

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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; the Special Rapporteur on freedom of religion or belief and the Working Group on discrimination against women and girls

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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; 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; Special Rapporteur on freedom of religion or belief and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 43/4, 43/16, 40/10 and 41/6.

In this connection, we express our serious concern with the **Bill on Amendments to the Criminal Code and the Code of Criminal Procedure to criminalize stay in an area controlled by a terrorist organization¹ (the “Bill”) and its compatibility with Netherlands’ international and human rights law obligations**. This legislation includes measures that could significantly limit the exercise of fundamental freedoms, including those of freedom of movement (pursuant to article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights (“the Covenant”), freedom of expression (pursuant to article 19 of the Universal Declaration of Human Rights and 19 of the Covenant), the right to a fair trial, in particular the respect for the presumption of innocence and the principle of legality (pursuant to articles 10 and 11 of the Universal Declaration of Human Rights and 14 and 15 of the Covenant), the right to family life (article 17 of the Covenant), to right to enter his own country (article 12 of the Covenant), the right to work (article 6 of the International Covenant on Economic, Social and Cultural Rights).

We recommend review and reconsideration of certain aspects of this legislation to ensure its compliance with the Netherlands’ international human rights obligations. We note that best international practice encourages States to regularly independently review counter-terrorism and emergency law regularly so as to ensure that it remains necessary and international law compliant.

I. Context and content of the Bill on unauthorized stay in a terrorists-controlled area

The Bill undertakes to establish, through amendments to the Criminal Code and the Code of Criminal Procedure, the criminalization of persons who intentionally stay in an area under the control of a terrorist organization without the permission of the Minister of Justice and Security.

¹ Wijziging van het Wetboek van Strafrecht en het Wetboek van Strafvordering tot strafbaarstelling van verblijf in een door een terroristische organisatie gecontroleerd gebied (strafbaarstelling verblijf in een door een terroristische organisatie gecontroleerd gebied).

This Bill reportedly has the aim of creating an instrument complementary to the existing legal framework to address the issue of travel of “foreign terrorist fighters” and associated offences committed by them.² The Bill was adopted by the Lower House (*tweede kamer*) on 10 September 2019. It is currently pending before the upper house (*eerste kamer*) of the Dutch Parliament. The Senate Committee for Justice and Security is currently discussing the procedure forward, following feedback on the discussion between the government and NGOs about the Bill.

We note that, in parallel, a temporary piece of administrative legislation enacted in 2017 (the Temporary Administrative Measures to Counter Terrorism Act),³ aims at addressing the matter of foreign terrorist fighters by imposing travel bans.⁴ This regulation supplements existing legal instruments to combat terrorism.

According to this Bill, the Criminal Code will be amended to include the following provision:⁵

Article 134b:

1. *Punished with a term of imprisonment not exceeding two years or a fine of the fourth category, the Dutch national who, other than by order of the State or an organisation under international law or as a delegate of the International Committee of the Red Cross or of the Red Cross, as referred to in Article 1, second paragraph, of the 1988 Red Cross Decree, without the permission of Our Minister of Justice and Security, intentionally stays in an area designated by order in council as being under the control of a terrorist organization. Permission may be granted to a group of persons working for a particular organization.*
2. *For the purposes of the first paragraph, a foreign national who has a permanent place of residence or domicile in the Netherlands shall be treated in the same way as a Dutch national.*
3. *[...]*
4. *Contrary to the first subsection, Our Minister of Justice and Security and Our Minister of Foreign Affairs may jointly designate an area under the control of a terrorist organization for a maximum period of three months, if an urgent interest so requires. The draft of a ministerial regulation shall be submitted to both Chambers of States General at least two weeks prior to its adoption.*

II. Assessment and concerns with regard to the Bill

² See Memorie Van antwoord, Eerste Kamer der Staten- Generaal, 24 Juli 2020; Letter from the Ministry of Justice and Security to the OSCE, 24 July 2020, on the Bill on areas controlled by terrorist groups, https://www.eerstekamer.nl/overig/20200724/brief_van_de_minister_van_j_v_van_2/document.

³ Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding.

⁴ Article 3 of the temporary law (Our Minister may, if necessary with a view to the protection of national security, impose a prohibition on a person from leaving the Schengen area, if there is a well-founded suspicion with regard to this person that he or she will move outside this territory as aim to join an organization that has been placed on the list of organizations referred to in Article 14, paragraph 4, of the Netherlands Nationality Act).

⁵ This is an informal translation of the Bill.

We acknowledge that a clear and human rights compliant regulatory response is required to address the return of foreign (terrorist) fighters,⁶ as well as the need for the development of a criminal legislation to adequately counter terrorism and foreign fighters pursuant to legislative process and the rule of law, instead of furthering administrative measures.⁷ However, we consider that the Bill, as it stands, poses a number of concerns with regard to its potential infringement of international human rights, such as, the rights to freedom of expression, the right to a fair trial, including the principle of legality and the presumption of innocence, the right to freedom of movement, the right to family life, as well as the right to work and the right to enter one own's country.

Primarily, we are concerned that (i) the Bill does not adequately define the term "terrorist-controlled areas". Moreover, the Bill does not include or require any "terrorist-related purpose" or other criminal intent to satisfy the criminal act involved, and neither can it be considered to contain an implicit intent requirement in view of the current wording of the text. This creates legal uncertainty and the capacity to render criminal behavior, which does not meet the threshold for criminal sanction. The vagueness of the Bill's wording is also a matter of concern. (ii) This Bill creates an obligation for a person to have an authorization for stay in another jurisdiction, without defining any criteria or conditions for providing (or denying) such authorization. In this sense, this Bill risks targeting individuals who will be hindered and penalized for undertaking legitimate and internationally protected work because of lack of official credentials. This Bill thus risks infringing upon the rights to freedom of expression and freedom of movement of persons in ways, which are unnecessary, disproportionate and potentially discriminatory in practice. (iii) Finally, the imprisonment penalty may appear to be disproportionate.

*The UN General Assembly has expressed serious concern related to violations of human rights and fundamental freedoms committed in the context of countering terrorism. It has stressed that, when counter-terrorism efforts neglect the rule of law and violate international law, they undermine the values they sought to uphold, but may also fuel violent extremism that could be conducive to terrorism.*⁸

⁶ Concerns have been raised over the labelling of individuals as well as their families, by association, as foreign terrorist fighters (as defined in resolution 2178 (2014)); difficulties related to the criminal regulation of individuals' intentions; as well as the blurring of lines between terrorism and armed conflict, with consequences for human rights protection and the protection regime under international humanitarian law. This document uses the term "foreign terrorist fighters" when referring to the use of this term as reflected in the relevant Security Council resolutions. <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>.

⁷ We note the existence of Temporary Administrative Measures to Counter Terrorism Act of 2017. While we acknowledge that travels to terrorist areas are intended in principle to engage a preventive approach, we recall the administrative measures should not function as hidden punitive measures e.g. the OSCE guidelines doc, p.34, 35: In principle, criminal procedure also provides a more transparent and rule of law compliant vehicle for suspected F(T)Fs to know and respond to allegations against them, compared to the application of administrative or executive measures that can have just as serious rights consequences and punitive effects (see section 3.4). The fairness, legitimacy and effectiveness of criminal law responses depends on the existence of a rule of law framework that is consistent with fundamental principles of criminal law and international human rights law. On administrative measures, see also A/HRC/40/52/Add.4, paras. 24 and ff (the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism argues that sequential and cumulative use of overlapping and sometimes duplicative administrative and criminal powers engages violations of the right to fair process as protected by human rights treaties").

⁸ GA resolution 70/291, para. 16. See also A/72/316, A/HRC/25/11; UNSC Resolutions 2178 (2014), 2396 (2017).

We recall that the regulation of travel for terrorist purposes is set in Resolution 2178 (2014), which requires States to prosecute those who travel or attempt to travel in these precise contexts.⁹ Such regulation has to be defined within the boundaries of fundamental human rights and criminal legal principles. Importantly, as expressed the High Commissioner for Human Rights, “certain measures adopted by States in the implementation of resolution 2178 (2014) have resulted in profound human rights challenge. [...] Some of [them] may have a negative impact, for example, on the right to due process for affected individuals, including the right to presumption of innocence; to enjoyment of the right to freedom of movement, and be protected against arbitrary deprivation of nationality; to the rights to freedom of thought, conscience, opinion, expression or association; and to protection against arbitrary or unlawful interference in privacy.”¹⁰ Furthermore, individuals may be discriminated based on their ethnicity, gender, race, and religion or belief. We concur that this Bill may impose the negative outcomes identified by the High Commissioner.

i) *Absence in the Bill of a “terrorist purpose”, a criminal intent and vagueness of the law*

We raise concerns with regard to the absence of any indication in the Bill that the stay/residence [verblijf] in “terrorist-controlled” areas must be linked to a terrorist purpose or includes any criminal intent. In other words, any unauthorized stay would be the subject of criminalization.

As this Bill is produced in the framework set by the UNSC Resolution 2178, we wish to recall that this Resolution defines foreign terrorist fighters specifically as “individuals who travel to a State other than their State of residence or nationality *for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training*”.¹¹

We note that any purpose related to terrorism, as per the purposes described in the Security Council Resolution, is lacking in the Dutch Bill. The absence of terrorist purpose and the lack of any criminal intent (besides a mere implied intent to travel and stay to an area “controlled by terrorists”) appears to raise issues with regard to the principle of legality and we consider that the definition of the prohibited conduct will be too vague.¹²

In this view, we recall that “while Resolution 2178 (2014) provides the framework of obligations, it falls to states to give them effect in criminal law in a manner that respects the principle of legality and clarifies the scope of criminality. The burden, therefore, falls on individual states to ensure that their national legislation clearly and specifically defines the material and mental elements of [foreign terrorists

⁹ Resolution 2178 (2014), para. 6). See also resolution 2396 (2017), based on resolution 2178 (2014) focusing on measures to address returning and relocating foreign terrorist fighters and their families.

¹⁰ A/HRC/28/28, para. 49.

¹¹ Paragraph 6 of the Resolution (emphasis added).

See OSCE, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters”, pp. 34-38.

fighters]-related crimes”.¹³

Moreover, the Report of the High Commissioner for Human Rights insisted on the fact that “[i]t should not be presumed [...] that every individual travelling to an area of conflict has criminal intent or is supporting or engaging in criminal terrorist activity. This consideration is fundamental to ensuring respect for due process and the presumption of innocence”.¹⁴ Yet, we note that this Bill appears to be exactly within the scope of this consideration.

Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reported that, in order to facilitate terrorism related prosecutions, legislation that may fall short of human rights standards has been adopted in multiple contexts.¹⁵ She has recommended that, in criminalizing travelling abroad for the purpose of terrorism, the specific intent to carry out, contribute to or participate in an act of terrorism should be an essential element of the crime. In doing so, it was noted that “[s]ome jurisdictions have enacted as offences the entering or remaining in a ‘declared area’ in which a ‘listed organization is engaging in hostile activity’ or travelling to a ‘country designated to be a terrorist training country’”.¹⁶ The offence is considered to have been committed regardless of whether there was any terrorist purpose to the travel, that is, it is sufficient that the individual entered the area or the country without being able to show that the purpose of the travel was covered by one of the exceptions. Those provisions reverse the burden of proof, placing the onus on individuals to prove that their travel falls within an exception. Such legislative techniques may conflict with the right to a fair trial, in particular the respect for the presumption of innocence under article 14 of the International Covenant on Civil and Political Rights, which is a non-derogable right.¹⁷

We also wish to highlight that “[t]he intervention of criminal law is generally justified where an individual has caused or contributed to harm to a protected value. [...] The law cannot, however, prosecute an abstract danger that an individual is seen to represent. [...] remoteness is a constraining principle of criminal law, such that individuals cannot be prosecuted absent a meaningful proximate link between their behavior and the ultimate wrong”.¹⁸ However, we raise concerns that, by prosecuting any kind of unauthorized stay, the Bill goes against these fundamental criminal law

¹³ OSCE, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters”, p. 36. See also UN Guidelines on Human Rights Complaint Approaches to Foreign Fighters, <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>

¹⁴ A/HRC/28/28, para. 49

¹⁵ See generally, reviews of national counter-terrorism legislation by the Special Rapporteur and State Responses found at: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/LegislationPolicy.aspx>

¹⁶ A/71/384, para. 50. Références needed [GW to add].

¹⁷ A/71/384, paras 49, 50. Note also that intent is currently a requirement in the draft articles 7 to 10 of the European Commission’s “Proposal for a directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism”, which criminalizes, inter alia, travelling for terrorist purposes in order to counter the phenomenon of foreign terrorist fighters; the funding, organization and facilitation of such travel, including through logistical and material support, the provision of firearms and explosives, shelter, means of transportation, services, assets and goods.

OSCE, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters”, p. 38. See also A. Ashworth and L. Zedner, *Preventive Justice*, Oxford, 2014, p. 109.

principles. Moreover, we consider that such a vague provision may have *de facto* an impact on the right to freedom of movement. We recall that restrictions of right must be provided by law, if they have a legitimate aim, such as protecting national security and be proportionate to that aim.¹⁹ This Bill, in the same vein, may also have an impact on the right to work, the right to family and the right to enter one's country.

On another hand, we note that this Bill does not define the "terrorist-controlled areas". In this sense, we believe that clarification should be provided to define the test applied to determine the control of these areas that is required.

We also raise concerns as to the scope and definition of the *actus reus* of the provision. The "verblijf" or "stay" in a terrorists-controlled area supposes an act that consists more than just the travel but does not define what kind of stay is understood, and what specifics are involved by 'stay'. Therefore, we consider that the Bill in this regard does not appear to provide sufficient clarity, in terms of the principle of legality and certainty as to what behavior will be considered as criminal.

In this context, we wish to recall that the principle of legal certainty under international law 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.²⁰ This principle recognizes 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.²¹ The Special Rapporteur also underscores that the use of counter-terrorism law to quell legitimate activities are protected by international law is inconsistent with the State's treaty obligations, as discussed above.

Moreover, we recall that, according to the principle of foreseeability "[a]n individual must know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it and after taking appropriate legal advice, what acts and/or omissions will make him/her criminally liable and what penalty will be imposed for the act committed and/or omission".²²

ii) *The need for preliminary authorization for the stay in terrorists-controlled areas*

We note that the Bill requires that permission of the Minister of Justice and Security to travel and stay in the terrorists-controlled areas must be granted. In other words, it is the absence of such permission that triggers the penalization of the stay. This requirement of prior authorization appears to raise a number of issues with regard the legitimacy of the specific authority for granting the authorization; the absence of determination, in the Bill of the requirements needed for this authorization and the necessity of such authorization, in terms of efficiency.

¹⁹ International Covenant on Civil and Political Rights, article 12(3). See also, Human Rights Committee general comment No. 27.

²⁰ ICCPR, article 15(1); ECHR, article 7(1).

²¹ A/73/361, para.34.

²² ECHR, *Cantoni v. France*, § 29; *Kafkaris v. Cyprus [GC]*, § 140; *Del Río Prada v. Spain [GC]*, § 79). The concept of "appropriate advice" refers to the possibility of taking legal advice (*Chauvy and Others v. France (dec.)*; *Jorgic v. Germany*, § 113).

First, we observe that, for a matter of national security, the Ministry of Justice and Security will be the authority granting the authorization. We are concerned that authorization follows from an executive process with no judicial or independent determination. We are deeply concerned about the degree of wholly political discretion on matters that will impact directly individual rights, related to freedom of expression, freedom to work and respect to family life, inter alia. In this sense, we fear that a number of individuals, researchers, independent journalists or other, will see their work impeded by the Ministry of Justice and Justice, where their work should be free from undue state interference.²³

Furthermore, we wish to recall the necessity to develop independent oversight mechanisms to guarantee that the application of this Bill, by granting or refusing permission, will not infringe individual rights in a disproportionate manner. We further flag the absence of defined criteria set or the granting of authorization the absence of basis that will allow or deny the permission, and thus raises concern as their potentiality of impeding on multiple rights, and lead to arbitrariness of decisions.

Third, we raise doubt as to the necessity of such permission, which in practice, will not likely prevent travel for terrorist actors (who are unlikely to see the state's permission to travel), but will rather have the effect of constricting and limiting the legitimate work of individuals and in many cases organization or business entities with which they are connected. We raise concern with regard to evidentiary requirements in order to receive such authorization. We note that criteria which are expansive will likely hinder humanitarian organizations, independent journalists or investigators, or other individuals to be able to travel to these areas for legitimate matters.

In this regard, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.²⁴ In its resolutions, the Human Rights Council noted its grave concern that “in some instances, national security and counter-terrorism legislation and other measures, [...], have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.”²⁵

We further observe that this Bill appears to mix both preventive objectives²⁶ (which are also covered by the Temporary Administrative Measures to Counter Terrorism Act), which are found in the need to seek for an authorization to stay in these areas and punitive objectives. This appears to lead to an additional lack of clarity of the scope of the Bill and what acts it intends to repress. We would thus encourage further precision.

In addition, we wish to raise our concern with regard to the potential effect of this Bill, if adopted, on the work of humanitarian organizations. While we note that

²³ See namely [CCPR/C/GC/34, par. 13.](#)

²⁴ A/70/371, para 46(c).

²⁵ [A/HRC/RES/25/18](#), [A/HRC/RES/27/31](#), [A/HRC/RES/32/31](#) and [A/HRC/RES/34/5](#).

See, on this matter, OSCE, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” p.35.

the ICRC is mentioned in the proposed legislation and other impartial humanitarian organizations can also request waivers, this provision seems to create a hierarchy for impartial humanitarian and human rights organizations, essentially placing all other entities (other than the ICRC) in a contingent and suspect category. In this view we recall that “[t]he proliferation, coexistence and overlap of these broad and vague measures, which can be opaque and lacking in clear implementation guidance, not only restrict access to needy populations in areas controlled by non-State armed groups but also have an impact on humane, neutral, independent and impartial humanitarian action in various ways. Regrettably, they can result in the arbitrary arrest and prosecution of humanitarian actors, human rights defenders and other actors, . Indeed, such measures ultimately may impede the ability of impartial humanitarian organizations, including ICRC, to carry out life - saving humanitarian tasks [...] including the provision of food and medical assistance”.²⁷

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has addressed the need for States and international organizations, including the Security Council, to adopt humanitarian exemption clauses that unambiguously exempt humanitarian actions from their counter-terrorism measures, granting immunity from counter terrorism and sanctions regimes to all individuals and organizations engaged in principled humanitarian action.²⁸

Based on this report (A/75/337) of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, we highlight that the presumption holds that all impartial humanitarian organizations should have access that is necessary to protect the most fundamental of rights in the most difficult of areas, and a permission framework *de facto* restricts the work of humanitarians, and appears contrary to the requirement of IHL. Moreover, human rights defenders might find they are persecuted for exercising rights that are specifically guaranteed by the Declaration on Human Rights Defenders,²⁹ particularly with relation to article 1, which establishes that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

iii) The sanctions for unauthorized stay in a terrorists-controlled area

We note that the Bill sets a punitive sanction of a maximum duration of a two-years’ imprisonment for unauthorized stay in a terrorists-controlled area, which raises further concerns on this regime and its associated sanctions. Indeed, it appears that the prohibited conduct, in itself, is remote from eventual or planned terrorist acts and we thus underscore that that sentences appear to be disproportionate to the gravity of the offence identified.³⁰

We also recall that “States should ensure that their competent authorities are able to apply a case-by-case approach to returnees, on the basis of risk assessment, the availability of evidence and related factors. In assessing alternatives to incarceration,

²⁷ A/75/337, para. 30.

²⁸ A/75/337, para. 34, referring to see A/HRC/40/52, paras. 21–22.

²⁹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms [A/RES/53/144](#) OSCE, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters”, p.44.

Members States should adopt a “comprehensive, multidisciplinary approach that involves all branches of Government, as well as community and civil society stakeholders” as an effective and long-term response. States should develop and implement strategies for dealing with specific categories of returnees, in particular children, women, family members and (other) potentially vulnerable individuals.”³¹ We would also like to raise concern on the disproportionate impact that such measures would have on women married to persons identified as foreign fighters and their children who plan to return to the Netherlands and could face criminalization if the Bill is passed.³² As noted by the Working Group on Discrimination against Women and Girls in its report on causes of deprivation of liberty (A/HRC/41/33), measures to combat terrorism and corresponding national security measures have profiled and targeted women who end up detained rather than receiving the services they need. Women and children are often detained in areas *de facto* controlled by non-state actor groups in deplorable conditions and may have also experienced extreme and significant human rights violations and gender-based violence. Therefore, we underscore the need for a thorough individual evaluation of each woman and child from a human rights perspective, including evaluation of gender-based violence.

Finally, 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 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. 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.³³

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 therefore 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 concerns.
2. Please provide information in details of how the counter-terrorism efforts of Your Excellency’s Government 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 and 72/180, in particular with international human rights law requirements of same.

³¹ <https://www.un.org/sc/ctc/wp-content/uploads/2018/08/Human-Rights-Responses-to-Foreign-Fighters-web-final.pdf>, p.43.

³² See generally, A/HRC/46/36 Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression; [CCPR/C/GC/34](https://www.unhcr.org/refugees/article/4c781766.html).

3. Please provide information on the reasons for the extensive scope of this Bill enhanced by the absence of criminal intent and terrorist purpose and how your Excellency's Government considers that it respects the principles of precision and legal certainty set in the Covenant;
4. Please provide information on the definition of 'terrorist-controlled areas', what test will be applied to determine such control by non-State armed groups.
5. Please provide information on the guarantees that will ensure that rights of individuals, such as freedom of movement, right to a fair trial and freedom of expression, but also the right to a family life, the right to property and the right to privacy are not infringed by this Bill;
6. Please provide information on the guarantees to ensure that this Bill will not, in practice, duplicate article 3 of the administrative measures to counter terrorism act.
7. Please provide information on the guarantees to not resort to gender, religious or racial profiling and to ensure that journalists, humanitarians, human rights defenders or other individuals willing to stay in terrorists-controlled areas for legitimate purpose will not be targeted and hindered by the application of this Bill. In this view, please also provide explanations as the requirement and evidentiary basis needed for the authorization of the Ministry of Justice and Security to be granted.

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

Irene Khan

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

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