



Amnesty International's response to the report on human rights of victims of terrorism by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Written statement to the 20th session of the UN Human Rights Council (18 June – 6 July 2012)

This statement focuses on the recommendations made by the United Nations (UN) Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report on *Framework Principles for Securing the Human Rights of Victims of Terrorism*.¹ A more detailed version of this statement is available on the Amnesty International website.²

Amnesty International welcomes the Special Rapporteur's decision to promote better recognition and respect for the human rights of victims of terrorism.

Although there is no internationally-agreed definition of terrorism, at the core of most understandings of the term are attacks that deliberately target civilians or fail to discriminate between civilians and others.³ Such attacks constitute grave abuses of human rights and are fundamentally incompatible with basic principles of humanity. They are also grave violations of national or international criminal law or both. In the context of an armed conflict, such acts can constitute war crimes. When they are part of a widespread or systematic attack on a civilian population they also constitute crimes against humanity.⁴

¹ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Advance Unedited Version, A/HRC/20/14, 7 May 2012.

² See Amnesty International's response to the report by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Emmerson, on the Human Rights of Victims of Terrorism, AI Index IOR40/012/2012, 31 May 2012 available at <http://www.amnesty.org/en/library/info/IOR40/012/2012/en>.

³ E.g. the definition proposed by the previous UN Special Rapporteur, Martin Scheinin: Report on "Ten areas of best practices in countering terrorism", A/HRC/16/51 (2010), paragraphs 26-28.

⁴ Amnesty International uses the term human rights "violations" in its legal sense, specifically to refer to actions by governments that contravene the state's obligations under international human rights law. The organisation uses the term "abuses" of human rights to refer to similar acts perpetrated by armed groups or other non-state actors, which are acts to which international human rights law generally does not directly apply. Acts by armed groups can however constitute violations of international humanitarian law, which applies in situations of armed conflict, or violations of national or international criminal law. Amnesty International recognises that victims of attacks and other abuses by armed groups or private individuals also frequently experience them as violations of their rights or personal integrity, regardless of how they may be characterised as a matter of international law. Simply extending the existing system for human rights protection to cover acts by armed groups and other non-state actors by characterising them in technical legal terms as "human rights violations", as the Special Rapporteur proposes in his report, would be attempting to apply to non-state entities rules and mechanisms that were not designed for that purpose and may not be fit for purpose, and would likely result in reduced scrutiny by such mechanisms of states' human rights records. The use of the term "abuse" or "violation" is not intended to imply any difference in the gravity of the act or the seriousness of the impacts on the victim. Amnesty International recognises that attacks by armed groups or other private individuals can be aimed at the very destruction of the victims' human rights with devastating effect, and that states can and must act at both the

Governments must move beyond merely affirming their solidarity with victims of such attacks, and ensure in law and in practice respect for and protection of their human rights. Amnesty International remains concerned that a number of existing instruments that should provide support and protection to victims of terrorism have not been fully implemented and respected in practice, and believes that there is much more that governments and inter-governmental organisations can and should be doing systematically to monitor the actual performance of states in this regard.

At the same time, Amnesty International agrees with the Special Rapporteur that states should take steps towards adopting a new global instrument that specifically and comprehensively addresses the human rights of victims of terrorism. In line with the principles Amnesty International has previously said should guide states' treatment of victims of terrorism,⁵ Amnesty International urges the Human Rights Council to:

- I. express support for the development of an instrument for full recognition and respect for the human rights of victims of terrorism, including to justice, to the truth and to reparations.
- II. express support for the embodiment of the following principles in such an instrument:⁶
 - All victims of terrorism should be treated with humanity, compassion and dignity with due respect for their privacy.
 - Victim status should be accorded to direct victims of attacks, their families, and people who have suffered harm in intervening to assist victims following an attack.
 - Recognition of the status of a victim and granting of assistance should not depend on the identification, apprehension, prosecution or conviction of the perpetrator(s).
 - States should promptly provide to victims information about their rights.
 - States should ensure that emergency medical and psychological assistance is available and accessible to any person having suffered mentally or physically following a terrorist attack. Continuing assistance, including medical, psychological, legal, social and material assistance should also be given to victims.
 - Following an attack, States have the obligation to open a prompt, thorough, effective and independent official investigation. Victims have the right to receive information about the progress of the investigation and to present and challenge evidence. The methods, scope and results of the investigation should be made public. Measures must be taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, in a manner that is consistent with the rights of all suspects and accused persons to a fair trial.

international and national levels to protect against such attacks and to respect and fulfil the rights of victims. Amnesty International considers, and understands the Special Rapporteur to agree, that the duty of governments to act in this regard should not be seen to depend on whether attacks by armed groups are legally characterised as “violations” rather than “abuses” of human rights. See further <http://www.amnesty.org/en/library/info/IO40/012/2012/en>.

⁵ See Security and Human Rights: Counter-Terrorism and the United Nations, AI Index IO40/019/2008, ANNEX I, September 2008.

⁶ This text has been written to meet Council word-limits. Slightly fuller versions of these principles are set out in <http://www.amnesty.org/en/library/info/IO40/012/2012/en>.

- States should guarantee victims' effective access to the law and to justice, including legal assistance. Victims should be allowed to participate in criminal proceedings, in a manner consistent with the rights of the accused to a fair trial.
- States should recognise victims' right to reparation (compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition) through easily accessible mechanisms involving a simple procedure and allowing for reparation to be provided without undue delay.
- States should enact legislation and procedures to enable victims to pursue civil claims against perpetrators, their estates, their organizations or others who assisted in the commission of the crime. States should introduce a mechanism to ensure fair and appropriate reparation to victims when reparation is not fully available from other sources.
- States should ensure that barriers such as state and other immunities do not prevent victims from seeking reparations against other states or their representatives, who for instance provided support for an attack by an armed group, before national courts or enforcing orders for such reparations.
- The rights of victims, including to reparations, should be protected without any discrimination or distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, national, ethnic or social origin and disability. Attention should be given to those who have special needs because of the nature of the harm inflicted or any of the factors mentioned in this paragraph.
- States must respect and protect the freedom of expression and freedom of association of victims, victim associations and other civil society organizations.
- Law enforcement, judicial authorities, social services officials and other concerned personnel should receive training to sensitize them to the needs and rights of victims.
- States should implement measures for the prevention and suppression of terrorism, including by ensuring that acts of terrorism constitute criminal offences in national law, conducting investigations capable of detecting and collecting evidence of such offences, and bringing those responsible for acts of terrorism to justice in fair trials, including through international cooperation where necessary. Failure to bring to justice individuals responsible for attacks can constitute a violation of the rights of the victims to truth and to justice.
- States must ensure that all counter-terrorism laws and measures comply fully with international human rights law. States must also protect minority communities from the particular risks of discrimination, violence and harassment they often face in the aftermath of an attack.