

Mandates of the Working Group on Arbitrary Detention; 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL EGY 19/2020

24 December 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 42/22, 43/4, 43/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning concerning the **alleged arbitrary detention of human rights defender Mr. Mohamed Radwan, the alleged arbitrary detention of Mr. Kamal Elbalshy in apparent attempt to target his brother, the journalist and human rights defender Mr. Khaled Elbalshy, and the extended pre-trial detention of human rights defender Mr. Patrick Zaki.**

Mr. **Mohamed Radwan**, also known as 'Mohamed Oxygen', is a human rights defender and blogger. Prior to his arrest on 6 April 2018 on charges of “publishing false news” and “joining an illegal group”, he had used his social media platforms to write and publish on human rights issues, including cases of enforced disappearance and torture allegedly involving the National Security Agency.

Mr. **Kamal Elbalshy** works in the tourism industry in Cairo, and is the brother of Khaled Elbalshy. He is not involved in any human rights activities, political activism and does not have a criminal record.

Mr. **Khaled Elbalshy** is a human rights defender and journalist. He is currently Editor-in-Chief of the media outlet Darb News which focuses on human rights related issues, including the arrests of journalists and the targeting of human rights defenders, activists and CSOs. It is considered one of the last independent media outlets in your country and access to it has been blocked by the authorities. Other news websites and media outlets that he has been involved with, such as Albedaiiah and Katib, have also been blocked by authorities. He was formerly Vice President of the Syndicate of Journalists and founded the Front to Defend Journalists and Freedoms. In 2017, he was awarded the Individual Activist Award of the Nelson Mandela-Graca Machel Innovation Awards, in recognition of his work reporting on human rights issues. Mr. Elbalshy has been the target of smear campaigns by state controlled media outlets for his journalism and advocacy, and in 2016 was sentenced to one year in prison for his defence of two journalists who had been critical of the Government.

Mr. **Patrick Zaki** is a human rights defender and a researcher on human rights and gender for the Egyptian Initiative for Personal Rights (EIPR), and has been

involved in several national campaigns against violations of civil and political rights. He has also advocated for women's rights, the rights of detainees, as well as the rights of vulnerable groups in the country, including sexual and Christian minorities. Mr. Zaki is an Egyptian national, but until the time of his arrest and detention on 7 February 2020, he had been resident in Italy, where he is a postgraduate student at Bologna University studying Gender and Women's studies.

A previous communication was sent to your Excellency's Government by several Special Procedures mandate holders in relation to the situation of Mr. Radwan, along with that of other human rights defenders, on 27 September 2018 (case no. EGY 14/2018). Therein, the mandate holders expressed grave concerns as to the extended period of arbitrary detention the human rights defender had been subjected to following his arrest in April 2018, as well as the risk that he may have been subjected to torture and other inhuman and degrading treatment during the alleged ten-day period of incommunicado detention in which he was held.

We thank your Excellency's Government for its response to the above-mentioned communication, received on 23 January 2019. We express serious concern, however, at the confirmation in the State's response of Mr. Radwan's arrest on anti-terrorism grounds including "using the Internet for propagating ideologies". This would appear to further confirm the extremely alarming pattern, identified by the mandate holders in the communication of September 2018, of the use by the authorities of counter-terrorism legislation to suppress dissent and curtail the work of human rights defenders in Egypt. We also express concern at the failure of the State to provide any information in their response as to Mr. Radwan's whereabouts either immediately following his arrest in April 2018 or at the time of the State's response.

Mr. Zaki has been the subject of three previous communications EGY 6/2020, EGY 10/2020 and EGY 15/2020, sent on 31 March, 29 July and 25 November, respectively. We regret that responses to EGY 6/2020 and EGY 10/2020 have not been received.

We would also like to refer to communications EGY 4/2020 and EGY 13/2020 regarding Egypt's anti-terrorism legislation, and Terrorism Circuit Courts, respectively. We regret that no response has been received for EGY 13/2020, and we look forward to the substantive reply pending regarding EGY 4/2020.

According to the information received:

Concerning Mr Radwan

Following his arrest on 6 April 2018, after a ten-day period of alleged incommunicado detention, Mr. Radwan was held at Tora Prison in preventative detention, renewed in 15-day periods by the Supreme State Security Prosecution, on charges connected to the protection of national security in Supreme State Security Case No. 621 of 2018, to which multiple other human rights defenders are also attached.

On 31 July 2019, Mr. Radwan was conditionally released from preventative detention in Tora Prison. Several conditions were attached to his release, including a duty to report at a police station twice a week.

On 21 September 2019, upon reporting to a Cairo police station in compliance with the conditions of his release, Mr. Radwan was detained and transferred to the headquarters of the National Security Agency, allegedly in connection with his participation in demonstrations earlier that month, calling for the resignation of the Egyptian President. Subsequent to his transfer to the National Security Agency, operating under jurisdiction of the Ministry of Interior, Mr. Radwan's whereabouts were unknown.

On 8 October 2019, Mr. Radwan was presented before the Supreme State Prosecution, who ordered his preventive detention for a period of 15 days on charges of "membership of a terrorist organisation", "defamation" and "misuse of social media" in Case No. 1356 of 2019, to which several other human rights defenders are attached. Thereafter, his preventive detention was repeatedly extended for 15-day periods by the Supreme Security Prosecution, including on 20 October 2019 and 18 November 2019.

On 5 May 2020, the Cairo Criminal Court extended Mr. Radwan's preventive detention for a period of 45 days. The session of the Court, which also dealt with other human rights defenders included in the same case as Mr. Radwan, was held without the presence of any of the human rights defenders or their lawyers, either physically or by video link.

On 24 August 2020, Mr. Radwan's family were informed that the human rights defender had been transferred from Tora Prison to Al-Aqrab Prison, a maximum security facility within the Tora complex south of Cairo. Neither his family or lawyer were informed of the reason for this transfer.

On 27 October 2020, Mr. Radwan's preventive detention period was renewed for 45 days by the Supreme State Security Prosecution.

On 3 November 2020, the Cairo Criminal Court ordered Mr. Radwan's conditional release in Case No. 1356 of 2019. This order, however, was not executed, and Mr. Radwan was subsequently attached to a new case, No. 855 of 2020, by the Supreme State Security Prosecution, charged with "joining a terrorist organization". Multiple other human rights defenders are also attached to this case.

Mr. Radwan has been denied family visits since March 2020, when the Ministry of Interior suspended such visits for all prisons in the country in order to prevent the spread of Covid-19, reportedly without facilitating alternative means for detainees to contact their families. Items dropped off for him by his relatives, including food and medicine, have been also blocked by the prison authorities.

Concerning Mr. Kamal Elbalshy

On 20 September 2020, Mr. Elbalshy was walking home from the gym when he was stopped at a police checkpoint. There was a strong police presence and a number of police checkpoints throughout Cairo on that day, as anniversary protests to mark demonstrations from the previous year had been expected. Mr. Elbalshy was initially waved through the checkpoint and continued on his way home, but was then stopped by a police officer who had run after him, and asked him to return to the checkpoint. Upon returning, Mr. Elbalshy was reportedly asked by the police officers if Khaled Elbalshy was his brother. Upon confirming that he was, the officers confiscated his ID and arrested him, and allegedly without informing him of the reasons for his arrest. He was then taken to the Qasr-El Nil police station.

On 22 September 2020, he was transferred to the Red Mountain Central Security Forces (CSF) camp outside Cairo where he was held incommunicado, his family and lawyer unable to contact him and unaware of his whereabouts.

On 1 October 2020, he was transferred to the Supreme State Security Prosecution (SSSP). Whilst being held at the SSSP, Mr. Elbalshy was allegedly interrogated, during which he was formally accused of illegal protesting, belonging to an illegal organization, spreading false news, and misusing social media. Case No. 880/2020 was opened against him and he was ordered to remain in pre-trial detention.

On 2 October 2020, Mr. Elbalshy was transferred to Tora prison. His family were reportedly not made aware of this transfer until 10 October 2020.

On 17 November 2020, following the denial of multiple requests to visit Mr. Elbalshy, he received his first visit from his family in Tora prison. He was visited by one of his brothers, who is also representing him in his case. They were unable to discuss the legal aspects of the case at length however, as the visit took place over a barrier.

Since Mr. Elbalshy was allegedly arbitrarily detained in September, his pre-trial detention has been routinely renewed every 15 days by the SSSP in writing, and he is yet to be brought before a prosecutor. His lawyer has been denied access to his case file, and denied the ability to make a defence for him or a case for his release. Until a trial date is announced for Mr. Elbalshy and so long as he remains in pre-trial detention, the charges against him are subject to change, and the relevant articles and laws are not known.

Concerning Mr. Zaki

On 7 February 2020, Mr. Zaki was arrested by the National Security Investigations (NSI) of Egypt whilst travelling through immigration security in Cairo airport, after arriving from Bologna.

On 8 February 2020, following a 24 hour period when Mr. Zaki's whereabouts were unknown, he was reportedly transferred to the NSI facility in Cairo. Here

he was reportedly interrogated for 17 hours, during which he was allegedly handcuffed, blindfolded, was threatened, received beating to his abdomen and back, and tortured with electric shocks. He did not have access to his lawyers. On the same day, he was taken to the Prosecutor's office in Mansoura and questioned about his human rights activities, and ordered into pre-trial detention in Mansoura prison for 15 days. Since 8 February 2020, his pre-trial detention has been consecutively renewed for 45 days by the SSSP.

On 24 February 2020, Mr. Zaki's family were informed he had been transferred to Mansoura Public Prison, and on 5 March 2020 were informed that he had been transferred to Tora investigation prison.

Mr. Zaki is formally accused of incitement to commit violence and terrorism-related crimes and of publishing rumours and false news that aim to disturb social peace and sow chaos under Egyptian Counter terrorism law; of managing a social media account that aims to undermine the social order and public safety under Egyptian Anti Cybercrime Law; of calling for the overthrow of the state under the Egyptian Penal Code, and for incitement to protest without permission from the relevant authorities with the aim of undermining state authority under the Egyptian Protest Law.

On 6 December 2020, the Third Terrorism Circuit of the Criminal Court renewed Mr. Zaki's detention once again for a period of 45 days. The court session reportedly lasted over seven hours, and during which the presiding judge reviewed the detention of over 700 detainees who were reportedly denied food, water and access to a bathroom for the duration of the hearing.

Mr. Zaki remains in pre-trial detention in Tora prison, where he has limited access to his lawyers and family members. His interactions with his lawyers are limited to a few minutes contact when leaving his remand renewal hearings and one member of his family is permitted a monthly 20-minute visit. Mr. Zaki suffers from asthma; a respiratory condition recognised by the World Health Organisation as putting those who suffer from it at increased risk if they contract the COVID-19 disease, placing him in a more vulnerable position whilst in pre-trial detention.

Without wishing to prejudge the accuracy of the information received, we express serious concern as to the continued detention without trial of Mr. Radwan, which appears to be in response to his exercising of the right to freedom of expression in the context of denouncing alleged human rights violations. The arrest and continued pre-trial detention of Mr. Elbalshy in apparent attempt to target his brother Mr. Khaled Elbalshy for his efforts to report on human rights violations in the country, is particularly concerning for the apparent lack of legal or factual basis for the arrest other than intimidating and threatening Mr. Khaled Elbalshy, and deterring him from continuing with his legitimate work. The targeting of family members of human rights defenders is of serious concern, for it represents a systematised approach to silencing their efforts to promote and defend the rights of others whilst also implicating their relatives. We remain concerned by the remanding of Mr. Zaki in pre-trial detention, and the criminalisation of his legitimate human rights activities, which have been equated to involvement in terrorism, publishing rumours and false news, and incitement.

Regarding the renewed 45-day period for pre-trial detention on 6 December 2020, we reiterate our concern regarding the duration of pre-trial detention in the case of Terrorism Circuit Courts and that it be prolonged every 45 days (rather than 15 days as set out in article 142 of the Criminal Code of Procedure) and that there seems to be no upper limit to the time that an individual may be held in pre-trial detention.

In this regard, we also wish to reiterate our concern regarding the misuse of anti-terrorism and national security legislation to criminalise human rights defenders, journalists and civil society actors in the country for the chilling effect it has already had and will continue to have on civil society more broadly. We further reiterate our concern regarding the repeated and continued use of this legislation to shrink civic space in Egypt, as previously communicated to your Excellency's Government by the Special Rapporteurs.

Moreover, we express serious concerns use of vague provisions to unduly criminalise the exercise of the right to freedom of expression, including through the prohibition of the spreading of false information, the misuse of social media and the incitement to protest, noting that such provisions blatantly fail to comply with the requirement of legal clarity under international human rights law. We further note that the imprisonment of individuals for defamation would constitute a violation of article 19 of the ICCPR.

We wish to express further concern at the information received as to procedural irregularities in the above-mentioned cases, including the allegations that proceedings were carried out in the detainee's absence and without the presence of their lawyer, that they have limited and irregular access to their lawyers and families, their lawyers are unable to access their case files, and the failure to inform their families of their transfer between prisons. We also find concerning the use of extended pre-trial detention, as the norm to persecute and imprison human rights defenders and their relatives and would also like to reiterate that, as stipulated by the Egyptian Criminal Proceedings Code, pre-trial detention should only be used in certain circumstances, as an exception to the rule of provisional release.

Moreover, we express our deep concern regarding the allegations that the above-mentioned individuals were held in incommunicado detention at an unknown location for a given amount of time whilst detained by authorities, rendering them vulnerable to an increased risk of being subjected to torture and or cruel, inhuman and degrading treatment. We also reiterate our serious concern regarding the allegation and information received that Mr. Zaki was physically assaulted and tortured whilst being interrogated, which if confirmed, would be in contravention of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which guarantee that no one should be subjected to torture, cruel, inhuman or degrading treatment or punishment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the arrest and pre-trial detention of Mr. Radwan, Mr. Elbalshy and Mr. Zaki, and provide the compatibility in compliance with Egypt's obligations under international human rights law. In addition, please provide specific information on how the authorities have guaranteed the rights of these individuals to challenge the legality of their detention, including by allowing them access to legal assistance immediately after their arrest.
3. Please provide information on why charges related to membership of a terrorist organisation have been levied against Mr. Radwan and Mr. Zaki; and, indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
4. Please provide information as to Mr. Radwan's whereabouts during the period between 21 September 2019 and 8 October 2019.
5. Please provide information as to the reason for Mr. Radwan's transfer from Tora Prison to Al-Aqrab Prison, as communicated to the human rights defender's family, without explanation, on 24 August 2020. Kindly also provide confirmation of Mr. Radwan's current location.
6. Please provide information on the condition of detention for the above-mentioned individuals, including details about family visits, items delivered to them by their families and communication with their lawyers. In the case that visits by family members or lawyers remain denied to these human rights defenders following measures taken to prevent the spread of the Covid-19 pandemic in Egypt, please specify the precise legal basis for these restrictions, and what alternative means of contacting family and legal counsel have been made available for them.
7. Please explain how the systematic imposition of pre-trial detention, particularly in cases of human rights defenders, and under the current COVID-19 context, is consistent with the human rights obligations of your Excellency's Government.
8. Please indicate what measures have been taken to ensure that human rights defenders, journalists and other civil society actors have been able to carry out their legitimate work in a safe and enabling environment in Egypt without fear of threats or acts of intimidation or harassment of any sort.

9. Please provide information on any measures taken to revise provisions under criminal law to ensure their compatibility with the right to freedom of expression, including the criminalization of defamation and provisions criminalizing the spreading of false information, the misuse of social media and the incitement to protest.
10. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [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](#), [72/180](#) and [73/174](#) in particular with international human rights law, refugee law, and humanitarian law contained therein.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted this communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. This letter of allegations in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the letter of allegations procedure and the regular procedure

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 7, 9, 10, 14, 19 and 21 of the **International Covenant on Civil and Political Rights (ICCPR)**, ratified by Egypt on 14 January 1982, which guarantee that no one should be subjected to torture, cruel, inhuman or degrading treatment or punishment, everyone has the right to liberty and security of person, to a trial within a reasonable time, to challenge the legality of the detention before the courts, to be released subject to guarantees to appear for trial, to a fair and public trial before an independent and impartial tribunal without undue delay and with legal assistance of their choosing, and that everyone shall be granted these rights free of discrimination. Articles 19 and 21 guarantee that everyone shall have the right to freedom of expression and the right to freedom of assembly.

With respect to the charges of “spreading false information”, “misuse of social media”, “incitement to protest” and “defamation”, we would like to highlight that any restrictions on the right to freedom of expression must be compatible with article 19 of the ICCPR. The Human Rights Committee has highlighted that the protection afforded to article 19 is particularly strong with respect to expressions on political and human rights issues (see General Comment no. 34 paras. 2 and 3 and 20). This, in turn will influence the permissibility of any restriction under article 19 (3). Any restriction, to be compatible with the Covenant, must be provided by law, pursue one of the exhaustively enumerated aims in paragraph 3 of article 19, and be necessary and proportionate. In addition, please note that arrest or detention as punishment for the legitimate exercise of the rights to freedom of opinion, expression, assembly and association is arbitrary (CCPR/C/GC/35, para 17).

As the Human Rights Committee has affirmed, a norm to be characterised as “law” 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” (General Comment no. 34 para. 25). This precludes the criminalisation of conduct on the basis of vague and ambiguous language. As highlighted by the UN Special Rapporteur on the right to freedom of expression in the 2017 joint declaration with regional freedom of expression monitors, the criminalisation of “false” expressions would be incompatible with the Covenant. The same applies to other vaguely formulated provisions, such as the “misuse of social media”.

The necessity and proportionality requirement entails that the restriction “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law” (*Id.* para. 34). With respect to the criminalisation of defamation, the Human Rights Committee has unequivocally held

that “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” (*id.* para. 47).

With regard to article 9 of the Covenant, we would also like to remind your Excellency’s Government that incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3. In addition, incommunicado detention may also violate other rights under the Covenant, including articles 6, 7, 10 and 14 (CCPR/C/GC/35, para 35). Furthermore, article 9.3. of the Covenant requires that detention pending trial shall be the exception, not the rule, and it should be based on the individual circumstances of the case and subject to judicial oversight.

We would also like to highlight that article 14 of the Covenant requires that anyone facing criminal charges shall be granted adequate time and facilities for the preparation of his defense, to communicate with counsel of his own choosing, to be tried without undue delay and not to be compelled to testify against himself or to confess guilt.

We would further like to highlight that many of the above-referenced rights from the ICCPR are also guaranteed under the **African Charter on Human and Peoples Rights**, including in articles 6, 7, 9 and 11, which protect the rights to liberty and security of person, due process and fair trial, freedom of expression and freedom of assembly.

With respect to the apparent use of counter-terrorism and extremism as justifications for the detention and investigation of the above-mentioned individuals, we would like to stress that counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under the ICCPR and non-violent exercise of these rights is not a criminal offence.

We would also like to draw the attention of your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners, otherwise known as the Nelson Mandela Rules, adopted by General Assembly resolution 70/175 on 8 January 2016. We would like to make reference, in particular, to the basic principles contained in rules 1-5, and those concerning contact with the outside world as laid out in rules 58-63.

Similarly, the information received would appear to indicate contraventions of several of the principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 on 9 December 1988. In this regard, we would like to specifically cite articles 1, 15, 16(1), 18, 19, 37 and 38 concerning the dignity of detained persons, their communication with the outside world, notification of persons connected with detainees of their arrest and/or transfer, access to legal counsel, the right to visits and the right to trial within a reasonable time.

Finally, we would like to refer your Excellency’s Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to 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. We also wish to refer to articles 5(a), 6(c), 9 and 12, which state that everyone has the right, individually and in association with others, to meet or assemble peacefully for the purpose of promoting and protecting human rights; to study, discuss, form or hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms.

In regard to the definition of terrorism employed by the Terrorism Circuit Courts, we 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 these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law.

We wish also to refer to the 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, groups and organs of society engaged in promoting and defending human rights.

We would like to bring to the attention of your Excellency's Government that counter-terrorism legislation should be sufficiently precise to comply with the principle of legality recognised in international human rights law, so as to prevent the possibility that it may be used to target civil society on political, religious or other unjustified grounds (A/70/371, para. 46 (c)). We recall that the principle of legal certainty expressed in article 11 of the UDHR and in the ICCPR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes and seeks to prevent that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para. 34). To be "prescribed by law," the prohibition must be framed in such a way that the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.¹ The failure to restrict counter-terrorism laws and

¹ Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

implementing measures to the countering of conduct which is truly terrorist in nature, has the potential to restrict and infringe upon the enjoyment of rights and freedoms in absolute ways including exercising freedoms of expression, opinion, and assembly.² To minimize the risks of counter-terrorism legislation being misused, criminal offences must be in “precise and unambiguous language that narrowly defines the punishable offence”.³

² E/CN.4/2002/18, Annex, para. 4(b).

³ E/CN.4/2006/98, para. 37.