counter-terrorism strategy in place, one is in the process of developing such a strategy, one relies on the European Union model without transposing at the domestic level, Ireland includes terrorism in its national policing strategy, and three others have developed individual strategies for CFT or CVE or for the protection of critical infrastructure against terrorist attacks, but have not yet developed a single integrated counter-terrorism strategy that brings together all relevant components.

559. Three of the other European States of this subregion have a comprehensive and integrated counter-terrorism strategy in place. All three adopt a “four pillar” approach to incorporate various components of counter-terrorism and CVE. The United Kingdom has revised its comprehensive strategy ‘CONTEST’ on multiple occasions, most recently in 2018; 22 government departments are currently involved in delivering CONTEST, together with all three devolved administrations, local authorities across the United Kingdom and United Kingdom embassies in over 90 Member States. Among those States that do not have a formal counter-terrorism strategy in place, one includes counter-terrorism issues in its broader national security strategy.

### **(b) Risk assessment**

560. Law enforcement agencies in 12 of the 16 European Union States of this subregion conduct threat and risk assessments relating to terrorism, as do most other European States of this subregion. Almost all these States update their assessments periodically, with some doing so quarterly, and some annually. Five States have established a dedicated entity focused on assessing terrorist threats, set threat levels, and issue warnings, as well as producing in-depth reports on trends, terrorist networks and capabilities. The United Kingdom has the capacity to establish such a mechanism in response to a crisis. Eleven States have assigned specific bodies or inter-departmental committees with responsibility for coordinating, deconflicting and disseminating the intelligence received, and in four States the risk assessments are performed by the police. The recipients of the analyses vary by State. In response to the increase in the terrorist threat, some States have sought to facilitate the sharing of terrorism-related material between intelligence and police, including through the adoption of legislative amendments or protocols.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

561. Fourteen of the 16 European Union States of this subregion have in place legislative provisions to suppress the recruitment of terrorists. Two do not have specific offences of this type but have proscribed certain conduct ancillary to terrorism that could include the act of recruitment (e.g., participation offences).



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562. Outside the European Union, implementation in this subregion is lagging behind. Only half of non-European Union States have introduced a specific offence of recruitment for terrorism. The others have criminalized various forms of participating in terrorist organizations which could, in some cases, encompass the act of recruitment.

### **(b) Financing of terrorism**

563. The previous global survey noted that all States of this subregion had robust legislation in place criminalizing terrorism financing as a standalone offence. This continues to be the case. The survey also noted, however, that the legislation in around a quarter of States lacked the element of the financing of an individual terrorist or of a terrorist group (including for other purposes than the specific commission of a terrorist act). In this respect, progress has been made since the last survey.

564. In 20 of the 24 States of this subregion, the offence covers both the financing of an individual terrorist and of a terrorist organization. In three cases it is unclear whether the offence requires a link to a specific terrorist act, and in one it is unclear whether the offence covers both the direct and indirect provision and collection of funds. In another case the State had recently adopted legislation aimed at addressing a shortfall in this regard.

565. The European Union freezing regime described above (in relation to the European Union States of Eastern Europe) applies equally to the European Union States of this subregion. As with those of Eastern Europe, some of the European Union States of this subregion lack a complementary domestic legislative basis for making their own orders to freeze terrorist assets, leaving a potential gap in the global effort to disrupt terrorism financing.

566. Progress has been made in this respect. Two thirds of European Union States of this subregion can freeze funds without delay. However, there remain certain shortfalls in legislative implementation, including lack of a legal obligation to do so; absence of a dedicated mechanism and reliance instead on general mechanisms of criminal law such as seizure and confiscation of assets; delays in domestic measures regarding individuals or entities that were not listed at the European Union level; or the lack of practical implementation (meaning that the adequacy of the measures could not be verified). In addition, one State still lacks the regulatory powers to issue its own asset-freezing order, instead remaining fully reliant on the European mechanism. A shortfall also continues to be apparent in practical implementation, as demonstrated by the fact that half of these States have not yet frozen any assets pursuant to resolution 1373 (2001). This number includes at least two European Union States that are significant international financial centres.

567. Half of the other European States of this subregion can freeze terrorist funds without delay but most have not done so in practice and have not listed any terrorists or terrorist entities beyond





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those listed by international organizations. Most of those States have not frozen assets of any significant value.

568. With respect to the level of functionality of the FIUs of this subregion, the Committee has identified a general improvement in the levels of resources and capabilities over the survey period. Positive indicators include the increase in the level of human resources in recent years; the updating of software and data-mining tools; the provision of analytical reports to other State agencies; FIUs' increased access to multiple domestic databases; the high usage of FIU reports by law enforcement agencies; and the creation of dedicated terrorism-financing units. Some of the persistent identified shortfalls include the low level or variable quality of STRs received (which could be linked in part to inadequate guidance provided to reporting entities and could thus affect the ability of the FIU to target its resources); the lack of secure communications between the FIU and the competent authorities; and the lack of human resources or IT tools (which undermine the efforts of FIUs to produce strategic analysis). All States are members of the MONEYVAL, 19 of which are also members of the FATF.

569. With respect to the cross-border movement of currency, European Regulation 2018/1672 will enter into force in June 2021 for the European Union States of this subregion (for more information on this Regulation, see Eastern Europe section, above). In 13 out of 16 of the European Union States, the border authorities have the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. Those powers arise from AML/CFT legislation and/or from general powers to restrain cash suspected to have originated in or to be destined for criminal activities. Conversely, in two States, the border authorities themselves do not have the power to restrain the cash or BNI and must engage law enforcement authorities if they suspect a link to terrorism financing. This arrangement could undermine the effectiveness of those States' ability to impede the movement of terrorist cash across borders.

570. Seven of the eight other European States of this subregion have granted their border authorities the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. Those powers arise from AML/CFT legislation and/or from general powers to restrain cash suspected to have originated from, or to be destined for, criminal activities.

571. The previous global survey noted that only around a quarter of States of this subgroup had conducted a specific review of the terrorism-financing risk to their NPO sectors. Although there has been some improvement in this area, this continues to represent a weakness for European States and reflects comparatively fragmented and weak oversight of NPOs in general. Eleven of the 24 States of this group have conducted a full assessment of the terrorism-financing risk to their NPO sector and four of those have done so only as part of the larger NRA of the financial sector as a whole, with varying degrees of thoroughness. One State is in the process of conducting its first assessment and one is in the process of conducting an updated assessment. Of those States



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that have not yet conducted the necessary assessment, some have carried out related activities (e.g., a review of the legal framework pertaining to the NPO sector or partial reviews of the terrorism-financing risk to this sector). With respect to the results of those assessments, one State identified NPOs active in conflict zones as among those at higher risk of abuse for terrorism-financing purposes, while another highlighted the lack of transparency in the management of NPOs.

### (c) **Firearms**

572. European Union States of this subregion are bound by the relevant European Union Regulations (see Eastern Europe section, above). Eleven of the sixteen European Union States of this subregion have legislation in place to criminalize the illicit manufacturing, trafficking and alteration of firearms, as well as the illicit obliteration of their markings. For the remaining States the shortfalls or queries relate primarily to criminalization of the alteration of firearms or the illicit obliteration of markings, which is the same shortfall identified in the previous global survey.

572. Most other European States of this subregion have legislation in place to criminalize the illicit manufacturing, trafficking and alteration of firearms, as well as the illicit obliteration of their markings. The remainder have legislation in place to criminalize illicit manufacturing, trafficking, and alteration, but not a specific offence of the removal of markings.

### 3. **Opportunity and border security**

573. The previous global survey noted that only a few States of this region had fully connected their immigration screening processes at the frontline to the INTERPOL SLTD database and Red Notices and to the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List and that only one of those States had full connectivity. Significant progress has since been made in this area, especially within the European Union, where the connection is facilitated by use of the SIS, which incorporates the relevant INTERPOL databases.

574. In 11 of the 16 European Union States of this subregion, immigration screening processes are connected at the frontline to the INTERPOL I-24/7 network and to relevant INTERPOL tools. In two States, some immigration authorities were able to access the relevant databases, but it was unclear whether the connection was accessible to authorities at all BCPs. One State noted that INTERPOL databases were available to officials at all BCPs, but it was not clear whether all travellers were automatically screened against the databases. In seven of the eight other European States of this group, some, but not all, immigration authorities had direct access to the INTERPOL I-24/7 network and the relevant tools.

575. Eleven of the 16 European Union States of this subregion have both API and PNR systems in place. Four States have established a "single window" system for API/PNR (mainly via the PIU, which serves as a designated body to receive, dispatch and analyse incoming data). The Committee



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has highlighted this as a good practice. One State has an API system in place and a PNR system under development, one State has a PNR system in place, but not API, and three have neither in place. (For details on European Union legislation on API and PNR, see the Eastern Europe section, above.)

576. The Committee noted, however, that scope of the API/PNR collection carried out by European Union States varied. First, some collect this data only with respect to passengers travelling from outside the Schengen area. Second, a small number of European Union States have taken steps to collect API data also from passengers travelling by other means (including bus, rail and sea). These measures go beyond the strict requirements of the Council resolutions, but were commended by the Committee because they assist States to detect broken travel patterns.

577. Only two of the other European States of this group have established advanced systems for both API and PNR and a “single window” system for receiving and analysing such data. Two others collected API only with respect to some travellers (and only from flights coming from outside the Schengen area) and did not yet have PNR systems in place.

578. With respect to analytical capacities, it should be noted that 12 European Union States have systems in place for the production and dissemination of risk analysis to frontline officials. The common risk indicators developed by Frontex and Europol in this area were also widely used. Fourteen States have taken steps to prevent and detect the fraudulent use of identity and travel documents at ports of entry. Immigration officials typically receive training on the identification of fraudulent travel documents, BCPs are equipped with document-examination devices and reference databases (including the Frontex manuals example), and in several cases frontline officials have on-site access to experts in travel document security. In this respect a good practice has been established by the Netherlands, which has established regional ID Desks that employ document experts specialized in travel, identity and residence documentation.

579. Border checks are not in operation for travel within the Schengen area, the States of this group do not consistently record and store the entry and exit of persons crossing the Schengen border. The Committee has been informed that in Iceland the information was being recorded only via the retention of PNR data. The Committee was also informed of one other State in which work was underway to establish a system to store entry/exit data in order to ensure compliance with Regulation EC 2017/2226 by 2022 (see also Eastern Europe section, above).

580. Four of the eight other European States of this group have taken steps to prevent and detect the fraudulent use of identity and travel documents at ports of entry, including the provision of training to frontline officials, dissemination of trends analyses, reference databases, and access to experts in travel document security. Over half of the States did not record and store the entry/exit data of all persons crossing its borders. The Committee was informed that one State did have the legislative authority to collect and store that data, but no information has been received as to



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whether that authority had been used in practice. One State with only land borders and no airport, does, however, automatically record the entry and exit of all vehicle licence plates.

581. Within the European Union (for both States within the Schengen area and those outside it), cooperation in the area of border management is at a high level. European Union entities (including Frontex and Europol) and the SIS facilitate the sharing of data, analysis, and good practices. Several European Union States have also established cooperation mechanisms with States of neighbouring regions, notably in North Africa and South-East Europe, as well as subregional structures relating to the Baltic Sea and Nordic States. In mid-2019, Project Neptune (a multilateral maritime border operation coordinated by INTERPOL) detected suspected FTFs travelling across the Mediterranean.

582. Outside the European Union context, most States of this group have measures in place to cooperate with other States in the area of border management: at the bilateral level with neighbouring States; at the regional level through interactions with relevant European Union bodies; and with INTERPOL.

583. All the European Union States and six of the eight non-European Union States of this subregion have established RSD procedures and have legislation and procedures in place to prevent the granting of asylum to an individual who has planned, facilitated or participated in a terrorist act. A common shortfall, however, is that the relevant domestic legislation departs from article 1F of the 1951 Refugee Convention by lowering the applicable standard of proof and/or expanding the bases of exclusion beyond those stated in the Convention (e.g., by providing for exclusion based on broadly framed security concerns).

584. In four of the smaller non-European Union States of this subregion, the Committee has not received enough information to assess whether the relevant authorities have the technical capacity to effectively screen asylum applicants for possible connections to terrorism (even though the legislative provisions and procedures are in place).

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

585. All European Union States and seven of the eight other European States of this group have legislation in place that makes it possible to prosecute any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. This arises in different ways: general principles of domestic criminal law require that only one constituent element of the offence be committed on the State's territory; the definition of terrorist offence itself covers conduct occurring, in whole or in part, outside the State's territory; terrorism offences are included within categories of offences in respect of which the State also asserts extraterritorial jurisdiction; and/or domestic criminal law provides for



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jurisdiction in all cases envisaged in the international conventions to which the State is a party (this includes the 19 international counter-terrorism instruments).

586. All States of this group also criminalize acts of planning, preparing and supporting terrorist acts, providing clarity as to the meaning of those terms. In most cases, however, this is done only through general provisions of criminal law on accomplice liability, rather than through additional terrorism-specific offences. In one State, however, the criminalization of supporting terrorist acts covers only the main terrorist offence, and has not been extended to cover the offences created by the international counter-terrorism instruments.

### **(b) Capacity to investigate and prosecute**

587. With regard to the capacity, expertise and technical means of prosecution offices to handle complex terrorism cases, 12 of the 24 States of this subregion were found to have sufficient capacity. Nine had taken steps in recent years to strengthen their capacities in this regard by providing additional training of prosecutors and strengthening cooperation with national and international partners (including with respect to obtaining and utilizing evidence obtained in conflict zones where FTFs are active). Moreover, 10 States have assigned a unit of prosecutors to focus specifically on terrorism or terrorism-financing cases. Persistent challenges noted in this area relate to digital evidence, including the absence of legislation to regulate its use; the sheer volume of material that has to be analysed; and obstacles to obtaining such evidence when it is held by servers controlled by CSPs based outside Europe. One State highlighted persistent challenges relating to digital evidence, including its extraction, treatment and analysis, and emphasised the need to strengthen international cooperation in this regard. For those States that were not found to have sufficient capacity, the main reasons included the small size of the prosecutor's offices in question and lack of experience needed to build up expertise. This was particularly true for the many small States of this group.

588. All States of this group have made available multiple SITs for investigating terrorism cases, which are regulated by codes of criminal procedure, police acts or similar legislation, and require approval at the judicial or prosecutor-general level. Most have expanded the list of SITs available in recent years to reflect developments in the nature of terrorist investigations, in particular the use of digital evidence. SITs commonly available include use of audio-visual recording equipment; video surveillance; phone-tapping; use of informants; capture and decoding of encrypted messages; and undercover interaction with suspects online.

589. The type of authorization required to initiate and extend the use of such SITs varies by State and by the type of SIT to be employed. Typically, the more intrusive the measure, the higher the level of authorization required (including advance judicial authorization in some cases, with defined periods after which further authorization must be sought to continue using the measure). In four States, more expansive SIT powers are available and/or lower levels of authorization are





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required in terrorism cases. In three of those States, the legislation in question stipulates the need for proportionality assessments to guide the use of SITs. The Committee has identified this as a good practice. With respect to two States, however, United Nations human rights mechanisms have expressed concern that the surveillance powers provided are excessively broad, based on insufficiently defined objectives, and/or lack adequate oversight.

590. The previous global survey noted that almost one third of States of this subregion did not have in place independent oversight mechanisms for law enforcement agencies (apart from judicial oversight) and also noted the different forms that oversight takes in different jurisdictions. As of 2021, even though all the States of this group have in place some form of oversight of the counter-terrorism measures taken by law enforcement (and some have established multiple bodies to consider counter-terrorism measures) only in 10 States can those mechanisms be considered to be fully effective (i.e., legally and functionally independent and with the capacity to either prosecute law enforcement misconduct or to investigate and refer it to an independent prosecutor). Where the oversight mechanisms did not meet the requisite standards, the identified shortfalls included allocation of insufficient financial or human resources to the oversight bodies; lack of independence of such bodies; disparity between the number of complaints of ill-treatment and the number of judicial inquiries; or a general lack of evidence that the measures put in place were effective. By contrast, the Committee noted that Finland had put in place a system whereby the entity with oversight for intelligence agencies had real-time access to measures underway and could order cessation where they did not comply with the applicable legislation.

### (c) Rule of law

591. In over half the States of this group, it was found that the definition of terrorist acts is not sufficiently clear and precise and risks applying to acts beyond those envisaged in the international counter-terrorism instruments. Common shortfalls in this regard include the use of overly broad phrases within the definition (such as references to acts that destabilize “social structures”, acts against “moral integrity” or “public health” or which “impair national integrity”); criminalizing of certain non-violent conduct that falls outside the relevant international instruments; requiring that the action be designed to “influence” rather than “intimidate” a Government; a lower *mens rea* requirement in cases where weapons are used; and the criminalization of threats to act without reference to the credibility of the threat. The Committee noted a good practice in Irish legislation, which includes an explicit exclusion of legitimate protest activity from the scope of the terrorism offence. The law in that case contains a clause that states that a person engaging in any protest, advocacy or dissent, or any strike, lockout or other industrial action is not of itself a sufficient basis for inferring that the person has the intent to carry out an act of terrorism.

592. In assessing due process protections, it was found that in 14 of the 24 States of this group the key principles of the rule of law were not fully respected in terrorism cases – specifically, that procedural protections that are otherwise present in criminal proceedings are diminished in





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terrorism cases. Common shortfalls identified by the Committee and by United Nations human rights mechanisms include extended periods of detention before being brought before a judge and extended periods of pre-trial detention; delays or restrictions on access to counsel; failure to promptly inform detainees of their rights in a language they can understand, or of the nature of the offence for which they are being arrested; and the use of incommunicado pre-trial detention, with resulting limits on access to counsel and on correspondence.

593. Nine of the 24 States of this group have adopted special laws that confer specific powers on certain authorities to counter terrorism. These laws include, for example: administrative control measures, including restrictions on movement; expanded search powers for law enforcement agencies; extended powers of preventive arrest or pre-charge detention; expanded powers to gather electronic data; additional powers to question prison inmates to prevent terrorist offences; and, in one State, the ability to prosecute in special criminal courts without juries (which are otherwise a right). In only three States are such laws subject to sunset clauses. In France, a 2017 law providing for new administrative police measures included an express sunset clause and was to be reviewed by Parliament prior to any extension. In another of those States, however, although the law authorizing the special powers cannot be extended for more than 12 months, it has been renewed by parliamentary resolution on an annual basis since 1998.

594. The Committee has commended the United Kingdom for establishing a special mechanism, the Independent Reviewer of Terrorism Legislation (IRTL), with a broad mandate to conduct annual reviews of counter-terrorism measures and considerable access to sensitive national security information and personnel. The Independent Reviewer also has freedom to report in depth on specific issues, at his/her own initiative or at the request of ministers. The reports of the IRTL and the responses of the Government are publicly available.

### **5. Activating international cooperation**

595. Most States of this subregion have developed and made publicly available guidelines on domestic laws and procedures relating to MLA and extradition in order to inform foreign authorities about the requirements that must be met to obtain assistance or extradition. In most cases States have made relevant information available via the website of the Council of Europe, but in some instances this information has not been updated for more than five years and essentially consisted of brief explanatory notes only.

596. With respect to the *aut dedere aut iudicare* principle provided for in the international counter-terrorism instruments, it was found that the legislation of 11 of the 16 European Union States and seven of the eight other European States of this group did not ensure that this principle would be fully complied with in practice. Common shortfalls identified in this regard include domestic laws that permit referral to the competent authorities for purpose of prosecution but do not make it mandatory (contrary to the conventions); limiting the application of this rule to cases



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where extradition has been refused on certain grounds (contrary to the requirements of the conventions); and failing to stipulate the requirement that referral to the competent authorities for purpose of prosecution take place “without undue delay”. The legislation of Luxembourg represents a good practice in this area. Not only does the extradition law obligate authorities to submit a case for prosecution in Luxembourg if extradition is refused, but the Code of Criminal Procedure repeats the obligation expressly for the offences in the terrorism chapter of the Criminal Code.

597. Nine States of this group have conducted bilateral cooperation with foreign authorities in investigations relating to terrorism cases. A further seven have laws in place to allow for joint investigations, but have not yet used these powers in terrorism cases. Notable examples of such cooperation in terrorism cases include an operation conducted between Spain and two States of neighbouring regions, which resulted in the successful prosecution of a network of FTFs; a joint investigation conducted by France and Switzerland which, with the assistance of Europol and the use of SITs, uncovered plans by ISIL supporters to carry out cross-border attacks and resulted in multiple arrests in both Member States in 2017; and Finland’s prosecution of the perpetrator of a terrorist attack that was facilitated by information received (via INTERPOL, Europol and States’ legal attachés) from other States within and outside of the European Union. For those States that have not yet had practical experience in this area, domestic legislation and European Union regulations (including the Council Framework Decision of 2002 on joint investigation teams) provide the legal framework for such investigations to be undertaken in the future.

598. For Member States within the European Union, the European Union Agency for Criminal Justice Cooperation (Eurojust) can play an important coordinating role in cross-border terrorism investigations and prosecutions and in facilitating judicial cooperation. Eurojust has established a European Judicial Counter-Terrorism Register to collect information on counter-terrorism proceedings from all EU Member States. In recent years, Eurojust has also issued analytical reports on specific methods and challenges in criminal justice responses to terrorism, including the use of evidence collected in conflict zones (see paragraph 620, below); the investigation and prosecution of offences committed by terrorist groups motivated by xenophobia, racism and other forms of intolerance;<sup>106</sup> and on the cumulative prosecution of FTFs for core international crimes and terrorism-related offences.<sup>107</sup>

### **C. Implementation of resolution 1373 (2001) in North American and other States**

#### **1. From prevention to rehabilitation**

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<sup>106</sup> <https://www.eurojust.europa.eu/eurojust-expert-workshops-violent-right-wing-extremism-and-terrorism>

<sup>107</sup> <https://www.eurojust.europa.eu/cumulative-prosecution-foreign-terrorist-fighters-core-international-crimes-and-terrorism-related>



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### **(a) Comprehensive and integrated counter-terrorism strategies**

599. Of the six States of this group, Australia, Canada and New Zealand have adopted a comprehensive and integrated counter-terrorism strategy in whose development civil society actors played some role. Of the other three, one State has adopted a comprehensive and integrated national strategy but without consulting civil society organizations. In another State, the role played by civil society actors in designing and revising the strategy was unclear. One State has developed cross-governmental responses to terrorism which incorporate both law enforcement and preventive components, but has not yet adopted a comprehensive or integrated counter-terrorism strategy.

### **(b) Risk assessment**

600. Law enforcement agencies of all six of these States conduct threat and risk assessments relating to terrorism. Four States has established a fusion centre to facilitate the gathering and effective dissemination of threat data and risk analyses, and New Zealand has created an overarching government body to evaluate threats and foster inter-agency collaborative assessments.

## **2. Addressing enablers of terrorism**

### **(a) Recruitment**

601. Five of the six States in this Group had in place legislative provisions to suppress the recruitment of terrorists. One visited State did not have a specific provision to criminalize recruitment to terrorism but had proscribed certain conduct relating to terrorist organizations (which could include the act of recruitment). The Committee recommended that this provision be supplemented by an offence criminalizing recruitment also in the absence of a link to a designated organization.

### **(b) Financing of terrorism**

602. The previous global survey noted that all States of this subregion had robust legislation in place criminalizing terrorism financing as a standalone offence. This continues to be the case. All States of this group have criminalized terrorism financing as a standalone offence, including in the absence of a link to a specific terrorist act. In five of the six States the terrorism-financing offence covers both the financing of an individual terrorist and of a terrorist organization. In one State, although the law did not explicitly cover this aspect, a combination of laws and its financial sanctions regime ensured that financing of both an individual terrorist and a terrorist organization was effectively criminalized.



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603. Five of the six States of this group can freeze funds without delay. In the State where this was not the case, the Committee noted that the multi-stage process for designating and implementing a freeze made delays inevitable. Four of the six States had frozen assets pursuant to resolution 1373 (2001). Information on the precise amounts involved was not available. In two States domestic designations had been made but no assets of the designated persons/entities had been identified.

604. All States have functioning FIUs. The positive indicators include recent efforts to enhance human resources; updated software and data-mining tools; integrated analytic tools; a dedicated FIU section for strategic analysis and for conducting investigation; regular dissemination of terrorism-financing typologies and indicators to reporting entities and law enforcement; the conclusion of cooperation agreements with relevant domestic entities; annual training for staff on security-related issues, including document handling and confidentiality; and effective and regular data and intelligence-sharing with law enforcement, banks, and other partner agencies. All six States are members of the FATF as well as of their respective FSRBs.

605. In all six States, the border authorities have the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing.

606. All six States have assessed the terrorism-financing risk to their NPO sectors, which reveal that the terrorism-financing risk faced by NPOs varies based on the operation, activities and affiliations of such organizations and that the categories of NPOs at higher risk of terrorism financing are mainly those providing humanitarian assistance in or close to conflict zones and NPOs with foreign donors. Risk assessments conducted by two States found that a small number of NPOs were suspected to have been exploited to divert funds for groups or individuals engaged in foreign conflicts or terrorist activities overseas, rather than for domestic terrorist activity.

### (c) Firearms

607. Most States of this subregion criminalize the illicit manufacturing, trafficking and alteration of firearms or the illicit obliteration of their markings to some degree. In the case of three States, legislative provisions were in place regarding the illicit manufacturing and trafficking of small arms, but it was unclear whether the alteration of firearms or illicit obliteration of their markings was also criminalized. One State is in the process of overhauling its firearms-related legislation and has recently enacted strict controls.

### 3. Opportunity and border security

608. The previous global survey noted that only a few States of this subregion had fully connected their immigration screening processes at the frontline to the INTERPOL SLTD database and Red Notices and to the Security Council ISIL (Da'esh) and Al-Qaida Sanctions List and that



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only one of those States had established full connectivity. As of 2020, in four of the six States of this group, law enforcement agencies had direct or indirect access to all up-to-date INTERPOL data and databases, including at all ports of entry. In one State, the relevant immigration authorities do not have direct access to the INTERPOL I-24/7 SLTD database and Red Notices at all air, sea and land BCPs. In another State, this access was available to authorities at the central level, but it was unclear whether personnel at BCPs could also access these tools. Three States actively conduct searches, including identity and character checks against national police and other criminal records, INTERPOL Red Notices, SLTD data, United Nations lists, and other datasets to which its officers have access.

609. Five of the six States of this group have both API and PNR systems in place and implement these systems using a “single window” (a centre established for receiving and assessing this data). One State noted that the data received was of a variable quality and another had introduced several safeguards applicable to the processing and use of API and PNR, including the use of privacy impact assessments. In one State the establishment of an API system is anticipated. Four States partner with foreign law enforcement officials and commercial carriers overseas to prevent the boarding of passengers who pose a security threat, with one operating a passenger protection programme to prevent the travel by air of individuals suspected of posing a threat. A number of these States have also established joint teams of law enforcement, airport security and intelligence officers conducting risk-management assessments and identifying threats.

610. Five of the six States of this group have strengthened their capacity to prevent and detect the fraudulent use of identity and travel documents, including by training relevant officials and disseminating identification kits to authorities at border control posts, embassies and consulates. With respect to one State, the Committee recommended also providing training in the detection of fraudulent documents to airline officials to assist their personnel to evaluate documents presented by passengers.

611. Five of the six States of this group record and store, through an automated system, the entry and exit of persons crossing their borders. Five of the six States have developed a biometric entry/exit system, with two States conducting 100 per cent screening of passengers and one developing capacity to establish a biometric watch list and real time verification at the border.

612. All States of this group have measures in place to cooperate with other States in the area of border management through cooperation agreements with regional bodies and bilateral agreements with neighbouring States in customs matters. The Committee commended the establishment of a trilateral police and customs cooperation centre between Bulgaria, Greece and Turkey to facilitate the exchange of information on terrorism, smuggling, and other illegal activities, as well as operational and investigative cooperation among law enforcement and customs authorities of the three States. The Committee also commended Turkey for its efforts to establish and expand risk analysis units within its Integrated Border-Management system. Four



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States of this group deploy border control and immigration officers at international air and seaports to facilitate genuine traveller movements and to identify and manage threats. These States also participate in a border control group to share threat information and trends reports and have established extensive programmes to provide technical assistance and capacity-building to international partners to enhance passenger screening capabilities, improve information sharing, and provide training in travel-document security. Since the previous survey, the United States has strengthened the capacity of its international partners to conduct counter-terrorism screening and vetting to detect terrorist travel. Its Government shares information on known or suspected terrorist subjects, including the identities of FTFs, with international partners to facilitate screening. In addition, the United States continued to strengthen border-security measures particularly through its overseas enforcement programmes (e.g., the Preclearance, Immigration Advisory and Joint Security Programs (IAP/JSP) and Regional Carrier Liaison Groups (RCLGs)) to identify and prevent the travel of individuals deemed security threats as early as possible.

613. All States of this group have an RSD system in place. Three States collect biometric information from asylum applicants and conduct thorough background checks to establish the claimant's identity and possible links to criminal or terrorist activity. In respect of two States, United Nations human rights mechanisms have raised concerns regarding the capacity of their systems and their compliance with international standards in terms of protecting the procedural rights of asylum seekers. In a number of these States, laws and procedures are in place to prevent the granting of asylum to an individual who has planned, facilitated or participated in a terrorist act. The Committee noted that the relevant domestic legislation expanded the bases of exclusion beyond those stated in the 1951 Refugee Convention (inter alia, by providing for exclusion based on broadly framed security concerns). The Committee has commended Turkey for its significant efforts to host and provide services to the world's largest refugee population.

### **2. Bringing terrorists to justice**

#### **(a) Planning and preparation**

614. Five of the six States of this group have legislation in place that makes it possible to prosecute any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. This can arise in different ways: general principles of domestic criminal law require that only one constituent element of the offence be committed on the State's territory; the definition of terrorist offence itself covers conduct occurring, in whole or in part, outside the State's territory; and/or the domestic criminal law provides for jurisdiction in all cases envisaged in the international conventions to which the State is a party (this includes the international counter-terrorism instruments). In one State, however, it was unclear whether such conduct would be covered.





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615. All States of this group criminalize acts of planning, preparation and supporting of terrorist acts, although in two States some of these ancillary forms of liability are linked to the activities of terrorist organizations. In this regard, the Committee raised concerns regarding the process by which organizations are so designated. One State has legislation specifically criminalizing planning, preparing and providing support; another has specifically criminalized planning and other preparations; and two have criminalized facilitation or a range of preparatory acts.

### **(b) Capacity to investigate and prosecute**

616. With regard to the capacity, expertise and technical means of prosecution offices to handle complex terrorism cases, four States of this group have undertaken efforts to strengthen capacities, including by assigning prosecutors to focus on terrorism cases in each regional office (these were said to have gained important experience in the use of undercover operatives and the exploitation of ICT to facilitate investigations); upgrading the case-management system; and strengthening inter-agency mechanisms or coordination between prosecutors and law enforcement. In one State, further information about prosecutorial capacities is required, but it was noted that converting intelligence into evidence for terrorism prosecutions was an ongoing challenge.

617. All States of this group have made available multiple SITs for investigating terrorism cases, including undercover operations; wiretapping; interception of communications; electronic and covert human surveillance; digital forensics and detection; accessing computer data; controlled deliveries; and warrantless searches. In the case of five of these States, the relevant legislation clearly stipulated the preconditions for the use of such techniques, such as minimum sanctions and reasonable grounds for suspicion that an act had been committed, as well as measures based on a reasoned written order, with prescribed minimum contents, issued by a judge upon a motion submitted by the prosecutor. In three States, some of the SITs can, in case of emergency, be employed without court authorization. The Committee has frequently reiterated that States should ensure that SITs, including surveillance practices, are implemented in a manner consistent with human rights law, including with respect to oversight and redress mechanisms.

618. Although all States of this group have in place some form of oversight of the counter-terrorism measures taken by law enforcement and indeed have established multiple bodies to consider counter-terrorism measures, it was determined that in only two of the six States could these mechanisms be considered to be sufficiently effective and independent. The shortfalls identified in the other States include the absence of legislation providing for independent scrutiny of important components of the counter-terrorism regime; lack of independence, in practice, of bodies charged with oversight; failure to document, report without delay, and investigate all allegations of ill-treatment relating to counter-terrorism operations; and a general lack of evidence that the measures put in place were effective.

### **(c) Rule of law**



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619. In three of the six States of this group, it was found that the definition of terrorist acts was not sufficiently clear and precise and risked applying to acts beyond those envisaged in the international counter-terrorism instruments. The shortfalls identified include the use of overly broad or open-ended terms within the definition; the criminalization of threats to act without reference to the credibility of the threat; the criminalizing of certain non-violent conduct that falls outside the relevant international instruments; and a lower *mens rea* requirement.

620. In assessing due process protections, it was found that in five of the six States of this group the key principles of the rule of law are not fully respected in all terrorism cases. Shortfalls identified by the Committee and by United Nations human rights mechanisms, include extended periods before a charged person is brought before a judge; delays or restrictions on access to counsel in terrorism cases; extended periods of pre-trial detention; use of incommunicado detention; and concerns regarding the independence of the judiciary.

621. Two States of this group have adopted special laws that confer specific powers on certain authorities to counter terrorism and that do not appear to include sunset clauses. Three States have adopted special laws that are subject to sunset clauses (although in one case the sunset clause for a key provision has been extended several times). In the other State the applicable legislation appeared to provide for an indefinite number of extensions of the period of pre-charge detention in terrorism cases. In one of those States the Committee highlighted sweeping administrative measures taken against thousands of persons alleged to harbour terrorist sympathies, as well as the regularization of counter-terrorism criminal justice measures, previously introduced under emergency legislation, which limited access to counsel and provided for extended pre-trial detention.

622. The Committee has noted that Australia has introduced comprehensive procedures and established several distinct bodies specifically for reviewing legislation to ensure that it complies with Australia's obligations under international law, including international human rights law. The mechanisms in place include the Independent National Security Legislation Monitor (which is responsible for considering whether counter-terrorism and national security legislation is necessary and proportionate to terrorism or other national security threats, as well as for determining whether the laws contain adequate protections for individual rights) and the Australian Human Rights Commission (which is an independent national institution responsible for monitoring and promoting human rights protection and which can receive individual complaints). The Committee observed that the review of counter-terrorism legislation for necessity, proportionality, and protections of rights is good practice and commends Australia for those measures.

### 3. Activating international cooperation



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623. All States of this group have taken steps to make guidelines on domestic law and procedures relating to MLA and extradition publicly available. Two have done so via the website of the Council of Europe and three have posted information on Government websites. This was noted as a good practice by the Committee. In addition, five States undertook efforts to raise other States' awareness of their processes on a bilateral, ad hoc basis.

624. With regard the *aut dedere aut iudicare* principle provided for in the counter-terrorism conventions, domestic legislation in three of the six States does not include provisions to ensure that this rule would be fully complied with in practice (although in one case the Committee noted that the State did appear to have thus far complied with this principle in terrorism cases).

625. With respect to bilateral cooperation in terrorism investigations, all States of this group have legislative provisions in place to facilitate such cooperation. The relevant authorities of five of the six States have practical experience in conducting joint operations with other States on a bilateral basis and the other State regularly undertakes joint operations through a regional cooperation body.

### Priority recommendations

- Review and revise legislation to ensure that terrorism offences are consistent with international law, such as ensuring that liability for attempts covers all terrorism offences; that terrorism-financing offences cover both a terrorist organization and an individual terrorist; and that the offence covers both the intentional provision of funds as well as the provision of funds with knowledge that they are to be used for terrorism.
- Work closely with humanitarian organizations and financial sector to ensure that counter-terrorism measures are not implemented in a manner that unduly affects the delivery of exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.
- Share experiences in investigating and prosecuting terrorist crimes committed by groups motivated by racism, xenophobia and related intolerance, including any persistent challenges and good practices developed.
- Ensure NPO registries are comprehensive and up to date, and review the sanctions available to supervisory authorities for NPOs that fail to comply with applicable regulations.
- Ensure asylum legislation is applied in a manner consistent with the 1951 Refugee Convention, including with respect to specific bases for exclusion stipulated in Convention.



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- Gather disaggregated data on persons excluded from refugee status because of suspected links to terrorism and on measures taken after their exclusion in accordance with resolution 1373 (2001) and develop SOPs for such cases, including on information-sharing with third States, in full compliance with international law, and on possible referral to domestic prosecution authorities.
- Ensure that there are in place effective, independent and impartial mechanisms with a mandate to investigate and prosecute abuse of powers would enhance the day-to-day conduct of law enforcement agencies.
- Implement, within existing asset-freezing legislation, the ability to freeze funds at the request of another State (not just international organizations).
- Revise extradition laws to ensure an obligation to submit a case to a prosecutor if a person accused in a terrorism case is not extradited and an explicit statement that terrorist acts cannot be political acts.
- Ensure that all measures relating to the possible deprivation of nationality of persons suspected of involvement in terrorism are conducted in a manner consistent with international human rights law, including the international instruments on statelessness, and with particular regard for the need to provide procedural safeguards for affected persons.

### **South-East Europe**

**(Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, North Macedonia)**

#### **A. Terrorism trends**

##### **1. Risks**

626. South-East Europe has been largely free of terrorist attacks in the previous five years, and its risk of being subject to attack is comparatively low compared to other European subregions.

627. At the time of the previous global survey, it was noted that South-East Europe was a major transit route for people, funds, arms and goods from Africa, Central Asia and the Middle East to Europe. In 2015, despite improved border management and considerable investment in infrastructure, human resources and regional cooperation, the number of refugees and asylum seekers, in particular from conflict zones, who were using this subregion to access Europe created a crisis situation. That crisis has abated, largely owing to cooperation between Turkey and the



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European Union (with Turkey shouldering a significant burden of the responsibility to host refugees fleeing the conflict zones in which ISIL and FTFs have been active in the Middle East).

628. However, there remains the underlying risk that this subregion is still attractive for those seeking to transit between the European Union and conflict zones. In 2018, for example, a Bulgarian court convicted a preacher and 13 of his followers for smuggling several FTFs en route to the Syrian Arab Republic. The same year, Bulgarian prosecutors also indicted six persons on terrorism-financing charges after they had transferred more than \$10 million through a hawala system and purchased and delivered more than one hundred vehicles, delivering them to the Turkish-Syrian border in support of terrorist organizations in the Syrian Arab Republic. A further 43 persons were arrested on similar charges in 2019.

629. Governments of the subregion have taken several initiatives to respond to the risks posed by FTFs. There have been 24 prosecutions in Bosnia and Herzegovina for related activity, including incitement, and Serbia implements measures to prevent the travel of FTFs from, to, and through its territory. Those measures include the work of the risk assessment unit of the border police, the sharing of updated information on FTF methods and travel patterns with BCPs, and the provision of training to the border police. Governments of the subregion should, however, avoid overstating the risks posed by FTFs to justify restrictions on core human rights in the name of countering terrorism.

630. Other continued risks in this subregion include relatively high levels of organized crime and arms trafficking, and their potential linkages to terrorism. The counter-terrorism strategy of one State of the subregion notes the presence of large quantities of weapons remaining from the Balkan Wars of the 1990s, as well as the interrelationship between terrorism and other criminal phenomena, especially terrorism financing, money-laundering, organized crime, abuse of narcotics, and illegal migration. These challenges remain consistent with those reported in the previous global survey (which also noted that regional cooperation is undermined by longstanding bilateral tensions).

### **B. Implementation of resolution 1373 (2001) in South and South-East Europe**

#### **1. From prevention to rehabilitation**

##### **(a) Comprehensive and integrated counter-terrorism strategies**

631. The previous global survey noted that only some of the States of this subregion had developed national counter-terrorism strategies. There has been a significant improvement in implementation since then. By 2020, most States of this subregion had adopted comprehensive national counter-terrorism strategies. Serbia's strategy covers the period 2017-2021 and has an accompanying action plan. It promotes engagement with a wide range of implementing partners and stakeholders; includes activities to engage youth, women, educational institutions and civil



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society; and allocates the resources required to facilitate its implementation. Bosnia and Herzegovina's strategy places a major focus on preventive measures and on addressing challenges posed by new terrorist threats, including the FTF phenomenon and use of the Internet for terrorist purposes. Albania's strategy extends to matters relating to organized crime, and illegal trafficking, as well as terrorism. Croatia takes an integral approach to the prevention and suppression of terrorism, based on several national strategic documents, including the National Strategy for the Prevention and Suppression of Terrorism.

632. However, the strategies of a number of States of this subregion retain certain shortcomings. For example, the role which civil society actors played in designing and revising some of the strategies is not always clear. In one case, the strategy does not include all the various elements prescribed in the four pillars of the United Nations Global Counter-Terrorism Strategy (i.e., it omits the human rights pillar). In one case, the strategy was adopted in 2002 and has not been updated since.

### **(b) Risk assessment**

633. Only one of the nine States of this subregion conducts regular detailed terrorism threat assessments. The other States do conduct some form of risk assessment, but that assessment is neither detailed nor comprehensive. Two States, for example, include terrorism risks in very high-level policy documents. One of those States has introduced legislation requiring all public buildings and facilities to develop site-specific terrorism risk assessments. One State of this subregion has conducted a risk assessment through its border police to identify measures to prevent the travel of FTFs. Another has included in its money-laundering and terrorism-financing NRA more general risks associated with terrorism such as the risk of international terrorist groups and risks from radicalization. One State reported to the Committee that its relevant domestic agency required updated ICT tools to enable it to develop an effective system of intelligence-led policing.

634. Five States of the western Balkans have entered into operational and strategic cooperation agreements with Europol that enables them to utilize Europol analytical tools in counter-terrorism investigations and to participate in Europol analysis projects on FTFs. One State has strengthened cooperation and data exchange with regional partners through formal and informal mechanisms, including the use of Europol's SIENA counter-terrorism platform for data exchange, and has also participated in a number of Europol analytical projects (as well as cooperating with the Southeast Europe Law Enforcement Centre (SELEC) in a number of areas, including counter-terrorism). Since the previous global survey, one State has concluded an operational and strategic agreement with Europol, which provides for increased cooperation with respect to a number of crimes, including terrorism. The same State also engages in cooperation and information-sharing within the framework of regional bodies, including SELEC and the Southeast European Prosecutors Advisory Group (SEEPAG), as well as through the Police Cooperation Convention for Southeast Europe.





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### **2. Addressing enablers of terrorism**

#### **(a) Recruitment**

635. The previous global survey noted that good progress had been made in the criminalization of recruitment to terrorism and that most States had also adopted practical and preventative measures against terrorist recruitment (which is an area of particular vulnerability). The survey also noted, however, that all States needed to review and consider updating their legislation to ensure that recruitment of FTFs was criminalized. In 2020, the Committee found that seven of the nine States of this subregion had enacted an offence of recruitment to a terrorist group. Of the two that do not have a terrorism-specific offence in place, one has criminalized the offence of criminal association, which could encompass some cases of recruitment of terrorists. In the other State, the offence is partially enacted (it is a criminal offence to recruit a person for the purposes of committing a terrorist offence). The Committee recommends in such cases that States ensure that recruitment into a terrorist group is criminalized irrespective of the commission of a terrorist offence.

#### **(b) Financing of terrorism**

636. As noted in the previous global survey, all States of this subregion are parties to the 1999 International Convention for the Suppression of the Financing of Terrorism and all have adopted AML/CFT laws. Levels of legislative implementation remain high. All States of this subregion have implemented standalone offences covering terrorism financing in their national criminal legislation. The offences of all States cover the financing of both an individual terrorist and a terrorist organization.

637. The previous global survey noted that the challenges of this subregion related more to implementation (including the development of regulatory systems to effectively implement aspects of resolution 1373 (2001) to fully comply with the requirement to freeze funds without delay). To a large extent, those challenges remain.

638. Only one European Union State of this subregion had the ability to freeze assets without delay. The same State was the only European Union State of this subregion to have issued asset-freezing orders under its own domestic powers, in addition to those ordered at the European Union level under European Council Regulation 2580/2001 (see also Eastern Europe section, above). In one non-compliant State, the regulatory provisions had not been updated since 2008 and required action only within five working days.

639. One of the non-European Union States of this subregion has amended its legislation to introduce a general obligation to freeze without delay. Another State has regulations in place for the implementation of resolution 1373 (2001), but has not yet frozen any terrorist assets. A third State had not frozen any terrorist assets at the time of the Committee's visit, despite having enacted



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regulations in that regard. Two other States have taken steps to develop their legal frameworks on freezing, but further information is required as to whether they could, in practice, freeze assets without delay. Neither State had yet frozen any assets pursuant to 1373.

640. With respect to FIUs, the Committee has observed that the States of this subregion generally have in place functioning FIUs that are operationally independent and have the appropriate powers to seek additional information. In one State, the FIU was developing a module to facilitate cooperation with national authorities.

641. The Committee has expressed concern, however, that in three States of this subregion the FIUs are not resourced adequately. In one of those States, even though the staffing level of the FIU was comparable to that of FIUs of similar-sized States, it was also the body primarily responsible for supervising all reporting entities (a function that is normally shared across multiple agencies). This represents a potentially disproportionate workload in view of its resource levels. In another of those States, although the staffing level was comparatively high, the FIU lacked adequate IT analytical tools and training and was thus unable to analyse the volume of STRs received. The Committee encouraged States of the subregion to continue their efforts to provide their FIUs with adequate equipment and with training in the use of analytical and investigative software.

642. With respect to the cross-border movement of currency, European Regulation 2018/1672 will enter into force in June 2021 for the European Union States of this subregion (see also Eastern Europe section, above). However, three of the four European Union States of this subregion have not yet granted their border authorities the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing.

643. Of the non-European Union States of this subregion, only two of the five States have granted border authorities the legal authority to stop or restrain currency and BNI suspected to be related to money-laundering or terrorism financing. In one of those States, however, this power is not applied in practice because the staff are not fully aware of this authority.

644. The previous global survey noted that a challenge common to States of the subregion was the handling of NPOs and preventing their misuse for terrorism-financing purposes. No State had reviewed its NPO sector or conducted a risk assessment for potential terrorism-financing abuse.

645. Some progress has been made in this area. As of 2020, three States of this subregion had performed a comprehensive assessment of the risks to the NPO sector, including the risk of abuse for terrorism-financing or money-laundering purposes. One State conducted a general assessment for NPOs, but only as part of its overall NRA, not as a standalone focused study. Another State did conduct a review of NPO sector vulnerabilities to the financing of terrorism, but the document was kept confidential, thus precluding proper assessment. Four other States have not yet taken adequate steps to assess the terrorism-financing risk to their NPO sector. The Committee



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encouraged States to continue to monitor and strengthen the dialogue with the NPO sector in order to prevent terrorism financing while also ensuring respect for human rights, including the freedom of association.

### (c) **Firearms**

646. The previous global survey noted that all States of this subregion had criminalized the illicit manufacturing and trafficking of arms, but that at least four had not directly criminalized the alteration of firearms or the illicit obliteration of their markings. Implementation in 2020 remains mixed, as it was in 2016, at the time of the previous survey.

647. European Union States of this subregion are bound by the relevant European Union Regulations (see Eastern Europe section, above). Two of the four European Union States of this subregion have introduced legislation to criminalize the illicit manufacturing, trafficking and alteration of firearms, as well as the illicit obliteration of their markings. The legislation of one State does not include criminalization of the illicit obliteration of markings (which is the same shortfall identified in the previous global survey). In the fourth State, the legislative process to implement these provisions was underway at the time of the Committee's assessment.

648. All the non-European Union States of this subregion have criminalized the illicit manufacturing and trafficking of arms. Since the previous global survey, two States have criminalized the alteration of firearms or the illicit obliteration of their markings. In one State, it was unclear whether the alteration of firearms or illicit obliteration of their markings was also criminalized in addition to illicit manufacturing and trafficking. Stockpile management, including seized weapons, and destruction of surplus arms remains a challenge for this region. Surpluses left from previous conflicts are a leading source of trafficking and unlawful possession. These challenges persist for this subregion, despite national and international efforts to curb and minimize illicit stockpiles of arms from past conflicts.

### **3. Opportunity and border security**

649. The previous global survey noted that the immigration screening processes of this subregion were being conducted with the use of the INTERPOL I-24/7 system, including the SLTD database, and in cooperation with INTERPOL NCBs and law enforcement agencies.

650. The extent to which the INTERPOL databases are connected to frontline staff, however, remains unclear. Only one of the European Union States of this subregion has confirmed that it has connected all its BCPs to INTERPOL databases for use by frontline border officials. In another State, the INTERPOL databases are connected to the national police system, but it is unclear whether they are also connected to BCPs. In some of the other five States of this subregion, not all immigration authorities had direct access to the INTERPOL databases. In other cases the immigration authorities only had indirect access through their NCBs.



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651. The previous survey noted that most States of this subregion faced considerable challenges in identifying suspected terrorists or FTF returnees and that only three States of this subregion used an API system (the lack of which undermines the efforts of frontline officers to detect entering or exiting wanted persons or FTFs). Progress on implementation in this area has been uneven.

652. As of 2020, all four European Union States of this subregion had implemented both API and PNR systems, as well as having access to the SIS, consistent with the rules imposed at the regional level. (Bulgaria, Croatia, and Romania are not part of the Schengen area, but Bulgaria and Romania have full access to the SIS, and Croatia has access to the SIS for law enforcement purposes. Two European Union States also had immigration systems in place to record and retain all entries and exits across their borders (see also Eastern Europe section, above).

653. No other State of this subregion has API or PNR systems in place. One State had established an intelligence unit in its customs authority but did not appear to have developed an analytical capacity to detect potential terrorists. More information is required to assess the capacity of States of the subregion to effectively screen for terrorists at BCPs or to detect the fraudulent use of travel documents.

654. The previous global survey noted a relative lack of border management cooperation in this subregion. Cooperation had increased significantly as of 2020, but bilateral tensions continue to prevent full cooperation in some cases. The European Union States continued to join European Union cooperative networks. Three States were working towards joining the Schengen area. Slovenia is already a member. The European Union institutions have also been strengthened. Frontex has focused some of its main operations on the region, particularly to tackle the main trafficking and smuggling routes into and out of the European Union.

655. Progress has also been made in the non-European Union States since the previous global survey. Serbia has, inter alia, proceeded with the development and implementation of an IBMS and conducted joint patrols of the armed forces and the police at its borders with Bulgaria and North Macedonia. Albania has invested significant resources (including mobile scanners, X-ray machines and an IT system) into its customs administration and has enhanced both internal cooperation (in particular with the border police and the FIU) and international cooperation. Bosnia and Herzegovina has entered into a number of operational and strategic agreements with neighbouring States, including on joint patrols, joint cooperation centres and local border traffic. One example in this regard is the joint contact centre with Croatia at the Bijača-Novo Sela BCP. Bosnia and Herzegovina, Montenegro and Serbia have also established a joint centre for police cooperation to facilitate joint measures against cross-border crime and has also appointed focal points to share analysis on FTFs with neighbouring States. Work is underway in one of those States to develop an early-warning system wherein information on FTFs seeking to enter a neighbouring State is relayed to the BCPs of neighbouring States.



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656. Multilateral cooperation across the European Union and non-European Union States of this subregion should also be noted. States continue to cooperate on border management issues through SELEC, which includes the European Union States addressed in this section, plus Greece, and the non-European Union States, plus Turkey. The non-European Union States of this subregion have also established working arrangements with Frontex on the exchange of information and training of border guards.

657. With respect to refugee and asylum seekers, it should be noted that only two of four of the European Union States of this subregion have established RSD procedures and have legislation and procedures in place to prevent the granting of asylum to an individual who has planned, facilitated or participated in a terrorist act. Three of the non-European Union States had an RSD system in place but with respect to one of those systems the Committee noted that the relevant domestic legislation expanded the bases of exclusion beyond those stated in the 1951 Refugee Convention (inter alia, by providing for exclusion on the basis of broadly-framed security concerns). In another State, concerns were raised about the reported practice of denying or revoking the authorizations extended to refugees and asylum seekers on the grounds of threats to national security (thereby creating a risk of refoulement). Further concerns were raised concerning another State, which has an extremely low rate of successful asylum applications and the granting of refugee status.

#### **4. Bringing terrorists to justice**

##### **(a) Planning and preparation**

658. Most States of this subregion have legislation in place to make it possible to prosecute any preparatory or accessory acts that are conducted in the State with the aim of committing terrorist acts against other States or their citizens outside the State's territory. In some cases, the legislation is clear and precise. In two States, for example, a specific legislative provision requires that only one constituent element of a terrorist offence be committed on the State's territory. Another State has taken universal jurisdiction (thereby making the presence of the accused the only relevant territorial consideration). In other cases, the legislation appears to comply with this requirement, but further clarity would be useful. The legislation of one State, for example, contains a clear description that terrorism can have a transnational basis, but without clearly imposing criminal liability for preparatory acts. In another example, amendments to the Criminal Code expanded the scope of application of relevant provisions to criminalize preparatory acts against values protected by international law.

659. Most States of this subregion criminalize acts of planning, preparing and supporting terrorist acts. However, even though in a few cases acts of planning and preparation of a terrorist act are clear and precise, there is not always clarity as to the meaning of those terms. In one State,



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for example, conspiracy and some ancillary offences relating to terrorist organizations is criminalized but those offences are not clearly defined. In another, the relevant offence uses terms that focus on leadership and coordination in the preparation of a terrorist act but without covering more general supporting roles. The other States of this subregion criminalize planning, preparing and supporting through general provisions of criminal law on accomplice liability rather than through additional terrorism-specific offences.

### **(b) Capacity to investigate and prosecute**

660. The previous survey noted that all States of this subregion had established functioning investigative authorities and functioning prosecution services (also noting in this context that four States had successfully prosecuted FTFs and prevented their travel). All States had also benefited from assistance in developing their investigative and prosecutorial capacities. The survey also stated, however, that even States that had received assistance should continue to benefit from training initiatives with respect to handling complex terrorism investigations, financial crimes, and identifying links between organized crime and terrorism.

661. Since the previous survey, progress has continued in this area. The counter-terrorism capacity of the national prosecutor's office of one State has been strengthened through the establishment of a separate section focusing on terrorism-related cases, and the appointment of nine additional prosecutors to deal with terrorism cases. Another State has introduced amendments to its Code of Criminal Procedure for prosecutor-led investigations and has expanded the mandate of the Prosecutors' Office for Organized Crime in Terrorism-Related cases. The Committee has noted, however, that there remain certain shortfalls, including the continued need to establish central mechanisms to coordinate the work of judicial and prosecutorial counter-terrorism agencies; the need to upgrade IT systems; evidentiary issues in FTF-related cases, and language barriers. It should also be noted that many States of this subregion have not needed to investigate or prosecute terrorism cases and have therefore not yet demonstrated the capacity to tackle such cases.

662. States of this subregion have made available multiple SITs for investigating terrorism cases, including use of audio-visual recording equipment; interception of communications; video surveillance; phone-tapping; use of informants; technical recording of premises, covert surveillance of individuals and objects, and use of undercover investigators and informants. In most States the relevant legislation clearly stipulates the requirement for judicial authorization, the preconditions for such authorization (such as the gravity of the suspected offence and the proportionality of the measure), and the permissible duration.

663. In some cases, human rights concerns have been raised over the use of SITs. In one State, for example, United Nations human rights mechanisms have raised concerns at reports of large-scale use of wiretapping against journalists and political opponents and at the lack of effective





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legal remedies for persons subject to such measures. In several States it was noted that the permissible duration of some of these measures was not stipulated in the legislation.

664. All States have in place some form of oversight of the counter-terrorism measures of law enforcement agencies. In Bulgaria and Slovenia, for example, oversight of the intelligence agencies is performed by parliamentary committees consisting of all political parties. In Serbia, measures taken since 2016 include the development of a Code of Police Ethics, guidelines on procedures in cases where allegations of mistreatment are made, provision of training for law enforcement officials, and measures to ensure multiple levels of oversight for law enforcement activities. In Albania, two human rights institutions have a mandate to protect the rights, freedoms and legitimate interests of the individual from unlawful and irregular actions or omissions of public administration bodies and third parties.

665. Although these measures are good practices, United Nations human rights treaty bodies have expressed concern at the lack of independent mechanisms to prosecute criminal misconduct or to investigate and refer cases of abuse of authority to an independent prosecutor. Where the oversight mechanisms did not meet the requisite standards, the identified shortfalls include allocation of insufficient financial or human resources to the oversight bodies; lack of independence of such bodies; and a disparity between the number of complaints of ill-treatment and the number of judicial inquiries. It is also important to note that parliamentary oversight committees have responsibility for overseeing policies, administration, budgets and expenditure, but do not review operational activities and cannot investigate or prosecute individual cases of misconduct.

### (c) **Rule of law**

666. Although all States of this subregion have criminalized terrorist acts, the Committee has observed in all cases that the definition of terrorist acts is not sufficiently clear and precise and thus risks applying to acts beyond those envisaged in the international counter-terrorism instruments. In one example, the offence of terrorism contains three elements: violence; aimed at the public or government targets; with a political motive to influence a Government. A clearly drafted terrorism offence would require all three elements to secure a conviction but, in this case, only one of those elements was required to satisfy the elements of the crime, leading to the potential criminalization of non-violent acts of protest or dissent. In another case, the definition included acts intended to destroy the “social foundations” of the State. Although the Committee has observed such provisions frequently in national legislation, it has noted that these are not precise and do not derive from any of the relevant international legal instruments (e.g., paragraph 3 of Security Council resolution 1566 (2004), or article 2, paragraph 1(b), of the 1999 International Convention for the Suppression of the Financing of Terrorism.



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667. In two States of this subregion, the offence of terrorism is defined in more than one piece of legislation. In this regard, it should be noted that the Committee has stated that the existence of multiple definitions and the lack of harmonization between relevant provisions could potentially undermine the effectiveness of the prosecutorial system in terrorism cases.

668. In all of the States of this subregion due process guarantees are reflected in a number of constitutional protections, including the right to a fair trial, independence of the judiciary, and equality of all before the law. No State of this subregion had introduced exceptions for terrorism cases into its criminal procedures. With respect to more than half the States of this subregion, United Nations human rights bodies have raised concerns about due process rights in general. In its dialogue with States, the Committee encourages each State to continue its dialogue with the relevant United Nations human rights bodies.

669. Only three States of this subregion have adopted special laws that confer specific powers on certain authorities to counter terrorism. None includes a sunset clause. In one of those States, the law provides for expanded powers of detention, search, and to use physical force, if a terrorist threat is imminent, or if the authorities have information that a specific person is preparing a terrorist attack. In the second State, the law allows for temporary limits on certain constitutional rights and freedoms of citizens for the purpose of criminal proceedings. In addition, the security agency can apply for an order imposing a range of preventive measures on persons for whom there is data that they are preparing an act of terrorism, including surveillance measures, and measures limiting their movement or travel. Although the orders can be appealed, they do not have sunset clauses. In the third State the Law on State Police defines the procedures followed by police officers in counter-terrorism related efforts.

### **5. Activating international cooperation**

670. Seven of the nine States of this subregion have developed and made publicly available guidelines on domestic laws and procedures relating to MLA and extradition in order to inform foreign authorities about the requirements that must be met to obtain assistance or extradition. This information, however, was only made available via the website of the Council of Europe, and in one instance had not been updated for more than five years.

671. With regard to the *aut dedere aut iudicare* principle provided for in the international counter-terrorism instruments, only three States of this subregion have introduced extradition laws that oblige Governments to submit a case to the investigative authorities if an extradition is refused. In one of those States the obligation was explicitly repeated with respect to terrorism offences. The Committee consider this to be good practice. In one State, the principle is only partially implemented, in that the Criminal Code requires a case to be handed to prosecutors if an extradition is refused because the accused is a citizen of that State (in which case extradition is barred by the Constitution). The clause does not apply, however, to foreign nationals. In the other States of this



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subregion, domestic legislation did not include provisions to ensure that the *aut dedere aut iudicare* principle would be fully complied with.

672. Five States of this subregion had legislative provisions in place to facilitate bilateral cooperation in terrorism investigations and have also gained practical experience in conducting joint operations with other States of this subregion. In one of those States, the Code of Criminal Procedure also allows for representatives of international organizations such as Europol and Eurojust to participate in JITs. One of those States notably also hosts 15 foreign police liaison officers on its territory.

### Priority recommendations

- Amend terrorism offences to remove elements that are overly broad or vague, and ensure that there are not multiple definitions of terrorism in criminal codes; review extraterritorial jurisdiction over terrorist offences to prevent gaps in jurisdiction.
- Review national legislation to ensure evidence collected through SITs can be admitted as evidence, while respecting international human rights law, including the right to freedom of expression and the right to freedom from arbitrary or unlawful interference with privacy.
- Review powers to freeze assets of suspected terrorists to ensure that they are exercised beyond persons or entities listed by the Security Council or the European Union; ensure asset-freezing orders cover assets indirectly owned or controlled by a designated person or entity regulations; revise procedures to allow challenges to asset freezing decisions; ensure asset freezing without delay.
- Review powers of customs officials to ensure they can restrain currency or BNI, and increase investment in training to strengthen the capacity to identify persons who may present risks of being cash couriers and identify potential ties to terrorism financing.
- Consider whether appeal rights are adequate for refugee or asylum seekers whose applications are denied and whether non-action on removal should continue until all legal proceedings, including appeals, are concluded.
- Develop comprehensive and integrated counter-terrorism strategies and relevant action plans that include significant roles for youth, families, women, religious, cultural and educational leaders and other concerned civil society groups, and periodically update them to take into account the evolving threat.
- Revise extradition laws to exclude terrorism offences from being considered acts of a political nature.



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- Review codes of criminal procedure to include a mandatory obligation to transfer all terrorism cases to prosecutors where extradition has been denied, where the obligation to transfer such cases to the prosecutor is mandatory, but the prosecutor retains independent discretion as to whether to investigate or prosecute.
- Introduce into counter-terrorism laws time limits on the duration of states of emergency that can be declared pursuant to the law, together with automatic expiry dates, and build into such laws the requirement that any measures taken during a state of emergency be proportional, only taken to the extent strictly required, and are consistent with international human rights obligations.
- Include explicit prohibitions in codes of criminal procedure on the use of statements as evidence if there is a risk that may have been obtained by torture, including for any evidence that may be supplied by another jurisdiction; introduce explicit prohibition on extradition if there are substantial grounds for believing that the accused would be in danger of being subject to torture.

### IV. Thematic outlook

#### A. National comprehensive and integrated counter-terrorism strategies

673. The need to develop comprehensive and integrated national strategies with a view to ensuring an effective and holistic approach in countering terrorism is one of the key issues addressed by CTED within the framework of its dialogue with Member States on the Committee's behalf. In paragraph 6 of its resolution 1963 (2010) and paragraph 18 of its resolution 2129 (2013), the Security Council requests CTED to advise Member States, as appropriate, on the development of comprehensive and integrated national counter-terrorism strategies and the introduction of implementing mechanisms that include attention to the factors that lead to terrorist activities. In paragraph 16 of its resolution 2395 (2017), the Council *encourages* Member States themselves to consider developing comprehensive and integrated national counter-terrorism strategies and effective mechanisms to implement them.

674. Since the previous survey, CTED has identified an increase in the number of Member States that have taken steps to develop a broader approach in countering terrorism, including by engaging a broader range of governmental stakeholders, beyond law enforcement agencies. This trend has been driven in part by the evolution of the threat, including the continued impact of the foreign terrorist fighter (FTF) phenomenon (especially in the context of the return or relocation of FTFs from the conflict zones in which they were active). Another driving factor has been the shift in terrorist groups' tactics (including their increased focus on recruiting potential homegrown



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terrorists aimed at circumventing Member States' efforts to stem the flow of FTFs to the conflict zones where ISIL and other terrorist groups were active). These and other factors relating to ISIL's territorial losses have led States to widen the scope of governmental agencies' engagement with a view to strengthening the population's resilience against terrorist attacks.

675. Most Member States that have developed new counter-terrorism strategies in recent years have ensured the engagement of, inter alia, ministries of education, information and youth; governorates; and municipalities in those efforts. This approach goes beyond States' earlier approaches (which typically focused on engaging primarily law enforcement and intelligence agencies, justice departments, FIUs, the military, and ministries of foreign affairs) and is designed to ensure that national strategies are more integrated. Other States have gone further, to engage non-governmental actors (e.g., civil society and the private sector) in the development of their respective strategies. Although these are considered to be good practices, many States continue to focus their strategies too narrowly on law enforcement measures (which remain effective to a degree, but do not include the many other preventive measures required to effectively address conditions conducive to terrorism).

676. Of Member States that have engaged non-governmental stakeholders, some have consulted non-governmental stakeholders in the process of developing the strategy, while others have engaged them in the design and implementation stages. These approaches often address factors (e.g., socio-economic, educational and/or developmental factors) that could lead to or are conducive to terrorist activities. Regardless of the approach employed, Governments are encouraged to continue engaging and coordinating with non-governmental stakeholders throughout the design, drafting and implementation stages. This is key to enhancing the resilience of all social sectors against terrorism. The same is also true with respect to strategy action plans, which should ensure inclusivity by providing for continuous engagement and coordination with non-governmental stakeholders. Such action plans are often supplemented by a mechanism or structure to oversee and/or coordinate implementation of the national strategy and include an outline of specific tasks assigned to each agency, while setting out time frames for achieving the strategy's indicators and goals.

677. States' good practices have also ensured that their national strategies include the gender dimension as a cross-cutting theme and fully integrate human rights considerations in accordance with the United Nations Global Counter-Terrorism Strategy and the position of the Security Council that all counter-terrorism measures must be undertaken in compliance with international law, including human rights law and refugee law. Most Member States review their strategies periodically or include a sunset clause providing for future review aimed at addressing emerging threats, trends and developments. The periodic review also provides an opportunity for some States



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to expand narrowly focused counter-terrorism strategies to be more comprehensive and integrated and to engage a wider range of stakeholders.<sup>108</sup>

678. The holistic approach required in the development and implementation of comprehensive counter-terrorism strategies may be similar to the approach employed in other contexts (e.g., preventing and/or countering violent extremism conducive to terrorism). However, comprehensive counter-terrorism strategies differ in terms of scope, coordination, implementing mechanisms and action plans, measures covered, and range of stakeholders involved. CTED therefore recommends to Member States, as applicable, that they clearly differentiate between their comprehensive and integrated counter-terrorism strategies and their P/CVE strategies in accordance with Security Council resolutions 1963 (2010), 2129 (2013), and 2395 (2017).

### **B. Legislation and criminal justice**

#### **1. Legislation**

679. Effective, appropriate and human rights-compliant counter-terrorism practice requires the ratification of the relevant international and regional instruments, as well as their domestic implementation. Member States must also ensure that domestic frameworks established to counter terrorism comply with their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.

680. The primary international framework to counter terrorism consists of the 19 international counter-terrorism instruments, which are open to ratification by all Member States. According to data available to CTED as of January 2021, 168 Member States have ratified more than 10 of the international instruments. This represents a 3.7 per cent increase compared with the previous global survey.

681. This international framework is complemented by a large number of recent Security Council resolutions on terrorism adopted in response to the changing nature of the global terrorism threat. The key element of resolutions 1373 (2001) and 2178 (2014) is the requirement for States to introduce comprehensive counter-terrorism legislation at the domestic level aimed at ensuring that any person who participates in the financing, planning, preparation or perpetration of terrorist acts, or in supporting such acts, is brought to justice. Since the adoption of resolution 1373 (2001), most Member States have taken steps to criminalize terrorist acts in accordance with the international instruments.

#### **(a) Legislative implementation of Security Council requirements**

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<sup>108</sup> In conducting assessment visits on behalf of the Committee, CTED has continued to advise States visited since the adoption of resolution 2395 (2017) on the need to take all the above measures into account to ensure that an effective national strategy is in place.





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682. Pursuant to Council resolutions 2178 (2014), 2322 (2016), 2396 (2017) and 2462 (2019), Member States have accelerated the review of their existing legislative and administrative frameworks and, where necessary, enacted new measures to incorporate the requirements of the relevant Council resolutions into domestic law. However, despite this progress, the degree to which the relevant offences have been codified continues to require careful monitoring.

683. The relevant Council resolutions require Member States to criminalize preparatory acts, including the planning, aiding and abetting of the commission of terrorist offences. The relevant legislative measures must be supported by adequate jurisdiction in order to ensure that domestic courts are competent to deal with potential offenders. However, many States do not yet use the active personality (nationality) principle to prosecute preparatory or accessory acts conducted with the aim of facilitating the commission of terrorist offences outside the State's territory.

684. Council resolution 2178 (2014) requires States to “ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence” those who travel or attempt to travel to a State other than their State of residence or nationality, for the purpose of the perpetration, planning, preparation of, or participation in terrorist acts, or the providing or receiving of terrorist training as well as persons who facilitate such travel.

685. The Committee's assessments show that most assessed States do not criminalize the facilitation (including organizing, transporting and equipping) of travel by FTFs. Many States rely instead on (sometimes broad) definitions of membership in a terrorist organization or material support for such organizations to address this requirement. Some States also demonstrate comparatively low levels of compliance relating to criminalizing and ensuring accountability for providing and receiving terrorist training.

### **(b) Definitions of terrorism and terrorism-related offences**

686. In assessing and monitoring legislative developments in Member States, the Committee and CTED have frequently identified shortcomings relating to the domestic definitions of terrorism and terrorism-related offences. In this regard, the Committee has recommended that States adopt a clear and precise definition of terrorism that corresponds to the requirements of the international counter-terrorism instruments to which they are parties, the relevant resolutions of the Security Council, and other applicable international law norms and standards, including international human rights law.

687. However, a number of jurisdictions have adopted definitions with an overbroad scope. The Committee has noted the use of broad phrases (e.g., references to acts that destabilize “social structures”, acts against “moral integrity” or “public health” or which “impair national integrity”). Such sweeping definitions (sometimes compounded by an expansive list of ancillary offences) risk



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leading to the criminalization of non-violent conduct that falls outside the scope of the relevant international instruments.

688. Overbroad definitions also pose challenges in terms of compliance with international human rights law, both a requirement of the relevant Council resolutions<sup>109</sup> and a prerequisite for effective and sustainable counter-terrorism practice. As noted by the Committee, unclear definitions of terrorism could also undermine States' efforts to prevent and suppress terrorism by increasing the likelihood that large numbers of persons will be subject to investigation and prosecution in respect of conduct that the international counter-terrorism instruments do not require States to criminalize, thereby stretching the capacities of law enforcement and judicial systems. Definitional shortcomings can also undermine international cooperation in the fight against terrorism.

### **2. Criminal justice**

689. The relevant Security Council resolutions, including resolutions 1373 (2001), 2178 (2014) and 2396 (2017), stress the need for Member States to ensure effective criminal justice responses to terrorism. Because effective prosecution of counter-terrorism cases relies on specific skills and expertise, States' investigative, prosecutorial and judicial authorities must develop ways to deal with the increasing complexity of such cases. Most States visited by the Committee continue to experience difficulties in their efforts to implement these requirements. Addressing these challenges requires States to take steps to enhance the capacities of the prosecution and the judiciary.

#### **(a) Use of intelligence information in a criminal justice context**

690. One key challenge in prosecuting terrorism cases derives from the fact that information of relevance to such cases is frequently generated by intelligence agencies. The Committee's recent assessments highlight that many Member States still struggle to build effective and human rights-compliant working relationships between intelligence agencies and the criminal justice system.

691. The Committee has noted that some States have established systems for admission, as evidence in criminal proceedings, of classified material, through which both fair-trial rights and national security interests in preserving the confidentiality of sources are taken into account through a multi-stage procedure comprising a range of mechanisms for reconciling those concerns. Such procedures may include an initial order by the court identifying the material in question and stipulating appropriate handling and protection thereof; the designation by the court of an officer tasked to assist the parties with respect to classified material; the provision by the Government of

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<sup>109</sup> See e.g., S/RES/1535 (2004), S/RES/1566 (2004), S/RES/1624 (2005), S/RES/1787 (2007), S/RES/1805 (2008), S/RES/1963 (2010), S/RES/2129 (2013), S/RES/2170 (2014), S/RES/2178 (2014), S/RES/2249 (2015), S/RES/2253 (2015), S/RES/2309 (2016), S/RES/2322 (2016), S/RES/2341 (2017), S/RES/2354 (2017), S/RES/2370 (2017), S/RES/2395 (2017), S/RES/2396 (2017), S/RES/2462 (2019), S/RES/2482 (2019).



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unclassified summaries or stipulations of certain facts; hearings to determine the use, relevance and admissibility of proposed evidence; and the opportunity for the defendant to appeal the court's decisions on these matters.

### **(b) Obtaining information admissible as evidence from conflict zones**

692. Member States continue to face challenges in relation to investigating or prosecuting suspected FTFs who remain in, return or relocate from conflict zones. Establishing proper domestic legal frameworks, where necessary, and improving Member States' capacities to gather or otherwise obtain information admissible as evidence from conflict zones facilitates States' compliance with their obligation to bring terrorists to justice. This is particularly relevant in cases where civilian investigatory capacities in the State in which the conflict is occurring are insufficient or where MLA arrangements are lacking.

693. However, many criminal justice systems do not accept the introduction as evidence of information collected, handled, preserved or shared by military personnel before national criminal courts in terrorism-related cases, particularly if such collection occurs outside the State's territory and in a situation of armed conflict. The relevant domestic authorities should address the bars to the admissibility of such information as evidence and explore ways to ensure that admissibility requirements set forth in domestic and international law can be met. 694. With the aim of assisting Member States in addressing challenges related to the collection of information in conflict, immediate post-conflict or high-risk situations, the Executive Directorate has led the development, within the framework of the United Nations Global Counter-Terrorism Coordination Compact's Working Group on Criminal Justice, Legal Responses and Countering the Financing of Terrorism, of the *Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences*.<sup>110</sup> As a result of continued strategic engagement with various stakeholders as well as the strategic alignment of the process with the Global Counterterrorism Forum's (GCTF) initiative resulting in the development of the *Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects*, the Guidelines have fed into the development of related policy guidance by international and regional organizations, such as the Council of Europe<sup>111</sup> and the European Union (Eurojust),<sup>112</sup> as well as Member States.

### **(c) International cooperation in criminal justice matters**

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<sup>110</sup> [https://www.un.org/sc/ctc/wp-content/uploads/2020/01/Battlefield\\_Evidence\\_Final.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2020/01/Battlefield_Evidence_Final.pdf)

<sup>111</sup> Council of Europe Committee on Counter-Terrorism (CDCT), Terms of Reference for the Working Group on the Gathering of Evidence from Conflict Zones for the Purpose of Criminal Prosecution, available at <https://rm.coe.int/cdct-ge-2019-01rev-eng-terms-of-reference-/168096f748>.

<sup>112</sup> Eurojust, 2020 Memorandum on Battlefield Evidence, available at <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>



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695. Promoting international judicial cooperation is a core objective of the Security Council's counter-terrorism efforts, as stressed by the Council in its resolution 1373 (2001) , with resolution 2322 (2016) further underlining the importance of strengthening international cooperation in order to prevent, investigate and prosecute terrorist acts, recognizing the persisting challenges stemming from the flow of FTFs.

696. Despite considerable progress in Member States' efforts to comply with, and implement, requirements relating to judicial cooperation in counter-terrorism contexts, challenges relating to the full and effective implementation of existing international and regional legal frameworks persist. To keep pace with the fluidity and improvisation demonstrated by terrorist groups, international law enforcement and judicial cooperation must become swifter and more effective through the full and effective utilization of existing networks and the meaningful implementation of existing laws and policies. Lack of trust, political will, and resources also continues to undercut international cooperation efforts.

697. Respect for the rule of law and human rights, including fair-trial guarantees, is essential for effective international cooperation. as also underscored in relevant Council resolutions.<sup>113</sup>

### **(i) Mutual legal assistance**

698. Despite notable progress in recent years, and the existence of a well-developed global legal framework for cooperation (notably through the 2000 United Nations Convention against Transnational Organized Crime), several States continue to face difficulties in relation to international cooperation in terrorism-related cases.

699. Shortcomings identified by CTED in this regard derive from many factors, including insufficient legal capacity of central authorities or their lack of adequate resources; differences in legal systems and/or requirements; insufficient awareness of MLA request procedures; lack of a focal point to initiate informal communication prior to preparing formal requests; and lack of political will.

700. A significant number of States have not yet designated, or have only partially designated, a central authority, and primarily use diplomatic channels. This often results in lengthy processing times. Most States are covered by regional agreements on MLA. However, the effectiveness of those agreements varies significantly by region, and cross-regional cooperation remains a challenge. The continued promotion of informal and formal cross-regional cooperation thus continues to be a priority in strengthening the prosecution of terrorism-related cases.

### **(ii) Extradition**

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<sup>113</sup> See e.g., S/RES/2129 (2013), S/RES/2170 (2014), S/RES/2178 (2014), S/RES/2253 (2015), S/RES/2396 (2017).



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701. The effectiveness of extradition processes is impacted by the lack of ratification or insufficient implementation of the existing international counter-terrorism instruments, as well as the lack of an effective and comprehensive domestic framework to facilitate formal and informal cooperation with foreign law enforcement and criminal justice authorities. Challenges encountered by States further include denials of extradition requests based on nationality, politicization of extradition, and the need for certain jurisdictions to better define their processes for making, receiving, and processing requests.

702. Effective and appropriate cooperation in extradition matters is also required to give effect to the relevant *aut dedere aut iudicare* obligations. Some common shortfalls identified by CTED in this area include the use of domestic laws that permit referral to the competent authorities for purposes of prosecution without making it mandatory; the limiting of referrals to cases where extradition has been refused on certain grounds; and the failure to stipulate the requirement that referral to the competent authorities for the purpose of prosecution take place “without undue delay”.

703. In the context of extradition processes, the Committee highlighted the need for States to act in conformity with their obligations under international law. In particular, they must respect the principle of non-refoulement as defined under international refugee law, as well as relevant international human rights law instruments.

### **(iii) International cooperation in the digital age**

704. Terrorist groups increasingly use ICT in order to transmit and disseminate propaganda, facilitate recruitment, plan, coordinate, and even publicize attacks. As the number of terrorism-related offences in which part of the conduct has been carried out through a cyber medium increases, law enforcement and judicial authorities face challenges relating to collection and use of digital evidence. Requests for data will regularly involve a transnational element requiring access to information stored in a foreign jurisdiction. The relevant authorities must therefore deal not only with Government agencies of other States, but also with private actors, including ISPs, CSPs, and the various Internet intermediaries who are the custodians of the requested data. Information may be deleted or modified by users and service providers, complicating digital forensics processes and potentially affecting admissibility of the data as evidence. Consequently, swift access to data is a prerequisite for securing reliable evidence.

705. CTED’s assessments and analysis show that law enforcement and judicial authorities face a series of obstacles to effective cooperation with respect to gathering and using digital evidence in terrorism cases. These include:



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- Limited efficiency of traditional law enforcement and judicial cooperation tools in the cyber context, particularly in view of the heightened risk of deterioration or disappearance of potential evidence, owing to delays in securing the relevant information. This has increasingly led Governments to pursue unilateral solutions to secure information.
- Jurisdictional complexities in cyberspace relating to difficulties in meaningfully asserting the principle of territoriality and the lack of international consensus on ways to address this challenge.
- The decentralization of control over ICT and related digital networks, resulting in difficulties in identifying and locating relevant actors, including users and entities that store and/or control the data.
- Concerns over the protection of human rights in the digital space, such as the **arbitrary or unlawful interference with the right to privacy**, including data protection, and the rights to freedom of expression, religion or belief. Guaranteeing the right to an effective remedy can be particularly challenging in such contexts.
- Challenges encountered in cooperating with the private sector: in the absence of standardized processes and a clear, internationally accepted framework to govern such processes, service providers run the risk of being in breach of obligations set forth in their domestic legal frameworks and/or being complicit in violations of international human rights law.
- Lack of specialized capacity within investigation and prosecutorial services to effectively handle the gathering, preservation, sharing and processing of digital evidence. This shortcoming also undermines efforts to ensure that relevant information meets admissibility standards set forth by criminal procedure laws.

### (d) **Prosecution, rehabilitation and reintegration (PRR) of FTFs**

706. Following the territorial defeat of ISIL, many returning FTFs and family members have entered into already strained criminal justice systems. Member States faced the immediate need to deal with this, often reacting by adopting piecemeal measures that lacked a comprehensive and strategic approach. Security Council resolutions 2178 (2014) and 2396 (2017) establish requirements for States to develop prosecution, rehabilitation and reintegration (PRR) strategies to address this challenge. This requirement is further developed in the Security Council Guiding Principles on Foreign Terrorist Fighters: the 2015 Madrid Guiding Principles + 2018 Addendum (S/2015/939 and S/2018/117) and the Technical Guide to the Implementation of resolution 1373 (2001) and other relevant resolutions (S/2017/716). Yet many States affected by terrorism have yet to develop such strategies. In some cases, the relevant measures are implemented on an ad hoc basis which may result in the allocation of insufficient structural, financial and human resources.





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707. Effective and sustainable PRR strategies require a holistic approach aimed at ensuring that the components interact and complement each other in a meaningful and comprehensive manner. Although most Member States have established legal and policy frameworks governing these individual components, an integrated approach is often lacking or is inadequately implemented. There is a need to strengthen coordination between criminal justice actors and other relevant stakeholders. This may include inter-agency cooperation between criminal justice authorities and the military or intelligence agencies aimed at increasing the collection of information admissible as evidence in accordance with applicable international law. It also requires enhanced cooperation between criminal justice actors and other government agencies or CSOs, in particular those in the social and welfare sectors. However, in some jurisdictions, cooperation with actors providing social, education, health and other services can result in the undue securitization of those services. This may prove counterproductive on the long term, as it undermines the trust of beneficiaries and consequently the ability of those entities to serve their communities.

708. In designing PRR-related measures, only a few States conduct meaningful public consultations that include all relevant stakeholders, in particular communities most affected by terrorism. In view of the need to secure community participation and local ownership to facilitate the effective and sustainable rehabilitation and reintegration of terrorist offenders and other persons associated with terrorist groups, it is essential to adopt a consultative approach.

### C. Counter-terrorism and international humanitarian law

#### 1. Intersection between terrorism and armed conflict

709. Member States face challenges in their efforts to develop and implement measures aimed at preventing and countering terrorism in the context of armed conflict. Armed conflicts (in particular those of a protracted nature) and the resulting violence, instability, and breakdown of rule of law institutions act as drivers of violent extremism **conducive** to terrorism. Such conditions render individuals and communities vulnerable to recruitment, including through the exploitation of deep-rooted grievances caused by the conflict and the often-associated governance and accountability gap.<sup>114</sup> Moreover, conflict-related institutional, social and economic vulnerabilities may also significantly undermine counter-terrorism efforts and impair their long-term sustainability. Shortcomings are especially common in the area of accountability. The combination of weakened or inexistent rule-of-law institutions and the widespread nature of violence and criminality can lead to impunity, and undermine the ability of States to fulfil their obligations pursuant to international law and the requirements of the relevant Security Council resolutions to bring perpetrators of terrorist offences to justice, including those responsible for acts amounting to violations of international humanitarian law and violations or abuses of human rights.<sup>115</sup>

<sup>114</sup> See e.g., A/70/674, para. 30. See also S/RES/2178 (2014), S/RES/2242 (2015), S/RES/2354 (2017), S/RES/2396 (2017).

<sup>115</sup> See e.g., S/RES/2170 (2014), S/RES/2249 (2015), S/RES/2322 (2016), S/RES/2396 (2017).



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710. Because the impact of complex crises involving terrorist activity in the context of armed conflict frequently extends across borders, it also negatively affects peace and security at the regional or international levels and may risk engulfing whole regions in armed violence. It is imperative to comply with applicable international law obligations including those regarding the protection of civilians (including protected individuals rendered vulnerable by the situation, including children, internally displaced persons and refugees, persons with disabilities and survivors of sexual and gender-based violence (SGBV), as well as members of minority groups potentially targeted by a party to the conflict).<sup>116</sup> Such protection activities commonly require international cooperation, including in relation to the carrying out of humanitarian activities and the delivery of humanitarian aid.

### 2. Security Council resolutions and promoting respect for international humanitarian law

711. The Security Council has regularly stressed that efforts to prevent and combat terrorism and violent extremism **conducive to terrorism** must comply with Member States' obligations under international law, including international humanitarian law.<sup>117</sup> The Council has also underlined that counter-terrorism strategies should aim to ensure sustainable peace and security and that respect for international law is essential to the success of counter-terrorism efforts.<sup>118</sup> The associated obligations are particularly relevant in the context of addressing the FTF phenomenon. For example, Council resolution 2178 (2014) requires that Member States prevent and suppress, consistent with their obligations under international law, to cooperate in efforts to address the threat posed by FTFs, including by preventing the radicalization to terrorism and recruitment of FTFs, including children, preventing FTFs from crossing their borders, disrupting and preventing financial support to FTFs, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning FTFs.<sup>119</sup>

712. Council resolution 2396 (2017) calls on Member States to assess and investigate individuals whom they have reasonable grounds to believe are terrorists, including by employing evidence-based risk assessments, screening procedures, and the collection and analysis of travel data, in accordance with international law, including international humanitarian law, as applicable. Council resolutions 2170 (2014), 2322 (2017) and 2396 (2017) reaffirm the obligation to bring to justice those who have committed, or are otherwise responsible for, violations of international humanitarian law. In its resolution 2396 (2017), the Council further urges States to develop and implement, in accordance with domestic and applicable international human rights law and international humanitarian law, appropriate investigative and prosecutorial strategies regarding FTFs. Additionally, resolutions 2462 (2019) and 2482 (2019) address the challenges faced by

<sup>116</sup> See e.g., S/RES/2472 (2019), S/RES/2475 (2019), S/PRST/2019/8, A/RES/72/284, para. 80.

<sup>117</sup> See e.g., S/RES/1624 (2005), para. 4; S/RES/2178 (2014), para. 5; S/RES/2309 (2016), para. 2; S/RES/2322 (2016), para. 2; S/RES/2341 (2017), preamble; S/RES/2354 (2017), para. 2(e); S/RES/2396 (2017), para. 4 (see also paras. 18, 19, 34, 40); S/RES/2462 (2019), para. 6 (see also paras. 5, 20, 24); S/RES/2482 (2019), para. 16.

<sup>118</sup> See e.g., S/RES/2129 (2013), S/RES/2253 (2015), S/RES/2368 (2017). See also A/RES/72/284, paras. 10 and 76.

<sup>119</sup> See S/RES/2178 (2014), para. 5.



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impartial humanitarian actors when operating in an armed conflict in a context where terrorist groups are active. In this context, the Council urges States, when designing and applying measures to counter the financing of terrorism, to take into account the potential effects of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.

### (a) Counter-terrorism and humanitarian action

713. Terrorism and violent extremism **conducive to terrorism** can be significant contributing factors to humanitarian crises, including complex emergencies resulting from a combination of natural and man-made elements, and including armed conflict and violence. Such emergencies require a swift and effective humanitarian response, delivered in a neutral, independent and impartial manner. Terrorist activity also endangers humanitarian actors and can undermine humanitarian action.<sup>120</sup> Recent years have seen attacks perpetrated against humanitarian workers and medical personnel by terrorist groups, including kidnapping and hostage-taking, detention and killings. ISIL and other terrorist groups have declared aid workers “legitimate targets” and called on their followers to “fight” humanitarian organizations.

714. International humanitarian law contains a set of rules relating to humanitarian activities, including on the protection of civilians, which can include medical and humanitarian relief personnel and civilian objects<sup>121</sup> and relating to Parties to the armed conflict allowing and facilitating the passage of humanitarian relief to civilians, provided such action is impartial, and conducted without adverse distinction.<sup>122</sup> Humanitarian relief activities are subject to consent and control by the Parties to the armed conflict, but consent should not be arbitrarily withheld and the activities of relief personnel as well as their movements should not be unduly restricted. In contexts of armed conflict involving terrorist groups, inappropriately applied or scoped counter-terrorism measures can have a negative impact on the ability of humanitarian actors to operate and, by extension, on persons in need of humanitarian assistance. Such measures have, inter alia, restricted humanitarian access to populations in areas controlled by non-State armed groups designated as terrorist organizations. Humanitarian organizations such as the International

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<sup>120</sup> See e.g., A/70/674, paras. 22 and 57.

<sup>121</sup> Under international humanitarian law, personnel exclusively assigned to medical duties shall be respected and protected. See, e.g., Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, article 20; Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, article 15; Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, article 9. The protection also extends to medical units and transports. See, e.g., Fourth Geneva Convention, article 18; Additional Protocol I, article 12, Additional Protocol II, article 11. Such personnel and objects will lose their protection if they are used to commit, “outside their humanitarian function, acts harmful to the enemy.” See, Additional Protocol I, article 13; Additional Protocol II, article 11(2).

Humanitarian relief personnel and objects used for humanitarian relief operations enjoy the protection accorded to civilians and civilian objects under international humanitarian law. Such persons or objects lose protection when they engage in direct participation in hostilities or are used to make an effective contribution to military action.

<sup>122</sup> See Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, articles 23 and 55; Additional Protocol relating to the Protection of Victims of International Armed Conflicts, article 70(2); Additional Protocol II relating to the Protection of Victims of Non- International Armed Conflicts, article 18(2).



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Committee of the Red Cross (ICRC) have also warned of a chilling effect, “which disincentivizes or prevents frontline responders from reaching populations in need”.<sup>123</sup>

715. The Security Council, in its resolutions 2462 (2019) and 2482 (2019), urges all Member States, when designing and applying measures to counter terrorism, to take into account the potential effect of these measures<sup>124</sup> on **exclusively** humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law and humanitarian principles. The Joint report of CTED and the Analytical Support and Sanctions Monitoring Team on actions taken by Member States to disrupt terrorist financing (S/2020/493), prepared pursuant to paragraph 37 of Security Council resolution 2462 (2019), notes that 45 per cent of States who responded to a dedicated questionnaire lacked an institutional framework to consider the effects of inappropriately applied or scoped counter-financing of terrorism measures on humanitarian activities. Thirty-five per cent of States had adopted measures in this area, but many of the measures reported were of a general nature. Only a handful of States had established permanent national forums to bring together relevant government agencies with representatives of the non-profit sector to discuss issues relating to humanitarian activities in high-risk jurisdictions. At least three responding States had introduced humanitarian exemptions into their CFT legislation.<sup>125</sup>

**(b) Accountability for terrorist offences including those that amount to serious violations of international humanitarian law**

716. The Security Council has consistently denounced widespread abuses of human rights and violations of international humanitarian law.<sup>126</sup>

717. The Council has repeatedly reaffirmed that those responsible for terrorist acts, and violations of international humanitarian law or abuses of human rights, must be held accountable.<sup>127</sup> A lack of accountability in contexts of armed conflict may undermine conflict mediation and resolution efforts, including political transitions and have a long-term negative impact on peace and security. In its resolution 2396 (2017), the Council urges States to develop and implement, in accordance with domestic and applicable international human rights law and international humanitarian law, appropriate investigative and prosecutorial strategies regarding those suspected of FTF-related offences. However, in the context of the FTF phenomenon, States have faced considerable challenges in their efforts to ensure that terrorist acts and related violations

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<sup>123</sup> International Committee of the Red Cross, Statement to United Nations Security Council debate: Threats to international peace and security caused by terrorist acts: International cooperation in combating terrorism 20 years after the adoption of resolution 1373 (2001), 12 January 2021, available at

<https://www.icrc.org/en/document/counter-terrorism-measures-must-not-restrict-impartial-humanitarian-organizations>.

<sup>124</sup> Security Council resolution 2482 (2019) refers to counter-terrorism measures in general (para. 16), and Council resolution 2462 (2019) addresses measures aimed at countering the financing of terrorism (para. 24).

<sup>125</sup> S/2020/493. (See, in particular, paras. 83-85.).

<sup>126</sup> S/RES/2170 (2014), S/RES/2249 (2015).

<sup>127</sup> See e.g., S/RES/2170 (2014), S/RES/2249 (2015), S/RES/2322 (2016), S/RES/2396 (2017).



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of international humanitarian law are duly investigated and prosecuted and that States assist one another in connection with terrorism-related criminal investigations and criminal justice proceedings, including in obtaining necessary evidence.

718. In their efforts to hold accountable FTFs, criminal justice systems have often faced challenges in their efforts to investigate and prosecute conduct perpetrated thousands of miles away, often in zones ridden by armed conflict, experiencing a breakdown of the rule of law and associated institutions and the proliferation of armed non-State actors. Effectively prosecuting related conduct perpetrated in conflict zones may require the use, consistent with fair trial guarantees under international law, of types of information and evidence with which States may not have extensive experience, including e-evidence, open source and social media intelligence, and information collected or obtained from conflict zones, including by military actors. These factors present significant challenges for many States which, if left unaddressed, may lead to impunity and denial of justice to victims of terrorism and to society more broadly. Lack of accountability for FTFs in turn weakens the rule of law, thereby contributing to conditions conducive to radicalization to violence, and risks setting off a vicious circle of conflict and instability.

### **D. Countering the financing of terrorism**

#### **1. Understanding terrorism financing risks, threats and trends**

719. The adoption of resolution 2462 (2019) has brought a new focus on terrorism-financing risks, urging all States to develop a clear understanding of the terrorism-financing risks to which they are exposed and of those economic sectors (including non-financial services) that are most vulnerable to the financing of terrorism.<sup>128</sup> Although most States have yet to conduct a dedicated terrorism-financing risk assessment, many have considered the related risk as part of their NRA process or broader money-laundering risk assessment.<sup>129</sup> The main threats identified by States are consistent with those emanating from United Nations-designated transnational terrorist groups such as ISIL and Al-Qaida and associated entities. Several States have also identified terrorism-financing threats posed by local groups designated pursuant to their national sanctions regimes. Some have explicitly identified threats relating to groups motivated by racism, xenophobia and related intolerance.<sup>130</sup>

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<sup>128</sup> S/RES/2462 (2019), para. 14. See also Technical guide to the implementation of Security Council resolution 1373 (2001) and other resolutions (S/2019/998), paras. 66 ff.

<sup>129</sup> S/2020/493, para. 39.

<sup>130</sup> S/2020/493, para. 40.





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720. Around the globe, terrorists and terrorist groups continue to raise funds through, inter alia, abuse of legitimate enterprises and non-profit organizations, exploitation of natural resources, donations, crowdfunding, and the proceeds of criminal activity, including kidnapping for ransom, extortion, illicit trade and trafficking in cultural property, trafficking in persons, drug trafficking and the illicit trade in small arms and light weapons.<sup>131</sup> These funds are moved by “traditional” means such as formal banking systems, financial institutions, money service businesses or informal financial networks and cash-couriers, as well as through the use of emerging payment methods, such as prepaid cards, mobile wallets or virtual assets.<sup>132</sup>

721. Terrorist groups continue to misuse social media and encrypted messaging platforms to raise and move the funds required to finance their activities. Key challenges in the detection, investigation and prosecution of terrorism financing through the abuse of social media services include the significant number of social media services and user accounts; the overall amount of social media usage; tracing and identifying persons; analysis of digital forensic evidence; and the transnational nature of procedures for obtaining evidence.<sup>133</sup>

722. As noted by the Monitoring Team, ISIL cells in Iraq and the Syrian Arab Republic continue to raise funds through extortion, harassment and kidnapping for ransom.<sup>134</sup> They also receive funds via informal financial networks from abroad. Funds have also been reported to flow in and out of camps for internally displaced persons (IDPs) via unregistered money service businesses as a means of support for ISIL and fighters’ family members. These funds also support the smuggling of people out of camps.

723. Groups and individuals involved **terrorism on the basis of xenophobia, racism and other forms of intolerance** have been reported to self-fund and to use various fundraising methods, including direct donations, political grants, membership fees, crowdfunding, cryptocurrencies, commercial activities such as mail-order and web-based sales (music, literature, merchandise, etc.), revenues from concerts, festivals and martial arts events, real estate transactions, online gaming, and illegal activities (e.g., drug dealing).

724. The use of cryptocurrencies and technologies that are largely untraceable continues to increase.<sup>135</sup> Based on over 100 case studies for the period 2017-2020, the Financial Action Task Force (FATF) has noted that virtual assets were used to evade sanctions and raise funds to support

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<sup>131</sup> See S/RES/2462 (2019); S/RES/2482 (2019); S/2020/493, para. 58.

<sup>132</sup> See S/RES/2462 (2019); S/2020/493, paras. 43, 57.

<sup>133</sup> See e.g., “Social media and terrorism financing”, *Typologies Report of the Asia/Pacific Group on Money Laundering and the Middle East and North Africa Financial Action Task Force*, (January 2019).

<sup>134</sup> See S/2021/68, paras. 78-83.

<sup>135</sup> S/2020/493; S/2021/68, para. 81 re financing of terrorism by purchasing cryptocurrency coupons, recovering funds through encrypted text messages, using cyberfinancing to channel funds, and operating a Bitcoin network using Telegram channels and other social media platforms to solicit cryptocurrency donations.





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terrorism.<sup>136</sup> There are ongoing reports of increased use of cryptocurrency by ISIL and Al-Qaida and terrorist fighters or their family members seeking to raise funds via cryptocurrency wallet addresses.<sup>137</sup>

725. Terrorist organizations have also turned to various criminal activities as a source of funding. It appears that small terrorist cells are more likely to use nominal sums from self-financing or from NPOs seeking to move FTFs to conflict zones. Drug trafficking and smuggling of persons or arms are among the crimes used to raise funds for larger terrorist groups. Different disruption strategies are therefore needed. The economic consequences of the COVID-19 pandemic appear to have led terrorists to increase their reliance on criminal activities. Increased reliance on drug smuggling, trafficking in minerals and precious stones, fraud through electronic means, the sale of counterfeit medicines, and cybercrime has been reported<sup>138</sup>. Some experts warn that restrictions on international travel may lead to the emergence of new human trafficking and cash smuggling routes and increase the popularity of informal money transfer services.<sup>139</sup>

### 2. Evolving responses

726. Over the past three years, Member States have increasingly introduced amendments to their CFT legislation with a view to addressing the requirements of the relevant Security Council resolutions, recommendations made by the Counter-Terrorism Committee pursuant to its assessment visits, and mutual evaluations and follow-up processes of FATF and the FATF-style regional bodies (FSRB). However, as underscored in the conclusions of the joint report prepared in 2020 pursuant to resolution 2462 (2019),<sup>140</sup> many of the newly adopted or amended CFT laws and mechanisms are not used consistently or fully.

727. Almost all States have criminalized terrorism financing, and many have achieved general compliance with the key requirements of the relevant international instruments, Security Council resolutions, and international standards. However, shortcomings remain in the criminalization of the financing of FTF travel in accordance with resolution 2178 (2014). Some States have not ensured that their terrorism-financing offence covers economic resources of any kind and is not limited to financial assets. This shortcoming is of particular concern with respect to cases of terrorism financing through exploitation of oil and other natural resources. In accordance with paragraph 5 of resolution 2462 (2019) and FATF Recommendation 5, Member States should also ensure that the financing of terrorist organizations and individual terrorists is criminalized on a broader basis, without requiring a link to a specific terrorist act or acts.

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<sup>136</sup> FATF Report on Virtual Assets Red Flag Indicators, October 2020.

<sup>137</sup> S/2021/98, para. 18.

<sup>138</sup> S/2021/98, para. 61; CTED, "The Impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism", p. 4, (December 2020). See also FATF, *COVID-19-related Money Laundering and Terrorist Financing*, December 2020.

<sup>139</sup> *Information Note for Combatting Money-Laundering and Financing of Terrorism (EAG) concerning the COVID19 impact on EAG States' AML/CFT efforts and measures taken to mitigate the ML/TF risks stemming from the COVID-19 pandemic* (2020).

<sup>140</sup> S/2020/493.



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728. However, legislation criminalizing terrorism financing is not sufficient to ensure that the financiers are effectively brought to justice. Indeed, the generally limited number of convictions secured for terrorism financing (even where the risk is high) indicates the need to strengthen systematic financial investigations conducted in parallel to terrorism cases.<sup>141</sup> Many States continue to face practical difficulties in ensuring the admissibility of financial intelligence in criminal proceedings and often elect to use other offences to prosecute and convict terrorist financiers. Pursuant to resolution 2462 (2019), which highlights the value of financial intelligence and financial investigations in counter-terrorism, Member States should further reinforce the analytical capacity of their FIUs, strengthen frameworks that allow for inter-agency cooperation in order to more effectively investigate the financing of terrorism, and intensify the timely exchange of financial intelligence, domestically and internationally, in terrorism-related cases.

729. There is also a global need to enhance specialized expertise of personnel in handling increasingly complex cases involving advanced investigation techniques and international cooperation mechanisms, in order to keep pace with the rapid evolution in financial tools and terrorism-financing methods.<sup>142</sup> Increased sophistication of investigative techniques, resources, and tools to detect terrorism financing has also become a challenge from the human rights perspective, including with respect to the lack of adequate safeguards for privacy and data protection.

730. Many States have made significant progress in their implementation of the asset-freezing requirements set forth in Council resolution 1373 (2001). It appears, however, that a large majority of States have never used their national mechanisms to make national designations and freeze assets accordingly.<sup>143</sup> Only a few States have submitted or received third-party requests for designations, and others continue to require processing through MLA channels (which is not consistent with resolution 1373 (2001)). Member States continue to appear confused about the freezing requirements in resolution 1373 (2001) compared to those introduced under Security Council sanctions regimes. Moreover, some States continue to rely on criminal proceedings as a provisional measure or on administrative actions and thus fail to freeze funds “without delay” as required by resolution 1373 (2001).

731. Member States are called upon to implement a risk-based approach in preventing misuse of the non-profit sector for terrorism-financing purposes because not all NPOs are inherently subject to terrorism-financing risks. For many States, this process has only just begun. Although most States have adopted a number of legal and regulatory measures to comply with international requirements, only a third of States have taken dedicated practical measures and engaged in

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<sup>141</sup> S/2020/493, paras. 59 *ff.*

<sup>142</sup> S/2020/493, para. 87.

<sup>143</sup> S/2020/493, para. 26.



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ongoing dialogue with the non-profit sector on this issue.<sup>144</sup> In many States, the understanding of the extent of the abuse of NPOs for terrorism-financing purposes remains very limited.

732. In many parts of the world, coordination mechanisms between national authorities, the private sector and civil society on CFT-related matters are absent or insufficient. Where public/private partnerships or consultation mechanisms with civil society have been formalized, they are often limited to the process of assessing terrorism-financing risks faced by the NPO sector in order to achieve compliance with revised FATF Recommendation 8. However, those States that have created active public/private partnerships report an increase in the quality and quantity of STRs received in relation to terrorism financing.<sup>145</sup> Financial institutions are increasingly using intelligence analysis to detect and predict financial crime risks. In return, the financial sector can offer a wealth of information, including data on transactions, behaviours and user identity, that can assist the competent authorities to establish financial connections between suspects and conduct preventive or post-attack analysis.<sup>146</sup> Partnerships with the financial technology industry and Internet companies, particularly social media companies, are particularly valuable with respect to the evolution of the trends, source and methods of terrorism financing. Public/private partnerships have also served as a useful forum for the authorities to disseminate regular guidance to the private sector on trends and typologies.

733. As States continue to strengthen their CFT legislation and operational measures, there is considerable debate as to the extent to which those measures might impact purely humanitarian activities, including in conflict zones with active terrorist activity. The COVID-19 pandemic has also raised additional concerns regarding the potential impact of CFT measures on emergency responses. So far, only a few States have adopted dedicated measures in this area (e.g., by strengthening the transparency of licensing and specific exemption measures as well as maintaining focused dialogues with the NPO sector and financial institutions)<sup>147</sup>.

734. Member States are also encouraged to take decisive action to identify cases of trafficking in persons that finance terrorism, including through proactive financial investigations. However, considerable challenges persist in this area because the covert nature of human trafficking, and the difficulty in collecting evidence and the lack of expertise required to conduct proper investigations undermine efforts to fully understand and effectively address the human trafficking/terrorism nexus.<sup>148</sup> With respect to links between terrorism financing and organized crime more generally, there remains a significant disconnect between the level of concern expressed by policymakers, the implementation of legal frameworks addressing both terrorism and transnational organized crime, and the actual level of investigation and prosecution of cases involving both criminal and terrorist groups. It is therefore essential that States increase the capacity of the relevant

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<sup>144</sup> S/2020/493, p. 24.

<sup>145</sup> S/2020/493, para. 68.

<sup>146</sup> S/2019/998, para. 87.

<sup>147</sup> S/2020/493, paras. 83-85.

<sup>148</sup> CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism and Terrorism Financing* (2019).



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practitioners to detect and deter such links, including training in identifying, tracing and countering illicit digital methods used for terrorism financing and in data forensics.

### **E. Law enforcement**

735. Member States' implementation of resolution 1373 (2001) has been greatly enhanced by the establishment of dedicated law enforcement counter-terrorism units and the training of specialized counter-terrorism officers to investigate terrorist and criminal acts. A significant number of States have also developed this capacity using computerized tools, establishing watch lists and databases, cross-checking criminal files, and expanding information-exchange systems. Member States have made some progress in enhancing counter-terrorism law enforcement and security cooperation and coordination with the support of inter-agency information-sharing functions or fusion cells. Member States have also adopted their national law enforcement plans of action to prevent and combat terrorism. The need to stem the flow of FTFs further encouraged States to establish counter-terrorism specific tools, revise their operational procedures, and strengthen their national coordination mechanisms. Member States have also helped strengthen international cooperation, including by extending access to the INTERPOL I-24/7 system beyond their NCBs.

736. The introduction of measures to prevent terrorist attacks has become a key element of law enforcement counter-terrorism policies. In recent years, States have developed their capacity to monitor known and suspected terrorists. Some States have developed new computerized information systems (including databases with the capacity to store personal biographic and biometric data) and counter-terrorism watch lists. However, this is a complex and challenging endeavour. For most Member States, establishing and maintaining an integrated national counter-terrorism watch list and ensuring that it includes input from relevant authorized agencies and is accessible by the relevant law enforcement agencies is challenging. In order to fully implement resolution 1373 (2001), law enforcement agencies must share relevant data, information and criminal intelligence with relevant partners. Most States continue to lack the basic tools and the appropriate legislative or policy and operational frameworks, safeguards, protocols and training to effectively ensure the necessary and timely information-sharing at the national level.

737. Law enforcement agencies have strengthened their procedures and training for the investigation of terrorist acts. Efforts have also been made to strengthen international police cooperation in the collection and use of evidence for possible prosecution. Public/private partnerships are particularly essential in the deployment of new technologies and applications for counter-terrorism purposes and the development of measures to protect critical infrastructures and "soft" targets against terrorist attacks. Some States have established operational partnerships (including information-sharing platforms) with the private sector to prevent and respond to



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terrorist attacks. However, many States lack access to the required new and advanced technologies and often struggle to identify relevant non-governmental stakeholders with which to build partnerships with their law enforcement agencies.

738. Lack of capacity to ensure access to pertinent and timely information, including for frontline officers, remains a critical gap in the efforts of many States to develop their national law enforcement counter-terrorism capacities. States should continue their efforts to help ensure effective international police cooperation. Challenges and gaps remain at the international level. The Counter-Terrorism Committee and CTED frequently recommend that visited Member States increase their sharing of information and counter-terrorism data and continue to populate the relevant INTERPOL databases.

739. The use of new technologies and the deployment of systems and applications that process personal data (e.g., API, PNR, biometrics) have increased over recent years. States have also strengthened their efforts to ensure the human-rights compliant, non-discriminatory, gender –and age-sensitive implementation of such systems. Few States possess the required resources, capacity and expertise (including appropriate legislative and regulatory and clear human-rights based frameworks) to effectively implement highly technical systems. In a number of States, legislation and appropriate safeguards to protect privacy and personal data remain largely inadequate and a source of concern.

740. The protection of critical infrastructure and “soft” targets presents a number of significant and complex challenges because of the considerable variation in their size and nature and because most are privately owned. The strong support expressed by ISIL and other terrorist groups for attacks against such sites continues to raise not only the overall risk level, but also the level of unpredictability. States should develop or expand existing national strategies and action plans to consider the risk and threat to “soft” targets.<sup>149</sup> This includes identifying, prioritizing, and protecting such targets, acting in coordination with industry and drawing upon its knowledge and expertise. Preparedness efforts should also include the development of mechanisms to promote risk-based decision-making, information-sharing, and the development of public/private partnerships to counter terrorist attacks (and specifically terrorist attacks against public spaces). The Security Council has also encouraged States to share information, establish partnerships, and develop national strategies and capabilities to counter the use of improvised explosive devices (IEDs), which are often the weapons of choice for terrorists in their attacks against “soft” targets.

741. In order to effectively implement resolution 1373 (2001), Member States are also required to prevent the supply of weapons to terrorists. However, because of the constantly evolving nature of the operational terrorist environment, denying terrorists access to weapons is a complex and multifaceted challenge. Illicit trafficking in weapons is often associated with, and facilitated by,

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<sup>149</sup> Security Council Guiding Principles on Foreign Terrorist Fighters: The 2015 Madrid Guiding Principles + 2018 Addendum. Guiding Principles 50 & 51.





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other forms of organized crime, including terrorism. Weapons may fall into the hands of terrorists because of poorly secured stockpiles and weak border controls. The activities of FTFs further increase the probability that weapons and ammunition will cross borders. In its resolution 2370 (2017), the Council recognizes the need for Member States to take appropriate measures, consistent with international law, to address the illicit trafficking in small arms and light weapons (SALW), in particular to terrorists, including by enhancing national systems for the collection and analysis of detailed data on the illicit trafficking of such weapons to terrorists and by putting in place adequate laws, regulations and administrative procedures to exercise effective control over the production, export, import, brokering, transit or retransfer of SALW within their areas of jurisdiction.

742. States have established law enforcement capacities to prevent the supply of weapons to terrorists, including by criminalizing the illicit manufacturing, trafficking, or alteration of firearms and by strengthening criminal procedures and investigative capacities.<sup>150</sup> Resolution 1373 (2001) requires all Member States to refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by eliminating the supply of weapons to terrorists. Few States currently have adequate laws in place to achieve this.

743. Terrorists deploy IEDs because they are cheap to produce, and easy to transfer, hide and use. Many States face challenges in detecting and seizing such devices, owing to porous borders that enable terrorists and criminals to move illicit weapons from one State or region to another without difficulty. Most States visited by the Committee continue to experience challenges in implementing secure stockpiling, registration of activated and deactivated weapons, arms tracing, tracking procedures, ballistic technology for the tracing of weapons (including lost and stolen weapons) and ammunition. Although some States have taken steps to address arms tracing (e.g., through the introduction of legislation requiring that unique identifying marks be placed on each firearm), the illicit obliteration of firearms markings continues to present challenges. Terrorist attacks have also been perpetrated with the support of non-permanently deactivated weapons that were reactivated after purchase on the Internet. Arms trafficking via small mail packages and the use of 3D printers to produce parts of complete firearms represent emerging threats that pose considerable investigative challenges.

744. Most States continue to lack a framework aimed at eliminating the supply of weapons to terrorists (including through arms brokers). It is also critical that States strive to eliminate the supply of weapons to terrorist organizations by supporting international protocols, including those developed to help address the nexus between terrorism and transnational organized crime.<sup>151</sup> Currently, 119 States are parties to the 2001 Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition ("Firearms Protocol"). This represents an increase of 18 States since the previous global survey. A number of States also

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<sup>150</sup> Ibid, Guiding Principles 15, 16, 17, 18, 19 and 51.

<sup>151</sup> Resolution 2370 (2017)





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engage with the 2001 United Nations Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects (PoA), which provides a framework for activities to counter illicit trade in SALW.

### **F. Border control**

745. Maritime, land and air borders are the first line of defence against the movement of terrorists, illicit goods and cargo. However, the considerable length of many States' borders, the complex terrain that they often traverse, the increasing presence of unofficial BCPs, and the use of broken travel pose significant challenges to Member States in this area. Paragraph 2 (g) of resolution 1373 (2001) requires States to prevent the movement of terrorists or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents and through measures for preventing counterfeiting, forgery and fraudulent use of identity papers and travel documents.

746. One of the greatest challenges encountered by States in their efforts to meet the related requirements of resolution 1373 (2001) is the need to effectively screen travellers at ports of entry. Member States are required to implement a broad range of border security tools and methods and ensure that their border-management strategies are sufficiently comprehensive and multi-faceted. Two of the most effective tools available to States in this regard are Advanced Passenger Information (API) and Passenger Name Records (PNR); a capability to collect, use, process, and protect API and PNR data is required by Security Council resolutions 2396 (2017) and 2482 (2019), as well as pursuant to Annex 9 of the Convention on International Civil Aviation ("Chicago Convention").<sup>152</sup> API and PNR allow Member States to collect and analyse data of passengers travelling into and out of their borders in order to identify, detect and interdict terrorists and other criminals. Currently, 86 Member States have implemented API and 53 have developed a PNR capacity. Even though the rate of API/PNR implementation by Member States is increasing, many States continue to face significant challenges in this regard, including the cost of implementation, the level of technical training required to operate such systems, and the need for appropriate data-protection laws.

747. Another highly effective way of strengthening borders is by providing frontline officers and law enforcement officials with access to, and use of, watch lists that enable them to identify known or suspected terrorists at the border. In its resolution 2396 (2017), the Security Council decided that States should develop watch lists or databases of known and suspected terrorists, for use by law enforcement, border security, customs, military and intelligence agencies, to screen travellers and conduct risk assessments and investigations, in compliance with domestic and international law, including human rights law. The development and implementation of watch lists

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<sup>152</sup> The requirement to develop PNR systems is a new obligation, set forth in resolutions 2396 (2017) and 2482 (2019). Moreover, resolution 2482 (2019) requires States to implement PNR not only for counter-terrorism purposes, but also for serious crime purposes. The introduction of PNR will become a new standard under Annex 9 of the "Chicago Convention", effective from February 2021.



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must be coordinated on a whole-of-Government basis. CTED's assessments on behalf of the Committee have revealed that Member States often use multiple, uncoordinated, or incomplete watch lists, or lack established procedures or well-resourced staff to assist in the development of watch-list databases. In some cases, the sharing of information about known and suspected terrorists is hampered by internal legal and policy obstacles and the lack of an appropriate screening infrastructure to allow the effective use of watch lists in conjunction with other border security tools (e.g., PNR). Further, applying international standards and best practices for developing and maintaining watch lists and databases can help prevent human rights and rule of law challenges. Human rights mechanisms have noted that States do not apply universal standards and criteria for the inclusion of individuals' names in national terrorist watch lists and databases, the management and sharing of such databases or the development of possible grounds and procedures for the removal of names.

748. In addition to developing national watch lists, Member States are encouraged, in Council resolutions 2178 (2014), 2322 (2016), 2396 (2017) and 2482 (2019) to make regular use of INTERPOL databases for the screening of travellers at air, land and maritime borders and to ensure that Member States' law enforcement, border security and customs agencies are connected to those databases through their NCBs.

749. A further critical tool in strengthening border controls is biometric technology. Pursuant to Security Council resolution 2396 (2017), Member States are required to develop and implement systems to collect biometric data in order to responsibly and properly identify terrorists, including FTFs. Although biometric technology can significantly strengthen the investigation and timely identification of terrorists, including FTFs, and disrupt their travel, it is imperative that biometric data be used and shared in full compliance with relevant international obligations and international human rights law, in particular the rights to freedom of movement, privacy, safeguards for the protection of personal data, and the principle of non-discrimination. Many States continue to face challenges in their efforts to cope with the rapid pace of technological innovation in this area and introduce the necessary legislation. Consequently, several States are utilizing biometric technology but have not yet established clear legal frameworks, necessary procedural safeguards, rules for data management and processing, clear data-retention policies or comprehensive human rights impact assessments.

750. In the area of document security, the vast majority of States have made rapid progress in their efforts to meeting the ICAO requirement to introduce machine-readable travel documents (MRTDs). Only one State currently uses non-machine-readable documents. A total of 145 States have taken a further step by introducing non-electronic machine-readable passport (e.g., passports, or ePassports, that include additional security features such as biometrics). Additionally, 76 States have joined the ICAO PKD programme, which allows Member States to verify the biometrics of the passport holder.



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751. Member States have made considerable progress in strengthening aviation security and facilitation. However, many States continue to face challenges in their implementation of the basic ICAO standards. Despite ICAO's "no country left behind" initiative, assessments show significant discrepancies in implementation by region. As of 30 September 2020, 63 per cent of States had achieved 65 per cent effective implementation of the Global Aviation Security Plan (GASeP), but States of West and Central Africa, Central America and the Caribbean continued to face considerable implementation challenges in this regard (having implemented less than 40 per cent of their GASeP).

752. States' customs authorities have also begun to include security as part of their mandate and functions, where appropriate, by including it in their strategic plans and disseminating relevant capacity to the frontlines, as required by the 2015 Resolution of the Policy Commission of the World Customs Organization on the Role of Customs in the Security Context. Significant progress has also been made in preventing and combating terrorism, developing operational procedures, and training customs officers (who also review API and PNR to prevent terrorism, because of its links with transnational organized crime). In some States, customs officers have been trained to work on fraud and illegal activities using the Internet and the darknet (including the supply of weapons to criminals and terrorists), but a vast majority of States continue to suffer from major shortcomings in their ability to assess and manage this criminal trend.

753. States have also made progress in their efforts to strengthen border controls by implementing the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, developing comprehensive customs policies that are based on risk assessments and advance cargo information, and developing a security culture. Most customs administrations have introduced digital systems to manage and process goods. Electronic tools, computerized networks and databases help strengthen criteria for the identification and interdiction of goods and travellers for screening, verification and customs processing. States have also made significant progress in their efforts to ensure the participation of customs administrations in all levels of their national counter-terrorism architectures.

### **G. Information and communications technologies**

#### **1. Misuse of ICT for terrorist purposes**

754. Since the previous global survey, Member States have continued to face an acute and growing threat posed by terrorists and terrorist groups that exploit the Internet, particularly social media, not only to commit terrorist acts, but also to facilitate a wide range of terrorist activities, including incitement, radicalization to violence, recruitment, training, planning, collection of information, communications, preparation, and financing. It became quickly apparent that the



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emerging capacity for people to connect remotely with others located all over the world offered both opportunities and risks.

755. In response to measures taken by large technology companies and Member States to counter exploitation of the Internet and social media, terrorists have migrated to more discreet sites, smaller platforms that are less able or willing to moderate content, end-to-end encryption systems, and virtual private networks (VPN) to train and plan their attacks. Terrorists are using smaller file-sharing platforms to guide users to outbound URLs, and “supporter networks” amplify terrorist propaganda by re-sharing and re-uploading material across an increasingly broad and fragmented range of smaller platforms. This was the case with the attacks carried out in March 2019 in Christchurch, New Zealand and the terrorist attack in October 2019 in Halle, Germany (this attack was livestreamed on Twitch and the livestream footage was automatically uploaded and spread to other smaller platforms). Users of forums such as 8Chan can be completely anonymous, and the absence of moderation and content removal makes them ideal sites for terrorist groups to inspire and incite people to commit violence.

756. Further issues of concern are the potential misuse of new dual use technologies by terrorists, the role of social media in furthering terrorist narratives, and the potential for terrorist groups to gain access to weapons of mass destruction (WMD) and commit acts of chemical, biological, radiological or nuclear (CBRN) terrorism. Emerging technologies that are increasing the risk that terrorist groups will access and use CBRN weapons include Unmanned Aircraft Systems (UAS), the dark web, malware, synthetic biology, and 3D printing. Whether it concerns ISIL’s attaching a camera to a home-made, armed UAS in the Syrian Arab Republic or terrorists in the Democratic Republic of the Congo uploading 4K videos pledging allegiance to Abu Bakr al-Baghdadi, cyberspace and emerging technologies are facilitating terrorist activities on an unprecedented scale.

757. AI and machine-learning capabilities are growing at an unprecedented rate. Malicious use of AI could threaten not only physical and political security, but also digital security. Progress in AI continues to facilitate new types of attack, ensuring that certain tasks can be completed more successfully than by a human and taking advantage of vulnerabilities that humans have, but AI systems do not. (For example, no team of humans could realistically choose the flight path of each and every UAS in a swarm being used to carry out a physical attack.)

758. Terrorist groups motivated by racism, xenophobia and related intolerance are taking advantage of technological advances to adapt their operational methods, whether by consolidating traditional techniques for disseminating propaganda, sourcing weapons and other support, or developing new techniques. The 2019 report of the Secretary-General on small arms and light weapons also highlighted the increase use of the Internet for trade in firearms between unauthorized users, including terrorist groups and transnational organized crime groups. The lockdowns imposed by States in response to the COVID-19 pandemic have also led to a dramatic



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increase in use of the Internet, enabling terrorist groups espousing various terrorist narratives to spread propaganda, fuel hatred towards common enemies, and radicalize to violence new individuals (especially young people who are most vulnerable), including through gaming.

### 2. Use of technologies to counter terrorism

759. The use of technologies to counter terrorism is a topic of growing concern to counter-terrorism practitioners, policymakers and researchers in the context of the increasing role played by technology in terrorism and counter-terrorism. This is addressed by the Security Council notably in its resolutions 2129 (2013), 2178 (2014) and 2395 (2017), predominantly in the context of combatting terrorist misuse of ICT.<sup>153</sup>

#### (a) Artificial intelligence (AI)

760. Over the past few years, several P/CVE programmes and tools with AI and algorithmic amplification have been developed. For example, the Redirect initiative developed by Jigsaw (a subsidiary of Google) and Moonshot CVE, an NPO, consists of an algorithmic system capable of recognizing the profiles of individuals who are potential targets of terrorist groups' hate narratives and radicalization efforts. The algorithm has been tested on **terrorist** discourse in order to teach it the words and phrases used. Once programmed, the algorithm is used to identify the Internet users considered at risk in order to redirect them to positive alternative content.

761. Another positive use of AI relates to the identification of illegal content, content prohibited by social media platforms' own terms of service (TOS), and harmful content that is neither illegal nor prohibited by the platforms' TOS but is considered to contribute to radicalization to violent extremism **conducive to terrorism** for further review. Small and large platform content moderation is now largely done through the use of AI and hashing. (Human moderation is used or should be used to oversee decisions made through algorithm.) Because of the sheer volume of content produced by users and the cost of providing human moderation, as well as ongoing improvements in automated technologies and their responsible use, we should expect an increase in the use of AI and hashing in the future. However, it also raises certain human rights and ethical concerns, such as the possibility of over-moderation and removal of content that could have a chilling effect on freedom of speech, freedom of association and religion and other civil and political rights.

762. Another form of intelligent technology is the use of algorithms in facial recognition. Such algorithms have been tested experimentally by law enforcement authorities of a number of States, whether for counter-terrorism purposes or for more general crime-prevention purposes. Facial recognition systems extract and process the biometric data of individuals' faces to compare them with other faces contained in databases of people suspected of terrorism or already convicted for

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<sup>153</sup> CTED Research Digest, December 2020, Issue 11.





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terrorist offences. The use and possible misuse of this technology also raises human rights and ethical concerns as well as privacy concerns.

### (b) Content moderation

763. In June 2017, Facebook, Microsoft, Twitter, and YouTube announced the formation of the Global Internet Forum to Counter Terrorism (GIFCT) to develop technological solutions (including a digital hash-sharing consortium), conduct research, and share knowledge with smaller companies to contribute to the global fight against terrorism, which was restructured at the end of 2019 as a non-governmental organization (NGO) in which CTED has the status of permanent observer on its Independent Advisory Committee.<sup>154</sup> The GIFCT implements many of its activities within the framework of the CTED-supported Tech Against Terrorism initiative which has launched an online Knowledge-Sharing Platform (KSP) to promote the sharing of good practices, as well as a collection of tools and resources to support the efforts of start-ups and smaller technology companies to strengthen their response to terrorist exploitation of the Internet. Tech Against Terrorism has also developed the Terrorist Content Analytics Platform (TCAP), a centralized platform of verified terrorist content designed to enable technology companies to rapidly identify terrorist use of their services.

764. In May 2019, following the livestreamed terrorist attack carried out in Christchurch, France and New Zealand brought together Heads of State and Government and leaders from the technology sector to adopt the “Christchurch Call to Action”: an action plan in which Governments and technology companies pledge to undertake a range of measures, including developing tools to prevent the upload of terrorist content; countering the roots of violent extremism **conducive to terrorism**; increasing transparency around the removal and detection of content; and reviewing how companies’ algorithms direct users to **terrorist** content.<sup>155</sup> These issues also continue to be addressed in other multilateral organizations, including the Group of Seven (G7), Group of Twenty (G20), the Global Counter-Terrorism Forum (GCTF), CoE, the OSCE and the EU.

765. Many States have adopted laws and regulations to prevent the dissemination of terrorist content online, aiming to ensure that online platforms play a more active role in detecting terrorist content online and that such content is removed within a short timeframe. Some of legal measures have been challenged in courts on the grounds that they limit freedom of expression.

### (c) Digital evidence

766. Access to e-evidence has become critical to many criminal investigations. In many

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<sup>154</sup> <https://gifct.org>.

<sup>155</sup> <https://www.christchurchcall.com/call.html>.





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investigations of FTFs, for example, this digital evidence (e.g., Facebook posts, WhatsApp instant messages, Skype calls, YouTube videos, photos shared by email or Instagram, documents stored on Dropbox, and also from hundreds of less known platforms) may be the only available evidence of their complicity in the crimes of ISIL or Al-Qaida. Lawfully obtaining electronic evidence from online service providers is now a critical element of a successful prosecution to prove where terrorist and organized crime suspects are located, with whom they are communicating, and what crimes they are planning.

767. A study on “Measuring Online Behaviours of Convicted United Kingdom Terrorists” found that 76 per cent of terrorists had used the Internet to learn about terrorist activities, 46 per cent had downloaded extremist media, and 32 per cent had prepared for attacks by accessing online resources.<sup>156</sup> A European Union survey<sup>157</sup> also showed that more than half of investigations include a request for cross-border access to e-evidence; that e-evidence in any form is relevant in around 85 per cent of total (criminal) investigations; and that in almost two-thirds of investigations where e-evidence is relevant, a request to SPs based in another jurisdiction is required.

768. In December 2019, the General Assembly approved a proposal entitled “Countering the use of information and communications technologies for criminal purposes”, which aims to establish an open-ended ad hoc intergovernmental committee of experts, representative of all regions, to elaborate a comprehensive international convention on countering the use of ICT for criminal purposes.<sup>158</sup> **On 26 May 2021, the General Assembly adopted Resolution A/RES/75/282 by consensus. It was decided that the Ad Hoc Committee shall commence its work in January 2022 in order to provide a draft Convention to the General Assembly at its seventy eighth session. The first Session is scheduled from 17 to 28 January 2022.**

769. The creation of advanced solutions for the transnational gathering of electronic evidence at the regional level is also considered a high priority. In April 2018, the European Commission proposed new rules enabling police and judicial authorities to obtain electronic evidence more quickly and more easily. Those rules were included in the Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters and the accompanying Directive of the European Parliament and of the Council laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings. If adopted, the new rules would create a European Production Order and a European Preservation Order, and would obligate service providers to designate a legal representative in the European Union.

770. In June 2017, the Cybercrime Convention Committee (T-CY) agreed on the Terms of Reference for the preparation of a 2<sup>nd</sup> Additional Protocol to the 2001 Council of Europe

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<sup>156</sup> [https://www.voxpol.eu/download/vox-pol\\_publication/What-are-the-Roles-of-the-Internet-in-Terrorism.pdf](https://www.voxpol.eu/download/vox-pol_publication/What-are-the-Roles-of-the-Internet-in-Terrorism.pdf).

<sup>157</sup> <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:52018SC0118&from=EN>.

<sup>158</sup> A/RES/74/247.



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Convention on Cybercrime. The negotiations commenced in September 2017. The following elements are being considered: (i) provisions on more efficient MLA; (ii) provisions on direct cooperation with providers in other jurisdictions; (iii) framework and safeguards for existing practices of extending searches transborder; and (iv) rule of law and data-protection safeguards.<sup>159</sup>

771. In November 2018, the United States enacted the Clarifying Lawful Overseas Use of Data Act (CLOUD Act), which amends the Federal Criminal Code to specify that an electronic communication service (ECS) or remote computing service (RCS) provider must comply with existing requirements to preserve, backup, or disclose the contents of an electronic communication or non-content records or information pertaining to a customer or subscriber, regardless of whether the communication or record is located within or outside the United States.<sup>160</sup> The Cloud Act also paves the way for the negotiation of bilateral agreements providing for the direct recognition in the United States of foreign court orders to access data of foreign nationals (such a bilateral agreement has been agreed between the United Kingdom and the United States).

772. Addressing challenges relating to access to e-evidence across borders has been a priority of the Security Council and the Committee in the context of international cooperation and MLA, and is addressed in Council resolutions 2322 (2016), 2178 (2014) and 2396 (2017); the 2015 Madrid Guiding Principles; and the 2018 Addendum. With the encouragement of the Committee, CTED launched the initial design for the Global Initiative on Legal Access to Digital Data Across Borders, a joint e-evidence initiative, undertaken with UNODC and the International Association of Prosecutors (IAP), which focuses on preservation, emergency requests, voluntary access and cooperation with the private sector.

773. CTED has worked closely with the European Union Eurojust/Europol SIRIUS Project on e-evidence (serving on its advisory board) and working<sup>599</sup> with think tanks (including within the framework of the Contact Group on Internet and Jurisdiction) and private-sector actors (including by mapping practice in the private sector and engaging with private sector entities). The project's outcomes include the "Practical guide to obtaining electronic data across borders" (including its forthcoming second edition) and the future launch and promotion of the Data Disclosure Framework (DDF) and (jointly with Eurojust/Europol SIRIUS) of Standardized Direct Requests Forms (SDRFs) to Assist Service Providers to Cooperate on Electronic Evidence Requests Across Borders. The Practical guide (published jointly by CTED with UNODC and IAP and translated into French, Spanish, Portuguese, Russian and Arabic) is widely recognized as the international reference document on e-evidence and is among the most widely downloaded publication on the UNODC Sherlock Platform. CTED is also member of the contact group of experts on Internet e-evidence and jurisdiction, a cutting-edge group of experts on e-evidence.

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<sup>159</sup> <https://www.coe.int/en/web/cybercrime/t-cy-drafting-group>.

<sup>160</sup> <https://www.congress.gov/bill/115th-congress/house-bill/4943>.



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### 3. Human rights dimension of ICT issues

#### (a) Privacy and data protection

774. Human Rights defenders have raised concerns at disproportionate online surveillance and data collection that violate privacy rights, stating their position that surveillance and data collection should be precisely defined in clear and publicly accessible laws, which must specify a legitimate aim, the scope and nature of the surveillance or data collection, and the necessity and proportionality of the measures to reach such aim and being the least intrusive option available.<sup>161</sup>

775. Even as counter-terrorism measures increasingly raise challenges relating to privacy and data protection, there remains a relative lack of data-protection legal frameworks and guidance for private companies and Governments on technical issues such as legal enrolment criteria, data retention or deletion policies, data processing, data-sharing, preventing misuse of data, data security, validation, and oversight. This represents a significant impediment to international cooperation and international sharing of data, since many States are prohibited, under their national laws, from sharing protected and personal data with States that have weaker data-protection regimes. New developments, such as advances in the field of AI (e.g., machine-learning) and increased reliance on tools powered by this technology make the development of such guidance essential.

#### (b) Internet shutdowns and filtering

776. The United Nations Human Rights Council has condemned the disruption of online access and information caused by Internet shutdowns and filtering,<sup>162</sup> and human rights experts have declared that shutting down entire parts of communications systems is not justified under human rights law.<sup>163</sup> Since the previous global survey, many States have imposed Internet shutdowns that are often justified on grounds of public safety or the need to avoid the spread of false news and violence (notably during elections or periods of unrest). Even where the Internet remains available, there have also been concerns at Governments' use of overbroad laws and regulations to pressure companies to block users in their jurisdictions from accessing certain web content.

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<sup>161</sup> Report of the Office of the United Nations High Commissioner for Human Rights, "The right to privacy in the digital age", A/HRC/27/37, para. 23.

<sup>162</sup> Human rights Council Resolution 32/13 (2016).

<https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/156/90/PDF/G1615690.pdf?OpenElement>.

<sup>163</sup> United Nations Special Rapporteur on freedom of opinion and expression; OSCE Representative on Freedom of the Media; OAS Special Rapporteur on Freedom of Expression; African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and responses to conflict situations* (2015).



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### **H. Human rights in the context of countering terrorism and violent extremism conducive to terrorism**

777. The Security Council continues to affirm that Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law. The Committee and its Executive Directorate have therefore continued to address relevant human rights issues in their assessments of States' implementation of resolution 1373 (2001). This is important not only in the context of States' legal obligations, but also because — as the Council has reaffirmed on several occasions, including in its resolutions 2395 (2017), 2396 (2017), 2462 (2019) and 2482 (2019) — respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures and are an essential part of a successful counter-terrorism effort.

778. Some States have implemented measures to enhance the compliance of counter-terrorism laws and policies with international legal obligations. However, most States have still not done enough in this critical area.<sup>164</sup>

779. One core issue that remains a major matter of concern, almost 20 years after the adoption of Security Council resolution 1373 (2001), is the question of the legal definition of terrorist acts. The national laws of a number of States continue to criminalize terrorist acts in vague or overbroad terms that could lead to abuse. Paragraph 2 (e) of resolution 1373 (2001) requires States to criminalize participation in the financing, planning, preparation or perpetration of terrorist acts or in supporting such acts but does not provide a definition of such offences. The Executive Directorate remains concerned about national definitions of terrorism that exceed the scope of Council resolution 1566 (2004), the international counter-terrorism instruments, and the model definition put forward by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, thereby creating the potential for non-violent conduct that is not terrorist in nature to be qualified as "terrorist". This includes acts that are described in overly broad or vague terms said to "disturb public order"; "destabilize national security or stability"; or "threaten national unity". Twenty-three of the 46 States assessed by the Committee from 2017 to 2020 were identified as having introduced overbroad definitions of terrorism or terrorist acts. Moreover, human rights defenders and lawyers, political dissidents and members of religious or ethnic minorities have been charged with broadly defined terrorism offences in several States.

780. Several States have criminalized acts which may not rise to the level of incitement to criminal conduct. This may have a negative impact on human rights, particularly the freedom of

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<sup>164</sup> In its resolution 2395 (2017), the Council encourages CTED to further develop its activities to ensure that all human rights and rule of law issues relevant to the implementation of resolutions 1373 (2001), 1624 (2005), 2178 (2014) and other relevant resolutions are addressed as an important component of all CTED's work.



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expression. The human rights implications of criminal provisions to prohibit the incitement of terrorism are addressed in greater detail in the 2021 CTED Global survey on the implementation of Security Council resolution 1624 (2005) by Member States (S/2021/XXX). The terms *violent extremism* and *extremism* are also vaguely defined in some States' legislation. Definitions of violent extremism or extremism were addressed in eight of the States assessed by the Committee from 2017 to 2020. The Committee and CTED raised concerns, in the cases of four of those States, at overbroad definitions of extremism which did not include an element of violence and could lead to arbitrary or disproportionate restrictions of human rights in practice. The assessments have also raised concern at discriminatory impacts of counter-terrorism and counter-extremism measures on certain communities, including in relation to profiling and surveillance. The Committee's country assessments also continued to reveal grave human rights violations committed by security forces and other authorities, including extrajudicial killings, arbitrary detentions, and torture and ill-treatment. The Executive Directorate continues to recommend that States strengthen independent oversight mechanisms to monitor the activities of law enforcement bodies to ensure that all counter-terrorism measures are undertaken in a manner fully compliant with international human rights law and to ensure accountability in case of violations.

781. Compliance with international standards of due process and fair treatment also remains a matter of concern, notably wherever counter-terrorism measures are applied in a preventive manner. Security Council resolutions 2178 (2014) and 2396 (2017), on the threat posed by FTFs, draw an express link between their own provisions and the implementation by States of resolution 1373 (2001). Measures taken to address the movement of FTFs and their family members have raised human rights concerns in relation to, inter alia, the application of administrative detention, travel bans, seizure of passports, and stripping of citizenship, which may impact the rights to liberty and freedom of movement, as well as the right to a nationality. Concerns have also been raised in relation to criminal justice measures, including the increased reliance on intelligence and administrative measures, and denial of fair trial guarantees. Increased data collection and analysis (including in relation to API, PNR, watch lists and databases and biometrics) highlight the need for effective oversight to ensure the information is not misused.

782. A further area of concern that has attracted the attention of the Committee and CTED is the impact of the implementation of resolution 1373 (2001) on the activities of CSOs. In its resolution 2395 (2017), the Council recognizes the Executive Directorate's relationship with civil society and the importance of civil society in increasing awareness about the threats of terrorism and more effectively tackling them. It also recalls the importance of fully respecting the rights to freedom of expression and association of individuals in civil society. The Executive Directorate has focused on developing its relationship with relevant CSOs, which have provided useful insights into various topics, including national definitions of terrorist acts and related offences, provisions on terrorism financing, PRR measures, and the impact of counter-terrorism measures on civil society. The Executive Directorate is aware of the need to prevent reprisals against civil society for cooperation with the United Nations and shares the Secretary-General's concern at the





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continued use by States of national security arguments and legislation and counter-terrorism strategies as justification for blocking access to, or punishment for engaging with, the United Nations.

783. Council resolution 2462 (2019), on countering the financing of terrorism, recognizes the vital role played by NPOs in national economies and social systems. It also encourages Member States to work cooperatively with the non-profit sector in order to prevent abuse of such organizations, while recalling that States must respect human rights and fundamental freedoms. The Executive Directorate therefore continues to enquire of States as to whether their reviews of their non-profit sector laws ensure respect for the right to freedom of association and for the legitimate role played by NPOs in the collection and distribution of funds. The Executive Directorate has noted with concern CFT provisions (e.g., restrictions on freedom of association for NPOs) that are not implemented in compliance with international human rights law, as well as the lack of procedures for unfreezing wrongfully frozen funds.

### **I. Gender**

784. Security Council resolution 2242 (2015) calls on Member States and the United Nations to strengthen the integration of their agendas on women, peace and security (WPS), counter-terrorism and countering violent extremism which can be conducive to terrorism, and requests CTED to integrate gender as a cross-cutting issue throughout its activities. The Security Council recognizes that terrorism and violent extremism have a differential impact on the human rights of women and girls and that, in turn, counter-terrorism strategies may have a differential impact on women, including on women's human rights and women's civil society organizations.<sup>165</sup> Since the adoption of resolution 2242 (2015), a growing number of Council resolutions on terrorism have integrated gender considerations, including on issues such as the prosecution, rehabilitation and reintegration (PRR); countering terrorist narratives; and links between terrorism, trafficking in persons and conflict-related sexual violence.<sup>166</sup>

785. Even though awareness of the need to ensure gender-sensitive and human rights-compliant counter-terrorism practices has grown considerably, the implementation of such approaches at the regional and national level nonetheless continues to encounter numerous challenges.

#### **1. Gender-disaggregated data**

786. Ensuring availability of the relevant data is essential in designing tailored and gender-responsive counter-terrorism and CVE measures. However, CTED's assessments have revealed

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<sup>165</sup> S/RES/2242 (2015), preamble; para. 12.

<sup>166</sup> The resolutions reviewed include resolutions 1373 (2001) and 1624 (2005), 2129 (2013), 2133 (2014), 2178 (2014), 2195 (2014), 2220 (2015), 2242 (2015), 2253 (2015), 2309 (2016), 2322 (2016), 2331 (2016), 2341 (2017), 2347 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2379 (2017), 2388 (2017), 2395 (2017), 2396 (2017), 2462 (2019), 2467 (2019) and 2482 (2019).





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significant gaps in the systematic collection of gender-disaggregated data across Member States. Such gaps were identified, for example, in relation to tracking the number of women who participate in terrorist activity (e.g., number of women who travelled to join ISIL), the number of women who returned from the conflict zones, and their subsequent fate (e.g., number of prosecutions, convictions etc.). This lack of information undermines States' ability to understand and counter the unique threat posed by women and to design appropriate responses. Gathering and analysing gender-disaggregated data more systematically would ensure that Member States' policy decisions are evidence-based and tailored and that capacity-building needs are identified early.

### **2. Gender-sensitive prosecution, rehabilitation and reintegration (PRR)**

787. In its resolution 2396 (2017), the Security Council emphasizes that women and children require special focus when Member States are developing tailored PRR strategies.<sup>167</sup> Additional guidance is provided in the Security Council's *Madrid Guiding Principles* (S/2015/939) on stemming the flow of FTFs.

788. Member States adopt various approaches to the prosecution of women. Some choose not to prosecute women at all, and in some cases broad definitions of "membership" have allowed courts to convict women simply for being family members of alleged ISIL fighters.<sup>168</sup>

789. In many States, rehabilitation and reintegration programmes are provided through the criminal justice system. However, because relatively few women returnees have been prosecuted, access to those rehabilitation and reintegration programmes has been limited. This poses the risk of not attending to returnees' needs, undermining women's successful reintegration into society and putting them at potentially greater risk of recidivism. Rehabilitation programmes can be implemented both as a complement and as an alternative to prosecution.

790. Some States have engaged in a multi-agency process, acting in partnership with CSOs, health and psycho-social care providers, religious counsellors and local communities, to provide comprehensive reintegration support to returnees. Some States have proactively engaged with families in preparation for the return of an individual from the conflict zone (an approach that CTED has identified as a good practice in dialogue with Member States).

791. In many other cases, however, policies and programmes fail to adequately address women's rights and needs. States should develop a nuanced understanding of gender roles and motivations and develop assessments of risks and mitigating circumstances, as part of a gender-

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<sup>167</sup> S/RES/2396 (2017), para. 31.

<sup>168</sup> [CTED Analytical Brief, "The Repatriation of ISIL-associated women \(2019\); CTED Analytical Brief, "The Prosecution of ISIL-associated women" \(2020\).](#)



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sensitive approach to PRR. Within judicial systems, there is an urgent need for training and capacity-building on gender-sensitive approaches to investigations and prosecutions.<sup>169</sup>

### 3. Countering violent extremism conducive to terrorism (CVE)

792. Women are making a critical contribution to countering violent extremism conducive to terrorism (P/CVE) in all regions of the world. They are often at the forefront of civil society efforts to build more resilient communities, sometimes at great risk to their own security. Council resolution 2242 (2015) urges Member States and the United Nations system to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism,, including by countering incitement to commit terrorist acts and other appropriate interventions and by building women's capacity to do so effectively. Both the United Nations Global Counter-Terrorism Strategy (A/RES/60/288) and the Secretary-General's Plan of Action to Prevent Violent Extremism (A/70/674) emphasize the importance of including women in efforts to counter and prevent terrorism and violent extremism.

793. However, the development of a gender-responsive CVE strategy remains challenging for many States. The participation of women in CVE efforts is seen as an essential component of efforts to address radicalization at the community level and as a way to empower women, but many initiatives have failed to bring out women's full potential as agents of change within society. Gendered assumptions underlie many CVE programmes, often demonstrating a belief that women are inherently more peaceful than men and that mothers, in particular, are in a unique position to detect signs of radicalization in their children. Such approaches may be potentially harmful in further entrenching existing gender stereotypes and may not be effective. Many women's CSOs struggle to secure funding for WPS work unless it is tied to CVE. There is therefore a risk that the CVE agenda will be imposed on them, potentially instrumentalizing and securitizing local peacebuilding initiatives.<sup>170</sup>

### 4. Trafficking in persons and sexual violence

794. Terrorist groups such as ISIL, Boko Haram and Al-Shabaab use human trafficking and sexual violence in deliberate and strategic ways to further their objectives. Trafficking in persons and sexual violence are highly gendered phenomena that disproportionately impact women and girls (who constitute over 70 per cent of the overall number of identified victims).<sup>171</sup>

<sup>169</sup> Security Council Guiding Principles on Foreign Terrorist Fighters: the 2015 Madrid Guiding Principles + 2018 Addendum (S/2015/939 and S/2018/117), p. 25.

<sup>170</sup> See e.g., Anna Möller-Loswick, *The countering violent extremism agenda risks undermining women who need greater support*, Saferworld, 26 April 2017; Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* (2017).

<sup>171</sup> Security Council resolutions 2331 (2016), 2388 (2017) and 2467 (2019) address the linkages between human trafficking, sexual violence and terrorism, requiring Member States to improve the implementation of legal obligations to criminalize, prevent and combat trafficking in persons and to provide access to protection and assistance for identified victims.



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795. However, there continues to be near-complete impunity for human trafficking and sexual violence perpetrated in a terrorism context. It is therefore essential to address gaps in investigations, prosecutions and sentencing, which must be firmly rooted in a human rights-based and gender-sensitive approach. This is critical to strengthening collective efforts to deter human trafficking by terrorist groups, address the current impunity of perpetrators, and facilitate victim's access to justice and support services.

796. The covert nature of human trafficking, the difficulty in collecting evidence, and the lack of expertise required to conduct proper investigations undermine efforts to fully understand and effectively address the links between human trafficking and terrorism.<sup>172</sup>

### **5. Groups motivated by racism, xenophobia and related intolerance**

797. Gender influences the discourse and operating methods of groups motivated by racism, xenophobia and related intolerance. Misogyny and violence were being used in targeted propaganda and recruitment efforts aimed at certain men. Although the convictions of groups motivated by racism, xenophobia and related intolerance is often deeply misogynistic, women nonetheless play active and important roles within such groups. It is therefore imperative that gender perspectives be fully integrated into the response to the threat presented by groups motivated by racism, xenophobia and related intolerance.

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<sup>172</sup> Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing, CTED (2019)