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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin*

Summary

In the present report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addresses the global, regional and national effects of the widespread use of counter-terrorism and preventing and countering (violent) extremism law, policies and practice on the lives of women, girls and the family.

The interaction between family regulation and counter-terrorism is accelerating, with profound implications for both, giving the State considerable and unprecedented access to the home and enabling the legal regulation of family life in the name of national security in ways that hitherto would have been inconceivable. The effects are found across multiple counter-terrorism measures, with a specific and defined negative impact on the human rights of women and girls and direct consequences for the integrity and protection of the family.

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I. Introduction

1. The Special Rapporteur has identified gender mainstreaming and attention to the gendered effects of counter-terrorism, violent extremism and broadly defined security laws and practice as a fundamental aspect of her work. Specifically, the mandate holder has continued to identify the gender and human rights impacts of measures aimed at countering terrorism¹ and those of approaches directed at preventing or countering violent extremism.² She has also addressed countering terrorism and preventing violent extremism in specific country reports.³ More recently, the mandate holder has attended to: the gendered impacts of restrictions on civic space;⁴ the risks of women-focused programmes aimed at preventing and countering violent extremism, inclusive of “agenda-hijacking;”⁵ and the problematic use of gender stereotypes to promote the roles of women in countering terrorism and preventing and countering violent extremism.⁶ In the present report, she provides a comprehensive overview of the impact on women’s and girls’ rights of the use of counter-terrorism and preventing and countering violent extremism programmes. She specifically addresses the impact of counter-terrorism and countering extremism law and practice on the human right to family life,⁷ including the construction, regulation and control of the family resulting from those practices.

2. The Special Rapporteur notes that significant and substantive efforts have been made to incorporate a gender perspective into the national security arena. Gender mainstreaming is rooted in the development of international law and architecture for the advancement of gender equality and the empowerment of women. It has expanded to the counter-terrorism regulatory space, particularly within the United Nations counter-terrorism architecture, in part through the Security Council’s women and peace and security agenda.⁸ That particular progression has been articulated in previous reports from this mandate holder to the Human Rights Council.⁹ It is also related to a greater engagement by security actors with the multiplicity of roles that women play in society, such as in the context of conflict and in the structure and practices of terrorist groups, including those designated by the United Nations. The Special Rapporteur has observed that a range of “gendered security harms” have resulted from national security policies, even when Governments have sought to explicitly incorporate a gender perspective.¹⁰ Those harms result, for example, when “gender” is treated as synonymous with “women”,¹¹ when human rights and gender equality are removed from gendered approaches to counter-terrorism and preventing and countering violent extremism, when gender equality is instrumentalized through the promotion of gender equality and the empowerment of women as a national security tactic and when a gender equality perspective is used to focus on women terrorists in ways that encourage punitive State responses, often with a higher gender-related cost for women than for similarly situated men.

3. Drawing from the definition of gender used by the Committee on the Elimination of Discrimination against Women, the Special Rapporteur notes and affirms the definition of gender as a set of socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for those biological differences resulting in hierarchical

¹ See A/64/211.

² See, e.g., A/HRC/31/65, A/HRC/40/52 and A/HRC/43/46.

³ A/HRC/43/46/Add.1.

⁴ See A/HRC/40/52.

⁵ A/HRC/43/46, paras. 39–40.

⁶ A/HRC/31/65, paras. 52–53.

⁷ The family is recognized as the fundamental group unit of society and as such is entitled to protection and assistance under article 16 (3) of the Universal Declaration of Human Rights, article 23 (1) of the International Covenant on Civil and Political Rights and article 10 (1) of the International Covenant on Economic, Social and Cultural Rights.

⁸ See Security Council resolution 1325 (2000).

⁹ See A/HRC/31/65.

¹⁰ Jayne C. Huckerby, “In harm’s way: gender and human rights in national security”, vol. 27, *Duke Journal of Gender Law & Policy* (2020).

¹¹ Fionnuala Ní Aoláin and Jayne Huckerby, “Gendering counterterrorism: how to and how not to (part II)”, *Just Security*, 3 May 2018; Emily Winterbotham and Elizabeth Pearson, “Different cities, shared stories: a five-country study challenging assumptions around Muslim women and CVE interventions”, *The Rusi Journal*.

relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.¹² She further affirms the elaboration on that definition relied upon by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), which notes that such attributes, opportunities and relationships are socially constructed and are learned through socialization processes.¹³ While the present report primarily addresses the experiences of women and girls, she notes that men and boys also experience gender stereotyping and that masculinities and femininities also shape roles, expectations and harms in this arena. She underscores the social construction of gender binaries and that they do not fully encompass the ways in which sexual minorities and lesbian, gay, bisexual, transgender, queer and intersex persons experience the impact of counter-terrorism and countering (violent) extremism law and practice. She also reflects on the impact of those policies and practices for lesbian, gay, bisexual, transgender, queer and intersex persons. An intersectional approach to reflecting the experiences of counter-terrorism measures demonstrates how experiences of discrimination and human rights abuses intersect and are compounded as determined by other social identities, including race, ethnicity, religion, ability, age and sexuality, and beyond.

4. The Special Rapporteur is particularly concerned that women and girls bear heavy and unseen burdens resulting from both the direct and indirect impacts of counter-terrorism law and practice. She notes that, in the absence of a globally agreed definition of terrorism, many States have adopted national legislation concerning terrorism that is frequently at odds with the principle of legal certainty.¹⁴ Many countries criminalize acts which are protected by international human rights law, including freedom of expression, privacy, peaceful assembly and religious belief and expression, the right to a fair trial, the right to leave and return to one's country and the right to family life. The counter-terrorism arena is often mistakenly viewed as gender-neutral, both in its practices and consequences. The Special Rapporteur underscores that that view is mistaken. She stresses that counter-terrorism law and policy, particularly in formal and elite settings, national and international, occur in spaces which are dominated by male actors and informed by gendered stereotypes.

5. The implementation of counter-terrorism and preventing and countering violent extremism law, policy and practice is equally gendered. Women have historically struggled to have due and adequate representation in the security sector that dominates counter-terrorism enforcement, including among the police, the military, prison personnel and the intelligence services.¹⁵ Nationally, elite security spaces remain dominated by affluent men lacking ethnic, religious and cultural diversity. While some progress is demonstrated in ensuring greater access for women to security sector careers through gender parity strategies, senior and decision-making roles in those arenas remain overwhelmingly closed and inaccessible to women. The North Atlantic Treaty Organization provides one positive example of increased attention to gendered approaches and organizational oversight, through its adoption in 2018 of a revised women, peace and security policy to increase the representation of women at all levels in civilian and military positions.¹⁶ In 2018, France adopted a gender equality strategy that promotes the increased participation of women in

¹² Committee on the Elimination of Discrimination against Women, General recommendation No. 28 (2010); E/CN.4/1996/105, para. 13; and Working Group on discrimination against women and girls, "Gender equality and gender backlash", position paper.

¹³ Office of the Special Adviser on Gender Issues and Advancement of Women, "Gender mainstreaming: strategy for promoting gender equality" (2002), as reaffirmed in United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Gender mainstreaming: a global strategy for achieving gender equality and the empowerment of women and girls" (2020).

¹⁴ See, e.g., Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, "Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism", sections 3.1–3.3 (2020).

¹⁵ Micah Zenko and Amelia Mae Wolf, "Leaning from behind", *Foreign Policy*, 24 September 2015; and J. Ann Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (Columbia University Press, 1993).

¹⁶ North Atlantic Treaty Organization (NATO), "Women, peace and transforming security, visions of the future of women, peace and security for NATO" (2018).

peace and security and public decision-making roles, including in peacekeeping operations.¹⁷ By contrast, although examples of good practices may exist, little data are available on national intelligence services.¹⁸ Improved gender representation can have significant positive effects on the design, delivery and oversight of counter-terrorism law and practice including for women and girls.¹⁹

6. The Special Rapporteur reiterates, however, that counter-terrorism institutions and policymakers not only suffer from an acute “diversity crisis” along gender and race lines, especially at the highest levels of decision-making, but also function within institutionalized cultures of discrimination, misogyny and gender bias that perpetuate gender inequality and cultures of impunity, while rewarding a very particular set of traditionally “masculine” traits and behaviours, including technocratic knowledge, justification of the use of force, decisiveness over moral considerations and masculinist protection narratives.²⁰ That creates a complex reality for improving gender parity in those spaces, hindering institutions from responding to crises effectively and serving all communities equally, and leads to instrumentalization of women on the ground and failure to appreciate them as experts in their own right. She acknowledges that having certain women as architects and decision-makers in counter-terrorism and military establishments promoting and regulating counter-terrorism at home and abroad is not unproblematic.²¹ The addition of women, particularly similarly situated elite women, into such institutions does not necessarily better equip such institutions to mainstream a gender perspective or protect the rights of diverse women. She underscores the complexity of that space and cautions against attention to gender parity alone as a marker of progress on non-discrimination. Regrettably, some women claim to function as feminist voices within those security frameworks instrumentalizing and appropriating a securitized version of the women and peace and security agenda to advance the narrow aims of countering terrorism or securitized countering violent extremism.²² Necessary transformations are thereby missed, without recognition of the gendered harms and consequences of securitized approaches and their effects on women or the appreciation that the effects of the counter-terrorism State fall on women who are most often of different races, ethnicities and religions from the power brokers making decisions.²³

7. From her sustained engagement with women’s civil society actors, the Special Rapporteur is aware that the consequences of increased securitization and expanded counter-terrorism and preventing and countering violent extremism regulation have been particularly felt by women-led civil society and by women human rights defenders. She affirms the emphasis placed by the Committee on the Elimination of Discrimination against Women²⁴ and the Special Rapporteur on the situation of human rights defenders on the need to specifically protect women human rights defenders,²⁵ including from the negative effects of ill-conceived and badly applied counter-terrorism law and practice. Recent reports have detailed the increasing threat against women human rights defenders in conflict and post-conflict countries, specifically countries experiencing terrorism and those at the centre of

¹⁷ France, “Stratégie internationale de la France pour l’égalité entre les femmes et les hommes (2018–2022)”, sect. 2.3.5.

¹⁸ Geneva Centre for Security Sector Governance, OSCE Office for Democratic Institutions and Human Rights and UN-Women, “Intelligence and gender, gender and security toolkit” (2020).

¹⁹ Ibid.

²⁰ S/2018/900, para. 14.

²¹ Negar Razavi, “NatSec feminism: women security experts and the US counterterror State”, *Signs: Journal of Women in Culture and Society* and International Crisis Group, “A course correction for the women, peace and security agenda” (2020).

²² Ibid.

²³ Noting that interventions premised on robust counter-terrorism measures and strategies, including intelligence and special forces, drones and punitive sanctions, are rarely analysed in terms of their effects on women in the sites of use. Ibid.

²⁴ Committee on the Elimination of Discrimination against Women, General recommendation No. 30 (2013), paras. 6, 36, 37 and 57 (b). See also statements made by the Committee, including the call made on International Women Human Rights Defenders Day 2020 to release all detained women human rights defenders, including Saudi women’s rights activist Loujain Al-Hathloul.

²⁵ A/HRC/43/51, para. 28.

global counter-terrorism responses.²⁶ Women human rights defenders are targeted at alarming rates for challenging the root causes of conflict, including corruption, governance deficits, access to land or resources and traditional notions of family and gender roles in their societies, by both State and non-State actors.²⁷ States have layered responsibilities under international human rights law, including to respect, protect and promote the rights of all persons within their jurisdiction and to provide effective remedy.²⁸ These have been specifically elaborated upon in relation to the violations of rights, targeting and reprisals faced by human rights defenders as a result of their work.²⁹

8. The costs are particularly acutely felt in conflict-affected and fragile States,³⁰ where women are doubly squeezed by the harms caused by violent non-State actors for whom indiscriminate violence is their stock-in-trade. Women and girls are caught between Scylla and Charybdis in contexts where non-State armed groups and proscribed terrorist organizations vie for control of territory and governance with States.³¹ The Special Rapporteur acknowledges that terrorism is particularly detrimental for the protection of women's rights and that women who are victims of terrorism face particular and unique challenges. She affirms that there are specific harms that women experience as a result of overarching gender inequalities, stereotypes and assumptions about their needs, experiences and vulnerabilities after terrorist acts that produce policies and practices of layered harms for women who are victims of terrorism. She is deeply concerned about the sustained targeting of women and girls by non-State actors and designated groups, and in particular the widespread use of sexual violence, rape and sexual slavery to harm women and their families. She supports efforts to ensure the prosecution of acts of sexual violence under international law³² and welcomes initiatives to advance the implementation of international law standards for survivor-centred responses and prosecutions.³³

9. In the present report, the Special Rapporteur documents the intersections of gender and national security approaches on women, girls, families, family life and family relations – specifically addressing their human rights dimensions and impacts – and provides guidance and recommendations to States.³⁴

II. Impact on women and girls of counter-terrorism and preventing and countering violent extremism law and practice

10. Since 2001, the scale, scope and rate of growth in counter-terrorism regulation has exponentially increased. Counter-terrorism regulations reach from borders to bedrooms and are ever present in the regulatory frameworks that have an impact on the full spectrum of human rights. Expansive counter-terrorism regulation causes rupture, displacement and transformation in the domestic and private lives of individuals, groups and communities, and much of those costs and harms have been unseen and invisible, not least because they are experienced in the “private” sphere and precisely because the burdens fall in unrecognized ways on women and girls. In parallel, counter-terrorism regulations situate institutions and

²⁶ S/2018/900, para. 1.

²⁷ *Ibid.*, para. 61.

²⁸ See General Assembly resolution 53/144.

²⁹ See Human Rights Council resolution 45/36, in particular paras. 29–31; and decision 71/II of the Committee on the Elimination of Discrimination against Women.

³⁰ Fionnuala Ní Aoláin and others, eds., *The Oxford Handbook of Gender and Conflict* (Oxford University Press, 2018).

³¹ A/HRC/43/51, para. 28.

³² A/75/337, para. 21.

³³ See, e.g., the draft global code of conduct for investigating and documenting conflict-related sexual violence.

³⁴ Noting that advice on gender (but not human rights-based gender analysis) has come from the United Nations and other entities. See, e.g., Counter-Terrorism Committee Executive Directorate, “Gender dimensions of the response to returning foreign terrorist fighters: research perspectives” (2019); and Global Counterterrorism Forum, “Addendum to the GCTF good practices on women and countering violent extremism, with a focus on mainstreaming gender” (2019).

information on health, finance, education and the home as the foci for the early detection, monitoring and overall prevention of “violent extremism”, thereby rendering pivotal aspects of a person’s most intimate and private life to the regulatory domain of the security State. The upsurge in preventing and countering violent extremism programming and practices by States has accelerated the intrusive thrust of security into private life and placed institutions and professions which have traditionally functioned as the guardians of health, maternity, education and welfare onto the enforcement edge of national security policies with multigenerational effects. Notably, those intrusions, harms and human rights violations do not fall equally on all women, girls and families. The overregulation and visibility of some families, some women and some girls to the security State operates largely along entrenched racial, ethnic and religious lines.³⁵ The focus on certain women and their families mirrors broader and pre-existing fault lines whereby some communities do not benefit from the privileges of presumed privacy for their intimate lives.

11. The Special Rapporteur recalls the mandate’s examination of how surveillance, particularly mass surveillance, for counter-terrorism purposes and access to bulk technology affects the right to privacy.³⁶ She underscores that the right to privacy is a gateway right, enabling and supporting a range of other rights, including the exercise of the right to family life. She affirms that new technologies and data collection methods in particular have disparate impacts on minorities and are profoundly gendered.³⁷ New technologies that ease the operational burdens of surveillance and the investment in surveillance infrastructure that has developed since 11 September 2001 continue to grow at an exponential pace. International human rights law requires States to provide an articulable and evidence-based justification for any interference with the right to privacy.³⁸ When surveillance is unlawfully undertaken, the individual harms are clear and often the focus of rights discussions, yet, in counter-terrorism operations, the family and home space are often part and parcel of those surveillance measures. In addition, unlawful use of counter-terrorism measures has also demonstrated patterns of targeting whole families, in some cases, to cause an overall disruption in the stability of the family unit.³⁹ The association with a suspected individual therefore has a direct impact on the rights of family and community members to privacy, but also operates in a climate where a suspected individual faces a larger presumption of guilt, both from law enforcement and communities, than in the context of other criminal justice investigations. Women, for example, are immediately presumed to be suspect by virtue of familial or communal association with particular men. Moreover, over the past two decades, a discriminatory use of counter-terrorism measures against Muslim individuals and communities has directly and indirectly affected the rights of associated family members. Significant research has uncovered wide misuse and abuse of surveillance laws on a discriminatory basis, targeting particular communities and groups based on ethnic background, race and religion.⁴⁰ This has rendered some forms of masculine expression as hyper-visible to law enforcement (exacerbated by ethnic and religious identity) and others, particularly the masculine protector expression, as above suspicion. Bodies of research have not only uncovered direct rights violations, but also how surveillance “produces fear and furthers control and securitization”,⁴¹ compounds harm and alters the social fabric of tolerance towards increased suspicion and more permissive environments for hate speech and

³⁵ See A/73/362.

³⁶ See A/69/397.

³⁷ A/HRC/44/57, paras. 4–9 and 17. See also Anna Kovacs, “Informed consent - said who? A feminist perspective on principles of consent in the age of embodied data”, report for the Internet Democracy Project (2020).

³⁸ Article 17 of the International Covenant on Civil and Political Rights. See also A/69/397, paras. 28–31.

³⁹ See A/75/385;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25374>; and Human Rights Council decision 40/113.

⁴⁰ See, e.g., Supreme Court of the United States of America, opinion in *Tanzin v. Tanvir* (592 U. S. ____ (2020)) or United States Court of Appeals, Third Circuit, *Hassan v. City of New York*, decision of 13 October 2015.

⁴¹ Nadera Shalhoub-Kevorkian, *Security Theology, Surveillance and the Politics of Fear* (Cambridge University Press, 2015).

crimes. The creation of “suspect communities” has also created “internal suspect bodies”, within the household where family members turn inwards and view one another through the lens of the State.⁴² This is a common result of discriminatory law enforcement where groups of peoples begin to self-regulate their realization of other freedoms, including freedom of expression and freedom of religion, so as not to draw the attention of the State.

12. The arrest and detention of family members during counter-terrorism or extremism actions by the State have a particular impact on families and the sanctity of the home. The Special Rapporteur notes that she has been consistently made aware of practices such as early morning disruptive arrests⁴³ and culturally and socially inappropriate behaviour towards women and children in their homes, including exposure of bodies and denigration of beliefs and the organization of the home, causing psychological trauma and stigma. She is particularly aware that, in cases of wrongful or mistaken security operations, repairs to damage caused to homes have been slow, apologies rarely forthcoming and other remedies not provided. Following arrest and detention, detainees’ family members often lack information and are given no legal basis for arrest, incommunicado detention is frequent in counter-terrorism contexts and rendition remains an ongoing and regrettable practice in cases where terrorism charges are laid.⁴⁴ She stresses that women with young children who are detained in high-security settings face extraordinary barriers to functioning as parents and maintaining family unity.⁴⁵ The Special Rapporteur particularly highlights the ongoing and life-long effects on the family members of 40 persons still detained in Guantanamo Bay, Cuba, many of whom were either not initially charged, not charged until years later or have not been charged at all.⁴⁶ They experience unending violations of their right to family life, a practice which should not be tolerated by a civilized society. She affirms the human rights violations that follow for family members when their son, brother, wife or sister is subjected to torture while being held on terrorism or extremism charges.⁴⁷ She highlights the long-term human rights consequences of recent legislation in multiple countries which seeks extended prison sentences for terrorism and adds cumulative administrative measures after criminal sentences are completed, which will have a substantial impact on family relationships and the human rights of individuals within families.⁴⁸

13. Counter-terrorism financing laws have been shown to negatively affect women’s rights organizations in ways that hinder the civic space for advocacy, the advancement of gender equality and the empowerment of women.⁴⁹ Such impacts further limit their ability to deliver equality and rights protection to women and girls. The Special Rapporteur recalls previous observations⁵⁰ detailing the negative impact of counter-terrorism financing laws. It is not only the “small scale” of women’s civil society work that is perceived as a risk to donors and financial institutions, but also precisely because of their “divergent voices” or challenging of traditional gender norms which can result in backlash and governmental efforts to curb women’s freedom of expression and association.⁵¹ When combined with the

⁴² See, e.g., Mary J. Hickman and others, “Social cohesion and the notion of ‘suspect communities’: a study of the experiences and impacts of being ‘suspect’ for Irish communities and Muslim communities in Britain”, *Critical Studies on Terrorism*; and www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E.

⁴³ A/HRC/40/52/Add.4, para. 25.

⁴⁴ See, e.g., A/HRC/WGAD/2020/41; A/HRC/WGAD/2020/6; A/HRC/WGAD/2018/39; A/HRC/WGAD/2018/30; A/HRC/WGAD/2018/2; A/HRC/WGAD/2017/78; A/HRC/WGAD/2013/10; A/HRC/13/30/Add.1, p. 145; and E/CN.4/2005/6/Add.1, p. 23.

⁴⁵ See A/HRC/WGAD/2020/14.

⁴⁶ See A/HRC/13/42. See also, e.g., A/HRC/WGAD/2013/10; A/HRC/13/30/Add.1, pp. 140 and 145; and E/CN.4/2005/6/Add.1, p. 23.

⁴⁷ United States Court of Appeals, Second Circuit, *Arar v. Ashcroft*, decision of 30 June 2008.

⁴⁸ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25443>;

and

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25375>.

⁴⁹ Duke Law International Human Rights Clinic and Women Peacemakers Program, “Tightening the purse strings: what countering terrorism financing costs gender equality and security” (2017).

⁵⁰ A/64/211, para. 42.

⁵¹ *Ibid.* See also A/HRC/WGAD/2020/33.

harsh impact of material support to terrorism laws, the operating space can fundamentally freeze the work of those actors. Additionally, counter-terrorism financing measures have been observably used to penalize family members for de minimis support and, in some cases, even when the conditions of the financial need had been caused by government detention or repatriation policies.⁵² Counter-terrorism financing measures with provisions on material support to terrorism being targeted at traditional practices of family support has undermined families and directly affected the economic and social rights of family members, including children. Notably, women may even have less access to information, have limited knowledge of a spouse's or family member's activity or may not be able to challenge such behaviour even if it is known.⁵³ Examples include families sending small amounts of money to women and children in camps in the Syrian Arab Republic and relatives of detainees sending money through appropriate government ministries to a listed individual, and, as noted in the following section, the expanding use of sanctions has a profound and increasing impact on the rights of family members of those whose assets are frozen.⁵⁴

14. Over the past 30 years, the use of sanctions regimes has become increasingly common in national, regional and international practice.⁵⁵ Sanctions have enabled the Security Council to “elastically” reinterpret “threats to international peace and security capable of justifying Council intervention ... with sanctions imposed for promoting human rights, restoring democratic leadership and furthering arms control” – a key enabling factor for the United Nations global governance of counter-terrorism.⁵⁶ Sanctions regimes have consolidated and expanded beyond recognition in the post-11 September 2001 counter-terrorism arena. That locus can be pinpointed to Security Council resolution 1267 (1999) requiring States to freeze funds and other financial resources directly belonging to, or indirectly benefitting, the Taliban. The regime was broadened to include Al-Qaida and persons associated with Osama bin Laden by Council resolution 1333 (2000). It was extended to target Islamic State in Iraq and the Levant (ISIL) by resolution 2253 (2015). Sanctions are global in scope and potentially limitless in duration.⁵⁷ Holders of this mandate have consistently articulated concerns that terrorism sanctions are applied both as a result of allegedly criminal conduct and as a purely preventative measure.⁵⁸ Sanctions function as a pre-emptive legal power, with few meaningful legal constraints and limited oversight, and constitute an exercise of unprecedented supranational power. The basis upon which persons are subjected to the most invasive human rights violations are secret; data are collected primarily by intelligence entities, most of whom operate without independent oversight; and, in respect of both United Nations and national processes, no comprehensive remedies exist for the individual, despite hearty political protestations to the contrary. Security Council resolution 2560 (2020), while paying welcome attention to the rules and procedures regulating sanctions, does not resolve the weighty legal concerns surrounding them.

⁵² Duke Law International Human Rights Clinic, “Families in the crosshairs: a human rights analysis of the Netherlands’ national security policy”, submission to the Special Rapporteur (2020).

⁵³ OSCE Office for Democratic Institutions and Human Rights, “Note on the Shanghai Convention”, para. 69, citing the United Nations Office on Drugs and Crime “Handbook on gender dimensions of criminal justice responses to terrorism”.

⁵⁴ Ibid.

⁵⁵ Gavin Sullivan, *The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law* (Cambridge University Press, 2020). During the first 45 years of the existence of the United Nations, sanctions were only imposed twice (Security Council resolutions 232 (1966) (Southern Rhodesia) and 418 (1977) (South Africa)). See also European Union, action plan on human rights and democracy, 2020–2024, para. 1.6 (a).

⁵⁶ Ibid.

⁵⁷ See Security Council resolution 1390 (2002).

⁵⁸ According to the guidelines for the conduct of the work of the Security Council Committee 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, a criminal charge or conviction is not a prerequisite for listing as the sanctions are intended to be preventive in nature (para. 6 (d)). See also A/61/267, para. 31.

15. Through multiple Security Council resolutions,⁵⁹ a United Nations infrastructure has developed, namely, sanctions committees which administer the “blacklists” of individuals and entities listed. The absence of adequate and comprehensive legal oversight of sanctions regimes has been the subject of sustained concern for national courts,⁶⁰ regional courts⁶¹ and human rights actors, including holders of this mandate. Responding in part to those concerns, the Security Council adopted resolution 1904 (2009) establishing the Office of the Ombudsperson to receive, consider and make recommendations on requests for names to be removed from the sanctions list.⁶² All holders of the office of the Ombudsperson have been recognized jurists of integrity,⁶³ yet, despite their best efforts to work within the constraints of the procedures provided,⁶⁴ disquiet remains about listing on rule of law grounds. Persons are targeted often on unclear or non-independent grounds. The basis of the information provided has been rightly critiqued by those who see it, specifically the Ombudsperson.⁶⁵ The process is highly politicized, and the rights of the targeted individuals and their families play no meaningful role in the outcomes or deliberations concerning listing. Notwithstanding the fact that the Office of the Ombudsperson undertakes important and valuable work to delist, the process provides neither a fair process nor a fair remedy to those who are subject to it, as is required by international law.⁶⁶

16. The impact of counter-terrorism sanctions and listing on women, girls and families are wide-ranging. The impact of sanctions goes far beyond the effects on a particular listed individual. If listed,⁶⁷ women, like men, are subject to an opaque and Kafkaesque political process which affects their political, social, economic and cultural rights; the consequences are severe and raise fundamental concerns of a lack of legality, legal certainty and proportionality.⁶⁸ For example, securing work is difficult (article 6 of International Covenant on Economic, Social and Cultural Rights); renting or purchasing a home will be challenging, if not impossible (article 25 (1) of the Universal Declaration of Human Rights); travel is prohibited (article 13 (2) of the Universal Declaration of Human Rights); accepting financial assistance makes other persons criminally liable, *inter alia*, affecting the family (article 16

⁵⁹ There are 14 active sanctions committees, including those established pursuant to Security Council resolutions 751 (1992); 1267 (1999), 1989 (2011) and 2253 (2015); 1518 (2003); 1533 (2004); 1591 (2005); 1636 (2005); 1718 (2006); 1970 (2011); 1988 (2011); 2048 (2012); 2127 (2013); 2140 (2014); 2206 (2015); and 2374 (2017).

⁶⁰ Supreme Court of the United Kingdom of Great Britain and Northern Ireland, *Her Majesty's Treasury v. Ahmed and others*, judgment of 27 January 2010, UKSC 2, in which Lord Hope commented on sanctions as a unique global legal weapon that made individual suspects “effectively prisoners of the state”, without any political or legal redress; Federal Court of Canada, *Abdelrazik v. Canada*, decision of 5 June 2009; and European Court of Human Rights (Grand Chamber), *Al-Dulimi and Montana Management Inc. v. Switzerland* (application No. 5809/08), judgment of 21 June 2016.

⁶¹ European Union, Court of Justice (Grand Chamber), *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and others* (joined cases Nos. C-402/05 P & C-415/05 P), judgment of 3 September 2008.

⁶² The procedure was updated through Security Council resolution 1989 (2011), although it was not substantially improved from a due process perspective.

⁶³ The Special Rapporteur concurs with the previous mandate holder, Ben Emmerson, that the mechanism is as fair as possible within the limits of its mandate, but the structural flaws of the regime remain despite the appearance of independence (A/67/396, para. 34).

⁶⁴ See www.un.org/securitycouncil/ombudsperson/approach-and-standard.

⁶⁵ For example, the lack of mandate for the Ombudsperson to review the Committee’s original decision to list; the lack of equality of arms regarding information available to petitioners; the lack of formal judicial independence for the Ombudsperson and the scope and nature of the terms of appointment (in practice and contractually, given that the term is for a period of approximately one year); the lack of entitlement to a United Nations laissez-passer; the less favourable contract terms than those that apply to comparable judicial positions, despite being formally described as a mandate; and the failure of States to allow for reasoned (if redacted, as necessary) opinions to explain the reasoned decisions of the Ombudsperson.

⁶⁶ Concerns include breach of article 10 of the Universal Declaration of Human Rights and articles 2 and 14 of the International Covenant on Civil and Political Rights and incompatibility with the Basic Principles on the Independence of the Judiciary.

⁶⁷ As of 21 December 2020, only four women were listed. See the list established and maintained pursuant to Security Council resolutions 1267 (1999), 1989 (2011) and 2253 (2015).

⁶⁸ A/61/267, paras. 32–37; and A/67/396, paras. 33–35.

(3) of the Universal Declaration of Human Rights and article 23 (1) of the International Covenant on Civil and Political Rights); and few meaningful legal remedies exist (article 2 of the International Covenant on Civil and Political Rights). Being listed has been likened to a “civil death penalty”.⁶⁹ Women whose family members or spouses are listed bear the full brunt of many of the impacts, not least because, in many legal systems, or by virtue of the patriarchal construction of family finances, they may not have independent access to work, funds or bank accounts or independent sources of income. In countries where women cannot own property, they may not alienate property held by a family member or spouse who has been listed. While humanitarian exemptions for individuals exist in some contexts,⁷⁰ the Special Rapporteur finds them to be financially inadequate and difficult to access, operating to increase stigma and exclusions for family members, rather than to alleviate them. The fact that no legal aid is provided to those who seek to challenge their listing may fall particularly heavily on women and families with little material means to hire legal representation and undertake the arduous task of challenging the listing. In a report emanating from the high-level review of United Nations sanctions, issues of gender and women’s rights were raised with a focus on the impact of armed conflict on women, without addressing the negative impacts on women with listed family members or spouses.⁷¹ The Special Rapporteur has directly encountered such impacts in her country visits and seen the poverty, shame and vulnerability listing creates for families. She is profoundly concerned by the practices she has observed in multiple countries, whereby States have developed their own listing and sanctions procedures for persons suspected, charged or convicted under domestic law of terrorism or “extremism”. Given the highly opaque and problematic definitions adopted by many States and over-zealous implementation, women and family members are being sanctioned for the acts of associated family members, through widespread and destructive sanctions and listing processes which simply do not comply with international law. She underscores that, more often than not, listing and sanctions procedures are being domestically applied to persons who are reasonably exercising their rights to expression, assembly, religious opinion and belief and political participation. The impact on family life is intergenerational and long-term. Children suffer directly from the penalties and stigma being (often unreasonably and opaquely) applied against adults in their families; young family members, particularly boys, are the subject of harassment and surveillance by security services based on the listing of a family member; and the mandate holder is aware of credible information that pressure to become informants for the security and intelligence sector is applied on the penalty of being listed as a result of non-cooperation.

17. The Special Rapporteur calls out the violation of the most basic tenants of the rule of law in listing procedures and process, both at the United Nations and in the national practice of States. The rule of law deficits fall particularly hard on women and children, whose capacity to access justice is severely attenuated in many parts of the world.⁷² An additional and significant overhaul of the Security Council’s listing regime is overdue, which should at a minimum be aimed at matching the rhetoric of independence and should be accompanied by an expansion of the capacity of the Ombudsperson with precise legal guarantees to that effect. An expanded and adequately empowered Office of the Ombudsperson should apply to all listing procedures.

III. Impact on families, family life and family relations of counter-terrorism regulation

18. The protection of the rights of the family⁷³ in all of its diverse forms remains a distinct and complex agenda within the international legal framework for the protection and

⁶⁹ See www.sueddeutsche.de/politik/dick-marty-bericht-zu-terrorlisten-zivile-todesstrafe-1.344886 (in German), citing Dick Marty, Rapporteur for the Council of Europe.

⁷⁰ See, e.g., Security Council resolutions 1267 (1999), para. 4 (a), and 1591 (2015).

⁷¹ See www.hlr-unsanctions.org/HLR_WG3_report_final.19.1.15.pdf.

⁷² Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015).

⁷³ See Human Rights Council resolution 29/22.

promotion of human rights.⁷⁴ The family can function as an extraordinarily meaningful site for the realization of individual rights. However, it can also function as a site of exclusion for particular types of families, a site of gender-based discrimination that places women's rights secondary to men's or a site of violence, secrecy and repression. Historically, for example, certain rights violations, particularly of those of women and children, such as domestic violence and violence against women, were seen as outside of the scope of public regulation and critiqued precisely because of their location within the privacy of the home and the family.⁷⁵ That remains true in many places. Still, in diverse contexts, various exclusions and hierarchies of families based on their perceived structure or origin persist, such as those that are perceived as male-headed, heterosexual or, in some contexts, Western or secular. That leaves some families without equal recourse and status under the law and increasingly vulnerable to State intervention in the name of countering terrorism and produces a range of stigmas for families that ultimately lead to compounding harms and rights violations. The implications for the family – both as a unit and for individual family members – are considerable.

19. Today, as critiques around gender equality and non-discrimination are rightfully at the centre of discussions on the matter, the family structure in all of its diversity survives and evolves. The family, and “home life”, remains a meaningful site of respite within which to exercise the full scope of individual rights among diverse contexts and communities. It is within that living and evolving context that the Special Rapporteur aims to construct a complex picture of the impact of counter-terrorism regulation on families and family life.

20. As counter-terrorism has expanded its scope, it has insidiously crept into the regulation of family life, family law and the intersection between families and the State. It is the result of classic counter-terrorism regulation, where both the family and individual family members are the target of the State's attention. The effects are experienced directly, e.g., interrogations or counter-terrorism financing prosecutions of relatives of terrorism suspects, and indirectly, e.g., the effects on relatives of the citizenship revocation or cancellation of the welfare benefits of sanctioned individuals. In parallel, the “home” increasingly functions as a new frontier in the war against terrorism, as State counter-terrorism policy puts certain homes firmly in its counter-terrorism sights, and the shift to preventing and countering violent extremism has squarely placed the family as a site of regulation, possibility and securitization on the agenda of States. The cost to families of counter-terrorism has not always been externally obvious. The reasons are varied. Many national security policies are in areas routinely characterized by confidentiality, e.g., custody decisions. Many interventions occur at the local level, involving actors who are atypical national security stakeholders, e.g., youth workers and social workers, and whose decision-making sites and processes are diffuse, informal and opaque, making meaningful oversight challenging.⁷⁶ Precisely because of the stigma associated with being identified as an “extremist” or a “terrorist”, or as affiliated or associated with a terrorist or an extremist, there are extraordinary fears and costs for family members to make surface the harms they experience directly or indirectly from security actors and counter-terrorism policies.

21. The Special Rapporteur is particularly concerned that the very construction of the family is being shaped and distorted by counter-terrorism law and practice.⁷⁷ The effects implicate human rights beyond the usual scope of analysis regarding national security policies, requiring attention to States' obligations, such as those not to interfere with the family life, to ensure equality of rights within the family and to protect and assist the family,⁷⁸

⁷⁴ See A/HRC/31/37.

⁷⁵ Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992).

⁷⁶ A/HRC/43/46, para. 32.

⁷⁷ Perceptively called “Family law versions of counter-terrorism”. See Clive Walker, “Foreign terrorist fighters and UK counterterrorism law” in David Anderson, *The Terrorism Acts in 2015: Report of the Independent Reviewer in the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (United Kingdom, 2016).

⁷⁸ UN-Women, “A contemporary view of ‘family’ in international human rights law and implications for the Sustainable Development Goals” (2017).

those concerning the status of children as rights holders⁷⁹ and other rights relevant to family life, e.g., the right to inheritance and sexual and reproductive rights, alongside the traditional areas of inquiry under the mandate, including the rights to privacy, freedom of religion or belief, non-discrimination and equality. Three pertinent dimensions of family-related practice are the regulation of “legitimate” marriage, birth certificates and the recognition of citizenship and custody. With regard to marriage, she notes the challenging issues arising as a result of the practices of marriage, including forced marriage associated with armed groups, in Iraq, the Syrian Arab Republic and other conflict-affected areas.⁸⁰ The failure and unwillingness of States to recognize the marriages of their (female) nationals to individuals associated with proscribed and listed organizations results in the non-recognition of certain families under law, the exclusion from entitlements that flow from the legal recognition of family status and the loss of the financial, cultural and social standing facilitated by marriage status. Article 16 of the Universal Declaration of Human Rights affirms the right of persons to marry and found a family and was drafted specifically to underscore the equal rights of women in the context of marriage. There are many organized and violent organizations, including far right-wing violent groups, whose members marry freely, where no legal impediments to the exercise of marriage rights or recognition are evident, raising concerns about selective non-recognition of certain marriages based on religious, ethnic or minority status. The Special Rapporteur affirms the prohibition on forced marriage, recognized by the International Criminal Court.⁸¹ She underscores the significance of marriage recognition and the importance of States applying the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages to ensure the protection of the fundamental rights associated with marriage.

22. The Special Rapporteur is concerned about the failure to recognize the births of children of persons associated with proscribed groups. Specifically, hundreds of children were born in Iraq and the Syrian Arab Republic when ISIL functioned as the de facto authority over large swaths of that territory. The issuance by non-State armed groups of birth “certificates” and their subsequent non-recognition places children born under the caliphate in the category of an “unchild”,⁸² lacking legal and social identity under law, stateless as a matter of international law and resultingly vulnerable to the most egregious and profound human rights violations. Legal recognition under law to identity is essential to claim family rights; its absence produces a myriad of intersectional harms. The lack of individual legal recognition is inconsistent with article 15 of the Universal Declaration of Human Rights, that everyone has the right to a nationality. The recognition of nationality often functions as the precursor to the meaningful exercise of family rights and is essential to family unity. The deliberate obfuscation in counter-terrorism practice by States in order to disable the recognition of nationality constitutes a violation of individual rights and functions to undermine the right to family life.

23. The Special Rapporteur notes an acceleration in the practices of citizenship stripping and deprivation in the counter-terrorism context.⁸³ Arbitrary deprivation of citizenship is a violation of international law, and widespread use of citizenship stripping in the name of countering terrorism works against the spirit and intention of both the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.⁸⁴ The deprivation of citizenship for a family member has profound consequences for the integrity, functionality and vulnerability of the family as a whole. Where the family member is the

⁷⁹ See Kristen Sanberg, “Children’s right to protection under the CRC” in Asgeir Falch-Eriksen and Elisabeth Backe-Hansen, eds., *Human Rights in Child Protection: Implications for Professional Practice and Policy* (Palgrave Macmillan, 2018).

⁸⁰ Mara Redlich Revkin and Elizabeth Jean Wood, “The Islamic State’s Pattern of Sexual Violence: Ideology and Institutions, Policies and Practice”, *Journal of Global Security Studies*.

⁸¹ “Situation in Uganda in the case of *The Prosecutor v. Dominic Ongwen*”, ICC-02/04/-01/15, para. 95.

⁸² Nadera Shalhoub-Kevorkian, *Incarcerated Childhood and the Politics of Unchilding* (Cambridge University Press, 2019).

⁸³ See, e.g., the Institute on Statelessness and Inclusion Year of Action on Citizenship Stripping and the Institute’s report, “The world’s stateless: deprivation of nationality” (2020).

⁸⁴ Supreme Court of the United Kingdom, *Begum v. Secretary of State for the Home Department*, case No. UKSC 2020/0158; and Office of the United Nations High Commissioner for Refugees, “Guidelines on Statelessness No. 5”.

male head of household, his uncertain status or deportation can render the entire family as the object of suspicion and surveillance. The loss of a family member, particularly in households with highly stratified gender roles, may result in loss of income or, in countries with robust welfare infrastructure, loss of entitlement to assistance. Removal of a family member to another jurisdiction undermines parent-child relationships and, as recognized in the Convention on the Rights of the Child, limits children's capabilities and opportunities in multiple ways. The fact that citizenship stripping can control and define on security grounds who may legally benefit from family membership reveals the deep connection being forged between family regulation and security policy. The removal of citizenship or immigration status from a family member based on assumptions or claims of radicalization, extremism or engagement in or support of terrorism and/or the failure to preserve family units affect the fundamental rights of all its members. The lack of an internationally agreed definition of either radicalization or extremism underscores the accompanying legal uncertainty and potential for abuse.

24. The Special Rapporteur highlights the particular impact of removal, wardship and custody orders and the role of family courts being shaped by the dubious and insidious infiltration of security thinking in ways that affect the most fundamental of rights for individuals and the family unit.⁸⁵ The infiltration of radicalization language and policy into family administration and family courts enables a permissive interaction between family law and counter-terrorism regulation,⁸⁶ which removes terrorism from the realm of a problem of political violence and reframes it as a family problem, to be solved primarily by women, as mothers, daughters or wives. The Special Rapporteur has observed the increased use of custody, wardship and State care orders to remove children from mothers because of "radicalization"⁸⁷ and notes that there appears to be a difference in judicial standards applied to men and to differently constituted family structures, resulting in a particular maternal penalty being applied to women for perceived or actual "extremism". The tools in such cases involve making children wards of a court or placing children in foster care under permanent or interim care orders (or equivalent) on the basis of parents' radicalization or extremism. The upsurge in family law engagement has followed from interventions where parents had planned to travel to designated conflict zones or where children were demonstrating signs of radicalization.⁸⁸ The proceedings often involve exceptional national security elements, including closed material proceedings and the use of intelligence evidence, and limit the typical challenges that individuals might make when their most fundamental rights are being adjudicated.⁸⁹ The Special Rapporteur reiterates her concern about the use of "experts" on determining radicalization and extremism in extremism proceedings in general and in family law proceedings in particular.⁹⁰ She entirely accepts the importance of safeguarding and ensuring the best interests of the child from physical and psychological harms.⁹¹ She notes that the best interests test can be skewed by undue reliance on the (little) information that security services may provide in such proceedings. She expresses deep concern in that regard, given the lack of scientific consensus on what constitutes radicalization,⁹² the acknowledged absence of cultural and religious sensitivity in determining "good" parenting through the lens of culturally dominant practices, e.g., preferences for secularity or what is considered acceptable religious practices through a Judeo-Christian lens, the disciplining of certain "suspect" groups to advance other social and political agendas and the historically specific

⁸⁵ See, e.g., www.judiciary.uk/publications/radicalisation-cases-in-the-family-courts/.

⁸⁶ See A/64/211; and A/HRC/WGAD/2020/33.

⁸⁷ See Fatima Ahdash, "The interaction between family law and counter-terrorism: a critical examination of the radicalisation cases in the family courts", *Child and Family Law Quarterly*.

⁸⁸ Rachel Taylor, "Religion as harm? Radicalisation, extremism and child protection" *Child and Family Law Quarterly* (2018).

⁸⁹ Arguments are made that such family proceedings are "better" in the circumstances than criminal law, because they focus on "protection" and the child. That position underestimates the costs to family law systems from being securitized and the dangers of creating exceptional legal spaces for some families (and not others) under the rubric of lawful family regulation.

⁹⁰ See A/HRC/43/46/Add.1.

⁹¹ Rozemarjin van Spaendonck, "To school or to Syria? The foreign fighter phenomenon from a children's rights perspective" *Utrecht Law Review*.

⁹² See A/HRC/43/46.

and contingent ways in which interventions in the family manifest. She concludes that the regulation of child welfare through the lens of extremism and radicalization is profoundly problematic and requires greater oversight and scrutiny. She acknowledges the specific unease at the construction of the Muslim family within counter-terrorism policy and discourse in certain countries, including interpreting the Muslim home as a site of risk, resulting in blame, pathology and State hyperregulation.⁹³

25. Counter-terrorism practice in a number of countries increasingly includes administrative measures affecting the rights of family members. Administrative control measures include assignment of residence, restrictions on the right to leave the home, passport seizures, geographical restraints on movement, limitations on visits to houses of worship, bans on being in the vicinity of certain persons or bans on contact. They can also have consequences for the maintenance of family life, including with family members living abroad. Administrative actions are frequently based on broad and vague criteria, typically rely on secret information and are generally imposed on persons who have not been charged or tried with a crime. Meaningful remedies are limited, and judicial oversight when it is provided is frequently attenuated.⁹⁴ While those measures target specific individuals and affect their rights, their coterminous impact on the rights of family members has been underappreciated. Not only do they often limit the movement and association rights of children, spouses and other adults in the household, but they also affect the capacity of all family members to access other rights, e.g., education, religious exercise, work, health, and other social entitlements.

26. The Special Rapporteur identifies the “familialization of terrorism” in contemporary State practice.⁹⁵ Specifically, the construction of contemporary motherhood for certain mothers and certain communities is being shaped by counter-terrorism and preventing and countering extremism law and practice.⁹⁶ She sees the ascendancy of discourses and practices placing requirements on the “mother”, partner and wife in the context of preventing extremism and terrorism to operate in highly constrained, patriarchal and rights-denying ways. Notably, mothers who “fail” to appropriately raise their children are perceived as particularly blameworthy when their children engage in terrorist acts. The “good mother” is one who partners with the security State in preventing and countering violent extremism programmes,⁹⁷ even as such programmes may stigmatize, marginalize and make her a front-line target within her own political context. Programmes that target Muslim mothers to address violence in their families often rely on and perpetuate a series of harmful stereotypes, burdening women as mothers in unique and highly retrogressive ways. As noted in previous country reports,⁹⁸ the mothers of individuals who have committed terrorist attacks are subjected to intersecting intrusions by the State, violating not only the right to non-discrimination and privacy but also fundamentally disrupting the right to family life for extended periods. Mothers and wives are invariably conflated with the violent acts of their children or husbands. Their homes are often the target of intrusive and violent State searches; they frequently become the objects of ongoing surveillance and harassment; they are rarely given the decency of recognition that they too have been the object of suffering and loss; and they must manage complex and challenging familial, communal and societal expectations.

27. The Special Rapporteur is particularly concerned about retrogressive and highly patriarchal views of the family form and function deployed in the context of counter-terrorism and security measures as enforcement of gender ideologies.⁹⁹ She sees a particular confluence of the masculinities that dominate the security sector (and national security

⁹³ Conversely, to a large extent, right-wing violent extremism and terrorism are largely absent in such regulatory practices and generally not the object of familial regulation.

⁹⁴ See A/HRC/40/52/Add.4.

⁹⁵ She is indebted to Fatima Ahdash for the use of this term.

⁹⁶ Gargi Bhattacharyya, *Dangerous Brown Men: Exploiting Sex, Violence and Feminism in the “War on Terror”* (Zed Books, 2013).

⁹⁷ Katherine Brown, “The promise and perils of women’s participation in UK mosques: the impact of securitisation agendas on identity, gender and community”, *The British Journal of Politics and International Relations*.

⁹⁸ See A/HRC/40/52/Add.5.

⁹⁹ A/HRC/43/46/Add.1, para. 21.

policymaking) and the failure to address the equal rights of sexual minorities or differently constituted family units in the context of “gendering” counter-terrorism. She notes in particular the deployment of “gender” language by United Nations and regional counter-terrorism entities, with no concurrent commitment to address human rights violations committed in the name of countering terrorism or extremism against sexual minorities.

28. The Special Rapporteur is concerned about the extension of militarized and carceral counter-terrorism approaches into areas such as domestic violence regulation. She affirms the need for a whole of society approach to addressing misogyny and complementary hypermasculinities across State and non-State settings.¹⁰⁰ She particularly notes her disquiet in the increasing suggestions that preventing and countering violent extremism should integrate “evidence on individuals perpetrating violence against women or domestic violence needs”,¹⁰¹ which is problematic both conceptually and practically. Effective legal sanction and nuanced social responses to intimate partner violence will not be well-served by security-led intrusions into women’s lives or by institutions and actors whose practices embody and entrench the patriarchal and masculinist status quo. She encourages United Nations entities to avoid superficial analysis and programming, affirming the necessity of a holistic approach to the manifestations of multiple masculinities among both terrorism and counter-terrorism actors.

29. The Special Rapporteur is profoundly concerned about the securitization of care services by counter-terrorism actors. She has documented the ways in which comprehensive approaches to countering and preventing violent extremism involve a range of actors that traditionally interact directly with – and therefore have implications for – the family.¹⁰² Alongside the intelligence service, the police and other security actors we now find youth care workers, social workers, mental health services personnel, educators and medical personnel who have independent professional and ethical responsibilities to those they serve. The impacts on families, particularly marginalized families, from securitizing front-line care and intervention are significant in terms of the quality of care they receive and the stigma and harm that results from being treated as security threats rather than individuals and families with needs and rights. From a human rights perspective, the infringements particularly undermine the guarantee of equality and non-discrimination both within and between families.¹⁰³ When that type of intervention disproportionality affects families from particular ethnic, religious or racial groups, heightened scrutiny of State action is all the more necessary.

30. The Special Rapporteur has consistently held that the urgent return and repatriation of foreign fighters and their families from conflict zones is the only international law compliant response to the complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons or elsewhere in Iraq and the Syrian Arab Republic. Their return is a comprehensive response that would amount to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) and take into consideration States’ long-term security interests. She highlights the leadership and positive actions of those that have undertaken large-scale returns, including Kazakhstan, the Russian Federation, Tajikistan, Tunisia and Uzbekistan and Kosovo.¹⁰⁴ She affirms their openness and the engagement of Kazakhstan and the Russian Federation with her mandate on the matter. The impact on families of the conditions in the camps is profound. The human rights costs to children are devastating. The existence of the camps is a blight on the conscience of humanity.

31. The Special Rapporteur affirms that significant work has been undertaken to address the human rights of victims of terrorism.¹⁰⁵ Nonetheless, significant gaps exist in national

¹⁰⁰ David Duriesmith, *Masculinity and New War: The Gendered Dynamics of Contemporary Armed Conflict* (Routledge, 2017).

¹⁰¹ Melissa Johnston and Jacqui True, “Misogyny and violent extremism: implications for preventing violent extremism”, report for UN-Women (2019).

¹⁰² See A/HRC/40/52/Add.5.

¹⁰³ See UN-Women, “A contemporary view of “family””.

¹⁰⁴ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

¹⁰⁵ See General Assembly resolution 72/165.

practice for addressing the specific needs of women and girls as victims. Better understanding from studies conducted in conflict and trauma settings confirms that women who are victims of terrorism experience and manifest trauma differently from men and have different social, psychological and material needs.¹⁰⁶ Reparations for women who are victims of terrorism must address the underlying gender inequities that frequently place women in a less advantageous position to recover from harm or to be fairly treated in the context of law and administrative processes. In many societies, gender stereotypes lead to assumptions about the capacity and responsibility of women and there is a failure to acknowledge the gender burdens of care carried by women who are terrorism victims. Moreover, women may not have the legal right in some countries to acquire access to funds and/or care independently from the men with whom they are connected, undermining their individual rights to remedy and to be treated without discrimination. Women who are victims of terrorism have specific reproductive and maternal needs that can only be addressed by including a comprehensive approach to reproductive rights and sexual health for women who are victims of terrorism in legal provisions and social entitlements.

IV. Effect of terrorism on the promotion and protection of human rights

32. The Special Rapporteur was invited by the Human Rights Council, in its resolution 42/18, to reflect on the negative effects of terrorism.¹⁰⁷ Her preliminary reflections address questions of legal precision, the nature of the legal obligations engaged by addressing the actions of non-State actors that might be implied from discourse on the effects of terrorism and the legal obligations of States with respect to the rights of victims of terrorism.

33. The Special Rapporteur is of the view that overall reflection on the enjoyment of economic, social and cultural rights in the terrorism and counter-terrorism arenas has been understated. She recalls the Vienna Declaration and Programme of Action, including its recognition of the indivisibility of all human rights, the important work that has been undertaken by the Committee on Economic, Social and Cultural Rights in underscoring the nature of the positive obligations owed by States to ensure the enjoyment of economic, social and cultural rights to individual rights holders¹⁰⁸ and the variety of tools now available to effectively measure the implementation of State obligations in that context.

34. The Special Rapporteur views the departure point of addressing the regulation of terrorism as the multiple terrorism suppression conventions, agreed by States, providing solid, agreed and irrefutable definitions of acts of terrorism.¹⁰⁹ They are supplemented by Security Council resolution 1566 (2004), which provides an overarching definition of terrorism shaping the Security Council's regulation in that arena.¹¹⁰ She notes that those obligations are directed at States, and precisely not at non-State actors, a matter on which she believes there is strong State consensus. In that regard, she encourages States to maintain that consensus in the context of addressing the effects of terrorism, placing a sustained focus on their clear and precise obligations. She exhorts States to avoid the pitfalls of undermining human rights standards and practice by indeterminacy in defining who may be the subject of legal obligation in this arena. She also strongly advises States to avoid blurring the lines between terrorism-related regulation and international humanitarian law.

35. The Special Rapporteur is particularly aware that, as a descriptive matter, the effects of terrorism speak to a wide range of harms that are experienced in society as a result of acts of terrorism. While recognizing the pull to rhetorical and emotive language on the challenges of terrorism, she encourages the Human Rights Council to remain firmly focused on the specific legal obligations that follow for States from the International Bill of Human Rights,

¹⁰⁶ Herbert E. Ainamani and others, "Gender differences in response to war-related trauma and posttraumatic stress disorder – a study among the Congolese refugees in Uganda", *BMC Psychiatry*.

¹⁰⁷ A/HRC/40/52, para. 29.

¹⁰⁸ See E/1991/23, annex III.

¹⁰⁹ See, e.g., the Convention for the Suppression of Unlawful Seizure of Aircraft.

¹¹⁰ A/HRC/16/51, paras. 26–28.

customary international law and sectoral conventions. The mandate holder will continue to inform States in that regard.

36. The Special Rapporteur notes that, in multiple judicial decisions, the legal obligations of States to take reasonable and effective measures to secure the safety, security and right to life of persons within their jurisdiction and under their effective control, including from terrorism, have been stressed.¹¹¹ Those obligations are also outlined in General Assembly resolution 72/246. The Special Rapporteur also notes that, in the United Nations Global Counter-Terrorism Strategy and multiple expert reports, the critical importance of observing human rights while countering terrorism has been stressed. She believes it essential that the obligations of States to take necessary measures to “prevent or avoid the perpetuation of such violations” consistent with international law must be the fundamental basis of State engagement with the effects of terrorism.

37. She strongly encourages States to be wary of making the mistake of conflating the economic effects of terrorism with their human rights obligations in respect of promoting economic, social and cultural rights while countering terrorism. She notes that there is no legal basis to view the State as the primary “victim” of terrorism through the economic costs that may be experienced from acts of terrorism. Individuals always remain the relevant rights holders in the human rights arena, and she underscores the necessity of States not losing sight of that proposition.

38. The Special Rapporteur concludes by reminding States that their primary obligation in respect of the effects of terrorism is defined by their human rights obligations to the victims of terrorism. That is an issue to which the Special Rapporteur is deeply committed and that will again be included in her annual briefing to the Council.¹¹²

V. Recommendations

A. States

39. **The Special Rapporteur recommends that States:**

(a) **Meaningfully and substantially adopt human rights-compliant and equality focused gender mainstreaming in counter-terrorism and preventing and countering violent extremism practice, elevating the rights of, and remedies due to, women and girls, without discrimination;**

(b) **Adequately and consistently incorporate a gender perspective into counter-terrorism law and policy across all areas, including but not limited to the definitions of terrorism and extremism offences, the conditions of detention, terrorism financing, citizenship stripping, sanctions and administrative measures;**

(c) **Establish clear and human rights compliant frameworks governing professional secrecy and other confidential obligations for professionals, including doctors, social workers and educators, that are drawn into counter-terrorism and preventing violent extremism regulation;**

(d) **Take account of the gender specific needs and rights of women and girls who are victims of terrorism;**

(e) **Address the rule of law and human rights deficits of sanctions and listing at the national level urgently, as they dictate close scrutiny and oversight by States; misuse of sanctions and listing processes to target civil society and persons exercising rights protected by international law through the universal periodic review mechanism, the treaty bodies and counter-terrorism country assessment processes, including of the Counter-Terrorism Committee Executive Directorate; and the gendered effects of listing should be attended to in the context of national action plans for the**

¹¹¹ See www.icj-cij.org/en/case/131; <http://hudoc.echr.coe.int/eng?i=001-58257>; <http://hudoc.echr.coe.int/eng?i=001-92945>; and <http://hudoc.echr.coe.int/eng?i=001-172660>.

¹¹² See A/HRC/20/14; and A/HRC/16/51 paras. 24–25.

implementation of Security Council resolution 1325 (2000) and reviews by the Committee on the Elimination of Discrimination against Women and United Nations counter-terrorism entities which profess to mainstream gender into their work;

(f) Seriously review and consider the office and capacities of the Ombudsperson, including the terms of contract, its capacity and the operating procedures of the office, which are significantly deficient from a human rights and rule of law standpoint and necessitate reform, and address the rights of individuals, including women and girls, which remain inadequately protected across listing regimes; the obligation to fix that deficit lies with Security Council members;

(g) Repatriate, rehabilitate and prosecute (as warranted) the women and children who are in the camps in the Syrian Arab Republic and in detention in Iraq, which remains an insistent human rights necessity; and States must fulfil their international human rights obligations, particularly their obligations under the Convention on the Rights of the Child, without delay.

B. United Nations bodies

40. The Special Rapporteur recommends that:

(a) Counter-terrorism entities, such as the Office of Counter-Terrorism and the Counter-Terrorism Committee Executive Directorate, adopt a clear and precise definition of gender mainstreaming in their work and that such a definition should concur with the definition used by the United Nations treaty bodies and UN-Women and ensure that gender mainstreaming is consistent with States' obligations, including human rights;

(b) Technical support and capacity-building work by United Nations entities in the counter-terrorism arena must fully observe due diligence in respect of the negative effects of terrorism on the rights of women and girls; and United Nations entities must not contribute to commodification, stereotyping and/or the infliction of direct harms on women and girls by counter-terrorism and extremism regulation;

(c) United Nations Global Counter-Terrorism Coordination Compact entities must ensure that gender mainstreaming is meaningfully and practically integrated into their work, specifically that the human rights and equality of women and girls are advanced; and the misuse of counter-terrorism measures against women human rights defenders and women-led civil society organizations must be adequately addressed by United Nations entities in the counter-terrorism context.

C. Family courts and care professionals

41. The Special Rapporteur recommends that:

(a) Cases involving the removal, wardship or State care of children on the basis of extremism should be published, and the principle of open justice and transparency, consistent with the practice of the State in other contentious family law regulations, should apply;

(b) The use of intelligence information or forms of proceedings in family regulation, e.g., closed material proceedings, but not shared with legal representatives of family members in the process of severing the most fundamental of human relationships – the legal relationship between a child and a parent – is inconsistent with the protection of the family, the rights of the child and due process norms under international law and should be ended.