

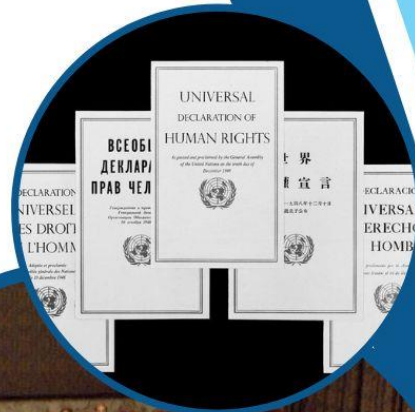


United Nations Security Council  
Counter-Terrorism Committee  
Executive Directorate (CTED)

## TRENDS TRACKER ON HUMAN RIGHTS

RECOMMENDATIONS BY THE SECURITY COUNCIL  
COUNTER-TERRORISM COMMITTEE FOLLOWING  
ASSESSMENT VISITS TO MEMBER STATES  
(2017–2023)

IN COMMEMORATION OF THE 75TH ANNIVERSARY OF  
THE UNIVERSAL DECLARATION OF HUMAN RIGHTS



DECEMBER 2023

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## KEY FINDINGS AND TRENDS (2017–2023)

- Since 2003, the Security Council, in its resolutions, has stressed that any measures taken by Member States to counter terrorism must comply with their obligations under international law, in particular international human rights, refugee, and humanitarian law.
- The United Nations Security Council Counter-Terrorism Committee (CTC) and its Executive Directorate have mainstreamed human rights across all of their mandated activities, including their monitoring and stocktaking tools. These include the Overview of Implementation Assessment, the electronic Detailed Implementation Survey and assessment visits conducted in Member States aimed at monitoring, promoting, and facilitating the implementation of Security Council resolutions on counter-terrorism.
- In the most recent 54 country visit assessment reports adopted by the CTC, which contain observations and recommendations to visited Member States, about 15 per cent of all recommendations pertain to ensuring respect for human rights while countering terrorism.
- The most frequent human rights-related recommendations made by the CTC to Member States in the context of counter-terrorism are on the topics of persons deprived of liberty, the right to fair trial, freedom of expression and opinion, and the definitions of terrorism and terrorist acts in national legislation, as well as their conformity with the principle of legality.
- The CTC has increasingly made recommendations to Member States to promote respect for the rights of victims of terrorism.

## Background

The Trends Tracker on Human Rights was prepared by the Counter-Terrorism Committee Executive Directorate (CTED) in accordance with Security Council resolution 2617 (2021), in which it directs CTED to conduct analytical work on emerging issues, trends, and developments and to make its analytical products available throughout the United Nations system. This Trends Tracker highlights some of the rights contained in the Universal Declaration of Human Rights (UDHR) and those rights as they appear in the United Nations Security Council Counter-Terrorism Committee's (CTC) recommendations stemming from its country visit assessments, as well as certain trends regarding the respect for human rights when countering terrorism and violent extremism conducive to terrorism. This report covers the period from January 2017 to November 2023.

On 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights – a document that paved the way for the further elaboration of international human rights law. It was adopted three years after the Charter of the United Nations, which proclaimed “promoting and encouraging respect for human rights and for fundamental freedoms for all” as an explicit purpose of the United Nations. This purpose has been at the heart of the work of the United Nations, including counter-terrorism, which became a priority of the Security Council after the 9/11 attacks in 2001.

The Security Council has long recognized that terrorism poses a danger to the enjoyment of human rights. Since 2003, the Council has also stressed that any measure taken by States to combat terrorism must comply with their obligations under international law, including international human rights, humanitarian and refugee law. More recently, the Council has underscored that “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”.<sup>1</sup> Furthermore, the Council has noted “failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity”.<sup>2</sup> Council resolutions also support the balanced implementation of all four pillars of the United Nations Global Counter-Terrorism Strategy, including its fourth pillar on “measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism”.

The CTC and its Executive Directorate have mainstreamed human rights across their monitoring and stocktaking tools, including the Overview of Implementation Assessment (OIA), the electronic Detailed Implementation Survey (e-DIS) and assessment visits conducted in Member States to monitor, promote, and facilitate the implementation of Security Council resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017), 2462 (2019), and 2482 (2019) and other relevant Council resolutions. Under the policy guidance of the

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<sup>1</sup> Security Council resolutions 1963 (2010), operative para. 10; 2129 (2013), preambular para. 5; 2170 (2014), preambular para. 8; 2178 (2014), preambular para. 7; 2396 (2017), preambular para. 7; 2462 (2019), preambular para. 5; 2482 (2019), preambular para. 10; and 2617 (2021), preambular paras. 6–7.

<sup>2</sup> Council resolutions 2178 (2014), preambular para. 7; 2396 (2017), preambular para. 7; 2462 (2019), preambular para. 5; and 2482 (2019), para. 10.

CTC and within its visit framework document, through transparent and constructive dialogues, the visits play a key role in the evaluation of the terrorist threat at the national level, by identifying progress, strengths and challenges related to the effective implementation of the relevant Council resolutions on counter-terrorism and by defining actionable and tailor-made recommendations to address gaps and identify good practices. In this respect, during the visits conducted by CTED on behalf of the CTC, CTED delegations assess the extent to which the measures taken by the visited Member State to counter terrorism are consistent with its obligations under international law, including international human rights law.<sup>3</sup> Following an assessment visit, CTED drafts a report with observations for and recommendations to the visited Member State so it can address gaps and share good practices. The report is then submitted for adoption to the CTC. Upon adoption, while the country assessment reports are not made publicly available, recommendations are made “available throughout the United Nations system, especially to the United Nations Office of Counter-Terrorism and United Nations counter-terrorism-relevant agencies, funds, and programmes, in order to better align United Nations technical assistance and capacity-building with gaps in implementation and capacity identified by the Executive Directorate”.<sup>4</sup>

Between January 2017 and October 2023, CTED conducted 83 assessment visits (including hybrid visits, during the coronavirus disease (COVID-19) pandemic, with both virtual and physical components) to 68 countries on behalf of the CTC. At the time of writing, these visits had led to the adoption of 54 assessment visit reports by the CTC. In total, the 54 adopted reports include approximately 400 recommendations pertaining to human rights, which corresponds to approximately 15 per cent of all recommendations. The promotion of and respect for human rights while countering terrorism and violent extremism are also mainstreamed across all other relevant thematic areas, including countering the financing of terrorism, border management and law enforcement, and countering the use of the Internet and information and communications technologies for terrorism purposes.

This Trends Tracker first reviews specific language in Security Council resolutions on counter-terrorism relevant to human rights. It then highlights how the CTC has addressed some of the rights included in the UDHR in recommendations contained in the above-mentioned 54 assessment visit reports. This overview illustrates the Council’s and the CTC’s evolving focus, during this period, on the human rights contained in the UDHR and highlights areas in which it considers that Member States could enhance their focus to better implement Council provisions on counter-terrorism in compliance with obligations under international human rights law.

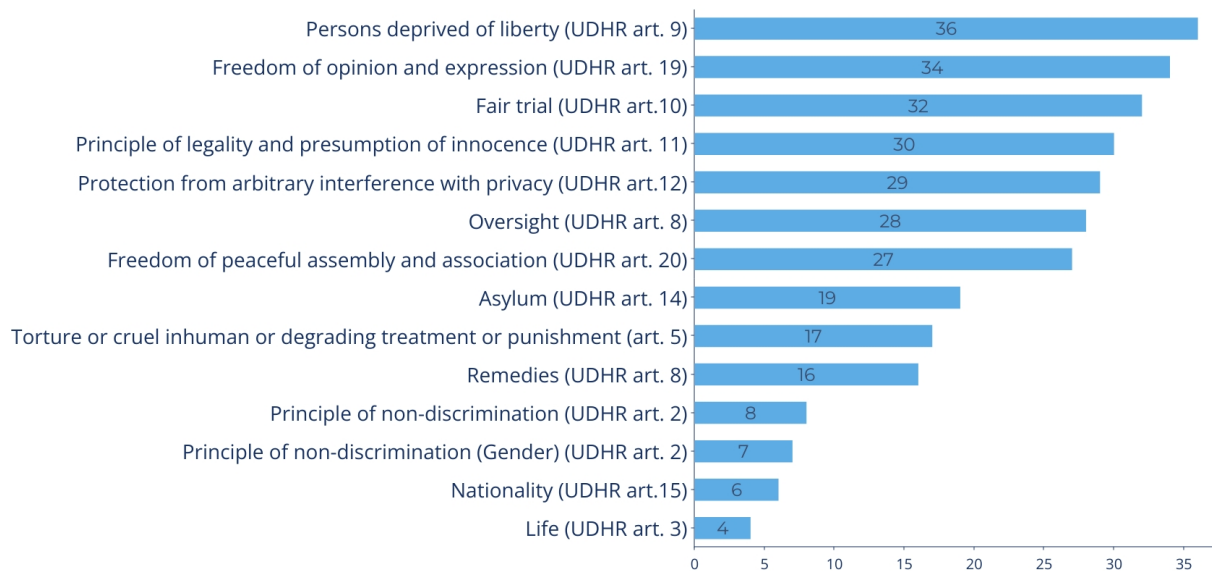
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<sup>3</sup> Framework document for Counter-Terrorism Committee visits to Member States aimed at monitoring, promoting and facilitating the implementation of Security Council resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017), 2462 (2019) and 2482 (2019) and other relevant Council resolutions (S/2020/731).

<sup>4</sup> Security Council Resolution 2617 (2021).

**Methodology:** Between 2017 and 2023, 54 assessment visits to Member States resulted in reports adopted by the CTC. Each of those reports contains, on average, 40 recommendations to the Member State on steps to improve implementation of Security Council resolutions on counter-terrorism. To develop this Trends Tracker, CTED extracted and categorized all recommendations contained in those reports related to human rights. The categorization of those recommendations is subjective, and some slight variation may exist.

**Number of CTC recommendations per category of UDHR rights (2017 - 2023)**



The charts show the distribution of human rights-related recommendations made by the CTC to Member States following assessment visits in the context of counter-terrorism, by category of rights contained in the UDHR. Several recommendations pertaining to the same category of human rights were sometimes made to a single State. Among the most frequently made human rights-related recommendations are those dealing with people deprived of their liberty, freedom of expression and opinion, the rights to a fair trial and the definitions of terrorism and terrorism acts in national legislation and how they relate to the principle of legality and presumption of innocence.

## Specific language in Security Council resolutions on counter-terrorism relevant to human rights

While human rights were only briefly mentioned in Security Council resolution 1373 (2001), the Council began to address this deficit with resolution 1456 (2003), in which it declared “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law”. Over the succeeding years, the Council has increasingly made reference to the requirement that counter-terrorism measures taken by States in accordance with Council resolutions must comply with their obligations under international human rights law. In addition to this general pronouncement, the Council has also addressed specific human rights issues in its counter-terrorism resolutions.

The Security Council has addressed the principle of non-discrimination, for example, in two ways. Firstly, the Council has reaffirmed “that terrorism should not be associated with any religion, nationality, civilization, or group”.<sup>5</sup> Secondly, in resolutions 2242 (2015), 2395 (2017) and 2617 (2021), the Council urges the Executive Directorate in collaboration with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and other relevant United Nations Global Counter-Terrorism Coordination Compact entities to conduct and gather gender-sensitive research and data collection on the impacts of counter-terrorism strategies on women’s human rights and women’s organizations.<sup>6</sup>

Relevant to the rights of persons deprived of liberty, the Security Council has encouraged Member States to collaborate and share best practices regarding well-managed custodial environments where human rights are respected and efforts to rehabilitate and reintegrate convicted terrorists are made.<sup>7</sup> It also encourages States to “take all appropriate actions to maintain a safe and humane environment in prisons ... and explore ways to prevent, within their prison systems, radicalization to violence”.<sup>8</sup> It also refers to “treating those who are being prosecuted for or have been convicted of terrorism offences humanely and respecting their human rights”.<sup>9</sup> In resolution 2396 (2017) on foreign terrorist fighters, the Council encourages States “to maintain a safe and humane environment in prisons ... consistent with international humanitarian law and human rights law, as applicable and in accordance with relevant international law and taking into consideration, as appropriate, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).”<sup>10</sup>

The Security Council has also addressed the fair trial rights of those being prosecuted for terrorist offences. In resolution 2396 (2017), the Council urges States, “in accordance with

<sup>5</sup> Security Council resolution 2617 (2021).

<sup>6</sup> See, respectively, operative paragraphs 12, 28 and 36.

<sup>7</sup> Security Council resolutions 2395 (2017), preambular para. 18, and 2617 (2021), preambular para. 21.

<sup>8</sup> Council resolution 2482 (2019), operative para. 20.

<sup>9</sup> Council resolution 2617 (2021), operative para. 9.

<sup>10</sup> Operative para. 40.

domestic and applicable international and human rights law and humanitarian law, to develop and implement appropriate investigative and prosecutorial strategies, regarding those suspected of foreign terrorist fighter-related offences”.<sup>11</sup> In resolution 2617 (2021), regarding the use of “battlefield evidence”, the Council notes “the importance of clear legal authorities, regulations and practices for the collection, sharing and use of this type of evidence in national courts, in full respect of fair trial guarantees of the accused, and in line with international human rights law, as applicable”.<sup>12</sup> In the same resolution, it also stresses that “the development and maintenance of fair and effective criminal justice systems, with full respect for and commitment to human rights and fundamental freedoms within a rule of law framework, must be central to any successful strategy to prevent and counter terrorism”.<sup>13</sup>

With regard to the right to be free from arbitrary interference with privacy, the Security Council has called for the respect of human rights by States when countering the use of the Internet and social media in furtherance of terrorist purposes and exploitation of information and communications technologies by terrorists and their supporters;<sup>14</sup> when developing and implementing systems to collect biometric data, which could include fingerprints, photographs, facial recognition, and other relevant identifying biometric data;<sup>15</sup> in the exchange of relevant operational information and financial intelligence, as well as in enhancing the traceability and transparency of financial transactions;<sup>16</sup> and in the use of advance passenger information and passenger name record data.<sup>17</sup>

On the right to seek and to enjoy asylum, the Security Council has recalled that States must ensure that measures to combat terrorism comply with international refugee law. More specifically, in resolution 1624 (2005), the Council recalled the right to seek and enjoy asylum in article 14 of the UDHR.<sup>18</sup> In resolution 1373 (2001), the Council called upon all States to take appropriate measures “in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts”.<sup>19</sup>

In its resolution on prohibiting and preventing incitement to commit terrorist acts,<sup>20</sup> the Security Council recalled the right to freedom of expression reflected in article 19 of the UDHR and recalled also the right to freedom of expression in article 19 of the International Covenant on Civil and Political Rights (ICCPR) adopted by the General Assembly in 1996. It emphasized that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of article 19 of the ICCPR.<sup>21</sup> Similar

<sup>11</sup> Operative para. 18.

<sup>12</sup> Preambular para. 17.

<sup>13</sup> Preambular para. 19.

<sup>14</sup> Security Council resolutions 2331 (2016), preambular para. 14; 2395 (2017), preambular paras. 27–28 and operative para. 26; and 2396 (2017), preambular paras. 27–28.

<sup>15</sup> Council resolution 2396 (2017), operative para. 15.

<sup>16</sup> Council resolution 2462 (2019), operative paras. 19–20.

<sup>17</sup> Council resolutions 2617 (2021), operative para. 38, and 2482 (2019), operative para. 15(c).

<sup>18</sup> Preambular para. 7.

<sup>19</sup> Operative para. 3.

<sup>20</sup> Security Council resolution 1624 (2005).

<sup>21</sup> *Ibid.*, preambular para. 6.



references were made in Council resolution 2354 (2017), on countering terrorist narratives.<sup>22</sup>

Finally, in resolutions 2395 (2017) and 2617 (2021), the Security Council recalls the importance of fully respecting the rights to freedom of expression and association of individuals in civil society and freedom of religion or belief in preventing the abuse of non-governmental, non-profit, and charitable organizations by and for terrorists.<sup>23</sup>

## **CTC stocktaking tools for Member States' implementation efforts (OIA and e-DIS)**

Aside from country visits, CTED uses other tools, the OIA and the e-DIS, for assessment and stocktaking of Member States' implementation efforts. These tools have been designed to ensure thoroughness, consistency, transparency, and even-handedness in the Committee's stocktaking process and to improve its utility to Member States, donors, recipients, the United Nations Office of Counter-Terrorism, and other United Nations agencies for designing technical assistance and capacity-building support. These tools have specific references to the human rights aspects of Member States' efforts in the context of counter-terrorism and countering violent extremism (CVE) conducive to terrorism.

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<sup>22</sup> Preambular para. 11.

<sup>23</sup> See, respectively, preambular paragraphs 24 and 28.

## Recommendations of the Counter-Terrorism Committee relevant to human rights

This section highlights how the CTC's recommendations in the 54 assessment visit reports address some of the rights included in the UDHR, which have since been expanded upon in international human rights law. After the quotation of each selected UDHR article, the section summarizes the main recommendations made by the CTC with regard to that right.

### UDHR article 2

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

To avoid stigmatization and discrimination when countering terrorism, the CTC has urged States to introduce measures to guard against racial, ethnic, or other discriminatory profiling.

In its visit reports, the CTC has encouraged States to ensure that language contained in government reports and documents do not associate a specific religion or ideology with terrorism and to prevent the indiscriminate targeting of different religions and cultures. The CTC has also recommended that States closely monitor the impact of their counter-terrorism and CVE policies on persons from ethnic and religious minorities and that they take necessary remedial measures where appropriate. It has urged that counter-terrorism and CVE policies consider a wide variety of radicalization drivers and do not target certain religious, ethnic or other groups.

Regarding gender equality, the CTC has called upon States to monitor and evaluate the differential impact of their counter-terrorism and CVE measures on men and women – in particular their terrorism legislation and national CVE strategies and action plans, as well as related law enforcement practices – and encouraged States to review any such practices that disproportionately affect women. The CTC has also recommended that States take tailored gender-sensitive measures to ensure the rights of women and girls are respected in the context of counter-terrorism and CVE, including on the need to ensure that prosecution, reintegration and rehabilitation strategies are gender-responsive.

## Integrating gender into the CTC's and CTED's activities

The Charter of the United Nations and the UDHR contain early references to non-discrimination on the basis of sex by the international community. The concept of gender equality has been elaborated further in the decades following the adoption of the UDHR, including with the reiteration of the non-discrimination clause in almost all human rights treaties and with the adoption of the Convention on the Elimination of All Forms of Discrimination against Women in 1979. Some of these provisions have been translated into the work of the Security Council, including on counter-terrorism and CVE, through the women, peace and security agenda.<sup>1</sup> In addition to assessing the consistency of counter-terrorism and CVE measures with obligations under international human rights law, CTED also focuses on monitoring areas of implementation concerning gender specifically, including the impact of counter-terrorism strategies on women's human rights and women's organizations. For more information on integrating gender into counter-terrorism and CVE, see the dedicated [CTED Trends Tracker](#) and [CTED factsheet on gender](#).

### UDHR ARTICLE 3.

*Everyone has the right to life, liberty and security of person.*

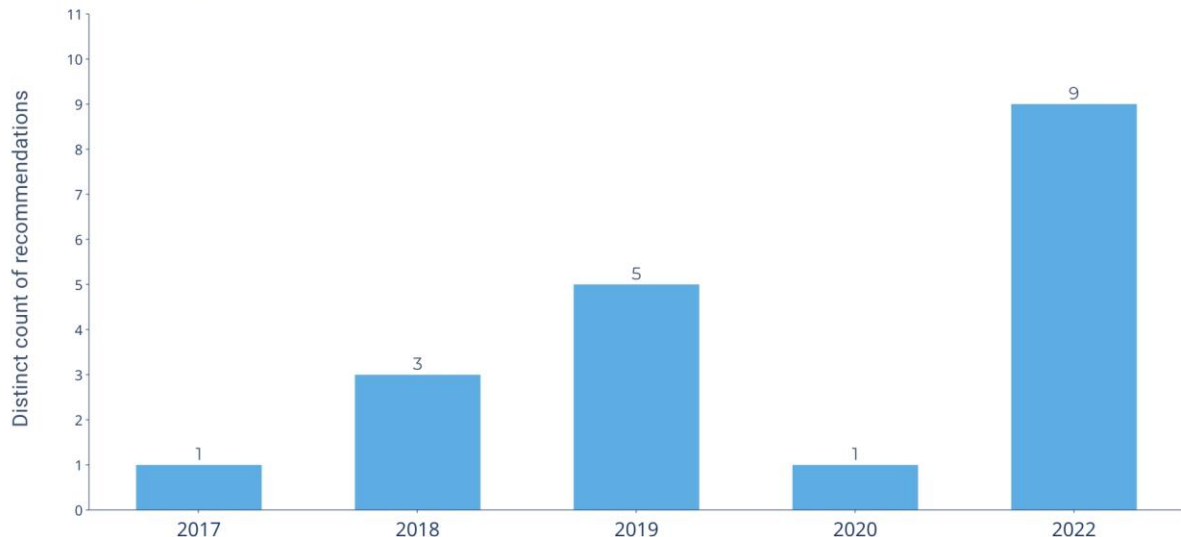
The obligation to counter terrorism is itself an element of guaranteeing the right to life of persons threatened by terrorism. As to the right to life when countering terrorism, the vast majority of States visited by the CTC between 2017 to 2023 do not apply the death penalty. For the small number of States that do provide for application of the death penalty, the CTC has recommended that capital punishment be considered only for the 'most serious crimes', in accordance with article 6 of the ICCPR, which, according to the United Nations Human Rights Committee, means that the death penalty may be imposed only for crimes of extreme gravity involving intentional killing.<sup>24</sup> The CTC has called upon one State to ensure that the death penalty may not be imposed for expression-based offences. It has encouraged another State to pay particular attention to the concerns raised by United Nations human rights mechanisms with respect to the imposition of the death penalty, including application of the death penalty against persons convicted for offences committed while they were minors.

<sup>24</sup> See Human Rights Committee, general comment No. 36 (2019) on article 6: right to life (CCPR/C/GC/36, para. 35).

## The CTC's recommendations on the rights of victims of terrorism

Since 2017, following the adoption of Security Council resolution 2331 (2016) on victims of trafficking and sexual gender-based violence linked to terrorism, the CTC has increasingly made recommendations to States on promoting the rights of victims of terrorism. They have included providing adequate support and assistance, including compensation, to victims of terrorism; activating a dedicated victims fund; implementing and extending victim and witness protection programmes to allow for their participation in judicial proceedings; and minimizing any risks of additional physical or psychological harm against them. In addition, the CTC has made specific recommendations encouraging States to ensure accountability for acts of sexual and gender-based violence linked to terrorism.<sup>25</sup>

**Number of CTC recommendations following assessment visits promoting the rights of victims of terrorism, per year**



*\*Note that the number of assessment visits and assessment visit reports has been affected by the 2020–2021 COVID-19 pandemic. There were only two assessment reports adopted for visits which took place in 2020, and none for 2021. Year 2021 is therefore omitted in this graph.*

<sup>25</sup> See “Towards meaningful accountability for sexual and gender-based violence linked to terrorism”, CTED, November 2023, available at: [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report-sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report-sgbv_linked_to_terrorism_final.pdf).

## UDHR article 5.

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

In its reports on visited Member States, the CTC regularly makes recommendations concerning the prohibition of torture, or other cruel, inhuman and degrading treatment or punishment, in the context of investigations into terrorism offences. These include recommendations for national legislation to reflect the absolute prohibition on torture and the criminalization of such acts, as well as for criminal procedure laws to include a specific provision that confessions obtained under torture or ill-treatment are inadmissible. It has recommended creating or activating national mechanisms for the prevention of torture and ill-treatment and introducing essential safeguards against torture and ill-treatment. It has recommended that States introduce the principle of non-refoulement into their legislation and ensure due process in the execution of expulsion orders as well as in extradition. It has also urged States to continue their dialogue with United Nations human rights mechanisms, including the Committee against Torture.

## UDHR article 8.

*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

The CTC has recommended that States ensure avenues for effective recourse for cases where counter-terrorism measures are employed in an unlawful manner, including special surveillance measures, use of biometrics, and restriction on one's rights stemming from the use of administrative measures. It encouraged States to set up effective complaint mechanisms and ensure thorough investigation of complaints as well as prosecution, as appropriate, of alleged violations of rights. It has also recommended that States develop appropriate mechanisms and procedures to challenge inclusion of names on domestic sanctions lists and watch lists.

Relatedly, the CTC has made additional recommendations on the establishment, activation or strengthening of independent oversight bodies, including national human rights institutions with the mandate and capacity to investigate misconduct of law enforcement and security personnel involved in counter-terrorism activities. It has recommended ensuring that these bodies are operationally independent, have sufficient resources and legal powers to investigate alleged violations, and that there is public awareness of the existence of such bodies.

## UDHR article 9.

*No one shall be subjected to arbitrary arrest, detention or exile*

The management of persons who have been detained or convicted on the basis of alleged (or proven) involvement in terrorism-related offences poses major challenges to many Member States. In particular, prisons can serve as potential incubators for radicalization to terrorism and terrorist recruitment, and failure to comply with human rights obligations could be counterproductive to efforts to prevent violent extremism conducive to terrorism in prisons.<sup>26</sup> This issue has been addressed by the CTC in its reports to visited Member States.

In fact, one of the highest number of human rights-related recommendations made by the CTC in its visit reports pertain to the rights of persons deprived of liberty. The CTC has recommended that visited States strengthen their safeguards against arbitrary and unlawful arrest related to terrorism cases. It has referred to the need to ensure that detention in the counter-terrorism context is based on an adequate legal foundation. It has encouraged States to reduce the length of pretrial detention and expedite trial proceedings. It has recommended that States continue efforts to ensure review of the legality of pretrial detention in terrorism cases on a regular basis and that accused persons are aware of the right to challenge the legality of detention, have the opportunity to do so, and have access to legal advice from the start of custody. It has also encouraged States to maintain or reinforce dialogue with United Nations human rights mechanisms in this regard.

The CTC has also recommended that States implement measures for the treatment of detained terrorist suspects and convicted terrorists, including by the military, in a manner that strengthens human rights protections. It has urged States to improve prison conditions to respect the dignity of all prisoners, in compliance with the Nelson Mandela Rules and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). It has recommended that necessary measures be taken to ensure that the conditions of detention of prisoners held for terrorism offences comply with international human rights standards, including through the prohibition of indefinite or prolonged solitary confinement. It has recommended that States grant continuous access to national human rights institutions and impartial humanitarian organizations, such as the International Committee of the Red Cross, to all places of detention where individuals are held for terrorism cases, and to strengthen independent national monitoring mechanisms for prisons. It has also said that States should redouble efforts to address the problem of prison overcrowding, including by establishing policies on the use of alternatives to the deprivation of liberty. It has also encouraged strengthening programmes for the pre- and post-release rehabilitation and reintegration of the

<sup>26</sup> CTED Analytical Brief, "Management of violent extremist prisoners and the prevention of radicalization to violence in prison", 2023.

general prison population, including allocation of adequate resources to the corrections system.

### **UDHR article 10.**

*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

Prosecution of individuals for terrorism acts is an integral part of efforts aimed at countering terrorism, including foreign terrorist fighters. In this regard, the CTC has made recommendations to about half of the visited States to ensure fair trial guarantees in terrorism cases, including amending legal provisions. It has recommended that States ensure that legal aid is available to all individuals accused of terrorism and related offences. It has also urged States to ensure the independence of the judiciary. It has recommended adopting legislation on witness protection and ensuring that the full range of protection measures are made available to witnesses and victims, as well as to criminal justice officials in terrorism cases. The CTC has recommended that legal proceedings be conducted in a way that ensures equality of arms and enables defendants to challenge evidence produced against them. It has also urged States to provide for the admissibility of information gathered by intelligence services and the military, on the battlefield and digitally, while also ensuring that such provisions include safeguards for compliance with international fair trial standards.<sup>27</sup>

### **UDHR article 11.**

*1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

*2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

Defining terrorist acts clearly and precisely on the basis of the provisions of international law, including the international counter-terrorism instruments, is essential to achieving one of the core objectives of resolution 1373 (2001) and subsequent resolutions: bringing those who participate in the financing, planning, preparation or perpetration of terrorist acts, or in supporting terrorist acts, to justice. Clear legal definitions in criminal law also ensure compliance by States with international human rights law, including the principle

<sup>27</sup> CTED, "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", December 2019.

of legality which holds that legislation should be sufficiently precise so as to provide legal certainty and predictability over conduct that will entail criminal responsibility.

The CTC has made recommendations to about half of the visited States on the principle of legality, in particular as it relates to the definitions of terrorism and terrorist acts in national legislation. The CTC has recommended that States review their criminal legislation to ensure that any definition of a terrorist or related offence is clear and precise so as not to apply to acts beyond those envisaged by the international counter-terrorism instruments to which the State is a party and to comply with international human rights law, including the principles of legality and predictability of criminal law. The CTC has recommended, for example, that elements of the terrorism offence that are vague, such as references to overly broad concepts that could be misused in the context of legal and non-violent activities are removed, and that open-ended language describing possible manifestations of terrorist intent is clarified. The CTC has also frequently recommended that offences of incitement to terrorism are drafted precisely to ensure clarity of the conduct that is criminalized (see more details under article 19 below). It has also encouraged States to ensure that mitigating circumstances are considered and that penalties are proportionate to the gravity of the conduct in question.

## UDHR article 12.

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

With the growing use of advanced technologies by States in their counter-terrorism policies, the CTC has referred in visit reports to the right to freedom from arbitrary interference with privacy. The CTC has frequently recommended that this right be protected, for example in the use of special means of surveillance, including urging States to clarify the rules for interception of communications. It has recommended that measures taken against terrorist abuse of the Internet and other information and communications technologies comply with the right to protection from arbitrary interference with privacy. It has encouraged States to ensure that financial information is collected and processed by law enforcement agencies with the necessary safeguards with respect to privacy and data protection; that development and maintenance of watch lists of known and suspected terrorists comply with applicable human rights standards; that the development and implementation of advance passenger information and passenger name record systems are in full compliance with international human rights law; and that the development and implementation of biometric tools include appropriate safeguards for protection of privacy and data.<sup>28</sup> It has encouraged the creation of oversight mechanisms to monitor these processes and ensure that the right to an effective remedy exists in case of violation of the right to freedom from arbitrary interference with privacy (see more details under article 8 above). Finally, the CTC has encouraged States to ensure that the retention and use of

<sup>28</sup> CTED Analytical Brief, "Biometrics and counter-terrorism", December 2021.



digital evidence is implemented with appropriate safeguards and to introduce clear legal procedures for using digital evidence, including across borders.<sup>29</sup>

### **UDHR article 14.**

- 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
- 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

According to the Office of the United Nations High Commissioner for Refugees (UNHCR), by the end of 2022, there were more than 29.4 million refugees and 5.4 asylum-seekers worldwide. In this regard, the CTC has recommended that States which had not done so at the time of the visit consider becoming a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It has encouraged States to ensure that measures to screen asylum applicants for possible involvement in terrorism do not infringe on refugee rights. To that end, it has recommended that States strengthen their domestic legal frameworks and measures pertaining to asylum-seekers and refugees to ensure that they are consistent with relevant legal obligations, including the principle of non-refoulement, and that the domestic provisions on exclusion are consistent with article 1(F) of the 1951 Convention. The CTC has also recommended that States build their capacity to conduct both registration and determination of asylum claims; ensure procedural rights of asylum-seekers throughout the refugee status determination process, including as relates to appeal rights and the ability to access material adduced against them in the context of exclusion assessments; and ensure that steps taken after any exclusion for terrorism-related reasons engage all relevant actors and are consistent with international legal obligations. It has encouraged States to consult and cooperate with UNHCR and other relevant international bodies regarding their legislation and practices pertaining to refugees and asylum-seekers.<sup>30</sup>

### **UDHR article 15.**

*Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

<sup>29</sup> CTED Trends Report, "The state of international cooperation for lawful access to digital evidence: research perspective", January 2022.

<sup>30</sup> CTED Regional Analytical Brief, "Reports of European member States to prevent terrorists from abusing asylum systems while ensuring compliance with international refugee and human rights laws: challenges, recommendations and good practices", April 2021.

Statelessness has serious implications for persons' ability to enjoy human rights and access socioeconomic services. In this regard, the CTC has highlighted the importance of taking appropriate measures to prevent statelessness. It has recommended that measures aimed at depriving of nationality persons suspected of involvement in terrorism are implemented in a manner consistent with international law, in particular applicable instruments on statelessness. It has also encouraged States to ensure that procedural safeguards are included in relevant legislation and provided for, together with due process guarantees to affected persons.

### **UDHR article 19.**

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

Protecting the right to freedom of opinion and expression when countering terrorism has been a recurrent topic raised by the CTC. In fact, one of the highest numbers of human rights-related recommendations made by the CTC in its visit reports pertain to the right to freedom of opinion and expression. Such recommendations were made to about half of the States the CTC visited between 2017 and 2023. These recommendations on freedom of opinion and expression are often combined with recommendations on the protection of the rights to freedom of thought, religion and belief, and many are made in connection with implementation of Security Council resolution 1624 (2005) on prohibiting and preventing terrorist incitement. The CTC has made recommendations encouraging States to ensure that adequate safeguards are in place to ensure full respect for the rights to freedom of expression, thought, conscience and religion in measures against alleged incitement, including in the implementation of strategies for countering terrorist narratives.

It has recommended that States clarify their definitions of "incitement" to terrorism so that they do not encompass forms of expression that may be protected by international human rights law. It has recommended that relevant provisions require both an intent to incite the commission of terrorist acts and the creation of a danger that such acts will be committed.

It has recommended that regulation of the media, including radio stations, prevents the dissemination of messages inciting the commission of acts of terrorism while also ensuring respect for the right to freedom of expression. The CTC has also urged States to remain mindful of the need to protect the right to freedom of expression in measures against terrorist use of the Internet and information and communications technologies, including social media networks.

## UDHR article 20.

- 1. Everyone has the right to freedom of peaceful assembly and association.*
- 2. No one may be compelled to belong to an association.*

States have sought to find a balance between preventing the abuse of the non-profit organization (NPO) sector for terrorism-financing purposes and preserving the vital role played by NPOs in national economies and social systems.<sup>31</sup> In its visit reports, the CTC has encouraged States to ensure that their legislation, regulatory frameworks and operational measures on countering the financing of terrorism ensure respect for the right to freedom of assembly and association and for the legitimate role played by NPOs in the collection and distribution of funds. It has called upon States to raise awareness in the NPO sector of the Financial Action Task Force's recommendation 8 and encouraged States to ensure the implementation of a risk-based approach with proportionate preventive measures aimed at the most vulnerable subsets of organizations without unduly restricting the operations of the entire NPO sector. It has also encouraged States to continue or strengthen their dialogue with their NPO sectors, including by introducing measures to promote transparency, accountability, integrity and public confidence in the administration and management of NPOs. Recognizing the role of civil society in CVE efforts, the CTC has also recommended that States take all possible steps to ensure a secure environment for civil society organizations to conduct their activities freely.

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<sup>31</sup> See CTED, "Thematic summary assessment of gaps in implementing key countering the financing of terrorism provisions of Security Council resolutions", December 2022.