

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues**

Ref.: OL TJK 5/2022  
(Please use this reference in your reply)

23 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/10, 51/8, 45/3, 43/4, 50/17, 43/16 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Law of the Republic of Tajikistan on Combating Terrorism (hereafter "CT Law") and the Criminal Code of the Republic of Tajikistan (hereafter "Criminal Code"). We respectfully address a number of serious human rights challenges in relation to the definition of terrorism contained in the legislation which, in our view, is overly broad; the negative and disproportionate impact of the legislation may have on particular groups, on due process, on the right to liberty and security of person, which may lead to enforced or involuntary disappearances; as well as on the exercise of freedom of opinion and expression, and freedom of peaceful assembly and association. We respectfully encourage your Excellency's Government to review and reconsider certain key aspects of the law to ensure that it complies with Tajikistan's international human rights obligations. We recall that Special Procedures Experts have raised some of these issues, particularly in relation to the Pamiri minority (communications TJK 1/2022, TJK 2/2022 and TJK 3/2022), to which your Excellency's Government has not yet responded.

*Overview of applicable international human rights law standards*

We respectfully call your Excellency Government's attention to the relevant provisions enshrined in the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Republic of Tajikistan on 4 January 1999, and the Universal Declaration of Human Rights (UDHR). In particular, we refer to the general international legal obligation under article 2 of the ICCPR, whereby the State has a duty to adopt laws that give domestic legal effect to the rights and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant.

We further refer to article 26 of the ICCPR, which affirms the right to equality and prohibits discrimination, and to article 27 of the ICCPR, which provides for the

protection and promotion of the rights of persons belonging to ethnic, religious and linguistic minorities.

Moreover, we refer to the rights enshrined in article 15(1) of the ICCPR and article 11 of the UDHR, which provide for the principle of legality, as well as in articles 18, 19, 21, and 22 of the ICCPR and 19 and 20 of the UDHR, which guarantee the right to freedom of thought, conscience and religion or belief, freedom of opinion and expression and freedom of peaceful assembly and association.

Furthermore, we refer to article 19 of the ICCPR, which protects the right to freedom of opinion and expression. Whereas the right to freedom of opinion in article 19(1) is absolute, the right to freedom of expression in 19(2) is subject to certain restrictions based on the requirements in article 19(3), which are tightly tailored and have narrow application. The scope of article 19(2) is broad. It protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes expressing and receiving communications of every form of thought and opinion capable of transmission to others. We recall that the scope of paragraph 2 embraces even expression that may be regarded as offensive (CCPR/C/GC/34 para. 11). It protects all forms of expression and the means of their dissemination, including "spoken, written and sign language and such non-verbal expression as images and objects of art. Communication includes all forms of audio-visual as well as electronic and internet-based modes of expression" (CCPR/C/GC/34, paragraph 12). Any restrictions on the right to freedom of expression must be compatible with the requirements of article 19(3). The State must demonstrate that any restrictions with article 19(2) are compatible with the requirements of article 19(3), as well as the principles of non-discrimination in article 26 (CCPR/C/GC/34, paragraphs 27 and 35). All restrictions must therefore serve one of the legitimate aims exhaustively enumerated in the provision, be provided by law, and be necessary and proportionate.

According to article 6(c) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (also known as the UN Declaration on Human Rights Defenders), everyone has the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters. The Declaration guarantees this right for both individuals and those acting in association with others, such as through participation with a non-governmental organisation.

We further refer to 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. These resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law.

Furthermore, we would like to recall the Declaration on the Protection of all Persons from Enforced Disappearance, article 7 of which provides that no circumstances whatsoever, including internal political instability or any other public

emergency, may be invoked to justify enforced disappearances. Article 10 of the Declaration sets minimum guarantees for the protection of individuals from enforced disappearances, including the obligation to hold any person deprived of liberty in an officially recognized place of detention, the right of a person to be brought before a judicial authority promptly after detention, obligation to provide accurate information on the detention of such persons and their place of detention, including transfers to their family members, counsel or any other persons having legitimate interest in this information, unless specifically manifested otherwise by the persons concerned, and the obligation to maintain an official up-to-date register of all persons deprived of their liberty in every place of detention and at the centralized level, and to make them available to the persons concerned, judicial and other competent authorities. The Working Group on Enforced or Involuntary Disappearances has noticed that States are increasingly justifying the use of enforced disappearances as part of their counter-terrorism activities, including through the adoption of legal provisions that facilitate the occurrence of enforced disappearance and incommunicado detentions, practices in clear breach of international human rights law (A/HRC/42/40, para. 58).

Finally, we remind your Excellency's Government that Security Council Resolution 2462 "[d]emands that Member States ensure that all measures taken to counter-terrorism, including measures taken to counter the financing of terrorism as provided for in this resolution, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law".

*Issues relating to the compatibility of the Combating Terrorism Law and the Criminal Code with international human rights standards*

As preliminary context, we welcome the explicit recognition of human rights and freedoms in the guiding principles of counter-terrorism activity, as set out in article 13 of the CT Law. We also note with interest that articles 1 and 2 of the CT Law recognise that one of the objectives of this legislation is to implement the international commitments of the Republic of Tajikistan in the field of counter-terrorism and that one of the legal bases of the fight against terrorism are the international treaties to which the Republic of Tajikistan is a party. While we welcome the recognition of the role that international law should play in the counter-terrorism strategy adopted by Tajikistan, we urge the country to explicitly and fully integrate general and particular human rights protections into its counter-terrorism strategy. We remind your Excellency's Government that, according to the Global Terrorism Index 2022, the risk of terrorism in the country is low,<sup>1</sup> and therefore urge your Excellency's Government to go beyond the mere formal recognition of the legal obligation to align its counter-terrorism strategy to international law, including international human rights, and to implement it adequately with a view to establishing a fully international law complaint counter-terrorism strategy in the medium and long term.<sup>2</sup>

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<sup>1</sup> 2022 Global Terrorism Index, <https://www.visionofhumanity.org/wp-content/uploads/2022/03/GTI-2022-web-04112022.pdf>.

<sup>2</sup> A/HRC/16/51, para. 12; See A/60/825, para. 5; A/HRC/8/13; Statement by the President of the Security Council of 27 September 2010, op.cit., para 8; the Internal Security Programme and National Counter-Terrorism Strategy of Finland; Switzerland questionnaire response; and the Human Security Act 2007 of the Philippines, sect. 2.

A. *Definition of terrorism*

We note that Article 3 of the CT Law defines terrorism as:

*“[The]violence or the threat of violence against individuals, compulsion or threat of compulsion against legal entities, and also the destruction (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities, which threaten to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or influencing the adoption by state organs of decisions advantageous to terrorists, or satisfying their unlawful material and (or) other interests; attempts on the lives of statesmen or public figures perpetrated with a view to weakening the foundation of the constitutional order and security of the state or with a view to ending their state or other political activity or out of revenge for such activity; attempts on the life or infliction of a bodily harm to statesmen, public figures or representatives of authorities perpetrated because of their political or public activity, with a view to destabilising the public order or influencing the adoption of decisions by organs of power or obstructing the political or public activity; attacks on representatives of foreign states or staffers of international organisations enjoying international protection, or members of family living together, and also on the offices, dwelling places or vehicles of persons enjoying international protection if these actions are committed with a view to provoking war or complicating international relations”.*

We further note that articles 4 and 10 of the CT Law define “terrorist actions”, "terrorism crimes", and “terrorist activity” as:

- ***Terrorist action*** - *direct commission of terrorist crimes in the shape of explosion, arson, or the use of or threat to use nuclear explosive devices or radioactive, chemical, biological, explosive, toxic, noxious, aggressive or poisonous substances; the destruction, damaging, or seizure of vehicles or facilities; an attempt on the life of a statesman or public figure or representative of national, ethnic, religious, or other population groups; the taking of hostages and kidnapping; the creation of a danger of to the life, health, or property of a nonspecific range of people by creating the conditions for accidents and man-made disasters or the real threat of creation of such a danger; the dissemination of threats in any form and by any means; other actions creating a danger of loss of life; significant damage to property, or other socially dangerous consequences;*
- ***Terrorist crimes*** - *crimes envisaged by articles 179-182; 185; 187; 310 and 402 of the Republic of Tajikistan Criminal Code. Other crimes envisaged by the Republic of Tajikistan Criminal Code may be categorised as terrorist crimes if they are committed for terrorist purposes.*
- ***Terrorist activity*** - *activity that includes: the organisation, planning, preparation, and implementation of a terrorist action; the incitement to terrorist action, to violence against individuals or compulsion of*

*organisations, or to the destruction of property and other material objects for terrorist purposes; the organisation of an illegal armed formation, criminal association (criminal organisation), or an organised group in order to perpetrate a terrorist action, and also participation in such action; the recruitment, armament, training, and use of terrorists the funding of a known (the perpetrator knows that the organisation is acknowledged to be terrorist; and terrorist organisation or terrorist group or other assistance to them.*

Additionally, we take note that article 179 of the Criminal Code defines “terrorism” as:

*“[The act of] committing an explosion, arson, firing with firearms or other actions, which create the danger of destroy people, causing a substantial financial damage or coming other socially dangerous consequences, if these actions committed with the goal of violating public security, frightening the population or influencing the decision-making of the power organs, as well as threat of committing the mentioned actions with the same goals are punishable by imprisonment for a period of 5 to 10 years”.*

We note that article 4 of the Law on Terrorism refers to several acts provided for by the Criminal Code which are also considered "terrorists", including “knowingly false information about an act of terrorism” (article 180 of the Criminal Code); “capture of hostages” (article 181 of the Criminal Code), “capture of buildings, constructions, means of information and communication” (article 182 of the Criminal Code); “organisation of an illegal armed formation” (article 185 of the Criminal Code); “organising a criminal community” (article 187), “trespass to the life of a statesman or public figure of the Republic of Tajikistan” (article 310 of the Criminal Code); and the “assault on individuals and institutions enjoying international protection” (article 402 of the Criminal Code).

We note that both the CT Law and the Criminal Code offer an overbroad and ambiguous definition of “terrorist actions”, “terrorist crimes”<sup>3</sup>, and "terrorist organisations"<sup>4</sup> which includes imprecise terms such as “the creation of a danger of harm to the life, health or property”, “dissemination of threat in any form and by any means”, “significant damage to property” and “socially dangerous consequences” and the “destruction (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities”. We recall that the definition of “terrorism” and “terrorism offences” must be confined to acts that are 'genuinely' terrorist in nature in accordance with the elements identified by the 19 UN Sectoral Conventions on terrorism offences, Security Council in its resolution 1566 (2004) <sup>5</sup> and the Declaration on Measures to Eliminate International Terrorism and the

<sup>3</sup> **Terrorist crimes** are crimes envisaged by Articles 179-182; 185; 187; 310 and 402 of the Republic of Tajikistan Criminal Code. Other crimes envisaged by the Republic of Tajikistan Criminal Code may be categorised as terrorist crimes if they are committed for terrorist purposes.

<sup>4</sup> **A terrorist organisation** is an organisation created with a view to carrying out terrorist activity or considering the use of terrorism possible in its activity. An organisation is deemed to be terrorist if at least one of its subdivisions engages in terrorist activities with the knowledge of at least one of the organisation's steering bodies;

<sup>5</sup> "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature"

Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and consistent with the definition of terrorism offered by the mandate of the UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism ([E/CN.4/2006/98](#), paras. 26-50 and 72; A/HRC/15/51, para. 28).<sup>6</sup> Criminal offences must thus be set out in precise and unambiguous language that narrowly defines the punishable offence. We recall that the failure to use precise and unambiguous language in relation to terrorism offences fundamentally affects the protection of a range of human rights and freedoms. The adoption of overly broad definitions of terrorism, therefore, carries the potential for the deliberate misuse of the term and poses the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights (A/HRC/16/51, para. 26).

These definitions, due to their overly broad nature, substantially differ from both the Security Council Resolution 1566 and the model definition provided by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In particular, we note that the definitions above do not meet the threshold of seriousness required for such acts, notably that the intent is to cause death or serious bodily injury.

We underscore that the definition of terrorism and related offences must be “accessible, formulated with precision, non-discriminatory and non-retroactive.”<sup>7</sup> We bring your attention to the 'principle of legal certainty' under international law, 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. This principle recognises that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse.

Furthermore, we note that article 4 of the CT Law defines a "terrorist organisation" as "an organisation established for the purpose of carrying out a terrorist activity or which considers the possible use of terrorism in its activity". This provision criminalises activities that have not yet been committed in contravention of article 15 of the ICCPR. Tajik legislation would allow the authorities to punish "pre-criminal" thoughts and actions. This may lead to violations of several rights guaranteed by the ICCPR, such as freedom of association and freedom of thought and expression and may even undermine the basic principles of the rule of law, namely the principles of proportionality and non-discrimination.

We would like to recall that overly broad definition of terrorist organizations has had practical implications on the opposition in Tajikistan. After the 2015 Supreme Court decision declaring the Islamic Renaissance Party and extremist and terrorist

<sup>6</sup> [A/HRC/16/51](#) - We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.<sup>6</sup> Those elements include:

- i) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- ii) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organisation to do or to abstain from doing any act,
- iii) Such acts constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.<sup>6</sup>

<sup>7</sup> [A/HRC/16/51](#), paragraph 27 (citing International Covenant on Civil and Political Rights, art. 15, General Assembly resolution 63/185, para. 18, and [E/CN.4/2006/98](#), para. 49).

organization and banning it, there were numerous reports of suppression of any dissent elements and of serious restrictions on the enjoyment of fundamental human rights and civil liberties, including the freedom of peaceful assembly, the right to participate in public affairs, the right to respect for private life, the right to personal security and integrity, the right to life and the prohibition of torture and the right to a fair trial, mostly in the name of fighting extremism and terrorism (A/HRC/45/13/Add.1, para. 8).

In view of the above considerations, we urge your Excellency's Government to adopt a definition of terrorism consistent with the core legal meanings adopted by the Security Council and by State Parties who have signed relevant multilateral terrorism conventions and commend the definition of terrorism developed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for your consideration (A/HRC/16/51) as well as compliant with the narrow and precise definition set out by the Security Council.

B. *Exceptional powers and emergency measures*

The definition of "anti-terrorist operation" as defined in section 4 of the CT Act, which defines it as "special measures aimed at stopping a terrorist action, ensuring the safety of persons, neutralising terrorists and also minimising the consequences of a terrorist action" is too broad.

We note that the language in this provision appears to be broad and permissive and to function as an emergency power within the domestic legal framework. The terms used, such as "special measures" and "neutralising terrorists" (article 4 of the CT Law), appear to positively encourage the use of excessive force rather than contain it. Furthermore, article 14 ("activities to uncover terrorist activities"), as well as article 16 ("suppression of terrorist activity") of the CT Law, appears to positively exhort and even oblige, in the latter case, the use of "all legal powers, means, forms and methods at their disposal", including the lethal use of force.

We recall that such provisions are inconsistent with article 6 of the ICCPR with respect to the right to life and the use of force by law enforcement officials. We respectfully refer your Excellency's Government to General Comment No 36, which requires that any use of force must be proportionate and that the use of lethal force, as the *ultima ratio*, must be used solely in self-defence and when all other means have been exhausted, including non-lethal force (CCPR/C/GC/36, para 12). We recall that the use of force should be strictly limited and compliant with the Basic principles on the use of force and firearms by law enforcement officials. We also recall that these provisions are fully applicable to the armed forces and to special services and units, including foreign countries operating on the territory of Tajikistan, when operating in a law enforcement context governed by international human rights law. The provisions allowing for the disproportionate use of lethal force also run contrary to the principle of presumption of innocence.

While we positively recognise the explicit recognition of human rights and freedoms in the guiding principles of counter-terrorism activity (article 13 of the CT Law), the principle of "strict measures for the protection of information during the conduct of special counter-terrorist operations" raises questions about the principle of confidentiality on tools, techniques and tactics of counter-terrorism. We believe this provision may undermine legal accountability and deters transparency from military,

intelligence and security actors. Moreover, the confidentiality extension to participants in counter-terrorism operations (specifically state agents) could be seen as a measure that provides preemptive impunity to security actors, who act in contravention of law or violate human rights while engaging in counter-terrorism activities (OL KGZ 3/2020, para 3). Considering the above considerations, we strongly encourage your Excellency's Government to review and reconsider this guiding principle.

Furthermore, we note that the "counter-terrorist operation zone and its legal regime", as provided in article 20 of the CT Law, gives enhanced police powers that seem to be highly problematic as they appear to be operating absent prior judicial authorisation or control. Likewise, as provided in article 21, the counter-terrorism zones appear to be designed areas of exceptional legal practice sealed off from oversight, review, and transparency of geographical locations where "counter-terrorism operation zones" are carried out. These provisions would appear to enable impunity for human rights violations committed during counter-terrorism operations and abrogate the rule of law entirely in the context of these actions through a *de facto* state of emergency. In that regard, we refer your Excellency's Government to the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that counter-terrorism laws must not be used as a form of *de facto* or covert emergency power (A/HRC/37/52, paras. 30 to 39). We also note that best international practice encourages States to thoroughly and independently review counter-terrorism and emergency law regularly to ensure that it remains both necessary and international law compliant. Ordinary law, where sufficient, should be used to address security and terrorism challenges experienced by the State and when exceptional or emergency law is utilised, it should be applied in accordance with international law and the framework of derogation on the basis of necessity, proportionality, and non-discrimination (A/HRC/37/52, paras 10 to 12).

Accordingly, the contents of article 28 of the CT law ("exemption from responsibility"), seem to afford immunity from prosecution, as well as article 24 of the law ("persons taking part in the fight against terrorism who are subject to legal and social protection") seems to afford "legal and social protection" to any individual participating or providing assistance in a counter-terrorist operation from its beginning to the moment of completion. This overreaching immunity clause for law enforcement officials, which seems to shield them from accountability in such circumstances, is entirely inconsistent with the State's international law obligations and appears to thwart the obligation of the State to afford effective remedies for human rights violations. We underscore that when law enforcement or the military use lethal force, commit acts of torture or detain persons arbitrarily, whether, against innocent individuals or individuals suspected of terrorism, there needs to be an independent, impartial, effective, and public investigation carried out by the authorities to determine the legality of the acts involved, and ensure accountability. Furthermore, the wording of article 28 of the CT law contradicts the provisions of articles 4, 14 and 16 of the Declaration on the Protection of all Persons from Enforced Disappearance.

Similarly, article 13 of the CT Law on the "Principles of the counter-terrorism activity" and especially the principle of "lawfulness of causing damage to a terrorist", lacks clarity and might therefore be open to arbitrary application and abuse. We believe that the latter may result in the use of disproportionate force against terrorists,



including lethal force. In that regard, we want to recall the "principle of legal certainty" under international law, enshrined in article 15(1) ICCPR and article 11 UDHR. This principle requires that criminal laws be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of such an offence. We also would like to recall the non-derogability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified. Furthermore, any action or attempt by States or public officials to legalise, instigate, authorise, consent or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment, including on grounds of national security and counter-terrorism, is condemnable and States should ensure accountability for those acts. (A/C.3/77/L.45).

### C. *Due process*

We note the implications of the authorisation of “closed judicial hearings”, as provided for in section 18 of the CT Act. In this regard, we wish to refer your Excellency’s Government to article 10 of the UDHR and article 14 of the ICCPR, which guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them. The decision to hold closed judicial hearings does not alleviate the Government’s obligation to inform families of the individuals concerned of their exact whereabouts.

Article 13 of the CT Law setting up “the inevitability of punishment of counter-terrorism activity” may have consequences for the right to a fair trial and the presumption of innocence if this is to be understood as a presumptive criminal liability. We consider that these provisions when applied are highly likely to violate the right to due process, equality before the law, and the presumption of innocence since persons accused of association with terrorist groups or criminal organisations could face substantial limitation in judicial guarantees before a competent authority can even determine their actual membership of such organisations. We recall that procedural safeguards protecting personal liberty may never be subject to derogations that circumvent the protection of non-derogable rights.

Similarly, we note that article 10 of the CT Law, which provides that a “terrorist activity” includes “the organisation”, “planning”, and “preparation”, “of a terrorist act” and “the incitement to terrorist action” is insufficiently precise and appear to punish "pre-criminal" thoughts and actions. We believe that pre-criminal counter-terrorism measures may lead to violations of several rights guaranteed by the ICCPR, including freedom of association and freedom of thought and expression, and can even undermine the basic principles of the rule of law.

We emphasise that all persons, regardless of the seriousness of the charges against them, have the right to a fair trial. The right to a fair trial is recognised not only in human rights treaties but also in international humanitarian law, international criminal law, counter-terrorism conventions and customary international law (A/63/223).

D. *Disproportionate impact on specific minorities*

We also note that article 189 of the Criminal Code on the prohibition of "arousing national, racial, local or religious hostility"<sup>8</sup>, might raise negative implications on the rights of persons belonging to ethnic, religious and linguistic minorities, as well as on the legitimate work of all those defending and advocating for these rights. In this respect, we would like to recall the State's obligations under the ICCPR, in particular articles 18 and 27 of the ICCPR providing for the protection of the freedom of thought, conscience and religion or belief and guaranteeing the rights of persons belonging to minorities. We also recall the Human Rights Committee's view that States should ensure that any prohibition and restriction of article 20 of ICCPR should be clearly justified in strict conformity with article 19 of the ICCPR (General Comment No. 34, CCPR/C/GC/34, paras 50 to 52). In addition, we wish to refer to the Rabat Plan of Action, which provides that for any expression of incitement to hatred to be criminalised, a six-part threshold test should be fulfilled in terms of its content and form, speaker, intent, extent of the speech act, and likelihood/imminence of the risk of harm (A/HRC/22/17/Add.4).

We respectfully refer your Excellency's Government to the report of the Special Rapporteur on freedom of religion or belief on the elimination of all forms of religious intolerance (A/73/362). In his report, the Special Rapporteur notes that some Governments use security reasons to formally ban religious or belief groups and render membership in these groups a criminal offence. The criteria for this do not always appear to be clear or closely connected to proof of the group's engagement in or material support for violence or incitement. In that regard, we want to recall that any restriction on freedom of expression that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). Furthermore, any such limitations must be legally based, necessary, proportionate, and non-discriminatory.

We note that in recent communications (TJK 1/2022, TJK 2/2022, and TJK 3/2022), several Special Procedures mandate-holders raised concerns regarding the treatment of the Pamiri minority and that some of these allegations concerned the abusive use of the counter-terrorism legislation against activists, human rights defenders and journalists belonging to this minority (TJK 3/2022). We would like to bring to your Excellency Government's attention, that in a press release of 20 April 2022, a group of Experts expressed deep concern about the lethal and excessive use of force against the Pamiri minority, the persecution of minority activists and the securitisation of minorities.<sup>9</sup> Subsequently, in a press release of 20 May 2022, the Special Rapporteur on minority issues expressed deep concern about the discriminatory impact of anti-terrorism legislation, "warning that the use of anti-terrorism operations to quell protests" by the Pamiri minority "could fuel even wider and more violent problems".<sup>10</sup> We echo the concerns of the Special Procedures Experts concerning the Pamiri minority and urge your Excellency's Government to

<sup>8</sup> The actions, which lead to **arousing national, racial, local or religious hostility, or dissension, humiliating national dignity**, as well as propaganda of the exclusiveness of citizens by a sign of their relation to religion, national, racial, or local origin, if these actions were committed in public or using means of mass media are punishable by up to 5 years of restriction of liberty or imprisonment for the same period of time.

<sup>9</sup> 20 April 2022 - <https://www.ohchr.org/en/press-releases/2022/04/tajikistan-un-experts-sound-alarm-about-tensions-gbao-urge-protection-pamiri>  
<https://www.ohchr.org/en/press-releases/2022/05/tajikistan-un-expert-fears-crackdown-against-pamiri-minority-could-spiral>

ensure that anti-terrorism legislation does not disproportionately affect specific ethnic minorities.

E. *Freedom of Opinion and Expression*

The prohibition of "incitement to terrorist action" (article 10 of the CT Law), the prohibition of "activity connected to terrorist propaganda" (article 15 of the CT Law), "public calls for violent change of the constitutional order of the Republic of Tajikistan" (article 4 of the CT Law and 179 of the Criminal Code), and "knowingly false informing about an act of terrorism" (article 180 of the Criminal Code), in our view, could hamper the right to freedom of opinion and expression. We recall that in the communication TJK 3/2022, we expressed deep concern about the misuse of certain of these provisions against human rights defenders, civil society representatives, journalists, media workers and human rights lawyers and recalled that any restriction on freedom of expression that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).

We recall that any limitation on freedom of expression must comply with the requirements set out by article 19(3), namely legality, necessity, proportionality and non-discrimination (CCPR/C/GC/34). The legality requirement of article 19(3) of the ICCPR requires that any restriction be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly". In contrast, the proportionality requirement requires that the State adopt the least restrictive means necessary, and that any restriction be narrowly circumscribed to achieve its protective function.

We note that both the CT Law and the Criminal Code do not delimit prohibited speech in a manner consistent with the limitations required by article 19(3) of the ICCPR and, as currently drafted, they may have a negative impact on civil society and civic space, including journalists, human rights defenders and civil society actors (see TJK 3/2022). In her 2019 report to the Human Rights Council, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed deep concern about the use of counter-terrorism and extremist legislation and practices to target, marginalise and criminalise the work of civil society and noted that "undue interference with the right to privacy limits the free development and exchange of ideas, and can have a chilling effect on freedom of expression" (A/HRC/37/52, para. 27). We further recall that in Resolution 12/16, the Human Rights Council called on States to refrain from restrictions incompatible with article 19(3), including discussion of government policies and political debate; reporting on human rights; participation in peaceful demonstrations or political activities, including in support of peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (OL ZWE 3/2021).

We respectfully refer Your Excellency's Government to General Comment No 34 of the Human Rights Committee which clarifies that the right to freedom of expression applies "to all kinds of information and ideas, including those that may shock, offend or disturb", and "irrespective of the truth or falsehood of the content" (UN HRC GC 34, para 11). In her 2022 report, the Special Rapporteur on freedom of opinion and expression expressed concern about the abuse of anti-terrorism legislation

to silence critical voices and to restrict media freedom. We also recall that in her 2019 report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stressed that counter-terrorism provisions "preventing reporting on or publicly discussing acts of terrorism, through the criminalisation of, *inter alia*, (...) the propagation of false information" "seriously limit transparency and the accountability of government officials and security forces for human rights violations perpetrated in the course of countering terrorism" (A/HRC/40/52, para. 40).

We bring your Excellency Government's attention to article 7 of the Declaration on Human Rights Defenders, which guarantees the right of everyone, individually or collectively, to develop and discuss new human rights ideas and principles and to advocate for their acceptance. We also remind you that the right to freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of your choice", and protects, *inter alia*, political speech, commentary on personal or public affairs, proselytising, discussion of human rights and journalism.

Finally, we note that article 26 of the CT Law could constitute an interference with the independence of the media, as it imposes a general duty to cooperate with the authorities, including through disclosure of information to sources, restrictions on the types of reporting permitted on individuals suspected of terrorism, requirements of prior authorisation by the authorities for interviews, and a general duty of prior self-censorship. We note that the law does not appear to provide any safeguards against abuse of authority, such as through judicial review requirements, and that these would directly interfere with basic principles of media freedom and journalistic privilege in a manner inconsistent with article 19 of the ICCPR. In this regard, we reiterate that "a free, uncensored and unfettered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society" (CCPR/C/GC/34 para. 13).

#### F. *Freedom of Peaceful Assembly and Association*

Article 4 of the CT Law ("terrorist organisation"), article 15 of the CT Law (prevention of terrorist activity) and article 187 of the Criminal Code ("organisation and participation in a criminal organisation"), by their broad nature, may directly or indirectly criminalise the peaceful exercise of freedom of association and assembly and may create a chilling effect on civil society engaged in non-violent criticism of state policies.

We recall that article 22(1) of the ICCPR provides that "everyone has the right to associate freely with others". Furthermore, under article 2 of the ICCPR, States have the responsibility to take deliberate, concrete and targeted steps towards the implementation of the obligations recognised in the ICCPR, including by adopting such laws and legislative measures as may be necessary to give domestic legal effect to the rights provided for in the Covenants and to ensure that the domestic legal order is compatible with the treaties". In this sense, the prohibition of meetings and demonstrations, as well as the prohibition of the "organisation, registration and operation of organisations pursuing terrorist aims", without reasons that obey the principles of necessity, proportionality, legality and non-discrimination constitute a

serious violation of freedom of association and could be used to criminalise organisations exercising legitimate activities for the protection and promotion of human rights.

We remain available to provide technical assistance to your Excellency's Government in order to support full compliance with your obligations under international law, including international human rights law.

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 analysis.
2. Please explain how the amended Act is compatible with Tajikistan's obligations under articles 2, 6, 14, 15, 17, 18, 19, 20, 21, 22, 26 and 27 ICCPR and articles 11, 12, 19 and 20 of the UDHR, as well as articles 4, 7, 10, 14 and 16 of the Declaration on the Protection of all Persons from Enforced Disappearance and how it may remediate the aforementioned inconsistencies with international human rights standards enshrined in the proposed law.
3. Please provide information in detail on how your Excellency Government's counter-terrorism efforts comply with 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](#) in particular with international human rights law, refugee law, and humanitarian law contained therein.
4. Please explain how the definition of "terrorism" and "counter-terrorism operations" comply with Tajikistan's international obligations, and the manner in which it complies with the principle of legal certainty.
5. Please identify any positive measures and oversight provided by your Excellency's Government on the exercise of the powers proposed in this legislation.
6. Please indicate what specific legal and administrative measures have been taken to ensure that human rights defenders, journalists as well as members of religious and other minorities in Tajikistan will be able to carry out their legitimate work and activities, including through the exercise of their right to freedom of opinion and expression and their rights to freedom of association, in a safe and enabling environment without fear of being designated "terrorist".
7. Please explain how the closed judicial hearings under article 18 of the CT Law comply with due process, and the prohibition of enforced or involuntary disappearances.

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

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

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

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

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes  
Special Rapporteur on minority issues