

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/16, 42/22, 45/3, 43/4, 43/16 and 43/20.

In this regard, we offer the following comments and suggestions on the **2017 Law on Combating Crimes of Terrorism and its Financing**, which was recently amended on 19 June 2020. In the context of our review of this law, and the legislation it draws and builds upon, we consider its application might negatively affect the enjoyment of human rights and fundamental liberties in the Kingdom of Saudi Arabia (Saudi Arabia). It could perpetuate a worrying trend, already identified by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, of increasingly impacting on the freedoms of opinion and expression, the prohibition of arbitrary detention and enforced disappearances, and the right to fair trial and due process guarantees.<sup>1</sup> We are also very concerned that this is the latest of a number of legislative novelties and amendments that appear to be more aimed at limiting fundamental freedoms and basic principles of international human rights law, as well as stifling civil society, rather than effectively countering terrorism.<sup>2</sup>

We are troubled by the fact that various articles of this law, despite recent amendments, would appear to be contrary to the obligations of your Excellency's Government under international human rights norms, in particular in relation to the Universal Declaration of Human Rights (UDHR), the Arab Charter on Human Rights (ACHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As a result, we are concerned that these articles, and their potentially severe punishments for ambiguously defined crimes (which include the death penalty and extended deprivations of liberty), rather than advance human rights compliant counter-terrorism efforts, may be used in a manner that may severely restrict

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<sup>1</sup> The Working Group on Arbitrary Detention has also expressed concerns in relation to the application of this Law. See, inter alia, WGAD opinions Nos. 10/2018 and 71/2019.

<sup>2</sup> The FATF referred to the use of the legislation to "divert attention and resources to specious cases from more important cases of terrorism financing", MENA FATF, Kingdom of Saudi Arabia: Mutual Evaluation report (September 2018), para. 232.

the legitimate and internationally protected activities of certain political or religious groups, human rights defenders, journalists, and others. In this regard, we are deeply concerned with the practices of extended administrative detention in so-called “Correction and Rehabilitation” Centres, which appear to pose a serious risk of practices of extended deprivation of liberty, potentially arbitrary detention, and possible violations of the absolute right to freedom of opinion. We are also troubled by various sections of the law which seem to permit violations of internationally recognised fair trial standards, enable temporary incommunicado detention or extended pre-trial detention, potentially putting individuals at risk of enforced disappearance, and generally provide the Executive Branch seemingly unconstrained power in the field of counter-terrorism.

We respectfully underline the importance of maintaining and upholding the fundamental guarantees of international human rights law, particularly in relation to counter-terrorism efforts. We stress that respect for international human rights law treaties and norms is a complementary and mutually reinforcing objective in any effective counter-terrorism measures or effort at the national level.<sup>3</sup> Consequently we encourage review and reconsideration of this law so as to ensure its compliance with Saudi Arabia’s international human rights obligations.

We have expressed our views about prolonged and possibly arbitrary detentions, judicial harassment and persecution, and other alleged violations committed against civil society under the guise of national security or terrorism concerns in SAU 5/2020, SAU 3/2020, SAU 16/2019, SAU 14/2018, SAU 11/2018, SAU 8/2018, SAU 1/2018, SAU 12/2017, SAU 7/2013, SAU 13/2012. We also recall that the Special Rapporteur on the promotion and protection of human rights while countering terrorism visited Saudi Arabia in 2017 to assess the progress that had been achieved in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards, and made a number of detailed recommendations whose adoption was recommended as a matter of priority for the government.<sup>4</sup>

### **Overview of international human rights law standards applicable**

We would like to reiterate the obligation of your Excellency’s Government to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR). In particular we would like to draw your Excellency’s Government’s attention to articles 3, 5, 9, 10, 11, 19 and 20 of the UDHR, which state that everyone has the right to life, liberty and security of person, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that no one shall be subjected to arbitrary arrest or detention, that all those with criminal charges against them are entitled to a fair and public hearing by an independent and impartial tribunal, including the presumption of innocence and guarantees necessary for one’s defence, that everyone has the right to hold opinions without interference, and the right to freedom of expression, including the right to impart information and ideas through any media and regardless of frontiers and that everyone has the right to freedom of association. We further emphasize that the rights contained in article 19 and 20 in relation to freedom of expression apply online as well as offline. We note that a number

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<sup>3</sup> See, United Nations Security Council Resolutions 1535 (2004), 1456 (2003), and 1624 (2005). See also, A/HRC/16/51, paragraph 8

<sup>4</sup> A/HRC/40/52/

of the norms identified here (e.g. the prohibition of torture and other cruel, inhuman or degrading treatment and the prohibition of arbitrary deprivation of liberty) constitute customary international law and are not subject to derogation or limitation.

We would specifically like to underline that the “principle of legal certainty” under international law, enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense.<sup>5</sup> This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.<sup>6</sup> Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

We also respectfully remind your Excellency’s Government of the applicable international human rights standards outlined by the Arab Charter on Human Rights (ACHR), specifically to articles 5, 8, 13, 15, 16, 32 which safeguard the rights to life, liberty and security of person, to be brought promptly before a judge, to not be subjected to torture or cruel, inhuman or degrading treatment, to be treated with humanity while in detention and to be compensated in circumstances of unlawful arrest or detention, and the right to information and to freedom of opinion and expression.

We also respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.<sup>7</sup> We would like to emphasize that any restriction on freedom of expression or information that a government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.<sup>8</sup>

We also wish to refer to the Declaration on the Protection of all Persons from Enforced Disappearance (Declaration), adopted by the General Assembly Resolution 47/133 of 18 December 1992, in particular articles 2, 3 and 7 which state respectively that no State shall practise, permit or tolerate enforced disappearances and that states should take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction and that no circumstances whatsoever may be invoked to justify enforced disappearances.

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<sup>5</sup> UA G/SO 218/2 Terrorism.

<sup>6</sup> [A/73/361](#), para. 34.

<sup>7</sup> General Assembly [Res. 60/288](#).

<sup>8</sup> Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression; [CCPR/C/GC/34](#).

We would also like to recall the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, as well as to articles 5(a) and (b), 6(b) and (c) and 12, paras 2 and 3. In this regard, we also wish to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals and groups engaged in promoting and defending human rights.<sup>9</sup>

We further recognize the urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders in the exercise of their work, and urge states to do so, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law (A/HRC/RES/34/5). In this regard, we recall that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.<sup>10</sup>

### *Background*

Saudi Arabia's first piece of counter-terrorism legislation, the Penal Law for Crimes of Terrorism and its Financing, was approved in December 2013 and entered into force on 1 February 2014.<sup>11</sup> Regulations of the Ministry of the Interior issued on 7 March 2014 extended this law's definition of terrorism. On 31 October 2017, the Council of Ministers adopted the Law on Combating Crimes of Terrorism and its Financing (the Terrorism Law), which replaced the 2014 framework. This new law reportedly transferred extensive powers from the Ministry of the Interior (which was reorganized in 2017) to the newly established Public Prosecution and the Presidency of State Security,<sup>12</sup> both of which report directly to the King. On 19 June 2020, a new amendment to the Terrorism Law was approved by Royal Decree.

### *Definition of Terrorism*

We respectfully remind your Excellency's Government, that although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing

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<sup>9</sup> A/HRC/RES/22/6, para. 10; See also E/CN.4/2006/98, para. 47.

<sup>10</sup> (A/70/371, para 46(c)).

<sup>11</sup> Royal Decree No. M/16 of 27 December 2013.

<sup>12</sup> The Presidency of State Security was established by royal decree in July 2017 to coordinate all Saudi security institutions, including counterterrorism and domestic intelligence services, placing them under the direct authority of the King (who also acts as Prime Minister) and sidestepping the Ministry of the Interior. Saudi Gazette, "Saudi Arabia creates new security authority", 20 July 2017.

conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,<sup>13</sup> the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.<sup>14</sup> We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.<sup>15</sup> Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.<sup>16</sup>

In this regard we note that article 1 of the Penal Law for the crimes of terrorism and its financing defines a “terrorist crime” in the following manner:

*Any act committed, individually or collectively, directly or indirectly, by a perpetrator, with the intention to disturb public order, destabilize national security or state stability, endanger national unity, suspend the Basic Law of Governance or some of its articles, undermine state reputation or status, cause damage to state facilities or natural resources, attempt to coerce any of its authorities into a particular action or inaction or threaten to carry out acts that would lead to of the aforementioned objectives or instigate such acts; or any act intended to cause death or serious bodily injury to a civilian, or any other person, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act; or Any act which constitutes an offense as set forth in any of the international conventions or protocols related to terrorism or its' financing or listed in the Annex to the International Convention for the*

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<sup>13</sup> See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

<sup>14</sup> [S/RES/1566](#); [A/RES/51/210](#).

<sup>15</sup> [A/59/565 \(2004\)](#), para. 164 (d).

<sup>16</sup> [E/CN.4/2006/98](#), para 37

*Suppression of the Financing of Terrorism that the Kingdom of Saudi Arabia has ratified.*

We positively note that this definition includes the objective of intimidating a population and the use of violent or lethal acts, including against civilians, “intended to cause death or serious bodily injury.” Although the ideological aspect of a terrorist actor or act could be more clearly outlined, we welcome that this definition reflects some elements that are also contained in the Model Definition referred to previously, and also makes reference to acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism. We also commend your Excellency’s Government for its modification of the 2014 version of the law, which reportedly did not contain any specific reference to violent acts or intimidation. This amendment was a positive step that brought some aspects of this definition closer to international standards on counter-terrorism legislation.

Nevertheless, this definition does not restrict the acts it criminalizes to violent acts, as it includes a range of ambiguous terms, such as disturbing public order, destabilizing national security or state stability, endangering national unity, suspending the Basic Law of Governance, and undermining state reputation, all of which raise concerns in regard to the possibility of their arbitrary application due to their lack of legal specificity. We warn that the criminalization of these vague concepts, some of which have no clear connection with terrorism or violent acts, significantly distances the Law from the principles contained in international treaties on terrorism that the definition itself makes reference to. The broad character of these phrases could entail that a range of speech and association activities protected under international human rights law is characterized domestically as ‘terrorism’. Such a characterization may permit the arrest, detention or harassment of individuals exercising their internationally protected rights, restrictions which could constitute arbitrary deprivations of liberty under international law, and ultimately risk the conflation of domestic protest, dissent, or peaceful defence of human rights with terrorism. We bring again to your Excellency’s Government’s attention the “principle of legal certainty” enshrined in article 11 of the UDHR, which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence, in order to reduce the risk of their arbitrary application. Moreover, the criminalization of these terms, without clearly stipulating what activities they encompass, also increases the risk that they may be applied in a manner that would be contrary to the fundamental principle that the punishment must be commensurate with the crime and the *nullum crimen sine lege* prohibitions of international law.

In addition we recall that some of the violent crimes that are mentioned in this definition, such as for instance causing serious physical injury to a civilian or damaging State facilities or resources, or other ambiguously defined terms that could be understood or interpreted as including violent conduct (such as destabilizing national security or disturbing public order), should only be punished as terrorist acts if they are truly of a terrorist nature. In this respect, we recall that crimes that do not have the status of terrorism, however serious, should not be addressed through counter-terrorism legislation. We note that the cumulative approach used in the model definition referred to previously acts as a security parameter to help ensure that it is only behaviour of a truly terrorist nature that is designated and prosecuted as terrorist conduct.

We would also like to express our concerns about the definitions of “terrorist” and “terrorist entity” as neither of these two terms appear to be set out in a constrained manner. Instead both are essentially defined as any person or group of persons “whether located inside or outside the Kingdom of Saudi Arabia, who commits (...) any crimes as set under this law” (article 1). Due to the broad range of activities that are subsequently criminalized in this legislation, which include, in addition to those detailed in the previous definition of terrorist crime, “challenging the king” (article 30), “undermining the interests of the Kingdom” (article 3), and expressing support for or lauding a terrorist actor (article 34), among many others, we are concerned that the potential punishments for those accused of being terrorist actors or members of terrorist organisations, risk being unlawfully disproportionate due to the broad range of entities, persons, or activities that could be deemed as being “terrorist” under these overly flexible definitions. We would like to take this opportunity to stress that persons who belong to or support associations should not be unduly penalized by the application of proscription laws that are unduly imprecise, in line with the “principle of legal certainty”.

The definition of terrorist is particularly concerning as it does not only criminalize those who “commit” any of the acts that are outlined in the law, but instead states that even those who “participate or contribute to any crimes as set under this law, by using any means directly or indirectly” could also be deemed to be terrorist offenders and prosecuted accordingly. This phrase appears to suggest that even persons who have not committed a crime in furtherance of a terrorist aim may be treated as violent terrorist offenders. We are particularly troubled by the inclusion of the term “indirectly”, which seemingly does not take into consideration intentionality or purposive action. By defining terrorist acts so broadly and criminalizing a range of both direct and indirect actions, the law may further increase the risks of conflation of civil disobedience and opinions critical of or contrary to that of the government with “terrorism.” To avoid such risks, we recall once again that criminal offences must be in precise and unambiguous language that narrowly defines the punishable offence.

## **Freedom of Expression**

We respectfully take this opportunity to elaborate on our concerns about the inclusion and criminalisation of essentially undefined terms such as destabilizing state stability, endangering national unity, suspending the Basic Law of Governance, and undermining state reputation or status and other related activities in the Terrorism Law, and the effects these imprecise inclusions could have on freedom of expression in Saudi Arabia.

UDHR article 19 states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The rights to opinion and expression are reflected also in global and regional human rights treaties, and are considered reflective of customary international law. While the freedom of expression may be subject to certain limitations, the freedom of opinion is absolute.<sup>17</sup> Even where the opinions expressed by people are critical of the State, it has a positive obligation to foster and ensure an enabling environment in terms

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<sup>17</sup> See e.g. Human Rights Committee, General Comment no. 34 (2011) para. 9.

of enjoyment of the rights to freedom of expression, peaceful assembly and association, so that citizens are able to exchange, communicate, information and opinions, and contribute to the building of a just society freely and without fear.<sup>18</sup>

The conditions for permissible restrictions are reflected in the UDHR and in numerous regional and global human rights treaties:

Firstly, as expressed in UDHR art. 29, as well as in global and regional human rights treaties, any restriction must be “determined by law”. Practice by international monitoring bodies have not only a requirement on the form, but also the quality of the law. Thus, for example, the Human Rights Committee has expressed that laws must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.<sup>19</sup> With respect of criminal laws, the requirement of clarity is higher, see UDHR article 11.

Secondly, any restriction must pursue a legitimate objective. The UDHR in article 29 limits those objectives strictly (“solely for the purpose of”) to the “respect for the rights and freedoms of others and to meet just requirements of morality, public order and general welfare in a democratic society”.

Thirdly, restrictions must be necessary and proportionate. The UDHR art. 30 prohibits the use of overbroad restrictions which would destroy the essence of the right itself.<sup>20</sup> This has been interpreted as an expression of the principle of proportionality.<sup>21</sup> The requirement further entails that the measure must be the least intrusive measure necessary amongst those which might achieve their protective function in order to protect a specified legitimate objective.<sup>22</sup>

Lastly, States have the burden of proof to demonstrate that any restriction is compatible with the requirements under customary international law. While national security in most treaties is recognised as a legitimate aim, it must be limited in its application to those situations in which the interest of the whole nation is at stake.<sup>23</sup> States must “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”<sup>24</sup>

We respectfully take this opportunity to elaborate on our concerns about the inclusion and criminalisation of several categories of crimes and their compatibility with the requirements of legitimate aim, legality, and necessity and proportionality. We fear that these provisions will seriously undermine the right to freedom of expression in Saudi Arabia in a manner inconsistent with your Excellency’s Government’s

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<sup>18</sup> A/HRC/20/27, para 63.

<sup>19</sup> Human Rights Committee, General Comment no. 34 (2011) para 25.

<sup>20</sup> Compare ICCPR art. 5.

<sup>21</sup> See General Comment no. 34 (2011) para. 21.

<sup>22</sup> A/71/373, para. 3.

<sup>23</sup> A/71/373.

<sup>24</sup> A/71/373.



obligations under customary international law or with Security Council resolution 1624 (2005).

### *Legitimate aim*

We express our serious concern that the criminalisation of several categories of crimes in the Terrorism Law lack any relevant justification under international law. This particularly relates to the criminalisation as terrorism of anyone who “suspends” the Basic Law of Governance.

We note that the Basic Law of Governance law outlines the key principles upon which Saudi society and law is based, and provides that: “consolidation of the national unity is a duty and the State shall forbid all activities that may lead to division, disorder and partition” (article 12); “citizens should profess loyalty to the King in times of hardship and ease” (article 6), “Mass media and all other vehicles of expression shall employ civil and polite language, contribute towards the education of the nation and strengthen unity (...) It is prohibited to commit acts leading to disorder and division, affecting the security of the state and its public relations.” (article 39), and that individuals should be raised in “the Islamic Creed, which demands allegiance and obedience to God, to His Prophet and to the rulers, respect for and obedience to the laws, and love for and pride in the homeland and its glorious history” (article 9).

The criminalisation as terrorism for the breach of these and other provisions is so broad that, in effect, it would constitute a restriction, not only on the freedom of thought, conscience and religion, but also to the freedom of opinion and expression. Furthermore, through its indirect reference to the Basic Law of Governance, the Terrorism Law also criminalises blasphemy as terrorism. In this regard, we note that “several human rights mechanisms have affirmed the call to repeal blasphemy laws because of the risk they pose to debate over religious ideas and the role that such laws play in enabling Governments to show preference for the ideas of one religion over those of other religions, beliefs or non-belief systems.”<sup>25</sup> The Human Rights Committee, for example, has affirmed that the prohibition of blasphemy is incompatible with the ICCPR.<sup>26</sup>

### *Legality*

We have consistently indicated that counter-terrorism laws across the globe that criminalize freedom of expression implicate serious concerns of legality.<sup>1</sup> We recall that freedom of expression may not be restricted lawfully unless a Government can demonstrate the legality of the action and its necessity and proportionality in order to protect a specified legitimate objective.<sup>27</sup>

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<sup>25</sup> A/74/486, para. 21; A/HRC/31/18, paras. 59–61

<sup>26</sup> General Comment no. 34 para. 48.

<sup>27</sup> We recall that one of the fundamental guarantees of due process is the principle of legality (*nullum crimen, nulla poena sine lege*), including: (a) the principle of non-retroactivity (*nullum crimen, nulla poena sine lege praevia*); (b) the prohibition against analogy (*nullum crimen, nulla poena sine lege stricta*); (c) the principle of certainty (*nullum crimen, nulla poena sine lege certa*); and (d) the prohibition against uncodified, i.e. unwritten, or judge-made criminal provisions (*nullum crimen, nulla poena sine lege scripta*). This means that an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction

In this respect, we note that the Terrorism Law does not clearly define or delimit key terms and categories of crimes in the law, as a consequence rendering in a way that makes it impossible to foresee in advance which acts that would be subject to criminal sanction. In particular, this applies to the criminalisation of ‘endangering national unity’ or ‘undermining state reputation/status’. However, the same concerns apply to many other provisions of the law. An example is article 30, which was reportedly added through the 2017 amendment. It stipulates that “whoever describes, explicitly or implicitly, the King or the Crown Prince as infidel, or challenges him in his religion or justice shall be sentenced to no more than a ten-year prison term of no less than a five-year term”. The same applies to the abovementioned reference to the suspension of the basic Law of Governance.

The inclusion of broad and imprecise phrases such as these which do not clearly indicate what kind of conduct would fall within their ambit. Accordingly, the provisions provide for a high risk of arbitrary or unlawful decisions, contrary to right to freedom of expression. For instance, the prohibition of all activities that “may” lead to division or disorder, does not restrict or define what division and disorder entail, or how the term “may lead” is to be understood or measured. Moreover, the requirements for citizens to profess loyalty to the King at all times and/or to love and have pride in the homeland and its glorious history, are troubling not only because they are vague, but because they would seem to permit the criminalisation of dissent, and appear to even indirectly ban certain opinions themselves, as it is unclear how the requirement to love and have pride in the homeland could be enforced without affecting the absolute right to freedom of opinion.

We would also like to take this opportunity to express our profound concerns with article 44 of the Terrorism Law, which states that “whoever broadcast in any means news, a statement, false or malicious rumour for implementing a terrorist crime, shall be sentenced to no more than a five-year prison term or no less than one-year term”. We note that general prohibitions on the dissemination of false information would be too vague to be compatible with the requirement of legality.<sup>28</sup> In this regard, we refer to the joint declaration on false news, disinformation and propaganda, which further lends support to this position.<sup>29</sup> We further highlight that article 44 applies where the false information is broadcasted “for implementing a terrorist crime”. In this regard, we note that because the definition of terrorism itself is vague, this does not delimit the provision in a way which would comply with the requirement of legal clarity. Finally, it is unclear whether the provision includes a requirement of intent. As a result, it could criminalise the broadcasting of “false” information even for the purpose of disputing or correcting it. Similarly, it could encompass the broadcasting of false information or rumours by mistake or in the belief that this information were true. This is particularly

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was attached.<sup>27</sup> We also note that the principle of legality further requires the substance of penal law to be due and appropriate in a democratic society that respects human dignity and rights (*nullum crimen, nulla poena sine lege apta*).<sup>27</sup>

<sup>28</sup> General Comment no. 34 para. 49.

<sup>29</sup> Joint Declaration on Freedom of Expression and False News, Disinformation and Propaganda - by the Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe, the Organization of American States (OAS) Representative on Freedom of the Media, the Organization of American States; and the African Commission on Human and Peoples' Rights (ACHPR).

troubling when considering the nature of contemporary modes of communication and the ease with which “false” information is disseminated.

Lastly, we wish to express our concern at the scope of application of the law. Article 3 of the law criminalizes a range of activities if committed “outside the Kingdom”, including “undermin(ing) the interests of the Kingdom”. We note that the requirement of legal certainty applies also to the question of the scope of the law. As such it is of significant concern that the Terrorism law does not carefully define the modalities for its extraterritorial application.

### *Necessity and proportionality*

We are deeply concerned that the effects of the individual provisions and the law as a whole may have for the freedom of expression in Saudi Arabia. As previously mentioned, the requirement of proportionality requires that the measure be appropriate to achieve a legitimate objective and that the means be the least restrictive among the alternatives. The law seems to go far beyond what is necessary in pursuance of the legitimate aim of combating terrorism and for the protection of national security. There is a real risk that the breadth of the criminalized forms of expression contained in the Terrorism Law may entail, in the words of the UDHR, the destruction of the right to freedom of expression itself. In this regard, we note that individual provisions could permit the criminalisation of political and religious dissent, critical discussion on human rights, independent journalism and media independence, among many others. Through the vague provision on the extraterritorial application of the law, it could even unlawfully limit freedom of expression beyond the territory of Saudi Arabia.

In this regard, we take into consideration the extent of vague provisions and the breadth of the definition of terrorism, which are likely to restrict or prevent journalists, human rights defenders, civil society, political or religious groups and other actors from carrying out their legitimate activities. We have consistently raised our concerns at counter-terrorism laws across the globe that criminalize freedom of expression.<sup>30</sup> The risk of vaguely worded provisions is that they are applied to target the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.<sup>31</sup>

We respectfully underline that the fact that an individual or organization may promulgate opinions that are different or contradictory to, or critical of, the views of the Government cannot be the basis for the prosecution of an individual or proscription of an entity under counter-terrorism legislation. Expressions of political dissent for instance are not a legitimate objective for a criminal-law-based restriction on the freedom of expression. The UN High Commissioner for Human Rights has cautioned against the use of counter-terrorism measures against non-violent conduct, asserting that “States should ensure the focus of their measures is on actual conduct rather than mere opinions or beliefs.”<sup>32</sup>

We are accordingly deeply concerned that many of the previously identified articles may be employed a punitive and possibly arbitrary manner against individuals

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<sup>30</sup> OL AUS 5/2019; OL OTH 46/2018.

<sup>31</sup> A/HRC/37/52, para. 47.

<sup>32</sup> A/HRC/33/29, para. 61.

who express legitimate criticism of the Government, rather than solely against persons who pose a direct and concrete security or terrorism-related threat. The explicit criminalisation of “challenging” the King (in his religion or justice) and the direct reference to the Law of Governance in the definition of terrorism in the Terrorism Law are particularly troubling in this regard, as none of the criminalised activities referenced above seem to have any connection with terrorism or violent extremism whatsoever, and yet they are indirectly criminalised in the opening article of the Terrorism Law.

We are similarly concerned that article 34 may contribute to the potential of stifling any form of open public discussion and independent media coverage critical of the Government. We recall that this article allows for the potential imposition of a prison term of between three and eight years to whoever “supports or calls for any terrorist ideology, a terrorist entity, a terrorist crime or the approach of its perpetrator, expresses sympathy with it, justifies the act of the crime, promotes, or lauds it, or acquires or obtains any document or recorded materials – with the intention of publication or promotion whatever their types”, Beyond the problem with the definition of terrorism which this article is based upon, the prohibition of supporting, promoting, lauding, calling for, expressing sympathy with terrorism-related activities or actors, without any attempt to restrict the manner in which these terms should be interpreted (the inclusion of the phrase “whatever their types” has the opposite effect) increases the potential that it restricts a wide range of protected forms of expression.

Article 44 of the law places further restrictions on the independence of the media. We recall that this article states that “whoever broadcast in any means news, a statement, false or malicious rumour for implementing a terrorist crime, shall be sentenced to no more than a five-year prison term or no less than one-year term”. In addition to our previously expressed concerns about it, this article may also enable the authorities to further limit or control media coverage and political debate on terrorism-related issues. Any such restriction on a matter of considerable public interest would be highly problematic. Given the ambiguous definition of terrorist offences this article is based upon, the type of control over the transmission of information would be incompatible with the freedom of expression.

We further note that freedom of expression applies equally online and offline.<sup>33</sup> In this regard, we would also like to express our concern about several articles of this law which seem to specifically target and potentially severely punish those who employ online modes of communication. Article 43 stipulates that “whoever establishes a web site on the internet or a program on a computer system or any electronic systems, or transmits any of them for committing a crime stipulated under this law, or facilitate communication with a leader or members of any terrorist entity, or promulgate its thoughts (...) shall be sentenced to no more than a twenty-year prison term or no less than a five-year term.” Similarly, article 36 imposes potentially severe prison terms (10-20 years) to those who use “any wire and wireless communication or electronic mediums.”

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<sup>33</sup> HRC resolution 44/12 on freedom of opinion and expression, adopted 16 July 2020, UN docs A/HRC/RES/44/12; Human Rights Committee, General Comment no. 34 para. 12; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 11 May 2016 (UN docs A/HRC/32/38), para. 8.

While we acknowledge that the nature of contemporary forms of communication pose particular risks towards both the prevention of concrete terrorist attacks and the spread of hate speech or disinformation, once again, in light of our repeatedly emphasized concerns in regard to the ambiguous definitions of terrorism and overly broad formulation of several crimes in this law, we are of the view that the prohibition of certain content, forms of expression, or even opinions online could allow the authorities to further control media coverage and public discussion on questions deemed to be related to terrorism.

In this connection, we respectfully recall that electronic modes of communication are an increasingly essential means for people to exercise their freedom of expression and their right to information. It is increasingly essential for individuals to develop ideas, thoughts, interests, and to discuss political and other issues. The restriction of online platforms, through the combination of overly broad definitions and disproportionate punishments, would disproportionately affect private individuals, civil society, journalists, human rights defenders, and other actors.<sup>34</sup> We recall that a full respect for and enjoyment of the right to freedom of expression and opinion implies a promotion and protection of the diversity and independence of the media and civil society, and of the ability of all to access and transmit information. We reiterate once again that article 19 of the UDHR guarantees a broad right to receive transmit ideas and information of “all kinds”, which includes those that may be considered offensive, without regard for types of media.<sup>35</sup>

### **Specialized Correction and Rehabilitation Centres**

We are particularly troubled by articles 88 and 89 of the Terrorism Law, which relate to Specialized Centres (articles 88) and Correction and Rehabilitation Centres (articles 89). Article 88 states that the Specialized Centres are “mandated to provide care to persons detained for or convicted of any of the crimes provided for in this Law, to correct their ideas and deepen national affiliation.” Article 89 describes the aim of the Correction and Rehabilitation Centres as to “provide care to persons detained for or convicted of any of the crimes provided for in this Law” (and to) to facilitate their integration into society, deepen their national affiliation, and correct their misconceptions.” Both these articles indicate that the President of State Security (PSS) will decide and outline their rules and procedures. This is confirmed by article 90 which states “The PSS shall issue a list of security procedures, rights, duties, breaches and penalties, classification of detainees and prisoners within the detention centres and prisons designated for the implementation of (these) provisions, and what is necessary to rectify and improve their social and health conditions.

We have numerous concerns about the inclusion of these provisions. First and foremost, as it appears that any person “detained and convicted” under the Terrorism Law can be sent to these Centres, and bearing in mind our profound and repeatedly emphasized concerns about the breadth of the definition of terrorist crimes and related terms, we are deeply concerned that these facilities may be used against non-violent offenders and individuals who have no clear relation with terrorist or violent extremist activity. Nevertheless, despite the troubling flexibility regarding the reasons why an individual might be sent to such a Centre, these Centres, due to their coercive character,

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<sup>34</sup> A/HRC/40/52, para. 26.

<sup>35</sup> [CCPR/C/GC/34](#), paragraph 12.

seemingly amount to detention facilities. As a result, the Law seems to grant broad discretionary powers to the authorities to detain individuals on vague grounds, without officially imposing a prison sentence on them, thereby seemingly undermining the principle of legal certainty and other fundamental legal safeguards. If confirmed, this may constitute pre-emptive arbitrary deprivation of liberty.

We recall that the prohibition of arbitrary deprivation of liberty is recognized in all major international and regional instruments for the promotion and protection of human rights, including articles 9 of the UDHR and 14 of the ACHR, and is considered a peremptory norm of international law. We also note that the widespread translation of the prohibition into national laws, constitute a near universal State practice evidencing the customary nature of the prohibition of arbitrary deprivation of liberty.<sup>36</sup> Notwithstanding, these Centres appear to raise a number of concerns with regard to potential practices of arbitrary detention.

In this regard we note that a detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon a vague or overly broad piece of legislation,<sup>37</sup> or if its legal provisions are otherwise incompatible with fundamental rights and freedoms guaranteed under international human rights law.<sup>38</sup> In this regard, we recall once again the broad definitions of terrorism and related crimes that admission to these Centres is premised upon, which due to their ambiguity raise the concerns we have repeatedly mentioned in regard to their lack of precision and the subsequent potential for their misuse.

As part of its efforts to counter terrorism, a State may lawfully detain persons suspected of terrorist activity, as with any other crime. However, if a measure involves the deprivation of an individual's liberty, strict compliance with international and regional human rights law related to the liberty and security of persons, the right to recognition before the law and the right to due process is essential. Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority.<sup>39</sup> We wish to remind your Excellency's Government that the right to challenge the lawfulness of detention, including in relation to detention under counter-terrorism measures, is a peremptory norm of international law.<sup>40</sup> We also wish to highlight the right to legal assistance in order to enable the effective exercise of the right to challenge the lawfulness of detention.<sup>41</sup> Furthermore we recall that a person may only be deprived of liberty in accordance with procedural safeguards governing detention.<sup>42</sup> Essential procedural rules entail limits established under national law on the duration of detention

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<sup>36</sup> Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law. Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law

<sup>37</sup> Opinions No. 36/2020, para 54; No. 45/2019, para. 54; No. 9/2019, para. 39; 62/2018, paras 57-59; No. 46/2018, para. 62; and 22/2018, paras 52-54.

<sup>38</sup> See, for example, Working Group, opinions No. 25/2012 (Rwanda) and No. 24/2011 (Viet Nam).

<sup>39</sup> Office of the United Nations High Commissioner for Human Rights - Human Rights, Terrorism and Counter-terrorism - Fact Sheet No. 32

<sup>40</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), paras. 3, 11 and 47(a).

<sup>41</sup> A/HRC/30/37.

<sup>42</sup> E/CN.4/2005/6, para. 58(a).

and rules governing the process for authorizing detention and continued detention.<sup>43</sup> States are obliged to demonstrate that detention does not last longer than absolutely necessary, that the length of possible detention is limited and that the State in question respects the guarantees provided by article 9 cases.<sup>44</sup> We also recall that the Working Group on Arbitrary Detention has previously stated that an overly broad law which authorizes indefinite detention with limited or no clear standards or means to review it is by implication arbitrary.<sup>45</sup>

We are consequently concerned by the fact that the Terrorism Law does not explicitly require the PSS or other relevant authorities to determine the initial duration of any potential detention in one of these Centres, nor does it appear to include any temporal limits to the amount of time an individual may spend at one or how often his or her detention can be renewed. This seemingly unlimited basis for placement in such a Centre, without clearly requiring the finding of criminal culpability, creates a serious risk of a violation of UDHR article 9. Moreover, combined with the inability of individuals to communicate with and be visited by family, friends, medical staff and legal counsel in line with conditions established by law, the Terrorism Law may thereby increase the risk of enforced disappearances. In this regard we recall that the Human Rights Committee has stated that “in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification”.<sup>46</sup> Furthermore, the legal basis justifying the detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally. We are concerned that the lack of clarity in relation to these articles suggests that the procedure behind admissions to these Centres may not comply with these requirements. In addition, the Law appears to be silent about the means or standards available to those individuals who may be sent to them to contest the decision or the exact legal process through which the PSS or relevant court makes the determination about whether or not to send an individual to one or to maintain their sentence.

We also respectfully recall that while arbitrary deprivation of liberty does not necessarily amount to torture and other cruel, inhuman or degrading treatment or punishment, there is a recognised link between both prohibitions. In conjunction, the arbitrary character of detention, its protracted and/or indefinite duration, the refusal to provide information, the denial of basic procedural rights and the severity of the conditions of detention can cumulatively inflict serious psychological harm which may well amount to torture or other ill-treatment.<sup>47</sup> The longer a situation of arbitrary deprivation of liberty and inadequate conditions of detention lasts, and the less the affected person can do to influence their own situation, the more intense their mental and emotional suffering will become - and the higher the likelihood that the prohibition

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<sup>43</sup> See for instance European Court of Human Rights, *Wynne v United Kingdom (No.2)*, Judgment of the European Court of Human Rights, 16 October 2003.

<sup>44</sup> Communication No. 770, *Gridin v Russian Federation*, Views adopted by the Human Rights Committee on 20 July 2000, para. 8.1.

<sup>45</sup> Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law. Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law

<sup>46</sup> Human Rights Committee, *Madani v. Algeria*, communication No. 1172/2003, Views adopted on 28 March 2007, para. 8.4

<sup>47</sup> (CCPR/C/116/D/2233/2013).

of torture and ill-treatment has been breached.<sup>48</sup> The lack of clarity provided about the reasons why an individual can be sent to one of these Centres, how long he or she may spend there, the means of appeal available, as well as the lack of information about the detention conditions and programmes raise concerns about the potential of serious psychological harm, which may amount to torture and ill-treatment, against detainees.

In addition to our concerns about the unclear parameters upon which admission to and release from these Centres appear to be based, and the subsequent risks of potentially arbitrary deprivations of liberty and possible instances of torture and ill-treatment, we would like to express our profound concerns about their stated aim. We recall that article 88 of the law states that the Centres are for “persons detained for or convicted of any of the crimes provided for in this Law” and aim “to correct their ideas and deepen national affiliation,” while article 89 describes their aim as “to facilitate the integration into society (“ of persons detained for or convicted of any of the crimes provided for in this Law ”) and to “deepen their national affiliation, and correct their misconceptions.” From our understanding of these phrases, it seems that these Centres, and their aim of “correcting ideas” or misconceptions and deepening national affiliation indicates that they may constitute re-education facilities which are designed to carry out undefined practices that may potentially amount to indoctrination.

In this regard we recall that the freedom to hold opinions without interference, enshrined in article 19 of the UDHR, is an absolute right that “permits no exception or restriction,” whether “by law or other power”.<sup>49</sup> The Human Rights Committee has concluded that this right requires freedom from undue coercion in the development of an individual’s beliefs, ideologies, reactions and positions.<sup>50</sup> This implies that an individual cannot be subjected to treatment intended to change that individual’s process of thinking, be forced to express thoughts, to change opinion, or to divulge a religious conviction. Similarly, no sanction may be imposed for holding any political view or religious belief. Accordingly, indoctrination programmes (such as re-education or “correction facilities”) or other threats or actions designed to compel individuals to form particular opinions or change their opinion would be a violation of article 19 of the UDHR. Furthermore, such facilities or policies are also in contradiction with the right to education, which must always be free of propaganda and imply access to information and a focus on the free development and exercise of critical thinking.<sup>51</sup>

Once again, due to the broad definition of terrorist offences it is possible that these Centres may be used not only to punish critics of the Government or those who hold views that are deemed contrary to the interests of the State or King, but to “correct” their views, opinions, and thoughts. Members of certain political organisations or religious groups could potentially be deemed to constitute a “terrorist”, due to the ambiguity of the definition of terrorist crime in Article 1 of the Law, and therefore be subjected to undefined coercive practices aimed to change their way of thinking in line with articles 88 and 89. If confirmed in practice, this would be in direct contravention of your Excellency’s Government’s international obligations in relation to the absolute right to freedom of opinion.

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<sup>48</sup> (A/HRC/37/50, paras. 25-27).

<sup>49</sup> Human Rights Committee, general comment No. 34 (2011), para. 9

<sup>50</sup> Yong Joo-Kang v. Republic of Korea, Human Rights Committee communication No. 878/1999, 16 July 2003 (CCPR/C/78/D/878/1999).

<sup>51</sup> A/74/243, paras. 35-36



## **Power of the executive**

Leading on from our concerns about these reformatory correction Centres, we recall that the articles related to this issue all indicate that the President of State Security (PSS) will decide and outline the rules and procedures of these Centres. In fact, as mentioned previously, article 90 directly states that “The PSS shall issue a list of security procedures, rights, duties, breaches and penalties, classification of detainees and prisoners within the detention centres and prisons designated for the implementation of the provisions of this Law, and what is necessary to rectify and improve their social and health conditions article 90).

We would also like to express our concern about how these articles appear to give the PSS significant discretion to send individuals to one of these Centres, to maintain or end their sentences, and even an ability to decide the rules and regulations of the way the Centres themselves will operate in general and treat specific detainees in particular. In the apparent absence of any clear procedure for exercising this extremely broad power, or indication of any oversight over it, it would appear that the PSS, and the Executive branch more broadly, could approve or maintain the detention of essentially any individual without being clearly required to legally demonstrate that there is objective reason to believe that any such decision is justified, despite the far-reaching human rights implications that such a decision could have.

We note with deep concern that this passage is one of many throughout the law as a whole which suggest that the Executive branch, and in particular the PSS, has broad and almost unconstrained power in the field of counter-terrorism. For instance, article 10 states that “the PSS, may ban a person suspected of committing any of the crimes stated in this Law from travel outside the Kingdom, or may take other measures relating to his travel or return.” Article 13 stipulates that those “convicted of crimes under this law may not be provisionally released except temporary by order of PSS throughout the execution of the sanction”, while article 14 indicates that persons who are released will nevertheless be subjected to “control” measures issued by the PSS. The far-reaching scope of the authority and discretion bestowed upon the Executive branch in this Law is perhaps most clear in article 4, which describes the PSS’s responsibilities as follows: “criminal control and deduction functions, including search, detection, control criminal and administrative persecution, collection of evidence, indicators, financial investigation and operations of secret nature, as well as identification, tracking seizing and keeping of funds of suspected persons, proceeds and instrumentalities.”

Given the imprecise and overly flexible definition of terrorism and other related offences included in this Law, we warn that the attribution of almost exhaustive powers to the Executive in terms of the Law’s implementation could lead to an arbitrary and unreasonable use of these powers. This could potentially further contribute to the criminalisation or persecution of organisations or individuals that are not ‘genuinely’ terrorist in nature, as persons or groups whose views are merely deemed contrary to those of the Executive branch might be the worst impacted by this multifaceted ambiguity. This would again be contrary to Security Council resolution 1566 (2004) and the model definition referred to previously, as well as in contravention of international standards on a broad range of fundamental rights. We respectfully take this opportunity to remind your Excellency’s Government that countering terrorism does not give States a *carte blanche* which automatically legitimates any interference

with individual rights. We are concerned that all these articles related to the powers PSS may foster or worsen practices that would be contrary to your Government's obligations under international human rights law, as the powers they stipulate, as well as the limitations to them, are not outlined in a clear, precise and human rights-consistent manner. Instead their lack of precision, appears to give the relevant authorities carte blanche to interpret and employ an already overly imprecise Law in a potentially subjective, inconsistent, and/or punitive manner.

### **Due process and right to a fair trial**

The right to a fair trial is one of the fundamental guarantees of human rights and the rule of law. It comprises various interrelated attributes and is often linked to the enjoyment of other rights, such as the right to life and the prohibition against torture. When confronting the challenge of terrorism in particular, the Human Rights Committee has stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide access to a fair and public hearing and to independent and adequate legal representation in accordance with obligations under international law.<sup>52</sup> In this regard we recall that Article 10 (1) of the UDHR, which constitutes customary international law, states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". We also recall that various universal terrorism-related conventions also require compliance with the right to a fair trial. The International Convention for the Suppression of the Financing of Terrorism for example, which is referenced in the definition of terrorist crime of the Terrorism law, requires the fair treatment of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law (article 17) and also generally stipulates that "this Convention does not affect the enjoyment of other human rights obligations and responsibilities of States" (article 21).

Nevertheless, several articles of the Terrorism Law, seem to disregard these considerations. For instance, article 21 states that "[w]ithout prejudg(ing) the right of the person to seek the assistance of a licensed lawyer to defend himself, the public prosecution may restrict this right if the investigation (so requires)." We recall that the right of access to counsel is protected by various UN principles and guidelines, namely the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>53</sup> the UN Basic Principles on the Role of Lawyers,<sup>54</sup> the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,<sup>55</sup> and the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court.<sup>56</sup> While we acknowledge that in the context of the fight against terrorism in particular, limitations upon representation by counsel of choice may be temporarily

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<sup>52</sup> Human Rights Committee, General Comment No. 32, CCPR/C/GC/32. *See also*, WGAD Opinions No. 41/2017; No. 42/2018; No. 43/2018; On fair trial rights see e.g. WGAD Opinions, Nos. 2/2020; 29/2020; 41/2017; 38/2017;43/2018; 84/2018; 53/2019.

<sup>53</sup> Adopted by GA Res. 43/173 (Dec. 9, 1988).

<sup>54</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27–Sep. 7, 1990).

<sup>55</sup> Adopted by G.A. Res. 67/187 (Dec. 20, 2012).

<sup>56</sup> A/HRC/30/37

imposed, due to potential security concerns for instance, we stress that any restriction to this right must be necessary to achieve a legitimate aim and must be proportional to that end, and it must be ensured that any restriction does not deprive the accused person of a fair trial when considering the entirety of the proceedings.<sup>57</sup> A decision to prosecute someone for a terrorist offence should never on its own have the consequence of excluding or limiting confidential communication with counsel.<sup>58</sup> We also recall that there must be a reasonable and objective basis for any alterations from the right to choose one's counsel, capable of being challenged by judicial review and that any delay or exclusion of counsel must not be permanent; must not prejudice the ability of the person to answer the case; and, in the case of a person held in custody, must not create a situation where the detained person is effectively held incommunicado or interrogated without the presence of counsel.<sup>59</sup>

However, the language of article 21 creates direct barriers to a lawyer's ability to provide meaningful representation for those accused of terrorism-related offenses. It also does not clearly state when and for how long such a restriction may be imposed, nor does it emphasize that such a decision should be temporary, proportional, and aimed at a legitimate aim. It also does not detail the exact means of recourse available to those tried in such a manner to contest the decision made against them. Consequently, it creates serious risks of infringing upon the accused's right to a fair trial. Our concerns in this regard are heightened by article 27 which states that the "competent court (...) may conduct the testimony of witnesses in the absence of the accused person and his lawyer."<sup>60</sup> We recall that under international human rights law, legal counsel should be available at all stages of criminal proceedings. The Human Rights Committee has also determined that a trial judge should not proceed with the deposition of witnesses during a preliminary hearing without allowing the applicant an opportunity to ensure the presence of his lawyer.<sup>61</sup> Furthermore, this article also undermines the right of the accused to present his or her own defence, and challenge the evidence presented by the prosecution. This could cause a fundamental abrogation of due process rights, and one which would be inconsistent with a human rights-based approach to countering terrorism. In addition it also seem to undermine the principle of equality of arms, which requires that procedural conditions be similarly provided to all parties at trial and sentencing, unless distinctions are "can be justified on objective and reasonable grounds, not entailing actual disadvantage or other."<sup>62</sup> It is unclear how this principle of equality can be protected in a system which does not guarantee legal representation or even the participation of the accused in court proceedings.

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<sup>57</sup> See, for example: European Court of Human Rights, *S v. Switzerland*, Application Nos. 12629/87, 13965/88 (1991), para. 48.

<sup>58</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223), para. 39

<sup>59</sup> *Ibid*, para. 40.

<sup>60</sup> Human Rights Committee, *Brown v. Jamaica*, Communication No. 775/1997, UN Doc CCPR/C/65/D/775/1997 (1999). See also Human Rights Committee, *Hendricks v. Guyana*, Communication No. 838/1998, UN Doc CCPR/C/76/D/838/1998 (2002), para. 8.4.

<sup>61</sup> See, for example, Human Rights Committee, *Robinson v. Jamaica*, Communication No. 223/1987, UN Doc CCPR/C/35/D/223/1987 (1989), para. 10.4.

<sup>62</sup> Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26), para. 36.

With regard to the Specialized Criminal Court, we recall that both the Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment<sup>63</sup> and the Working Group on Arbitrary Detention<sup>64</sup> have expressed concerns that this Court, which was established in 2008 to try cases of terrorism, is insufficiently independent of the Ministry of the Interior. As a court of exception, the Specialized Criminal Court is not composed of independent judges but of a panel appointed by the Ministry of the Interior.

### **Detention conditions**

We would also like to express our profound concerns about article 20, which seems to authorize temporary incommunicado detention potentially leading to both short and long term enforced disappearances and thereby violating the right to be protected from enforced disappearance. This article stipulates that “without prejudice to the right of the accused to inform his family of his arrest, the public prosecution may issue an order barring contact with the accused for a period not exceeding ninety days if the investigation so warrants.” The article also seems to suggest that this incommunicado detention period can potentially be further extended by the Specialized Criminal Court, without outlining any reasons or temporal limitations for any additional extension to be justified.<sup>65</sup> In this regard, we recall the right of persons deprived of liberty to communicate with and be visited by relatives, counsel or any other person of their choice at regular intervals.<sup>66</sup>

We respectfully refer your Excellency’s Government to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protections and responsibilities of the State in this regard. These include the obligation of the State to not practice, permit or tolerate enforced disappearances (Article 2), the right of the accused person to be held in an officially recognised place of detention and to be brought before a judicial authority promptly after detention (Article 10), and the obligation of the State to make available accurate information on the detention of persons to their family, counsel or other persons with a legitimate interest (Article 10). We would also like to highlight that there is no time limit, no matter how short, for an enforced disappearance to be categorized as such. Furthermore, once a person is in custody, the State is expected to promptly provide accurate information on the detention of said person and their place or places of detention, including transfers, to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned. We also note that the denial of communications with family and friends (whether through correspondence or visits) is prohibited under Rule 58 of the Mandela Rules.

Moreover, the Working Group on Enforced or Involuntary Disappearances has noticed that States are increasingly justifying the use of enforced disappearances as part

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<sup>63</sup> CAT/C/SAU/CO/2 and Corr. 1, para. 17

<sup>64</sup> See, inter alia, WGAD opinions Nos. 10/2018, para. 73; 22/2019, para. 74; 26/2019, para. 102; 56/2019, para. 86; and 71/2019, para. 86.

<sup>65</sup> “If the investigation requires a longer period, the matter shall be referred to the specialized criminal court for decision thereon.”

<sup>66</sup> Communication No. 74/1980, *Estrella v Uruguay*, Views adopted by the Human Rights Committee on 29 March 1983, para. 9.2; E/CN.41/1986/15, paragraph 151; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 15.

of their counter-terrorism activities, including through the adoption of legal provisions that facilitate the occurrence of enforced disappearance and incommunicado detentions, practices in clear breach of international human rights law (A/HRC/42/40, para.58).

We are deeply troubled by the fact that the law seemingly authorizes incommunicado detention for a period of up to 90 days, without any indication about how and when such a measure may be justified, and generally runs contrary to all of the considerations listed in the previous paragraph. We further recall that prolonged incommunicado detention or detention in secret places, in addition to increasing the risk of enforced disappearance, could facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and could in itself constitute a form of such treatment<sup>67</sup> and that the Committee against Torture has also frequently confirmed that incommunicado detention effectively deprives detainees of legal safeguards against torture.<sup>68</sup> Furthermore, we recall that enforced disappearances constitute acts inseparably linked to treatment that amounts to torture or to cruel, inhuman or degrading treatment or punishment because a person is detained indefinitely, without contact with the outside world and outside of the protection of the law.<sup>69</sup> We also note that enforced disappearances subject family members who remain without knowledge about the fate or whereabouts of a disappeared person for extended periods of time to severe and prolonged suffering, constituting torture and other cruel, inhuman or degrading treatment or punishment.<sup>70</sup> We therefore recommend that this article be removed from the legislation as it poses serious risks of contravening the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, as well as causing severe and unnecessary emotional distress to both the detainee and his/her relatives.

Finally, we would like to raise our concern about the lengthy periods of pre-trial detention stipulated by this law. We refer to article 19 which states that the “Public Prosecution may order the detention of any person accused of a crime provided for in this Law for a period, or successive periods, not exceeding any period above 30 days, and not exceed in total for twelve months. In the cases where the investigation requires longer periods of detention, the matter shall be referred to the specialized criminal court to decide on the extension.”

We are of the view that this potential period of one year in pre-trial detention, which seemingly can be further extended by court order, goes far beyond what is reasonable. Furthermore, we recall that under international law, detention pending trial is a preventive measure aimed at averting further harm or obstruction of justice, rather than a punishment, and must not last any longer than is necessary. Pre-trial detention should not be arbitrarily exercised. In addition, this exceptional measure is accompanied by a set of rights that must be respected. Detainees have the right to be

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<sup>67</sup> General Assembly resolution 70/146.

<sup>68</sup> CAT/C/SAU/CO/2, para. 16.

<sup>69</sup> Communications Nos. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; 1422/2005, *El Hassy v Libya*, Views adopted by the Human Rights Committee on 24 October 2007, para. 6.2.

<sup>70</sup> Communications Nos. 107/1981, *Almeida de Quinteros v Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

informed promptly of the reasons for their arrest and detention, the right be brought before a judge promptly after their arrest or detention,<sup>71</sup> the right to be assisted by a lawyer of their choice, the right to communicate with the outside world and, in particular, to have prompt access to their family, lawyer, physician, and other relevant third parties.<sup>72</sup> We recall that communication with the outside world and judicial oversight over detention are essential safeguards against potential human rights violations that may be committed while in detention. We further note, in the context of the COVID-19 pandemic in particular, that prolonged pre-trial detention should be urgently reviewed and avoided.<sup>73</sup>

In relation to the aforementioned articles 19 and 20 of the 2017 counter-terrorism legislation, the Working Group on Enforced or Involuntary Disappearances noted a number of procedural shortcomings, including the granting of extended powers to investigators who have the discretion to bar accused persons from engaging in communications with a person of their choice. In the absence of specific legal provisions offering sufficient protection against and criminalizing enforced disappearance, the Working Group expressed concerns that, in practice, the use of incommunicado detention, leaving persons vulnerable to the discretionary practices of the institutions holding criminal justice powers, puts individuals at heightened risk of enforced disappearance.

In this regard, we note that article 12 of the law was recently amended to read: “The Public Prosecution has the right to temporarily release any person arrested in connection with one of the crimes stipulated in the system, unless this results in harm to the interest of the investigations, or he fears his escape or disappearance.” The same article previously said that accused persons “may not be provisionally released except temporary by order of the Public Prosecution when there (are) no security concerns.” Although we welcome the removal of the vague phrase “security concerns”, and its replacement with slightly more specific concerns about harming the investigation, escapes or disappearances, we are of the view that this amendment does not address the serious risks posed by the long pre-trial detention periods that are codified by this law. We also regret that, despite the broad range of concerns we have detailed, this slight modification to one article, which nevertheless remains vague (the phrase “harm to the interest of the investigations” is undefined), was the sole amendment made to the Terrorism Law in 2020. Bearing in mind the flexibility of the definition of terrorism in this piece of legislation, we remain concerned that this new article, much like all of the previously detailed provisions, could still be used arbitrarily, punitively, or indiscriminately against political dissidents or civil society rather concrete terrorist threats

## **Concluding Remarks**

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<sup>71</sup> A/49/40, vol. I, annex XI, p. 119, para. 2; HRC, General Comment no. 29, ff 9; see also HRC, Concluding Observations: Israel, UN Doc. CCPR/C/ISR/CO/3 (2010), para. 7(c); HRC, Concluding Observations: Thailand, UN Doc. CCPR/CO/84/THA (2005), paras 13 and 15. 30 ICCPR, art. 9(4); CRC art. 37(d); Principle 32 of the UN Body of Principles)

<sup>72</sup> ICCPR, articles 9, 14 and United Nations Body of Principles for the Protection of All Persons under Any Form of Detention, Article 16.

<sup>73</sup> [https://www.ohchr.org/Documents/HRBodies/SP/COVID19\\_and\\_SP\\_28\\_April\\_2020.pdf](https://www.ohchr.org/Documents/HRBodies/SP/COVID19_and_SP_28_April_2020.pdf) .

We caution that the Terrorism Law in its current form does not appear to conform with either Saudi Arabia’s international human rights law obligations or best practices in relation to counter-terrorism legislation and policy. We regret that the two last amendments to Saudi Arabia’s counterterrorism legislation did not lead to significant improvements, as the 2020 amendment was limited both in scope and language, and the 2017 redrafting, although it slightly improved the Law’s definition of terrorism (by explicitly including violent acts), it also provided almost unconstrained powers to the PSS in the field of counter-terrorism. These powers include, but are not limited to, the authority to arrest and detain people (article 4), to decide whether or not detained persons can be released (article 13), to monitor communications and financial data (article 6), to search properties and seize assets (article 9), to ban persons from traveling abroad (article 10), or even impose currently undefined thought “correction” measures in Specialized Rehabilitation Centres (articles 88 and 89). All these and other capabilities can seemingly be wielded without judicial oversight, as the Law provides either limited or no language that would suggest otherwise.

While we are aware of the security challenges that Saudi Arabia and other countries face in relation to terrorism, and of the duty of a State’s leadership to ensure the safety and security of its people, including through preventive approaches. However, we are concerned that this law currently lacks sufficient clarity and precision so as to ensure that any measures taken pursuant to it are necessary, proportionate, and strictly limited to their stated aim of combating terrorism. We stress that the failure to use precise and unambiguous language in relation to terrorist offences could fundamentally affect the protection of a number of fundamental rights and freedoms. The Terrorism Law is particularly worrying in this regard because of the impact it could have on civic space, as it provides for potentially severe penalties for ambiguously defined crimes such as “challenging the king” (article 30), “undermining the interests of the Kingdom” (article 3), and expressing support for or lauding a terrorist actor (article 34), among others, and even seems to indirectly criminalise a range of activities that appear to have no clear relation with national security whatsoever (such as not “professing loyalty to the King” at all times<sup>74</sup> and not “loving and having pride in the homeland and its glorious history”).<sup>75</sup> The lack of a concrete and constrained definition of a broad range of key terms (terrorist, terrorist entity, etc.) and the ambiguity of the few that are defined in a somewhat limited manner (terrorist crime) are particularly troubling, and seem to repeatedly and seriously contravene the principle of legal certainty under international human rights law. We stress that this lack of clarity makes it difficult for any person or organisation to regulate their conduct accordingly as the Law itself is not always clear about the exact conduct it is criminalising.

As a result, we are profoundly concerned that the Terrorism Law establishes a legislative framework where essentially any forms of criticism or dissent could be interpreted and prosecuted as domestic terrorism, seemingly at the subjective discretion of the relevant authorities. We are of the view that the persistent ambiguity of this Law may lead to a systematic failure to distinguish between threats that are genuinely terrorist in nature and those which are not, and seriously affect the enjoyment of human rights and fundamental freedoms. Our concerns are heightened by the broad range of severe and often non-human rights compliant punishments outlined by the law. These include, in addition to capital punishment, the apparent legal authorization of up to

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<sup>74</sup> Article 6 Basic Law of Governance

<sup>75</sup> Article 9 Basic Law of Governance.

ninety-day incommunicado detention periods, up to one-year pre-trial detention periods (both which can seemingly be further extended), violations of the right of access to counsel and various other fair trial standards.

We therefore encourage a process of independent and thorough review of the relevant provisions, and other laws on which they are based or interact with, so that they are more clearly in line with international human rights standards. We also call upon your Excellency's Government to urgently recognise, in law and in practice, freedom of expression, both physical and digital, as an individual right, subject only to the restrictions permitted by international human rights law, the absolute nature of the right to freedom of opinion, and to take steps to reduce the risks of practices of extended and potentially arbitrary detention and violations of the right to a fair trial under this legislation, particularly against non-violent individuals.

We note that international best practice encourages States to regularly and independently review counter-terrorism legislation to ensure that it remains necessary and consistent with international law. In this context, we would be pleased to offer technical assistance on any of the issues raised in this communication.

As it is our responsibility, under the mandates given to us by the Human Rights Council, to seek your cooperation in clarifying the cases that have been brought to our attention, we would be grateful for your Excellency's Government's comments on the following points:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns.
2. Please justify the definition “terrorist crime” and how it is in line both UN Security Council Resolution 1566 and with the Model Definition mentioned previously. In particular, please clarify the inclusion of the terms “disturbing public order”, “undermining state reputation or status” and “suspending the Basic Law of Governance”, and how the criminalisation of these activities is strictly relevant to the fight against terrorism.
3. Please explain how the apparent restrictions of certain forms of speech included in this Law, such as in particular the criminalisation of "challenging the King," not having love or pride in the homeland and its glorious history, or “promoting or lauding a terrorist actor” among other terms and restrictions to the transmission and publication of information detailed above, will not restrict the enjoyment of Article 19 of the UDHR.
4. Please explain how the Specialized Centres and Correction and Rehabilitation Centres in particular are compatible with the prohibition of arbitrary deprivation of liberty. Please also provide further information on the nature and scope of “reform” programmes in these facilities and how they are in compliance with the right to education and the absolute right to freedom of opinion.



5. Please explain how the anti-terrorism legal framework of your Excellency's Government ensures the accused's right to counsel and right to a fair trial.
6. Please provide more detailed information concerning the power extended to President of State Security, the judicial role in independent oversight over it, and safeguards in place in order to ensure that these powers are employed using only measures which are necessary and proportionate.
7. Kindly provide information on the existing legal framework protecting individuals in Saudi Arabia against enforced disappearances, information on the conduct of effective independent investigations into such cases and the results of any related judicial processes, and how article 20 of the law, and its apparent codification of 90 day incommunicado detention, is in line with your Government's international obligations in this regard.
8. Please provide information on the appeals process and judicial oversight of pre-trial detention, and the parameters upon which pre-trial detention can be renewed. Please also indicate what procedures are in place to ensure that persons in detention are treated in compliance with your obligations under the CAT and that their right to be protected from enforced disappearance is safeguarded.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment