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

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

Summary

The present report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism comprises two parts. Section I refers to the Special Rapporteur's activities undertaken from 1 January to 31 October 2007. Sections III to V reflect the main thematic issue of economic, social and cultural rights in the context of countering terrorism. Section III refers to the normative framework and contains information on the work done to date by the United Nations human rights treaty bodies, special procedures and other United Nations entities, such as the International Court of Justice and the Counter-Terrorism Committee of the Security Council. Regional organizations, such as the Inter-American Commission on Human Rights and the Council of Europe, and judgements from the European Court on Human Rights, have also addressed the relationship between economic, social and cultural rights and counter-terrorism measures.

In Section IV, the Special Rapporteur's own country-specific work and other sources illustrate the negative impact that counter-terrorism measures can have on the enjoyment of economic, social and cultural rights. The Special Rapporteur examines a number of thematic and country-specific examples, such as how physical obstacles constructed for security reasons can affect access to health, education, work and so on; how charitable, humanitarian and financial organizations have been hindered from promoting economic, social and cultural rights by the justification of countering the financing of terrorism; how the right to education can be compromised or overlooked in the interest of national security; and how counter-terrorism measures can stigmatize and target indigenous and minority communities, resulting in the destruction of their means of livelihood, forced evictions and internal displacement.

In Section V, the focus shifts to the role of the promotion of economic, social and cultural rights in addressing and countering the conditions conducive to the spread of terrorism. Such considerations need to be included in the formulation of long-term sustainable strategies against terrorism.

The Special Rapporteur's conclusions and recommendations are presented in section VI, which includes recommendations resulting from the country-specific work by the Special Rapporteur, recommendations for States and the international community, and specific recommendations addressed to various human rights mechanisms of the United Nations.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 2	4
II. ACTIVITIES	3 - 9	4
III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF COUNTERING TERRORISM	10 - 32	5
A. Normative framework.....	10 - 11	5
B. Previous work	12 - 35	5
1. United Nations human rights treaty bodies and special procedures	12 - 21	5
2. Other entities in the United Nations system	22 - 24	7
3. Regional organizations	25 - 32	8
IV. IMPACT OF COUNTER-TERRORISM MEASURES ON THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS	33 - 63	11
A. Construction by Israel of a barrier in the Occupied Palestinian Territory	35 - 41	11
B. Impact of measures against the financing of terrorism	42 - 50	13
C. Right to education and its broader context	51 - 56	16
D. Economic, social and cultural rights of indigenous people	57 - 63	18
V. ROLE OF THE PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PREVENTING TERRORISM	64 - 68	20
VI. CONCLUSIONS AND RECOMMENDATIONS	69 - 74	22
A. Conclusions	69 - 71	22
B. Recommendations	72 - 74	22

I. INTRODUCTION

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Commission on Human Rights resolution 2005/80, General Assembly resolutions 60/158 and 60/251 and Human Rights Council decision 2006/102. It includes a reference to his activities from 1 January to 31 October 2007 and his views on the thematic issue of economic, social and cultural rights in the context of countering terrorism. The Special Rapporteur discusses the negative impact counter-terrorism measures can have on these specific rights and the role of promoting economic, social and cultural rights in preventing terrorism.

2. Addenda to the present report have been issued on communications in 2007 by the Special Rapporteur and the replies of Governments thereto and press releases issued under the mandate (A/HRC/4/26/Add.1); the report on the fact-finding mission to South Africa from 16 to 26 April 2007 (A/HRC/4/26/Add.2); the report on the fact-finding mission to the United States of America from 16 to 25 May 2007 (A/HRC/4/26/Add.3) and the report on the fact-finding mission to Israel, including visits to the Occupied Palestinian Territory, from 3 to 10 July 2007 (A/HRC/4/26/Add.4).

II. ACTIVITIES

3. On the question of upcoming country visits, the Special Rapporteur hopes to conduct a mission to the Philippines and to Spain in the first half of 2008. There are outstanding visit requests to Algeria, Egypt, Malaysia, Pakistan and Tunisia.

4. A summary of the Special Rapporteur's activities between 1 January and 31 July 2007 can be found in paragraphs 4 to 25 of his report to the General Assembly (A/62/263).

5. On 9 and 10 August 2007, the Special Rapporteur was represented at a workshop in Geneva, organized by the International Commission of Jurists and the Geneva Centre for the Democratic Control of Armed Forces, on intelligence, accountability, counter-terrorism and human rights.

6. On 9 October, the Special Rapporteur participated in a panel discussion on the role of parliaments in striking a balance between national security, human security and individual freedoms and in averting the threat to democracy at a session of the Inter-Parliamentary Union in Geneva.

7. On 11 and 12 October, the Special Rapporteur convened an expert group meeting at the Institute for International Relations in Clingendael, Netherlands, to discuss thematic issues relevant to his mandate. He also met with representatives of the Ministry of Foreign Affairs and had meetings with the Netherlands intelligence community.

8. On 19 October, he attended a meeting of the Interights International Advisory Council in London and participated in a panel session on security, the rule of law, counter-terrorism and human rights.

9. On 29 October, the Special Rapporteur presented his report (A/62/263) to the Third Committee of the General Assembly in New York. He also held meetings with delegates of the Counter-Terrorism Committee, the Counter-Terrorism Committee Executive Directorate, the Chairperson of the Counter-Terrorism Implementation Task Force and non-governmental organizations. On 31 October, he visited Washington, D.C., and met with officials of the State Department of the United States of America and of non-governmental organizations.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF COUNTERING TERRORISM

A. Normative framework

10. Combating terrorism has become a priority for the entire international community, particularly since the atrocious terrorist acts of 11 September 2001. A wide range of measures have been adopted on the national and international levels, including within the framework of the United Nations. Increasingly, decisions by the United Nations principal organs, such as the General Assembly and the Security Council, include an explicit affirmation that, when implementing the measures in question, States Members must respect international law, including human rights law. Such general references to human rights comprise also economic, social and cultural rights, as enshrined in the Universal Declaration of Human Rights and a number of international and regional treaties.

11. In line with the principle of complementarity, expressed in paragraph 14 (e) of Commission on Human Rights resolution 2005/80 that established the mandate, the Special Rapporteur seeks to address and highlight how economic, social and cultural rights have been neglected or underdeveloped in the otherwise commendable efforts that various human rights bodies and mechanisms have made towards the promotion and protection of human rights in the fight against terrorism.

B. Previous work

1. United Nations human rights treaty bodies and special procedures

12. The Commission on Human Rights adopted several resolutions on the protection of human rights and fundamental freedoms while countering terrorism. The human rights special procedures, assumed by the Human Rights Council, and treaty bodies continue to address the protection of human rights and fundamental freedoms while countering terrorism within their respective mandates and resources. Several human rights treaty bodies have continued to address the protection of human rights while countering terrorism. Significantly, special rapporteurs and treaty bodies that focus on civil and political rights have addressed counter-terrorism measures on an almost regular basis. Meanwhile, treaty bodies and special rapporteurs who have a mandate related to economic, social and cultural rights have addressed the protection of human rights while countering terrorism only when they came across specific cases, such as through a country visit.

13. Independent experts, such as the special procedures mandate-holders, have expressed their views on the relationship between human rights and the fight against terrorism on several occasions. In their joint announcement on Human Rights Day in 2001, the experts reminded

States of their obligations to uphold human rights and fundamental freedoms, also in the aftermath of the tragic events of 11 September. They expressed their concern that the fight against terrorism must not result in violations of the enjoyment of any human rights - civil, cultural, economic, political or social - as guaranteed under international law.

14. Within the treaty-based system, the treaty bodies which monitor the implementation of international human rights treaties focus on different human rights. For the purposes of the present report, the evolving practice under the International Covenant on Social, Economic and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child emerge as the most useful sources because they focus on economic, social and cultural rights. The other treaty bodies, such as the Human Rights Committee or the Committee against Torture, generally focus on civil and political rights and therefore their practice is not addressed in the present report. The Special Rapporteur is, however, aware of the commendable contribution the Human Rights Council and the Committee against Torture have made on a regular basis in promoting State compliance with human rights while countering terrorism. On occasion, their concerns have also related to economic, social and cultural rights.¹

15. The Committee on the Elimination of Racial Discrimination released a statement on racial discrimination and measures to combat terrorism, adopted at its sixtieth session in March 2002,² in which the Committee called upon States and international organizations to ensure that measures taken in the struggle against terrorism did not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin.

16. The Committee on the Rights of the Child, while considering reports pursuant to the Optional Protocol on the involvement of children in armed conflicts, has so far made no reference to the fight against terrorism or the recruitment of children by terrorist groups. The Committee has encouraged States parties to include the Optional Protocol in school curricula and welcomes information on measures of recovery and social reintegration for refugee children or child soldiers. Furthermore, the Committee has encouraged States parties to strengthen the protection for asylum-seeking, refugee and migrant children who may have been recruited in to, or experienced, hostilities in their country of origin.

17. In her 2002 report (E/CN.4/2002/60, paras. 64-69), the Special Rapporteur on the right to education drew the attention of States to the fact that many resources that could have been used for education were spent on security, which was in her view a negative approach and would not sustain peaceful communities in the long term.

¹ See, for example, the concluding observations of the Human Rights Council on Israel in the Official Records of the General Assembly, *Fifty-eighth session, Supplement No. 40 (A/58/40)*, para. 85 (16).

² *Ibid.*, *Fifty-eighth session, Supplement No. 18 (A/57/18)*, chap. XI, sect. C.

18. In 2006, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressed concern that Islam and Muslim religious observance continued in various parts of the world to be erroneously identified with terrorism (E/CN.4/2006/17, paras. 2 and 23).

19. In his 2006 report (E/CN.4/2006/78, para. 44), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed his concern at the fact that, in some countries, the State had sometimes confronted social struggles, claims and protest of the indigenous organizations with the implementation of terrorist law. He urged that those laws should not be used to criminalize social protest and the struggles of indigenous peoples.

20. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living reported of cases of evictions and demolition as a form of punishment of residents who allegedly supported terrorist groups (E/CN.4/2004/48, para. 37).

21. In her report on her mission to the Russian Federation (E/CN.4/2006/61/Add. 2, paras. 70-80) the Special Rapporteur on violence against women, its causes and consequences, addressed the economic, social and cultural rights of Chechnyan women in the context of military operations described by the Government as counter-terrorism measures.

2. Other entities in the United Nations system

22. In its advisory opinion of July 2004, the International Court of Justice concluded that Israel was in breach of its obligations under the International Covenant on Economic, Social and Cultural Rights due to the construction of a wall along and partly inside the Occupied Palestinian Territory, described by Israel as a counter-terrorism measure.³ The Court found the International Covenant of Economic, Social and Cultural Rights applicable in relation to the conduct of Israel in the Occupied Palestinian Territory and identified a number of economic, social and cultural rights enshrined in the Covenant and affected by the construction of the wall, namely, the right to work (arts. 6 and 7); protection and assistance accorded to the family and to children and young persons (art. 10); the right to an adequate standard of living, including adequate food, clothing and housing, and the right “to be free from hunger” (art. 11); the right to health (art. 12); and the right to education (arts. 13 and 14).⁴

23. The Court concluded that the restrictions on the enjoyment by the Palestinians living in the territory occupied by Israel of their economic, social and cultural rights, resulting from the construction of the wall by Israel failed to meet a condition laid down by article 4 of the Covenant, that their implementation must be “solely for the purpose of promoting the general welfare in a democratic society”. According to the Court, the wall, along the route chosen, and its associated regime were a grave infringement of a number of rights of the Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route could not be

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion*, I.C.J. 2004 Reports, 136, para. 116.

⁴ *Ibid.*, paras. 112, 130 and 134.

justified by military exigencies or by the requirements of national security or public order. The construction of such a wall therefore constituted breaches by Israel of several of its obligations under the applicable international humanitarian law and human rights instruments, including the Covenant and the Committee on the Rights of the Child.⁵

24. The Counter-Terrorism Committee receives regular reports from States Members on their action under Security Council resolutions 1373 (2001) and 1624 (2005), but it has no special focus on the consideration of human rights violations resulting from counter-terrorism measures, or on economic, social and cultural rights in its work. The United Nations High Commissioner for Human Rights, her Office and the Special Rapporteur on human rights and counter-terrorism have all sought and maintained a dialogue with the Counter-Terrorism Committee and its Executive Directorate. This dialogue takes place, inter alia, within the inter-agency Counter-Terrorism Implementation Task Force operating to implement the Global Counter-Terrorism Strategy adopted by the General Assembly in September 2006 by its resolution 60/288.⁶ They continue to recommend that the Committee systematically consider the impact of counter-terrorism measures on human rights. This aspiration reflects the view of the High Commissioner that, in the long term, a commitment to uphold respect for human rights and the rule of law will be one of the keys to success in countering terrorism.⁷

3. Regional organizations

25. The Inter-American Commission on Human Rights adopted in 2002 a comprehensive special report on terrorism and human rights, in which it discusses, inter alia, issues relating to the right to property⁸ and the human rights of migrant workers, asylum-seekers, refugees and other non-nationals in the context of countering terrorism.⁹

26. The Council of Europe has been active in emphasizing the imperative of complying with human rights while countering terrorism.¹⁰ Many conventions and other instruments have been

⁵ Ibid., paras. 136 and 137.

⁶ See also A/62/298.

⁷ Speech entitled “Security under the rule of law”, delivered by the United Nations High Commissioner for Human Rights to the Biennial Conference of the International Commission of Jurists, Berlin, on 27 August 2004.

⁸ Inter-American Commission on Human Rights, Report on terrorism and human rights (OEA/Ser.L/V/II.116 Doc.5 rev.1 corr), paras. 365-371.

⁹ Ibid., paras. 375-413.

¹⁰ Martin Eaton, “Human rights standards and framework conditions for anti-terrorist measures: European standards and procedures”, *Anti-Terrorist Measures and Human Rights*, Leiden/Boston 2004.

adopted.¹¹ The Council's initiatives on counter-terrorism measures are built on three pillars: strengthening legal action against terrorism; safeguarding fundamental values; and addressing the causes of terrorism. These priorities are based on the fundamental principle that it is both possible and necessary to combat terrorism while respecting human rights, fundamental freedoms and the rule of law.

27. The Committee of Ministers of the Council of Europe adopted guidelines on human rights and the fight against terrorism in 2002, supplemented in 2005 by guidelines on the protection of victims of terrorist acts. These guidelines focus on civil and political rights and set out clearly the strict limitations on the power of States to derogate from international human rights instruments. In these guidelines, reference to economic rights is made in section XIV on the right to property: "The use of the property of persons or organisations suspected of terrorist activities may be suspended or limited, notably by such measures as freezing orders or seizures, by the relevant authorities. The owners of the property have the possibility to challenge the lawfulness of such decisions before a court."¹²

28. The European Court of Human Rights has released several judgements which refer to counter-terrorism measures and their negative impact on human rights, including those related to economic and social rights. The cases considered mainly deal with the burning of villages and internal displacement of persons in South-Eastern Turkey in the context of the measures by the security forces against the Workers' Party of Kurdistan (PKK), designated by the authorities as a terrorist organization. In the case of *Akdivar and Others v. Turkey*,¹³ the Court considered the burning of nine houses in the village of Kelekci and the eviction of all its inhabitants on 10 November 1992 during a search for PKK terrorists. The Court held that "there can be no doubt that the deliberate burning of the applicants' homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions".¹⁴ The Court concluded that there had been a violation of both article 8 of the European Convention on Human Rights (private and family life and home) and article 1 of Protocol No. 1 (peaceful enjoyment of possessions).

29. Another illustrative case is *Dogan and Others v. Turkey*.¹⁵ The applicants lived in Boydaş village, Hozat district. The majority of the village population was of Kurdish origin. In October 1994, the applicants were forcibly evicted from their village and security forces destroyed their houses. As a result of the eviction, the applicants were forced to live in very poor conditions. The Court held that there had been a violation of article 1 of Protocol 1. The Court

¹¹ See the Council of Europe legal affairs web page at www.coe.int/legal/.

¹² See www.coe.int/T/E/Com/Files/Themes/terrorism/CM_Guidelines_20020628.asp.

¹³ Application No. 21893/93, judgement of 16 September 1996, 1996-IV.

¹⁴ *Ibid.*, para. 88.

¹⁵ Applications Nos. 8803-8811/02, 8813/02 and 8815-8819/02, judgement of 29 June 2004, 2004-VI.

dealt with the situation under the first sentence of the first paragraph of article 1, “since the impugned measures undoubtedly restricted the applicants’ rights to use and dispose of their possessions”.¹⁶ The Court acknowledged the extraordinary measures taken by the Government in order to maintain the security of the state of emergency region, but observed “that, in the circumstances of the case, the refusal of access to Boydaş had serious and harmful effects that have hindered the applicants’ right to enjoyment of their possessions for almost 10 years, during which time they have been living in other areas of the country in conditions of extreme poverty, with inadequate heating, sanitation and infrastructure”. The Court held that the action taken by the Government was not proportionate to the aim pursued and for the same reasons held that there had been a violation of article 8, which enshrines the right to respect for family life and home.¹⁷

30. Since these events, Turkey has developed a compensation scheme to address grievances and to provide a domestic remedy.¹⁸ The judgements by the Court are nevertheless referred to here to illustrate how the right to housing and the consequences of internal displacement can be addressed through a treaty pertaining to civil and political rights.

31. Within the Council of Europe framework, the European Social Charter (revised) is the main instrument with special focus on economic and social rights. The monitoring body of the treaty, the European Committee on Social Rights, has on occasion reflected on counter-terrorism measures and legislation in its consideration of State party reports. For example, when considering a report by Turkey, the Committee held in 2002 that depriving press professionals of their jobs or preventing them from exercising their profession by sentencing them to prison on the grounds that they expressed a political opinion, in circumstances that did not constitute a clear and imminent danger to security or to the public interest, may also constitute violation of their right to earn a living in an occupation freely entered upon, which was contrary to article 1, paragraph 2, of the Charter.¹⁹ However, in a subsequent reporting round in 2006, the Committee noted that the law had been amended and no longer provided for the imprisonment of press officials and as such did not lead to a finding of non-conformity.²⁰

32. The advisory committee of the Framework Convention for the Protection of National Minorities considered counter-terrorism measures and their impact on human rights with reference to article 6 on the duty to encourage a spirit of tolerance and intercultural dialogue,

¹⁶ Ibid., para. 146.

¹⁷ Ibid., paras. 153, 155, 159 and 160.

¹⁸ Act on the Compensation of Losses Resulting from Terrorist Acts and Measures Taken to Fights Against Terror, Law No. 5233; see also report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, mission to Turkey (A/HRC/4/26/Add.2), paras. 40-45.

¹⁹ Conclusions XVI-1, p. 643.

²⁰ Conclusions XVIII-1.

in particular in the fields of education, culture and the media.²¹ Another monitoring body within the framework of the Council of Europe that has contributed to the efforts to address the human rights implications of countering terrorism is the European Commission against Racism and Intolerance, which considered the impact of counter-terrorism measures in country reports and released general policy recommendation 8 on combating racism while fighting terrorism (17 March 2004) and general policy recommendation 11 on combating racism and racial discrimination in policing (29 June 2007). Both policy recommendations have a feature related to economic, social and cultural rights as they address issues such as discrimination in the fields of education, employment and housing, racial or ethnic profiling, and linguistic rights.

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

33. The above examples of the attention paid by United Nations and regional human rights actors to issues pertaining to the promotion and protection of economic, social and cultural rights illustrate various ways and situations where counter-terrorism measures may have a negative impact on the enjoyment of some of the human rights in question. A number of economic, social and cultural rights enshrined in the International Covenant on Economic, Social and Cultural Rights and other core human rights treaties with a special focus on economic, social and cultural rights have been found at risk because of counter-terrorism measures, namely the right to work (arts. 6 and 7); protection and assistance accorded to the family and to children and young persons (art. 10); the right to an adequate standard of living, including adequate food and housing (art. 11); the right to health (art. 12); and the right to education (arts. 13 and 14). Many examples demonstrate how some measures have a concurrent impact on several human rights, and thus the interdependent nature of civil, political, economic, social and cultural rights.

34. This section provides additional information on that negative impact, primarily with reference to the Special Rapporteur's own country-specific work but also on the basis of publicly available information from other sources. With regard to the latter category of cases in particular, the Special Rapporteur emphasizes that his intention is to provide illustrative examples of real or perceived negative impact, not to indicate whether the cases mentioned amount to a violation of human rights treaty obligations.

A. Construction by Israel of a barrier in the Occupied Palestinian Territory

35. The most illustrative case encountered to date by the Special Rapporteur was during his mission to Israel in July 2007 (A/HRC/6/17/Add.4), which included visits to the Occupied Palestinian Territory. During that mission, he made observations at various locations and consulted a number of governmental and non-governmental actors in Israel and the Occupied

²¹ Opinion on the Russian Federation, adopted on 13 September 2002 (ACFC/INF/OP/I(2003)005), paras. 57 and 65; opinion on Spain, adopted on 27 November 2003 (ACFC/INF/OP/I(2004)004), para. 53; and second opinion on the Russian Federation, adopted on 11 May 2006 (ACFC/OP/II(2006)004), para. 136.

Palestinian Territory on the construction of the barrier, partly a wall and partly a fenced zone with multiple physical obstacles. The barrier is being built by Israel along and partly inside the Occupied Palestinian Territory, referring to security concerns including combating terrorism. He assessed both the effectiveness of the barrier as a security measure and its impact on all human rights, including the economic, social and cultural rights of the Palestinian people.

36. Notwithstanding a demonstrated statistical correlation between the construction of the barrier and the reduction in the number of successful terrorist attacks against Israeli civilians, the barrier is having an enormously negative impact on the enjoyment of human rights by the Palestinian people. A considerable part of the Occupied Palestinian Territory, including towns and villages, is being separated from the rest of the Territory by the barrier. The winding route of the barrier is creating multiple obstacles for movement between even close-by communities inside the Occupied Palestinian Territory and is establishing a “seam zone” of land between the Green Line and the route of the barrier, representing approximately 10 per cent of the West Bank. The Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory has reported a dramatic and continuing deterioration in the socio-economic conditions of many parts of the West Bank since the construction of the barrier (A/HCR/6/17/Add.4, para. 31).

37. As a result of closures and the system of permits regulating the movement of people from one area to another, the Palestinian people are adversely affected in their ability to gain access to education; health services, including emergency medical treatment; other social services; and places of employment. Access by ordinary Palestinians to their land and water resources, including through the devastation or separation from villages of agricultural land in the course of erecting the barrier, is also being impeded, in some cases to the point of having a devastating socio-economic impact on communities.

38. Delays at checkpoints have complicated childbirth for Palestinian women. This has resulted in the delivery of children at checkpoints and unattended roadside births, putting at risk the health of both child and mother, and leading to numerous miscarriages and the death of at least five mothers. These hardships are reported to have contributed to an 8.2 per cent increase in home deliveries.²²

39. As a result of the barrier, Palestinian children encounter significant obstacles in attending or remaining at educational institutions. It also affects the movement of teaching staff, whether this be as a result of the barrier having been erected between “closed” communities and educational facilities, or the difficulties in obtaining special permits from the Israel Defense Forces to enter areas in which educational facilities are present. Various restrictions of

²² Henrietta Aswad, “Checkpoints compound the risks of childbirth for Palestinian women”, 15 May 2007. Available from www.unfpa.org; see also report of the Secretary-General on the situation of and assistance to Palestinian women (E/CN.6/2002/3), paras. 18-20.

movement associated with the barrier, including checkpoints and their limited daily operation hours, can effectively result in Palestinian children dropping out of school or enjoying only limited access to education.²³

40. The barrier and its practical operation have caused diverse negative effects on the economic situation of the Palestinian population. Thousands of people no longer have direct access to their area of cultivation, such as olive trees, or are allowed to take machinery with them, such as tractors, or temporary workers to assist them. Under these circumstances, their earnings are so low and their very livelihood is at risk (A/HCR/6/17/Add.4, para. 39).

41. In sum, the construction of the barrier has broad and complex effects on the enjoyment of economic, social and cultural rights of the Palestinians living in the Occupied Palestinian Territory. The Special Rapporteur acknowledged in his mission report that many of the human rights affected by the barrier and associated security measures are under human rights law subject to permissible limitations. However, as arbitrariness or unprofessional conduct are frequent in the implementation of the security measures, and as the route of the barrier continues to breach international law as affirmed by the International Court of Justice (see paragraph 25 above), the Special Rapporteur has concluded that the barrier and its associated regime continues also to cause effects that violate the international obligations of Israel under human rights law. With regard to the Special Rapporteur's own mandate, it is even more relevant that the barrier and its associated measures are widely experienced by the Palestinians as unlawful, destructive to normal human life, and humiliating. As a consequence, the barrier has a counterproductive effect by contributing to conditions that are conducive to the recruitment to and spread of terrorism (A/HCR/6/17/Add.4, para. 43).

B. Impact of measures against the financing of terrorism

42. In May 2007, the Special Rapporteur conducted a visit to the United States of America (A/HRC/6/17/Add.3). With regard to information received during the mission, he wishes to engage in the current thematic report in a somewhat broader discussion on the impact of counter-terrorism measures on charity work. Since September 2001, several United States charities have been shut down because of laws against the financing of terrorism. The negative impact has been felt mostly by Muslim charities, which are led by Muslims and/or are working for Muslim communities in the United States and abroad. Since 2001, over 40 charity groups have been investigated and their assets frozen, often without any evidence being available and without being prosecuted. Many Muslims were afraid to give their money to charity groups in case they were suspected of providing material support to terrorism. Some Muslim organizations have therefore requested from the authorities a "safe" list of charities to which it would be acceptable to donate. The United States authorities, however, have not drawn up such a list, apparently out of fear that any list of "safe" charities could potentially be abused for the

²³ Defence for Children International, Palestinian Section, "Sustained occupation: an analysis of human rights violations against Palestinian children in 2005" (Ramallah, 2005), pp. 55-62; Amnesty International report entitled "Enduring occupation: Palestinians under siege in the West Bank", 2007, available from www.amnesty.org/resources/Israel_Report0706/.

financing of terrorism. This has a continuing chilling effect on charity work, as potential donors and charity administrators fear that their actions will be classified as material support to terrorism, even retroactively.²⁴

43. Charities are often involved in activities and projects that enhance the enjoyment of economic, social and cultural rights. Hence, obstacles on charity work may often have a direct negative impact on the enjoyment of these and other human rights.

44. In the United Kingdom of Great Britain and Northern Ireland, the independent Charity Commission has opened 20 inquiries into charity organizations, most of them related to Islam in some way, allegedly having links with terrorism. The Commission states that the abuse of charities by terrorists is rare. One of the Commission's tasks is to promote compliance with charity regulations in order to make charities less vulnerable to abuse by terrorist organizations.²⁵

45. The Canadian Anti-Terrorism Act (bill C-36) prohibits the delivery of humanitarian assistance to zones of conflict where terrorist organizations are suspected of profiting from the assistance. One such zone is Northern Sri Lanka, where the needs of the poor, the marginalized and the displaced are the greatest. In this specific case, Canadian aid workers who have contacts with individuals and local organizations related to the Tamil Tigers run the risk of openly contravening the Act, accused of association with a terrorist organization. The Tamil Tigers, who control much of the affected area, are listed as a terrorist entity. Canadian donors who contribute to, for example, the Tamil Rehabilitation Organization, run a similar risk because that organization has helped victims in areas where the population is mainly Tamil, and the Tigers control much of the territory.²⁶ The work of many national and international charity employees is also made difficult by the Sri Lankan Public Security Ordinance which was adopted in December 2006.²⁷ The law prohibits all activities that might support terrorism, which in practice has made the aid work in Tamil areas risky.

²⁴ Report of OMB Watch on "Muslim Charities and the War on Terror", 2006, available from www.ombwatch.org.

²⁵ See National Council for Voluntary Organizations, press briefing "Terrorism - charities part of the solution, not part of the problem", (January 2007), and "Security and Civil Society: the impact of counter-terrorism measures on civil society organizations", available from www.ncvo-vol.org.uk.

²⁶ See International Civil Liberties Monitoring Group brief to the House of Commons Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, April 2005, available from www.interpares.ca/en/publications/pdf/ICLMG_Brief_on_C-36.pdf.

²⁷ Public Security Ordinance (chap. 40), Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka, 6 December 2006, <http://documents.gov.lk/Extgz/2006/Pdf/Dec/1474-5/1474-5e.pdf>.

46. The application of government measures to curtail charity work because of a perceived risk that the funds might end up in support of terrorism is not always based on evidence. Such counter-terrorism measures are unlikely to be effective because they do not rely on the reality of charity work. They can also undermine general confidence in charities and encourage less transparent ways to transfer funds, thereby producing counterproductive effects.

Counter-terrorism legislation has created uncertainty about the provision of humanitarian aid in some parts of the world, for example in Iraq, Afghanistan and the Occupied Palestinian Territory, even though these humanitarian activities are needed for the development of these places.²⁴

47. In countries like Iraq and Afghanistan, military action, armed insurgency and terrorist acts have led to a security situation whereby the delivery of even the most basic humanitarian assistance is hampered. The protection of rights, such as access to health care or to basic education, is severely endangered by the weakness of State institutions and the worsening social and economic situation, which cannot develop without effective delivery of humanitarian aid.

48. Another example of measures taken to prevent the financing of terrorism resulting in a negative impact on economic, social and cultural rights is the case of Al Barakaat, which was the main organization for money transfers into Somalia and also the country's largest private sector company, with financial involvement in other sectors.²⁸ The company, which had become essential for the delivery of remittances sent from family members living abroad, was run by many brokers who lived in different parts of the United States and in other countries where people of the Somali diaspora had settled.²⁹ Al Barakaat was closed down by the United States Government, even though it did not release any evidence that the money being sent to Somalia through the financial transfer system supported Al-Qaida. The Somalis who were, together with Al Barakaat, put on the terrorist list of the United States Treasury department were dropped from the list a year later. In 2002, the United Nations Development Programme stated that the closure of Al Barakaat had had a destabilizing effect on the economy of Somalia and a great humanitarian impact on the population of Somalia, who were unable to receive money from their relatives.³⁰

²⁸ See National Commission on Terrorist Attacks Upon the United States, Staff monograph, sect. 5 (Al-Barakaat case study) available from www.9-11commission.gov/staff_statements/index.htm#monographs.

²⁹ See Rühl Bettina, "Die Kalaschnikow gehört zum Hausrat", Amnesty journal, 1 July 2002, available from www2.amnesty.de/.

³⁰ David Rowan, "US drops accusation that Somalis supported Al Qaeda", 20 September 2002, *World Socialist Web Site*, www.wsws.org.

49. Many Al Barakaat brokers, working in many different countries, ended up listed on the terrorist list of the 1267 Committee or on different national lists. For instance, Luxembourg listed Al Barakaat, but a national court nevertheless released its assets because it could not get further information from United States intelligence and therefore had no evidence that the money was used to support terrorism.³¹

50. The case of *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* was dismissed by the judgement of the European Union Court of First Instance of 21 September 2005 insofar as the affected individuals challenged Council regulation (EC) No. 881/2002 that regulates the restriction of certain measures directed against persons and entities associated with Osama Bin Laden, Al-Qaida and the Taliban. According to the Court of First Instance, the regulation did not violate fundamental rights of the applicants of a jus cogens nature, as it primarily had an impact on the right to property and the right to a fair trial. Because the regulation was required by resolutions of the Security Council, pursuant to Article 103 of the Charter of the United Nations, it takes precedence over other human rights norms other than those of a jus cogens character. The judgement has been widely criticized for its formalistic approach to the relationship between human rights and Charter obligations, ignoring the Charter's own references to human rights and the obligation of Member States (and the European Union Council composed of representatives of Member States) of ensuring compliance with human rights when implementing Security Council resolutions on countering terrorism. The judgement is being reviewed by the European Court of Justice (case C-415/05 P).

C. Right to education and its broader context

51. In the case of Turkey, where the Special Rapporteur conducted a mission in February 2006, the "Kurdish question" is at the centre of the Government's counter-terrorism strategies. In the east and south-east of Turkey, the rate of violence is much higher than in other parts of the country. This appears to correlate with the complicated socio-economic situation in those regions, which in turn is related to shortfalls in the economic, social and cultural rights enjoyed by the people living there. On the basis of his mission to Turkey, the Special Rapporteur concluded that, in the long run, full respect for economic, social and cultural rights helped to eliminate the risk of individuals making the morally inexcusable decision to resort to acts of terrorism, and recommended that persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private.

52. The Special Rapporteur is of the opinion that the right to education is a key right for the integration and non-discrimination of all groups of people living in a country. In the case of Turkey, he was troubled by the pronounced differences in school attendance between boys and girls, in particular in the east and south-east. Even though the Government has launched campaigns aiming at improving attendance, especially of girls, in primary education, significant

³¹ Thachuk Kimberley L., "Counter terrorism across the Atlantic?" in *Defense Horizons*, No. 53, July 2006.

differences in the level of school enrolment for boys and for girls still exist. The Ministry of Education stated that school attendance is low in many urban settlements as well, such as Istanbul, and not only in the south-eastern regions. However, it appears that this problem is, at least in part, attributable to the high level of internal displacement of persons, primarily of Kurdish ethnicity, from the east and south-east.³² Special programmes are in place to encourage school enrolment, particularly in the east and south-east, and a special scheme for the promotion of attendance of girls has been launched (A/HRC/4/26/Add.2, paras. 62 and 63).

53. Another issue concerning the right to education is the closing or restricting the operation of or access to religious schools, or preventing their establishment under the justification of fighting terrorism. The issue has received attention in many countries, including Pakistan.³³ While the Special Rapporteur certainly agrees on the imperative of States taking decisive action against training for terrorism, he wishes to remind Governments that both the International Convention on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights protect the right of families to secure an education for their children, in conformity with their religious or other convictions.

54. In China, criminal charges are often laid against members of the Uighur minority in connection with the “evil forces” of “separatism, terrorism and religious extremism”. In the aftermath of 11 September 2001, this has reportedly occurred in the Xinjiang-Uighur Autonomous Region, which is calling for independence.³⁴ The Khotan Communist Party Committee reportedly stated, in 2002, that they had found several illegal religious extremist activities which severely influenced and disturbed society mainly through education. Because of this situation, the schools and teaching bodies were reorganized by the Communist Party Committee, therefore affecting the enjoyment of the right to education.

55. In India, the Naxalite conflict between the Maoist Communist party, the Government’s security forces and the Salwa Judum (a movement against the Naxalites) is mainly localized in the poorer, rural areas. In 2006, over 700 people were killed, most of them civilians. Because of the conflict, many people from the rural areas who formerly made their livelihood on small-scale farming and forestry have been displaced. Their means of livelihood has been destroyed by the displacement. Also, children’s right to education has been restricted through the Salwa Judum

³² See “Hacettepe University’s population survey assesses twenty-year displacements” (2006), available from www.internal-displacement.org.

³³ International Crisis Group, “Pakistan: Karachi’s madrasas and violent extremism”, Asia report No. 130, 29 March 2007, available from www.crisisgroup.org.

³⁴ Kevin Boyle, “Terrorism, states of emergency and human rights”, *Anti-Terrorist Measures and Human Rights*, Leiden/Boston 2004, p.111. See also “In the name of counter-terrorism: human rights abuses worldwide”, A Human Rights Watch Briefing Paper for the fifty-ninth session of the United Nations Commission on Human Rights, March 2003, available from <http://hrw.org/un/chr59/counter-terrorism-bck4.htm>.

campaign, because boys and girls were recruited as “special police officers” in the camps of the internally displaced. Another reported negative impact on the right to education results from the alleged takeover of 250 schools by the security forces for their own use.³⁵

56. One issue of concern related to refugee protection is the tendency of many countries to return asylum-seekers or repatriate refugees hastily for reasons of the country’s own national security interests but often with insufficient attention to the level of enjoyment of economic, social and cultural rights for the returnees in their countries of origin.³⁶ Only in very rare situations do States recognize such consequences as “persecution” or “inhuman or degrading treatment”, blocking as a matter of law the return of refugees on the basis of the rule of non-refoulement. The Special Rapporteur is specifically concerned about the effect that the return to conflict zones or post-conflict situations may have upon particularly vulnerable returnee households, including families with a female caretaker, unaccompanied children and youth who have no family networks in their country of origin. He draws States’ attention to the possibility that children and youth who are unable to have access to education and whose social and economic rights are not respected may, in such situations, be vulnerable to recruitment by criminals, armed groups and even organizations carrying out terrorist acts.

D. Economic, social and cultural rights of indigenous peoples

57. An issue that the Special Rapporteur has not yet encountered during his country visits but that has arisen in the context of his correspondence with Governments and that he hopes to address during forthcoming country visits is the impact of counter-terrorism measures on the economic, social and cultural rights of indigenous peoples or other minority communities with distinct forms of livelihood and culture. He notes with concern that, in various parts of the world, Governments have invoked their counter-terrorism laws in response to claims and social movements emanating from the indigenous peoples of those countries. Such measures may wrongly stigmatize as terrorism the activities of indigenous communities in respect of conflicts over land rights and natural resources. Insensitive governmental responses based on a counter-terrorism framework may in such situations easily violate the human rights of indigenous peoples, including their economic, social and cultural rights. In some cases, such impermissible action by Governments may be driven by the persistence of the Government in practices that exploit the respective lands and resources without the consent of, or consultation with, the indigenous communities.

58. The Special Rapporteur welcomes the recent adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295) and expresses the hope that the international standards provided by this new instrument will guide Governments in the elimination of any misuse of the notion of terrorism in relation to claims by indigenous peoples. Referring to his earlier reports, the Special Rapporteur

³⁵ Asian Centre for Human Rights report “Naxal conflict in 2006”, available at www.achrweb.org/reports/india/naxal0107.pdf.

³⁶ See A/62/263.

emphasizes that terrorism should be defined by the use of inexcusable methods of violence against bystanders and the intention to create fear among the general population rather than by political or other aims, which often overlap with the aims of social movements that have nothing to do with terrorist acts.

59. In Chile, a number of Mapuche community leaders have been prosecuted pursuant to a broadly defined definition of terrorism found in the current legislation, and some have been convicted and sentenced to lengthy prison sentences for alleged “terrorist” acts committed in the framework of a social conflict over land rights (see A/HRC/6/17/Add.1).

60. In 2002, organizations of indigenous people in the Philippines which defended their traditional lands and land rights or resisted the encroachment by foreign commercial operators on their territories were often criminalized as subversive, and their members prosecuted as “terrorists” (E/CN.4/2003/90/Add.3, para. 49). The Special Rapporteur expects to address this issue on a forthcoming mission to the country.

61. According to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the adoption of the Prevention of Terrorism Act in India, in 2002, led to the detention of many indigenous individuals, such as members of the Adivasis and Jharkhand tribal communities. By March 2003, when the Madras High Court upheld the supremacy of the Juvenile Justice Act over anti-terrorism laws, several indigenous children had been arrested as terrorists (E/CN.4/2004/80, para. 45). The Prevention of Terrorism Act has since been revoked, but many of its key provisions have been retained in ordinary legislation.³⁷ Members of the Adivasis community experienced forced evictions and their lives are threatened by dam and mining development projects, expansion of modern forms of agriculture and new settlements. Their land rights are neither recognized nor fully protected in the different regions. The forced eviction and demolition of their houses seems to be often linked to counter-terrorism measures. Reportedly, in 2003, Muslims in India were often stigmatized as “terrorists” when armed gangs systematically destroyed Muslim homes, businesses and places of worship. Such attacks were allegedly carried out with the participation and support of public authorities. Obviously, the resulting evictions would have a serious adverse impact on the right to adequate housing, which is guaranteed under the International Covenant on Economic, Social and Cultural Rights.³⁸

62. The vast majority of internally displaced persons in Colombia are children and women, and often includes members of indigenous communities who have been displaced from their ancestral lands, thereby losing their traditional means of livelihood, access to their lands and natural resources and the enjoyment of their own culture. Displacement is a direct consequence

³⁷ Amnesty International Report 2006 on India, available at <http://web.amnesty.org/report2006/ind-summary-eng>.

³⁸ “In the name of counter-terrorism: human rights abuses worldwide”, A Human Rights Watch Briefing Paper for the fifty-ninth session of the United Nations Commission on Human Rights, March 2003, <http://hrw.org/un/chr59/counter-terrorism-bck4.htm>.

of the violence between Colombian military forces, paramilitary groups and guerrillas, often framed with reference to terrorism. In the impoverished urban slums, displaced persons have no way of earning a living, face ongoing violence, lack basic necessities such as food, water and sanitation, and are deprived of health services and education.³⁹

63. In various parts of the world, evictions tend to affect persons who find themselves in a vulnerable situation, such as women, ethnic, religious and other minorities and indigenous peoples. In times of counter-terrorism, evictions and house demolitions are sometimes used as forms of targeted or even collective punishment for residents who are suspected of supporting terrorist groups. Heavily armed forces may carry out the evictions, destroying and demolishing houses and belongings. While some destruction of property may, in particular in the context of an armed conflict, be legitimate, collective punishments or the excessive use of force amount by definition to human rights violations, including that of the right to adequate housing. These actions may also deepen poverty and institutionalize impunity for those responsible for such violations. The discrimination behind these acts can escalate into violation of the most fundamental of human rights during times of forced eviction. The next step for people is to flee to other areas in the country, leading to displacement.⁴⁰

V. ROLE OF THE PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PREVENTING TERRORISM

64. One pillar of the United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly in September 2006 by its resolution 60/288, pertains to measures addressing the conditions conducive to the spread of terrorism. As such conditions - and underlining that none of these conditions can excuse or justify acts of terrorism - Member States referred to, inter alia, prolonged unresolved conflicts; violations of human rights; ethnic, national and religious discrimination; political exclusion; socio-economic marginalization; and lack of good governance. Many of these factors have a direct link with the extent to which economic, social and cultural rights are enjoyed. The promotion and effective realization of those rights can therefore be seen as a strategic choice to pursue policies aimed at preventing terrorism. While there is no scientific evidence of a causal connection between economic and social grievances and acts of terrorism, patterns of correlation can be demonstrated that suggest that societies characterized by such grievances and educational exclusion are often breeding or recruitment grounds for terrorists.⁴¹

³⁹ MADRE, Colombia overview, “The impact of Colombia’s war on women and children”, available at <http://www.madre.org/countries/Colombia.html>.

⁴⁰ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2004/48), paras. 37-39.

⁴¹ For a rich but complex discussion on various approaches to the issue of causes or conditions related to terrorism, see the presentation by Alex P. Schmid, “Why terrorism? Root causes, some empirical findings, and the Case of 9/11”, Council of Europe document, available from www.coe.int/gmt.

65. In the context of the Strategy, Member States agreed to undertake, inter alia, the following measures to address conditions conducive to the spread of terrorism:

- Timely and full realization of the development goals and objectives agreed at the major United Nations conferences and summits, including the Millennium Development Goals;
- Eradication of poverty and promotion of sustained economic growth, sustainable development and global prosperity for all;
- The pursuance and reinforcement of development and social inclusion agendas at every level as goals in themselves, recognizing that success in that area, especially on youth unemployment, could reduce marginalization and the subsequent sense of victimization that propels extremism and the recruitment of terrorists;
- Encouragement of the United Nations system as a whole to scale up cooperation and assistance in the fields of rule of law, human rights and good governance to support sustained economic and social development.

66. The Special Rapporteur welcomes these and other concrete measures and once again underlines their close relationship with the protection and promotion of economic, social and cultural rights.

67. States and international organizations have an important role in promoting the realization of economic, social and cultural rights through their development programmes, and thereby contributing to addressing the conditions conducive to the spread of terrorism. In its development cooperation, for instance, Germany has included a specific component of addressing conditions conducive to the spread of terrorism.⁴² In 2002, the Government of Germany implemented, as part of its anti-terror package, 34 regional and 5 supra-regional special measures for crisis prevention and peacebuilding as a contribution to structural terrorism prevention worldwide. The Gesellschaft für Technische Zusammenarbeit GmbH was the executive agency, contracted by the Federal Ministry for Economic Cooperation and Development.⁴³ As a strategic framework, the package will need to address both the symptoms and the causes of terrorism, and will involve various policy areas. At the operational level, development cooperation is mandated to implement primarily structural terrorism prevention measures, which include civilian conflict transformation measures, as well as specific development cooperation measures designed to help eliminate the structural causes of and frameworks conducive to terrorism. Traditional development cooperation programmes are often highly capable of integrating crisis prevention and peacebuilding into their existing work by incorporating new approaches.

⁴² See also Ministry of Foreign Affairs of Denmark report, “Countering radicalisation through development assistance: a country assessment tool”, March 2007, available from www.um.dk.

⁴³ Thania Paffenholz and Dunja Brede, “Lessons learnt from the German Anti-Terrorism Package”, available at www.gtz.de/de/dokumente/en-atp.pdf.

68. The main focus of the anti-terror package was the implementation of structural measures to prevent terrorism. One of the strategies chosen was the promotion of economic and social rights for special groups, for example, youth without job prospects, who, excluded from participation in social and economic development processes, are susceptible to recruitment by criminal or violent groups. Such special groups should be integrated more intensively into development cooperation programmes.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

69. The Special Rapporteur concludes that counter-terrorism measures have both a direct and an indirect impact on the enjoyment of economic, social and cultural rights. The measures adopted by States to combat terrorism often pose serious challenges to economic, social and cultural rights. States therefore need to be mindful of their duty to ensure the conditions allowing all people living within their jurisdiction to enjoy all human rights, including economic, social and cultural rights. This is particularly important as the promotion of those rights should be seen as a means of addressing conditions conducive to the spread of terrorism and hence of preventing acts of terrorism.

70. The social and economic marginalization of and discrimination against vulnerable groups, such as minorities, indigenous peoples or underprivileged households of women and children often amount to violations of their human rights, in particular of their economic, social and cultural rights. These circumstances may also provide fertile soil for recruitment to movements that promise a prospect for change but resort to the unacceptable means of acts of terrorism.

71. Through their negative impact on the effective enjoyment of economic, social and cultural rights, insensitive counter-terrorism measures, even when they may have a justification as permissible limitations to human rights, often result in counterproductive effects that undermine the long-term beneficial role of the promotion of economic, social and cultural rights in sustainable strategies to prevent terrorism.

B. Recommendations

72. **With reference to his country-specific work, the Special Rapporteur makes the following recommendations:**

(a) Without attempting to be exhaustive, the Special Rapporteur wishes to illustrate possible strategies and concrete steps in the field of the promotion and protection of economic, social and cultural rights while countering terrorism, by way of recommendations based on the experience of countries with which he has engaged in close cooperation;

(b) Referring to his “desktop study” on Australia (A/HRC/4/26/Add.3), the Special Rapporteur recommends that, when Australia and other donor countries assist other States to adopt and develop their counter-terrorism laws and mechanisms, due attention be paid to securing the compliance of those measures with human rights and to

ensuring that technical or other assistance in the counter-terrorism field is not provided at the expense of development assistance, including programmes aimed at promoting economic, social and cultural rights. The Special Rapporteur recommends that development cooperation be furthered, keeping in mind the strategic importance of the promotion of economic, social and cultural rights in preventing terrorism and the need to avoid undermining that potential by shifting resources from such programming to short-term capacity-building and technical assistance in the field of counter-terrorism;

(c) In his report on his mission to Israel, which included visits to the Occupied Palestinian Territory (A/HRC/6/17/Add.4), the Special Rapporteur addressed the adverse human rights consequences of the security barrier/wall constructed by Israel along and inside the Occupied Palestinian Territory, and its negative impact on, inter alia, the rights to work, health, housing and education. The Special Rapporteur recommends that the Government of Israel make an immediate decision to withdraw all Israeli settlements from the Occupied Palestinian Territory and replace the still unfinished barrier, which extends deep into Palestinian territory, with a security infrastructure that, by its geographical position, respects the Green Line or is otherwise accepted by the Palestinians. While that decision is being implemented, the Special Rapporteur recommends that urgent action be taken to ensure that the permits regime, the administration of checkpoints and all other associated measures in the Occupied Palestinian Territory do not have a disproportionate impact on the enjoyment of human rights, including economic, social and cultural rights;

(d) With reference to his missions to South Africa (A/HRC/6/17/Add.2) and the United States of America (A/HRC/6/17/Add.3), and to his earlier thematic report related to freedom of assembly and association, including in the context of listing terrorist entities (A/61/267, paras. 30-38), the Special Rapporteur recommends that these and other countries engage in a dialogue with relevant communities engaged in charity work in order to secure the availability of accessible and effective channels for charity that can be resorted to without the fear of donations being later stigmatized by the United Nations or the authorities of any country as financing or material support to terrorism. The Special Rapporteur is mindful of the fact that charity is seen as a religious duty by many Muslims, Christians and others; donors must therefore be able to choose a charity that is compatible with their convictions. Furthermore, charity work often plays an important role in enhancing the actual enjoyment of economic, social and cultural rights in poor countries;

(e) On the basis of his country visit to Turkey (A/HRC/4/26/Add.2), the Special Rapporteur recommends that attention continue to be paid to providing for victims of terrorism and of counter-terrorism operations not only compensation, but also measures that address rehabilitative and other needs of the victims, including by ensuring a safe environment to allow persons who wish to return to their home villages to do so. Emphasizing that full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism, the Special Rapporteur recommends that steps be taken to secure for everyone, including the Kurdish population, effective access to education, which should be enhanced through, at least, initial immersion in their mother tongue;

(f) With reference to his reports on his missions to Israel (A/HRC/6/17/Add.4) and Turkey, the Special Rapporteur urges Governments to ensure that any demolition of housing or other destruction of private property conducted as a measure aimed at combating or preventing terrorism is resorted to in strict compliance with international standards of international law and is accompanied by adequate reparation. Given that the high emotional impact of such measures could easily lead to counterproductive effects in the fight against terrorism, the Special Rapporteur recommends that Governments exercise extreme caution when resorting to such measures.

73. With reference to States and the international community in general, the Special Rapporteur makes the following recommendations:

(a) The Special Rapporteur encourages all States and intergovernmental organizations, while countering terrorism, to take into account relevant instruments for the protection and promotion of economic, social and cultural rights, in order both to avoid violations and minimize the negative impact on those rights in the fight against terrorism, and to utilize fully the potential of promoting economic, social and cultural rights as an inherent feature of long-term sustainable strategies to prevent terrorism. In particular, the Special Rapporteur recommends that the Counter-Terrorism Committee of the Security Council address these issues in order to provide guidance to Member States;

(b) The Special Rapporteur recommends that more attention be paid to the right to education as a key right in the enjoyment of several other human rights and as a cornerstone in sustainable long-term strategies for the prevention of terrorism;

(c) The Special Rapporteur recommends that attention be paid systematically to the rights of women and gender issues in the context of combating terrorism, including by securing the effective enjoyment by women of economic, social and cultural rights as another cornerstone in sustainable long-term strategies for the prevention of terrorism;

(d) The Special Rapporteur urges States not to apply their counter-terrorism laws and measures to social movements or protest by indigenous peoples or minority communities who claim recognition and full protection for their economic, social and cultural rights, including the right to enjoy their own distinctive culture, which is often associated with lands and specific forms of livelihood. He recommends strict adherence to the principle that terrorism should be defined through its inexcusable methods of violence against bystanders and its intention to create fear among the general population rather than through political or other aims, which often overlap with the aims of social movements that have nothing to do with terrorist acts;

(e) Reiterating the final recommendation of his latest report to the General Assembly (A/62/263), the Special Rapporteur recommends that States and intergovernmental organizations commit themselves to a greater sharing of responsibility in protracted refugee situations, which today are often intertwined with military insurgency, armed conflict and, at times, terrorist acts against civilians, and that such joint efforts be based on a transparent, profound and responsible analysis of conditions allowing for the return of refugees as well as of the existence and risk of conditions that may be

conducive to the recruitment of terrorists and the spread of terrorism, and greater international coordination and cooperation to resolve conflicts and stabilize societies. Due attention to economic, social and cultural rights is crucial in this context;

(f) The Special Rapporteur recommends that all States include adequate guarantees to ensure compliance with human rights, including the requirement of legality and the availability of judicial review in their national procedures for the listing of individuals and entities as terrorist, affecting the right to property, in the implementation of Security Council resolution 1267 (1999) or otherwise.

74. With specific reference to the United Nations and its human rights mechanisms, the Special Rapporteur makes the following recommendations:

(a) The Special Rapporteur recommends that all relevant special procedures and mechanisms of the Human Rights Council and human rights treaty bodies consider the protection and promotion of human rights within their mandates, with a special focus on economic, social and cultural rights, in the context of measures to combat terrorism, and coordinate their efforts as appropriate, in order to promote a consistent approach to this subject. He recommends that the Office of the United Nations High Commissioner for Human Rights continue to update its digest of jurisprudence on the protection of human rights while countering terrorism and include in that compilation a new section on treaty body and special procedures practice with regard to economic, social and cultural rights;

(b) The Special Rapporteur recommends that the Committee on Economic, Social and Cultural Rights and other treaty bodies that have economic, social and cultural rights within their mandates develop a systematic practice of addressing counter-terrorism measures by States while monitoring the implementation of respective treaties. In particular, the Special Rapporteur recommends that the Committee on Economic, Social and Cultural Rights adopt a general comment on economic, social and cultural rights and combating terrorism.
