

**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 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL EGY 8/2021

13 August 2021

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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/16, 42/22, 43/4, 41/12, 42/16, 43/16, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary detention of human rights defender Mr. Ramy Shaath, and the decision of the Court of Cassation to maintain his name in the terrorist entities and terrorist list; and the alleged arbitrary detention of lawyer and human rights defender Mr. Mohamed El-Baqer, and his inclusion in the terrorist entities and terrorist list.**

Mr. **Ramy Shaath** is an Egyptian-Palestinian political activist and human rights defender who has co-founded several coalitions and movements advocating for political democratisation in Egypt.<sup>1</sup> He has been detained since 5 July 2019.<sup>2</sup> On 17 April 2020, he was added for a period of five years to the terrorist entities and terrorist list, in absentia and without the presence of lawyers, and accused in a new case No. 517/2020.

Mr. **Mohamed El-Baqer** is a lawyer and human rights defender who has actively used social and other media outlets to publish and write on human rights issues, including on cases of enforced disappearances and torture allegedly involving the National Security Agency. Following his arrest in August 2019, he was detained arbitrarily for an extended period. He was also placed on Egypt's domestic terrorist entities and terrorist list [hereinafter "terrorism watchlist"] under Case No. 1781/2019.

---

<sup>1</sup> AI EGY 10/2019, AL EGY 10/2020.  
<sup>2</sup> AL EGY 10/2019.

We previously raised our human rights concerns to your Excellency's Government about the arrest and detention of Mr. Shaath in communications EGY 10/2019 and EGY 10/2020, and of Mr. El-Baquer in communications EGY 11/2019, EGY 10/2020 and EGY 5/2021. We regret that no reply has been received to any of these communications.

The case of Mr. El-Baquer was included in the 2020 report of the Secretary-General (A/HRC/45/36, Annex I paras. 45-46) on cooperation with the UN on allegations that he had been targeted in relation to his engagement with the Universal Periodic Review of Egypt. Mr. El-Baquer is reportedly in pre-trial detention with his detention periodically renewed since his arrest.

The terrorism listing process is the subject of ongoing concern for Special Procedures. We previously expressed serious concern that the inclusion of individuals to such a list "does not necessarily require the presence of the accused or his defence, as it is a judicial procedure that results merely in measures which the accused has the right to appeal."<sup>3</sup> We underscored that the process of listing constitutes an arbitrary, independent and severe legal penalty, which profoundly affects the civil and administrative rights of individuals and thus requires the full rights of fair process under international law, including access to independent legal representation.<sup>4</sup> In our view, your Excellency's Government's policy would appear to confirm an alarming pattern, whereby the "listing" of individuals to the terrorism watchlist is conducted on the basis of limited information or notice available to an accused or defence, and may be conducted in conjunction with prolonged patterns of arbitrary arrest and pre-trial detention. We are concerned about what seems to constitute a systemic pattern of abuse in the use of counter-terrorism legislation to suppress dissent and curtail the work of human rights defenders in Egypt.

We would also like to refer to communications EGY 4/2020 and EGY 13/2020 regarding Egypt's Anti-Terrorism Law, and Terrorism Circuit Courts, respectively. We thank you for the reply to EGY 4/2020 dated 8 April 2020 and acknowledge the detailed response provided by your Excellency's Government's reply to the joint communication from special procedures mandate holders concerning various laws and their application in practice. We regret however that no response has been provided to EGY 13/2020

According to the information received:

*Concerning Mr. Shaath*

We recall recent communications on Mr. Shaath's case, including that of 17 April 2020, in which we raised concerns about Mr. Shaath having been added to the terrorism watchlist in Egypt for a period of five years and accused in a new case, No. 517 / 2020, the charges of which have not yet been disclosed. Mr. Shaath's lawyers and family were reportedly not informed of the hearing and learned of the developments through the press.

---

<sup>3</sup> WGAD Opinion 77/2020, para 41.  
Human Rights Committee, General Comment 32 ([CCPR/C/GC/32](#)), para. 15, *citing* Communication No. 1015/2001, *Perterer v. Austria*, para. 9.2., which details that the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law may also "extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.")

In response, his lawyers appealed the decisions. On 14 July 2021, the Court of Cassation rejected the appeal and upheld Mr. Shaath's addition to the terrorism watchlist. It is reported that neither Mr. Shaath nor his family or legal team have been provided with access to his new cases' legal documents, investigation files or to any legal documents supporting the decision.

*Concerning Mr. El-Baqer*

Mr. El-Baqer, a lawyer and human rights defender, was arrested on 29 September 2019 at the State Security Prosecution premises in Cairo while attending a hearing with his client, a human rights defender and blogger named Mr. Alaa Abdel Fattah, who has been the subject of four past communications from Special Procedures: EGY 12/2020; EGY 13/2011; EGY 16/2013 and EGY 17/2013. Mr. El-Baqer was issued a summons order and added to the same case as his client, Mr. Abdel Fattah, specifically Case No. 1365/2019. Mr. El-Baqer was charged with joining a terrorist group, funding a terrorist group, disseminating false news undermining national security, and use of social media to commit a publishing offense. The Prosecutor reportedly questioned Mr. El-Baqer about his engagement with the UN human rights mechanisms and bodies, in particular that related to the November 2019 UPR of Egypt. Mr. El-Baqer remains in pre-trial detention with his detention periodically renewed since his arrest.

Mr. El-Baqer was reportedly blindfolded on the way to prison and subjected to physical and verbal abuse when entering the facility. All his belongings, including items of personal hygiene, were seized. Mr. El-Baqer was denied access to basic hygiene items and facilities for nine days following his arrest. As a result, he is suffering from a skin infection. His request for a consultation with the prison doctor was rejected.

The day following his arrest, on 30 September 2019, the Supreme Public Prosecution of Cairo ordered his detention for a 15-day preventive detention, pending investigation. At the time, the location of his detention was unknown, and his family and lawyers had not been given access to him.

On 1 October 2019 (the date upon which Mr. Baqer's location became known), prison authorities informed his family that he had been transferred and would now be detained in Al-Aqrab Prison (Scorpio 2), a maximum-security facility within the Tora Prison complex south of Cairo. Upon arrival within this detention centre, Mr. El-Baqer was allegedly subjected to ill-treatment and abuse and was forced to undress, to walk while hunched over, and subjected to insults, swearing and slaps. While in the prison, sources report that he has been given one blanket and deprived of a mattress, pillow or bed, which has necessitated him to lay down cartons on the floor to sleep, including in wintertime. He has been denied access to warm clothes, exercise, books, radio, newspaper, and written correspondence; and has been confined in isolation and deprived of going outside or being exposed to sun. Further, the information provided states that he has been prevented from receiving external food, bathing, receiving or using toiletries, and to purchasing items from the prison canteen, despite the limited and unsanitary food that he has been provided. He has complained about the polluted water at his disposal which has caused his health condition to worsen. It was also reported that the prison

refused to send him to the hospital despite the Prosecution's permission to do so.

On both 9 and 23 October 2019, the Supreme Public Prosecution renewed the preventive detention of Mr. El-Baqer for an additional 15 days.

On 18 February 2020, the Tora Assise Court ordered his release. Yet, on 20 February 2020, the Criminal Court of Tora accepted the Public Prosecution's appeal against his release and renewed his detention for an additional 45 days, without justification.

On 5 May 2020, the Criminal Court of Cairo renewed the detention of Mr. El-Baqer for an additional 45 days, along with three other human rights defenders. The renewal was held in absentia and without the presence of his legal representation.

On 31 August 2020, Mr. El-Baqer was informed of new charges brought against him. In particular, he was added to Case No. 855/2020, which now includes two lawyers and two journalists. The two journalists, named Esraa Abdel Fattah and Solafa Magdy, have also been subjects of Special Procedures communications. The charges include joining an illegal organization and being a part of a criminal agreement with the purpose of committing a terrorist act from inside the prison.

On 9 October 2020, a year after the initial "preventive" detention, the Supreme Public Prosecution in Cairo renewed this preventive detention for an additional 15 days. It was again renewed on 23 October 2020.

On 23 November 2020, the Criminal Court of Cairo published in the Egyptian Official Gazette its decision made on 19 November 2020, its order that Mr. El-Baqer be added to the terrorism watchlist for five years, although the maximum permitted period of listing is three years under domestic law, raising serious concerns of his fair rights guarantees. It was upon the inclusion of Mr. El-Baqer to the terrorism watchlist that it became known that he had also been added to a third case: Case No. 1781/2019. The addition of Mr. Baqer to the terrorism watchlist and his addition to Case No. 1781/2019 coincided with the announcement that he was awarded the 2020 Human Rights Award from the Council of Bars and Law Societies in Europe along with six other imprisoned Egyptian lawyers.

Without prejudging the accuracy of the information received, we express serious concern as to the continued arbitrary detention without trial of Mr. Shaath and Mr. El-Baqer, the denial of their most basic right to due process, as well as their torture or otherwise ill-treatment, in the name of counter-terrorism, which appears to be related to the exercise of their right to freedom of expression, and to defend others' rights and freedoms. We acknowledge the details provided in your Excellency's Government's reply to EGY 4/2020, specifically the detailed response to the listing procedures, yet express continued serious concern at the compliance of both listing procedures with international human right norms and principles, whether under the first listing procedure as compulsory ancillary punishment following a criminal conviction,<sup>5</sup> or as particularly relevant to these cases as the "listing of a terrorist entity

<sup>5</sup> See para. 94 of the Government's reply to EGY 4/2020.

or terrorist as a *precautionary measure*.<sup>6</sup> We further express profound concern as to the upholding of Mr. Shaath's inclusion in the terrorism watchlist by the Court of Cassation, the continued inclusion of Mr. El-Baquer into the same list, and more widely, what appears to be use of this listing procedure against them, and more widely against human rights defenders. We express serious concerns at a lack of adequate safeguards to prevent misuse and no clear means to guarantee the rights of those subject to national-level listing processes and sanctions. We are deeply concerned that the detention and listing of Mr. Shaath and Mr. El-Baquer may specifically be related to their human rights work, and for Mr. El-Baquer, especially his engagement during Egypt's Universal Periodic Review.

The targeting of human rights defenders is of serious concern because it represents a systematised approach to silencing their efforts to promote and defend the rights of others. This is entirely contrary to the letter and spirit of the international human rights instruments to which Egypt is a party. Regarding the repeated renewals of pre-trial detention, specifically the renewed 45-day periods for pre-trial detention on 18 February 2020 and 5 May 2020, we reiterate our concern regarding the duration of pre-trial detention in the case of Terrorism Circuit Courts which seems to enable prolonged 45-day detention (rather than 15 days as set out in article 142 of the Criminal Code of Procedure). These patterns of security and legal practice seem to indicate that there is no upper limit in practice to the time that an individual may be held in pre-trial detention, which is inconsistent with applicable international law.

We respectfully recall that judicial oversight of detention is also a fundamental safeguard of personal liberty and essential towards ensuring that detention has a legal, factual and legitimate basis.<sup>7</sup> Under article 9(3) of the International Convention on Civil and Political Rights (ICCPR), anyone deprived of his or her liberty, must be brought before a judge promptly after their arrest or detention so that an independent and impartial determination of the legality and legitimacy of that deprivation can be made. This provision is aimed at preventing arbitrary detention. This right cannot be restricted even during times of emergency.<sup>8</sup> The ICCPR also provides in its Art. 9.4 that individuals also have a right to challenge the lawfulness of their detention before a court. This fundamental rights was reaffirmed and developed by the UN Working Group on Arbitrary Detention when it presented to the Human Rights Council in 2015 its "[Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before a Court](#)."<sup>9</sup>

Under international human rights law, the court must review the case without delay and order the detainee's release if it finds the detention to be unlawful.<sup>10</sup> For the purposes of the initial detention order, prosecutors are not judicial officers under international law. Under international law, a prosecutorial decision regarding pre-trial detention is not enough to provide a basis for detention; the individual charged must

<sup>6</sup> See para. 97 of the Government's reply to EGY 4/2020.

<sup>7</sup> A/HRC/39/45, para. 60; A/HRC/30/37, para. 3.

<sup>8</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.

<sup>9</sup> <https://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/March2015/WGAD.CRP.1.2015.pdf>

<sup>10</sup> ICCPR, art. 9(4); CRC art. 37(d); Principle 32 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Guideline 32 of the Robben Island Guidelines; Section M(4) and (5) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; *see also* ); Art. 14(6) ACHR.

still be brought before a judge.<sup>11</sup>

We express concern at the seeming lack of judicial oversight in the arrest and detention process applied to these two men. The absence of an independent judiciary and judicial oversight on arrest warrants and the initial detention process is in direct violation of fundamental freedoms and guarantees. These standards are equally applicable to listing processes undertaken in the context of pre-trial detention, as they amount to a judicial and administrative determination subject to appeal and independent and impartial judicial review. We reemphasize the concern of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noting the severe consequences imposed by “listing” individuals to the terrorism watchlist and further elaborate on the ramifications of this practice below.<sup>12</sup>

In this regard, we reiterate our concern regarding what appears to be the continued misuse of anti-terrorism and national security legislation to criminalise legitimate activities by human rights defenders and other citizens including lawyers, 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.<sup>13</sup> We further reiterate our concern regarding the repeated and continued use of this legislation to shrink civic space in Egypt.

The use of vague legal provisions to criminalise the exercise of the right to freedom of expression and to peaceful assembly and association, through the prohibition of the spreading of false information, the alleged misuse of social media and related incitement to protest, noting that such provisions blatantly fail to comply with the key principle of legal clarity under international human rights law. We further note that the imprisonment of individuals for defamation may constitute a violation of article 19 of the ICCPR.

As has already been communicated, the Anti-Terrorism Law and related legislation has adopted a broad definition of terrorist acts, which encompasses a range of activities protected under international law by the rights to freedom of opinion, of expression, of association, of assembly and political participation, such as “harms [to] national unity, social peace, or national security” or “prevent[s] or hinder[s] public authorities, judicial bodies, government facilities, and others.”<sup>14</sup> The law also criminalize actions which harm communications and information.<sup>15</sup> It states that “anyone who directly or indirectly facilitates or incites a terrorist crime, regardless of whether the crime actually occurs, is liable for the same crime as those who commit the crime.”<sup>16</sup> In addition, the amendments to the Anti-Terror legislation in March 2020 have expanded the definition of terrorism funding to include providing suspected terrorists with documents in any way or form, as well as supporting or financing the travels of alleged terrorists, even if the provider does not have a direct

---

<sup>11</sup> See, e.g., HRC, *Kulomin v. Hungary*, UN Doc. CCPR/C/50/D/521/1992 (1996), para. 11.3. See also HRC, *Reshetnikov v. Russian Federation*, UN Doc. CCPR/C/95/D/1278/2004 (2009), para. 8.2; HRC, *Zheludkova v. Ukraine*, UN Doc. CCPR/C/75/D/726/1996 (2002), para. 8.3; HRC, *Concluding Observations: Tajikistan*, UN Doc. CCPR/CO/84/TJK (2005), para. 12 HRC, *General Comment General comment No. 35- article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/35; WGAD, *China*, UN Doc. E/CN.4/2005/6/Add.4 (2004), paras 32(c), 78(a).

<sup>12</sup> A/HRC/46/36, paras. 14-17.

<sup>13</sup> A/HRC/40/52, paras. 27, 60, 75(h).

<sup>14</sup> Anti-terrorism Law, no. 94/2015 art. 2.

<sup>15</sup> *Ibidem*

<sup>16</sup> *Ibidem*

link to the terrorist crime. It also announced harsher sentences for those accused of funding terrorist groups, including life sentences and capital punishment.

In this regard, we wish to underscore our serious concerns specifically around the use of the terrorism watchlist: the reported upholding of Mr. Shaath's listing for five years as of 14 July 2021 and the continued listing of Mr. El-Baqer for five years as of 19 November 2020. We wish to address our concerns around the human rights implications of the procedures, including permissible length of listing under law, application, and basis for administering the terrorism watchlist, particularly in light of information received in Mr, El-Baqer's cases mentioned above.

The process of designating or listing individuals into the terrorism watchlist directly relates to the compounding human rights concerns raised and previously communicated to your Excellency's Government, including on the overly broad and ill-defined definition of terrorism, arbitrary detention, lack of due process, absence of judicial oversight and the rights to a fair trial, freedom of peaceful assembly, opinion and expression, and to be free from enforced disappearance.<sup>17</sup> Importantly, we wish to reemphasize that the amendments to the 2015 national Counter-Terrorism Law, including the practices of "listing" individuals and organizations may profoundly impinge on a wide range of fundamental rights.<sup>18</sup> We are concerned that limited data remains available as to how many individuals have been placed on the terrorism watchlist since its creation. We have received information that at least 2,782 people may have been put on the list from February 2015 to July 2017.

#### *Listing of Individuals and Organizations under Overly Broad or Ill-Defined Definitions of Terrorism*

The designation or listing of an individual remains an opaque, highly secretive process, as highlighted by the particular facts in these cases. The Terrorist Entities Law (Law 8 of 2015) and the Anti-Terrorism Law, (Law 94 of 2015), as amended in March 2020, form the legal basis for the administration of the terrorism watchlist. This legal basis for the list remains a primary concern to us. We reiterate that vaguely and broadly worded provisions undermine the principle of legality, cannot qualify as *lex certa*, and violate due process of law. 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.<sup>19</sup>

The human rights risks associated with the administration of a terrorism watch-list rooted in an overly broad definition of terrorism, as in existing legislation, necessarily hinders your Excellency's Government's ability to implement the law in compliance with international human rights law due to its infringement upon the principle of legal certainty, as expressed in article 11 of the UDHR and in the ICCPR, which 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.<sup>20</sup> Currently, activists, human rights defenders, civil society, journalists, and other legitimate activities are at risk of being brought under this overly broad criminalization and subsequent listing that may

<sup>17</sup> EGY 4/2020.

<sup>18</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787>.

<sup>19</sup> OL EGY 4/2020; article 19(3) of the ICCPR & Human Rights Committee General Comment 34, para. 25; [E/CN.4/2006/98](#), para. 45.

<sup>20</sup> UA G/SO 218/2 Terrorism.

restrict and infringe upon the enjoyment of rights and freedoms in absolute ways, including exercising freedom of expression, opinion and assembly, as well as the full scope of economic, social and cultural rights, including the right to work,<sup>21</sup> the right to adequate housing,<sup>22</sup> and the right to education.<sup>23</sup> In addition, such ill-defined or overly broad laws leave space for arbitrary application and abuse.

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 fully with all their obligations under international law. 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 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. As previously highlighted in EGY 4/2020, the Anti-Terrorism Law and related laws adopt a broad definition of terrorist acts, which encompass a range of protected activities.

#### *Necessity, Proportionality, and Non-Discrimination*

Placement of individuals or groups on a terrorism watchlist should be necessary and proportionate and therefore only in response to an actual, distinct, and measurable terrorism act or demonstrated threat of an act of terrorism. As noted above, ill-defined and overly broad construal of the crime of terrorism necessarily implies a failure to meet the requirements of necessity and proportionality. Only through an adequately construed definition of terrorist acts can the necessity and proportionality elements for listing be met to ensure that the Government's listing is in response to an actual, distinct, and measurable threat as defined by law.

We further emphasize that placement of individuals or groups on a terrorism watchlist implicates a range of human rights, including freedom of movement, association, expression, the rights to privacy, property, health, due process, family life, and social and economic rights, including the right to work. Under the current legislation, the implications for listing to a terrorism watchlist include a wide range of severe penalties and deprivations of liberty that ultimately impact the immediately

<sup>21</sup> Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and article 23 of the Universal Declaration of Human Rights (UDHR)

<sup>22</sup> Article 11 of the ICESCR and article 25 of the UDHR.

<sup>23</sup> Article 13 and 14 ICESCR. *See also* General Comment No. 13 (E/C.12/1999/10, 8 December 1999) and article 26 of the UDHR.

sanctioned areas of life, but also affect a range of other human rights, including those of family members, including dependent children and associates. The implications for being listed include a range of measures that function as *de facto* deprivations of liberty that should be considered through a proportionality determination so as to ensure that human rights are infringed upon only when strictly necessary and in line with international human rights obligations.<sup>24</sup>

The sanctions that may be placed on an individual or organization include barring listed individuals from traveling and confiscation of passports, denial of certain political rights, ineligibility for employment in public service or representative bodies, and freezing of financial assets. The amendments made to the law in March 2020, have further serious human rights implications. We understand that the authorities are now permitted to freeze assets without linkages to terrorism-related activities, bar the designated individuals from membership in any professional or government entities, as well as syndicates, as well as unions, and disqualify them from any political activity. For listed organizations, such listing enables dissolution.

We express concern regarding the restriction of fundamental human rights freedoms, particularly in regard to the protection of freedoms of peaceful assembly, opinion, and expression. We wish to respectfully recall that article 19 of the ICCPR, protects the right to freedom of opinion and expression. The freedom of opinion in article 19(1) is absolute and the freedom of expression in article 19(2) is subject to limitation only in accordance with paragraph 3 of the provision. Any restriction to the rights under articles 19(2) must pursue a legitimate aim, in accordance with a law that is sufficiently clear, and conform to the requirements of necessity and proportionality. Attacks against individuals, such as through arbitrary detention, torture, and ill treatment, for the exercise of expression is incompatible with the Covenant.<sup>25</sup> Beyond these rights, the right to privacy is deeply impacted by the above sanctions regime.

Moreover, we wish to emphasize the serious impact on the right to privacy imposed by listing. The mandate holders respectfully recall article 12 of the UDHR and article 17 of the ICCPR, which guarantees a person's right not to be subject to "arbitrary or unlawful interference with his privacy, family or correspondence." Finally, placement of individuals or groups on a watchlist should not be discriminatory nor based on attributes of race, ethnicity, national or social origin, religious belief, age, sex or gender, minority status or any protected attribute under international human rights law. We wish to reemphasize our serious concern with these procedures without independent, and impartial judicial guarantees, including the right of the defence to meaningfully appeal, and to note that the mandate holders express serious concern that the facts presented may amount to a deprivation of liberty, constituting a violation of international law on the grounds of discrimination based on political or other views. This is of particular concern given the information received by the mandates as to the timing of Mr. El-Baquer's detention and questioning in relation to legitimate human rights activities in violation of his right to equality before the law and equal protection of the law under article 26 of the ICCPR.

---

<sup>24</sup> [Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law](#) (Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012, paras. 55, 57-60).

<sup>25</sup> Human Rights Committee, General Comment no 34 para 23.

*Judicial Guarantees and Due Process and National Listing of Individual and Organizations on the “Terrorism List”*

Without forgoing the above analyses, wherein, overly broad or ill-defined counter-terrorism laws violating the principle of legality *de facto* affect the legitimacy of a listing or designation process to a terrorism watchlist, we wish to further express our serious concern at the current administration of the terrorism list. Any placement of individuals or organizations on such lists should be because of a fair and accountable legal process rooted in procedural fairness and due process of law. To make such a determination without such processes would amount to a violation of the presumption of innocence, in breach of article 14(2) of the ICCPR. The information received suggests such violations of both Mr. Shaath’s and Mr. El-Baquer’s rights to a fair and public hearing by an independent and impartial tribunal (article 10, UDHR) with the guarantees necessary for his defence (article 11, UDHR), and principles of legal certainty, accessibility, foreseeability (article 7, ICCPR). We therefore reemphasize that the rights of fair trial are non-derogable.<sup>26</sup>

We respectfully remind your Excellency’s Government of the requirements under international human rights law for guarantees of procedural fairness and due process of law that comprise the right to equality before the courts and tribunals and the right to a fair trial in line with article 14 of the ICCPR and remain applicable to the listing process as outlined above. We further recall the relevant provisions of the Egyptian Constitution, articles 55 and 96 that guarantee such due process rights under Egyptian law.<sup>27</sup> In order to fulfil this right, all forms of the administration of justice must guarantee that these rights cannot be deprived through procedural practices that interfere with the overall right to claim justice.<sup>28</sup> In addition, we emphasize that under international human rights law, the guarantees for the meaningful functioning of lawyers.<sup>29</sup> Access to justice requires the protection of legal representatives and defence counsel and prohibits the unlawful interference with their person before, during and after judicial, administrative, or other proceedings.<sup>30</sup>

We express serious concern around the lack of transparent procedural practices that prevent such interference for the listing of individuals and organizations, noting that competency, independence, and impartiality of judicial review is a central tenet of meaningfully realizing an accountable legal process. The listing of individuals, as in the case of Mr. El-Baquer, are reported to occur in the context of arbitrary detention, where little to no access to legal counsel is provided, and other due process and judicial guarantees violations are implicated, including failure to give notice and to provide an equal basis for defence. In addition, the existing regime governing the terrorism watchlist currently includes several measures that fail to meet international standards as set forth by article 14 of the ICCPR, particularly article 14 (3)(a)-(f) and the UDHR.

In this regard, we express further concern about the information received as to procedural irregularities in the above-mentioned cases. This concern pertains to

<sup>26</sup> Human Rights Council, Communication No. 263/1987, *M. González del Río v. Peru*, Views adopted on 28 October 1992, U.N. GAOR, Doc. A/48/40 (vol. II), at 20, para. 5.2.; see also General Comment No. 32 (e.g., Peru, Algeria, Colombia) discussing irregularities that are ever-present in the context of proscription cases.

<sup>27</sup> Articles 54 and 96 of the 2014 Constitution of the Arab Republic of Egypt.

<sup>28</sup> Human Rights Committee, [General Comment No. 32](#), UN Doc. CCPR/C/GC/32 (2007), para. 2

<sup>29</sup> Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

allegations that proceedings were carried out in the detainee's absence and without the presence of their lawyer, with limited and irregular access to their lawyers and families, inability of lawyers 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. We would 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.

In addition, the reported procedural irregularities appear to be an integrated component of existing practice that seem to infringe on a number of human rights. The existing law grants broad authority to the Supreme State Security Prosecution, allowing its officers to name individuals and entities to the list. A judicial determination, by an independent judiciary is not required in all circumstances, with a request by the Prosecution capable of serving this domestic purpose. Although appeals are required to be referred to a criminal judicial circuit in the Cairo Appeals Court within seven days, and a 60-day period for appeal to the Court of Cassation exists, there remain significant concerns around the administration of justice and the rights of the accused to the presumption of innocence, to equality to defend oneself, meaningful ability to challenge the listing in the context of existing conditions of arbitrary detention, and reporting of lack of judicial guarantees in line with international human rights law. Moreover, it was previously reported that there remains a lack of clarity as to when and how an individual or entity can have the label of "terrorist" removed, and whether a meaningful and rule of law complaint "delisting" procedures exists.

Mr. Shaath and Mr. El-Baqer have been subjected to the application of a counter-terrorism law that has been flagged as incompatible with due process obligations by several human rights protection mechanisms. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concluded in a report that "In cases where the Counter-Terrorism Law has been invoked, it is invariably used as an adjunct to a substantive criminal offence, which can be prosecuted under ordinary criminal law. If that law is invoked, the accused is subjected to a number of significant procedural and substantive disadvantages."<sup>31</sup>

Finally, we express concern that the Government does not seem bound to produce any detailed evidence as part of the listing process, apart from existing charges, nor that the adjudication of criminal charges be completed prior to the listing. Moreover, it further appears intelligence reports are used as evidence in proceedings, without sufficient corroboration, scrutiny, or examination through independent oversight, and that intelligence services are not independently overseen contrary to best international practice.<sup>32</sup> Without prejudging the accuracy of the present facts, we wish to express our deep concern that the listing proceedings are currently not only based on the use of evidence that the detained individual and counsel cannot examine but are conducted in a manner that violates the presumption of innocence, in breach of article 14(2) of the ICCPR. Such lack of ability to review evidence, or to mount any defence at all in response to a judicial process infringes upon a wide range of human rights and does not meet the international standards of due process and fundamental fairness. The use of evidence from secret sources is also only permissible when

---

<sup>31</sup> A/HRC/25/59/Add.2, para. 55.

<sup>32</sup> A/HRC/14/46, para 38.

accompanied by particularly strong procedural safeguards that allow the detainee and representatives to meaningfully challenge the source and substance of adverse evidence. Of primary concern to the mandate holders is the principle of equality in arms, in line with article 14, paragraph 1, of the ICCPR, which guarantees equal access and ensures that the parties to the proceedings in question are treated without any discrimination.<sup>33</sup>

The consequences of the listing powers given to the Supreme State Security Prosecution may not only create a conflict of interest for the Prosecution.<sup>34</sup> When paired with previously communicated concerns around the lack of oversight across the broad range of powers given to the Prosecution,<sup>35</sup> lack of required independent judicial review, and lack of adequate safeguards, including lack of notice and use of secret evidence, cause grave concerns about procedural fairness and due process of law in Egypt. We note that respect for human rights represents a best practice and is an indispensable part of a successful medium- and long-term strategy to combat terrorism.

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 detention of Mr. Ramy Shaath and Mr. Mohamed El-Baqer and provide information about the compatibility of the measures with Egypt's obligations under international human rights law. Acknowledging the information provided in the Governments' replies to EGY 4/2020 and in particular paras. 8, 62-70 of the reply dated [8 April 2020](#) and paras. 71-77 of the reply dated [10 March 2021](#), kindly provide further details on how the specific measures and the listing of these individuals on the Government's terrorism watchlist comply 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).

---

<sup>33</sup> Human Rights Committee, [General Comment No. 32](#), UN Doc. CCPR/C/GC/32 (2007), ["/expand title="para. 8"]The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of

<sup>34</sup> EGY 4/2020, sent on 28 February 2020.

<sup>35</sup> whereby, the concerns related to the increasing power of prosecutors, particularly the Supreme State Security Prosecution, such as the power to detain without judicial review, increased surveillance, power to issue binding judicial decisions, ability to empower hold for up to 150 days, prevent the right to contact family or a lawyer for up to 28 days, inability to appeal due to lack of written statements of the charges against them and the reasoning for the pretrial detention in contradiction with article 9(2) and 14(3)(A) of the ICCPR. Existing conflict of interests whereby the SSSP lawyers may approve appeals against pre-trial detention.

3. Please provide specific information on how the authorities have guaranteed the rights of these two individuals to challenge the legality of their arrest and detention, including by allowing them to be brought promptly before a judge, and to access to legal assistance immediately after their arrest to do so.
4. Please provide information as to the legal and factual basis for the “listing” of Mr. Shaath and Mr. El-Baqer, as well as the legal process required and undertaken to support such a determination and how these measures are compatible with Egypt’s international human rights obligations.
5. Please provide specific information as to whether and when Mr. Shaath and Mr. Baqer were informed of the additional charges and the listing determination against them and whether they were allowed to access to legal assistance.
6. Please provide information as to the reasons for Mr. El-Baqer’s transfer to higher security Al-Aqrab Prison. Please also provide information about where Mr. El-Baqer is currently being detained.
7. Please provide information about the conditions of access (in terms of frequency, duration, confidentiality) of Mr. Shaath and Mr. El-Baqer to legal counsel of their choice to defend themselves against the accusations against them.
8. Please provide information on the treatment of Mr. El-Baqer during his since his arrest, and in particular upon his transfer to Al-Aqrab wing (Scorpio 2) of Tora Prison complex, where he was reportedly subjected to ill-treatment, such as being forced to undress, to walk hunched over, while he was insulted and slapped, as well as to solitary confinement.
9. Please provide detailed information on any inquiry or investigation, judicial or otherwise that may have been undertaken in connection with the allegations that Mr. El-Baqer was subjected to torture or otherwise ill-treatment in Tora prison; and on the conclusions of such inquiries. If no inquiry took place, please explain how this is compatible with the Convention against Torture that Egypt ratified on 25 June 1986?
10. Please provide precise information on the material and sanitary condition of detention of Mr. Shaath and Mr. El-Baqer, including with regard bedding, washing, clothing, food, water, outing, ventilation, sunlight and access to books and information.
11. Please provide precise information concerning their access to family visits, and to receive additional food and other items such as hygiene and medicine from them. In the case that visits by family members or lawyers are denied or limited, including in relation to measures that might have been 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 to them.

12. Please explain how the apparent systematic imposition of pre-trial detention, particularly in cases involving human rights defenders, especially in the context of the current COVID-19 context, is consistent with the international human rights obligations of the State of Egypt.
13. Please provide information on the current health status of Mr. El Baqer and the measures provided to ensure access to adequate and appropriate medication and health care, including hospitalization as required.
14. 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.
15. 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.
16. Please provide information in detail 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 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 prejudices any opinion the Working Group may render. The Government is required to respond separately to the letter of allegations procedure and the regular procedure.

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.

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

Miriam Estrada-Castillo  
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

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

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

## 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 has the rights to freedom of opinion and expression and to freedom of peaceful assembly, respectively.

With respect to the charges related to the “dissemination of false news” and “misuse of social media or use of media to commit a punishable offense”, 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). 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, we recall that the 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 Special Rapporteur on the right to freedom of expression in her report A/HRC/47/25, the criminalisation of “false” expressions is incompatible with the Covenant. The same would apply 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 defence, 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 like to remind your Excellency's Government that listing processes, insofar as they result in a serious deprivation of liberty and infringe upon several fundamental human rights, are also subject to international human rights law standards on principles of legality; necessity, proportionality, and non-discrimination; and fair trial guarantees and due process of law.

As noted above, vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate due process of law which is undergirded by the principle of legality in article 11(2) of the UDHR and article 14 of the ICCPR, which 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.<sup>36</sup> Moreover, on the issues of necessity, proportionality, and non-discrimination, we refer your Excellency's Government to the above referenced article 9 of the ICCPR, noting the failure to examine the necessity as it relates to these rights and listing, as required by article 9(3) of the ICCPR. In addition, the deprivation of other protected rights infringed upon due to listing must also be examined in the frame of a necessity, proportionality and non-discrimination lens in line with the Convention.

We respectfully recall article 12 of the UDHR and article 17 of the ICCPR, which guarantees a person's right not to be subject to "arbitrary or unlawful interference with his privacy, family or correspondence." Importantly, the mandate holders express serious concern about the human rights compliance of such measures as it relates to the right to privacy, noting that any collection, retention, processing, sharing or other uses of information relating to a person must meet a set of conditions, including implemented pursuant to a domestic legal basis that is sufficiently foreseeable, accessible, and providing of adequate safeguards against abuse. Moreover, these restrictions must be aimed at protecting a legitimate aim, and with due regard for the aforementioned principles of necessity, proportionality, and non-discrimination. In addition, such measures must also be established alongside independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight, capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications and interception and collection of personal data.<sup>37</sup> Moreover, adequate legislation should be developed or maintained and implemented with effective sanctions and remedies, that protects individuals against violations and abuses of the right to privacy, namely through the unlawful or arbitrary collection, processing, retention or use of personal

---

<sup>36</sup> UA G/SO 218/2 Terrorism.

<sup>37</sup> A/HRC/RES/42/15, para. 6 (a) – (e).

data by individuals, Governments, business enterprises and private organizations, along with preventive measures and remedies for violations and abuses regarding the right to privacy.<sup>38</sup>

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 exercising their rights to freedom of expression and freedom of peaceful assembly and of association. These rights are protected under the ICCPR and the ACHPR, and non-violent exercise of these rights is not a criminal offence.

We further wish to remind your Excellency's Government of its obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Egypt on 12 January 1982. In light of article 12, which guarantees the right of all people to the highest attainable standard of physical and mental health, States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health services (see Committee on Economic, Social and Cultural Rights, General Comment 14, para 34).

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 Rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases 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. In addition, the information received would also appear to contravene several principles of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990, specifically principles 16, 17, and 18 concerning the ability of lawyers to perform their professional functions without intimidation, hindrance, harassment, or improper interference, safeguarding of lawyers, and non-conflation of lawyers with clients or client's causes.

---

<sup>38</sup> A/HRC/RES/42/15, para. 6 (f)-(h).

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.

Regarding 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 their obligations under international law. Moreover, in regard to the procedures and international standards for listing and de-listing individuals and organizations, the mandate holders draw attention to the existing practices in use by the United Nations, Member States and recommended by the Financial Action Task Force (FATF) specific to the listing and de-listing of individuals that span [Guidelines of the Counter-Terrorism Committee](#) related to evidentiary standards, transparency, oversight, and procedural process, as well as those recommendations provided by the FATF in the [International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation](#).

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 ill-defined and/or overly broad laws that 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.<sup>39</sup> The failure to restrict counter-terrorism laws and 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.<sup>40</sup> 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”.<sup>41</sup>

---

<sup>39</sup> Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

<sup>40</sup> E/CN.4/2002/18, Annex, para. 4(b).

<sup>41</sup> E/CN.4/2006/98, para. 37.