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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

On 7 May 2012, United Nations (UN) Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, published a report on the human rights of victims of terrorism. The report is Ben Emmerson's first annual report to the Human Rights Council; he will address the Council in person on 20 June.¹

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

In 2008, in the context of the UN General Assembly's periodic review of the UN Global Counter-Terrorism Strategy "Plan of Action", Amnesty International set out a number of principles that it considers should guide states' treatment of victims of terrorism.² These principles, described in greater detail below, are based primarily on the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 2005 Council of Europe Guidelines on the Protection of Victims of Terrorist Acts. The organisation is pleased to see that the same principles are also reflected in the Special Rapporteur's recommendations.

Though there is not yet an 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 constitute war crimes. When they are part of a

widespread or systematic attack on a civilian population they can also constitute crimes against humanity.

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. Many of the recommendations made in the Special Rapporteur's report reflect and elaborate upon rights that have been recognised to some extent at the regional level,⁴ but which have not yet been recognised fully at the global level.⁵ Amnesty International remains concerned that 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.⁶

Amnesty International reaffirms its 2008 articulation of principles that should guide states' treatment of victims of terrorism as set out below, and welcomes the affirmation of similar principles included in the Special Rapporteur's report.⁷ Key elements are full recognition and respect for the right of victims of terrorism to justice, to the truth and to reparations.⁸

- States shall treat all victims of terrorism with humanity, compassion and dignity with due respect for their privacy.
- States should acknowledge the status of victim to both the direct victims of terrorist attacks and their families, as well as to people who have suffered harm in intervening to assist victims or to prevent their victimization.
- The acknowledgement of the status of victim and the granting of assistance shall not depend on the identification, apprehension, prosecution or conviction of the perpetrator(s).
- States should promptly provide to victims, in a language that they understand, information about their rights, including to reparations.
- 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. States should also ensure the availability, accessibility and provision of necessary and appropriate continuing assistance, including medical, psychological, legal, social and material assistance to victims of terrorist attacks as well as to their families.
- Following a terrorist attack, States have the obligation to open a prompt, thorough, effective and independent official investigation, capable of leading to the identification of the persons reasonably suspected of being responsible for such an act. Victims must have the right to present and challenge evidence and receive prompt information about the progress of the investigation, unless they specifically request not to. The methods, scope and results of the investigation should be made public. At all stages of the investigation and any subsequent proceedings, appropriate 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.

- States must guarantee effective access to the law and to justice to victims of terrorist attacks and their families. In particular, information, aid and assistance should be provided to ensure effective access to the law and to justice, notably to cover the costs that such procedures can entail, including legal assistance. Victims should be allowed to participate in criminal proceedings, including presenting their views at relevant stages, in a manner that is consistent with the rights of the accused to a fair trial.
- Victims have a right to reparation, which includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Mechanisms for reparations should be easily accessible, involve a simple procedure and allow for reparation to be provided for without undue delay. In some cases, states should consider establishing reparations programs to ensure that victims receive prompt, full and effective reparations.
- States should enact effective legislation and procedures (including legal aid) to enable victims to pursue civil claims against perpetrators and their estates or their organizations or others who assisted in the commission of the crime. When reparation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, States should introduce a mechanism to ensure fair and appropriate reparation to victims.
- States can in some circumstances be responsible in relation to attacks by armed groups, for instance by knowingly providing support to the attack. States should therefore ensure that, as with other human rights claims, barriers such as state and other immunities do not prevent victims from seeking reparations against other states or their representatives before national courts or enforcing such reparations orders made by their national courts.
- 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. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as their sex, language, nationality, ethnic or social origin, religion, cultural background, age or disability.
- States must respect and protect the freedom of expression and freedom of association of victims, victim associations and other civil society organizations. Such individuals and groups should be able to campaign for the rights and needs of victims and offer them assistance without any hindrance from State authorities or others.
- Law enforcement, judicial authorities, social services officials and other concerned personnel should receive training to sensitize them to the needs and rights of victims.

International law also requires states to implement measures for the prevention and suppression of terrorism. This includes a requirement to ensure that acts of terrorism constitute criminal offences in national law, to conduct investigations capable of detecting and collecting evidence of plans to commit such offences, and to bring those responsible for acts of terrorism to justice in fair trials, including through international cooperation where necessary.⁹ A failure by authorities to bring to justice individuals responsible for attacks can constitute a violation of the rights of the victims to truth and to justice.

While fulfilling these obligations states must, as the UN Security Council, General Assembly, and Human Rights Council have all repeatedly affirmed, at the same time ensure that the counter-terrorism laws and measures they enact comply fully with all their human rights obligations, including full respect for the rights of all those affected by the measures. States must also protect minority communities from the discrimination, violence and harassment they often suffer in the aftermath of an attack.

¹ Framework Principles for Securing the Human Rights of Victims of Terrorism, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, Advanced Unedited Version, UN Doc. A/HRC/20/14, 7 May 2012.

² See Security and Human Rights: Counter-Terrorism and the United Nations, AI Index IOR 40/019/2008, ANNEX I, September 2008.

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

⁴ See for instance articles 3(II)(4) and 18 of the 1998 Arab Convention for the Suppression of Terrorism; article 8(4) of the United Nations Convention for the Suppression of the Financing of Terrorism; article XVII of the 2002 Council of Europe Guidelines on human rights and the fight against terrorism; article 13 of the 2005 Council of Europe Convention on the Prevention of Terrorism; and, in their most detailed form to date, in the 2005 Council of Europe Guidelines on the Protection of Victims of Terrorist Acts.

⁵ Some of the rights discussed in the report already arise under 1966 International Covenant on Civil and Political Rights as interpreted by the UN Human Rights Committee (see for instance General Comment no 31 ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ UN doc CCPR/C/21/Rev.1/Add. 13 (2004), paragraph 8), for states that are party to the Covenant; as well as under several important UN General Assembly resolutions: the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 40/34); the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (resolution 60/147); and the 2006 United Nations Global Counter-Terrorism Strategy “Plan of Action” (resolution 60/288). Under each of these instruments, however, either the scope of application of the instrument would not necessarily cover all victims of terrorism, or the rights are only incompletely recognised in the instrument. See also paragraphs 24 and 25 of the final report by Mr Emmerson’s predecessor, Martin Scheinin: Report on “Ten areas of best practices in countering terrorism”, UN Doc A/HRC/16/51 (2010).

⁶ Amnesty International has not yet concluded whether in present circumstances work would best be directed toward the adoption of a declaration by the Human Rights Council or General Assembly, or a treaty text. While a treaty would be legally binding, it may take much longer to achieve agreement to a text and once adopted would still apply only to those states that choose to ratify it; while a Declaration would not be directly legally binding, it might be much more speedily adopted, would be applicable to all states, and could potentially directly address armed groups as well. Any new international instrument should be careful not to imply a hierarchy between the rights of victims of terrorism and the rights of victims of other kinds of human rights abuses and violations or other kinds of violent crime, or otherwise to undermine the rights of such victims.

⁷ As described in this document, Amnesty International supports the key recommendation of the Special Rapporteur that states adopt a new international instrument on the human rights of victims of terrorism, and supports the vast majority of the Special Rapporteur’s proposed *Framework Principles* for such an instrument (paragraphs 67 and 68 of the report). The organisation does not however agree with the Special Rapporteur’s conclusion that acts of terrorism constitute in technical legal terms a “violation” of human rights irrespective of the question of direct or indirect state responsibility (paragraph 65 of the report), which is a result of legal reasoning whereby he seeks to apply existing international human rights law directly to armed groups or private individuals (paragraphs 11-13 and 65 of the report). As a matter

of general policy, 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, 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. International human rights law and the mechanisms for its enforcement (including particularly the treaty bodies and the Human Rights Council) were developed in response to the special powers and responsibilities of the state in relation to individuals, and the recognition that those powers and responsibilities leave the individual particularly vulnerable to certain forms of government abuse of power. Amnesty International remains concerned that 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” 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 further likely result in reduced scrutiny by such mechanisms of states’ human rights records. The use of the term “abuse” or “violation” by Amnesty International 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 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 and ability of governments to take concrete action in this regard does not depend on whether attacks by armed groups are legally characterised as “violations” rather than “abuses” of human rights.

⁸ The affirmation of these principles as applicable to all victims of terrorism is not intended to preclude an entitlement to the same or similar rights by victims of other kinds of violent crimes or the victims of other kinds of human rights abuses or violations.

⁹ See e.g. the UN counter-terrorism conventions [<http://www.un.org/terrorism/instruments.shtml>, accessed 17 May 2012]; UN Security Resolutions 1373 (2001) and 1566 (2004), though it must be noted that the very broad language in these resolutions, particularly 1566, has in practice unnecessarily allowed certain states to invoke the resolutions to justify violations of human rights. Some such obligations may also arise under the general obligations of a state party to the ICCPR under article 2 of that treaty in combination with article 6 (right to life). The Human Rights Committee has said: “The article 2, paragraph 1, obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” See General Comment no 31, ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ UN doc CCPR/C/21/Rev.1/Add. 13 (2004), paragraph 8.