



## **United Nations Office on Drugs and Crime, Countering Foreign Terrorist Fighters: Global Programme on Preventing and Countering Terrorism**

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Session 3: Rule of Law and Human Rights-based Approaches in FTF Investigations

Remarks of the Special Rapporteur on the Promotion and Protection of Human Rights and  
Fundamental Freedoms while Countering Terrorism, Ben Saul

Distinguished Participants and Colleagues

I am delighted to participate in this important event. I am sorry I cannot join you in person. I have spent the past few weeks in Africa learning about counter-terrorism efforts on the continent, including meetings with the African Union in Addis Ababa, the African Commission on Human and Peoples' Rights in Banjul, ECOWAS, national human rights commissions, state officials, and many civil society organizations from North Africa. Just a few days ago, I attended the Pan African Conference on counter-terrorism and human rights in Nairobi, with representatives from over 20 African countries. I have learnt not only about the serious threat of terrorism and the challenges of countering it in Africa, but also of the need for “African solutions to African problems”. There is much the international community can learn from your experience here – indeed, “African solutions for global problems”.

The international community is conscious that foreign terrorist fighters (FTFs) pose an acute threat to national, regional and international security.<sup>1</sup> The United Nations Security Council has called on Member States to suppress FTFs, including by ensuring that domestic laws enable their prosecution and punishment, and developing risk assessments for returning and relocating FTFs and their family members.<sup>2</sup> Member States must take appropriately tailored actions to detect, investigate, and prosecute or rehabilitate FTFs.<sup>3</sup>

Investigative agencies are at the forefront of those efforts. Effective investigations are crucial not only to enhancing security, but also to vindicating the human rights of victims of terrorism by combating impunity.

Investigations can only be truly effective if they fully respect human rights. Security and human rights are inter-dependent.<sup>4</sup> A human-rights centred approach supports the legitimacy of the investigative process and any consequential prosecutions and takes into account the traumatic experiences of those returning from conflict zones and their particular needs. In 2023, my predecessor conducted a technical visit to the Syrian Arab Republic and witnessed first-hand the dire conditions faced by vulnerable persons detained there, including thousands of children, and widespread sexual exploitation and violence.<sup>5</sup>

What does effective, human rights-based investigation look like? I would like to draw your attention to the **United Nations Model Legislative Provisions to Support the Needs and Protect the Rights of Victims of Terrorism**. These were published in 2021 by the UN Office of Counter Terrorism, the Inter-Parliamentary Union and the UN Office on Drugs and Crime, in consultation with law enforcement authorities, victims of terrorism associations, and human rights experts. They recognize that victims of terrorism need special assistance and protection because of the particular harms and vulnerabilities they have suffered. They address victims' needs through following the principle of 'do no harm' with respect to the rights, dignity and wellbeing of victims, and through attention to victims' personal circumstances and intersectional vulnerabilities, including gender.<sup>6</sup> They are practical and feasible to implement.

I draw your attention in particular to a number of key articles from the Model Provisions. First, **Article 24** of the Model Provisions deals with access to justice. Procedures for providing justice and accountability to victims of terrorism should be accessible, fair and expeditious. Investigative bodies should receive and investigate any report or complaint by a person that they are a victim of terrorism and should promptly provide victims with information about the criminal justice process and the possibility of obtaining remedies, including compensation. The duty to investigate embedded in Article 24 facilitates access to justice and victims' right to reparation.

Secondly, **Article 25** provides for the participation of victims in criminal proceedings. Investigative agencies should provide victims with the opportunity to present their views or concerns, and victims' rights should be duly considered in connection with decisions whether or not to prosecute suspected offenders. Creating space for the participation of victims enables any ultimate legal proceeding to account for the different harms, needs and priorities of individual victims and reinforces the humanity of victims.

Thirdly and relatedly, as recognized by **Articles 37 and 38** of the Model Provisions, organizations representing the interests of victims of terrorism and related civil society groups should be enabled to play a role in advocating for the agency of victims in investigations and trials, and these stakeholders can be a valuable source of peer support for victims.

Fourthly, it is also important that the manner in which investigations are conducted protects the safety and security of victims. In that regard, **Article 19** of the Model Provisions provides that before, during and after any legal proceedings affecting victims, the authorities shall identify any threats to the safety, security, psychological integrity and privacy of victims and take effective measures to protect against such threats. Protective measures may be necessary to support the emotional needs of victims and to avoid secondary victimization. Secondary victimization refers to traumatization that results from the response of institutions and individuals to the victim of a criminal act.<sup>7</sup> A human rights-based approach demands that law enforcement agencies pay due regard to the psychological safety of victims.

Fifthly, **Articles 29 and 30** of the Model Provisions recognize that particular victims will have specific needs. Entrenched gender inequalities, stereotypes and assumptions create additional barriers to accessing redress for women and girls who are victims of terrorism.<sup>8</sup> Victims of sexual and gender-based violence perpetrated by terrorists must be recognized as victims irrespective of their perceived affiliation with terrorist organizations and the authorities should take steps to minimize harms such as stigmatization and social exclusion by facilitating access to appropriate support.

In addition to victim-sensitive investigations, a human-rights based approach to investigating FTFs must confront the evidentiary challenges that are pervasive in this area. I refer in particular to the use of “**battlefield evidence**” and evidence collected by security agencies. It is imperative for investigators to be aware that military and intelligence actors operating in conflict zones may lack knowledge of the relationship between evidence gathering and the criminal justice system and may be prone to adopting methodologies that lack independent oversight and human rights compliance.<sup>9</sup> Battlefield evidence collected as a result of the arrest, detention and interrogation of suspects may have been obtained in violation of international human rights law, including the absolute prohibitions on torture and arbitrary detention.<sup>10</sup> Reliance on such evidence may compromise the fundamental rights of suspected FTFs to a fair trial and the presumption of innocence and thereby undermine the rule of law. These are serious consequences, bearing in mind that perceptions of grave injustice feed into the cycle of grievance and alienation that perpetuates violence in many societies. “Battlefield evidence” should accordingly be treated with caution.

There are other resources available to investigative agencies which provide evidence to support the prosecution of persons for serious crimes. These include the UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh and the UN International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2021. I also note the Guidelines on Investigating Violations of International Humanitarian Law published by the International Committee of the Red Cross and the Geneva Academy.

In conclusion, law enforcement and investigative agencies play a central role in building trust and confidence in the communities in which they operate. For suspected FTFs and their families, law enforcement agents are the human face of the coercive arm of the State. Observing due process in investigations is essential for the credibility of any future criminal proceedings. For victims of terrorism, lawful and effective investigations are a precondition of successful prosecutions of serious terrorist offences, which are a critical dimension of vindication of victims’ rights. Investigators should therefore be supported by adequate training. **Article 35** of the Model Provisions provides that authorities should be equipped to address victims’ needs in an impartial, respectful, and professional manner, taking into account individual vulnerabilities and avoiding secondary victimization.

To conclude, it is imperative that human rights and victims’ rights are centred in States’ approaches to investigating FTFs. I welcome regional efforts in Africa to ground counter-terrorism initiatives in the bedrock of human rights frameworks, which are as much an expression of pan-African values as they are of the international community as a whole.

Thank you.

## Notes

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<sup>1</sup> The 2015 Madrid Guiding Principles and 2018 Addendum, S/2015/939.

<sup>2</sup> Security Council resolutions 2178 (2014) and 2396 (2017).

<sup>3</sup> Security Council resolution 2396 (2017).

<sup>4</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'Impact of Counter-terrorism on Peacemaking, Sustaining Peace, Conflict Prevention and Resolution', 2022, para. 10; Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, 'Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework', 2018, 74.

<sup>5</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'Joint Thematic Visit to Germany and North Macedonia', 2024, paras. 5-6 and 8.

<sup>6</sup> Model Provisions, Article 3(4).

<sup>7</sup> Model Provisions, Chapter II.

<sup>8</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'Human Rights Impacts of Counter-terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family', 2021, [8], [31].

<sup>9</sup> Position Paper of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'The Prosecution of Individuals with Alleged Links to Designated Non-State Armed Groups for Crimes committed in the Northeast of Syria as a Key Aspect of the Rights of Victims of Terrorism', 2023, 19-20.

<sup>10</sup> Position Paper of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'The Use of "Battlefield" or Military-produced Evidence in the Context of Investigations or Trials involving Terrorism Offences', 2021, p.4.