

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 situation of human rights defenders and the Special Rapporteur on the right to privacy

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8 May 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; 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 the right to privacy, pursuant to Human Rights Council resolutions 49/10, 51/8, 43/4, 50/17, 52/4 and 46/16.

In this connection, we offer the following comments on the **Law no. (58) Of 2006 With Respect to Protecting the Society from Terrorist Acts** and the **Bahraini Citizenship Act of 1963** as amended in 2014 and 2019 respectively. We respectfully address several human rights challenges in relation to the definition of terrorism contained in the legislation which, in our view, is overly broad and risks negative and disproportionate impacts on particular groups, on due process, on the right to liberty and security of person, on the right not to be deprived of nationality, 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 Bahrain's international human rights obligations. We would also like to reiterate the observations made in AL BHR 2/2019 on the Law no. (58) Of 2006 With Respect to Protecting the Society from Terrorist Acts.

Applicable International and Human Rights Law Standards

We refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Bahrain acceded to on 20 September 2006, and the Universal Declaration of Human Rights (UDHR). In particular we would like to draw your Excellency's Government's attention to articles 6, 7, 9, 17, 19, 21 and 22 of the ICCPR which guarantee, respectively, the right to life, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of persons and to be free from arbitrary detention, the right to privacy, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association.

We would specifically like to underline that the "principle of legal certainty" under international law, enshrined in articles 9(1) and 15 of the ICCPR and article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined

and/or overly broad laws are open to arbitrary application and abuse (A/73/361, para. 34.). Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

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

We also call your Excellency's Government's attention to Article 22(1) of the ICCPR states that "everyone shall have the right to freedom of association with others." Pursuant to article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the Covenant, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenant and to ensure that the domestic legal system is compatible with it. Article 22(2) ICCPR provides that any restrictions on the exercise of the right to freedom of association must be "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

We also respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all their obligations under international law. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.¹

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. We would like to emphasize that any restriction on freedom of expression that a government seeks to justify on grounds of national security or counter-terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest (General Comment No. 34, CCPR/C/GC/34).

¹ General Assembly Res. 60/288.

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

We further recognize the urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders in the exercise of their work, and urge states to protect human rights defenders, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law (A/HRC/RES/34/5). In this regard, we recall that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds (A/70/371, para 46(c)).

We also respectfully remind your Excellency's Government that Article 15 of the UDHR establishes that everyone has the right to a nationality and no one shall be arbitrarily deprived of it nor denied the right to change his nationality. The UN General Assembly in resolution 50/152 has recognized that the right to nationality, enshrined in article 15(1) of the UDHR, is a "fundamental principle of international law". The prohibition of arbitrary deprivation of nationality is implicitly recognized by all the principal international³ and regional⁴ human rights treaties through the proscription of discrimination on various grounds in respect of the right to nationality. More specifically, the 1961 Convention on the Reduction of Statelessness explicitly prohibits a State from exercising powers of deprivation causing statelessness, unless certain strict conditions are met.⁵ Beyond this treaty framework, the United Nations has also repeatedly and regularly confirmed the prohibition against the arbitrary deprivation of nationality, including by way of UN resolutions of the General Assembly, the Human Rights Council and its predecessor the UN Commission on

² A/HRC/RES/22/6, para. 10; See also E/CN.4/2006/98, para. 47.

³ Convention on the Nationality of Married Women (1957) 309 UNTS 65, Articles 1-2; International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195, Article 5(d)(iii); Convention on the Elimination of All Forms of Discrimination Against Women (1979) 1249 UNTS 13, Article 9(1); Convention on the Rights of the Child (1989) 1577 UNTS 3, Article 8(1). See also International Covenant on Civil and Political Rights (1966) 999 UNTS 171, Article 24(3), Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3, Article 18(1).

⁴ Including the Revised Arab Charter on Human Rights (2004), Article 29(1) ("*Every person has the right to a nationality, and no citizen shall be deprived of his nationality without a legally valid reason*").

⁵ Convention on the Reduction of Statelessness (1961) 989 UNTS 175, Article 8(1)-(4).

Human Rights,⁶ and multiple reports dedicated to the subject by the UN Secretary General⁷. Therefore, echoing the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, arbitrary deprivation of citizenship is a violation of international law, as it may impede an individual's full enjoyment of all their associated human rights⁸. Therefore, in the light of the substantial body of treaty law, pronouncements by international organizations, and judicial consensus⁹ on the prohibition against the arbitrary deprivation of nationality, the Special Rapporteur considers that the prohibition has risen to the status of customary international law.

Background

On 31 July 2006, the Government of Bahrain approved Law no. (58) on Protecting Society from Terrorist Acts. The Law was subsequently amended by Legislative Decree no. (20) of 2013 and the Legislative Decree No. (68) of 2014. The antiterrorism legislative framework has been further extended after the Bahraini Citizenship Act was amended in 2014 by Decree-Law no. (21) and in 2019 by Decree Law no. (16), providing the revocation of citizenship based on terrorism charges. According to the Human Rights Committee citizenship revocation has been allegedly used as an act of reprisal against peaceful political dissidents and human rights activists (A/HRC/WG.6/42/BHR/2).

Definition of Terrorism

We respectfully remind your Excellency's Government, that although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions¹⁰, the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to

⁶ See, e.g., UNGA, Resolution 50/152, UN Doc. A/RES/50/152, 9 February 1996, para. 16; UN Commission on Human Rights, 'Resolution on Human Rights and Arbitrary Deprivation of Nationality, 2005/45, 19 April 2005, preamble; see also para. 2; UN HRC, 'Human Rights and Arbitrary Deprivation of Nationality', UN Doc. A/HRC/RES/13/2, 24 March 2010, see generally; UN HRC, 'Human rights and arbitrary deprivation of nationality', UN Doc. A/HRC/RES/20/5, 16 July 2012.

⁷ See, e.g., 'Arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/10/34, 26 January 2009; 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009; 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc/ A/HRC/25/28, 19 December 2013.

⁸ See, e.g., UN HRC, 'Human rights and arbitrary deprivation of nationality', UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 6.

⁹ See, e.g., Eritrea-Ethiopia Claims Commission, Partial Award (Civilian Claims – Eritrea's Claims 15, 16, 23 and 27-32) (2004) 26 UNRIAA 195, para. 57 (the Commission accepted that the rules cited, including Article 15.2 of the UDHR, were customary); *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Inter-American Court of Human Rights, Advisory Opinion OC-4/84, 19 January 1984, Ser. A, No. 4, paras 33-34; *Case of Expelled Dominicans and Haitians v Dominican Republic*, Inter-American Court of Human Rights, Judgment, 28 August 2014, Ser. C, No. 282, para. 253; see also *Anudo Ochieng Naudu v United Republic of Tanzania*, African Court on Human and Peoples' Rights, Judgment, 22 March 2018, para. 76.

¹⁰ See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; E/CN.4/2006/98 paras. 25-50.

Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly (S/RES/1566; A/RES/51/210). 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 (A/59/565 (2004), para. 164 (d)). As explained by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report (E/CN.4/2006/98, para 37), the model definition includes acts that have the following cumulative characteristics:

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

In this regard we note that article 1 of the Law no. (58) defines “terrorism” in the following manner:

“Use of force, the threat of using it, or any other illegal means that constitutes a punishable crime that the perpetrator may resort to in execution of individual or collective criminal undertaking with the aim of disturbing the public order, endangering the Kingdom's safety and security, or prejudicing national unity or the security of the international community. This is when such acts lead to harm, horrify or terrify people, endanger their lives, freedoms or security, harm the environment, public health, national economy, facilities, institutions, or public property, seizing them or impeding proper functioning thereof, or prevent or obstruct public authorities, worship houses, or academic institutions from executing their works”.

Article 1 also defines a terrorist crime as *“felonies stipulated in the Penal Code or any other law, if it was committed for a terrorist purpose”.*

We note that this definition does not restrict the acts it criminalizes to violent acts, as it includes a range of ambiguous terms, such as disturbing public order, endangering the Kingdom’s safety and security, prejudicing national unity or the security of the international community, all of which raise issues with regard to the possibility of their arbitrary application due to their lack of legal specificity. We observe that the criminalization of these vague concepts, some of which have no clear connection with terrorism or violent acts, significantly distances the Law from the principles contained in international treaties on terrorism. The broad character of these phrases could entail that a range of speech and association activities protected under international human rights law would be characterized domestically as ‘terrorism’. Such a characterization may permit the arrest, detention or harassment of individuals exercising their internationally protected rights, restrictions which could constitute

arbitrary deprivations of liberty under international law, and ultimately risk the conflation of domestic protest, dissent, or peaceful defence of human rights with terrorism. We bring again to your Excellency's Government's attention the "*principle of legal certainty*" which is a fundamental tenet of international human rights law, requiring that criminal laws are sufficiently precise, so it is clear what types of behaviour and conduct constitute a criminal offence, in order to reduce the risk of their arbitrary application. Moreover, the criminalization of these terms, without clearly stipulating what activities they encompass, also increases the risk that they may be applied in a manner that would be contrary to the fundamental principle that the punishment must be commensurate with the crime and the *nullum crimen sine lege* prohibitions of international law.

In addition, we recall that while some of the violent crimes that are mentioned in this definition, such as harming people, harming public property, or preventing or obstructing public authorities, worship houses, or academic institutions from executing their works, or other ambiguously defined terms that could be understood or interpreted as including violent conduct (such as disturbing public order or prejudicing national unity), such acts should only be punished as terrorist acts if they are truly of a terrorist nature. In this respect, we recall that crimes that do not have the status of terrorism, however serious, should not be addressed through counter-terrorism legislation. We note that the cumulative approach used in the model definition referred to previously acts as a security parameter to help ensure that it is only behaviour of a truly terrorist nature that is designated and prosecuted as terrorist conduct.

We also observe that article 2 indicates the following offences as crimes punishable under Law no. (58):

- “1. *Aggression against people's lives, safety or freedoms.*
2. *Imitating seals and public indications (marks), counterfeiting currency, advocating counterfeited currency, forging checks, or any other discharging instrument.*
3. *Acts of sabotage, damaging or blazing fire.*
4. *Robbery or property usurpation.*
5. *Manufacturing, importing, possessing, transporting, advocating or using conventional and non-conventional weapons, explosives, or ammunition in violation of the Penal Code, and Law on Explosives, Weapons and Ammunition.*
6. *Attacks against automated data processing systems.*
7. *Forgery or use of official or unofficial instruments (documents).*
8. *Money Laundering crimes.*
9. *Concealing the proceeds obtained from a terrorist crime.*
10. *Crimes related to religions.”*

We observe that the potential punishments for those accused of being terrorist actors or members of terrorist organisations, risk being unlawfully disproportionate due to the broad range of entities, persons, or activities that could be deemed as being “terrorist” under these overly flexible definitions. We stress that persons who belong to or support associations with peaceful purposes should not be unduly penalized by the application of proscription laws that are unduly imprecise, in line with the “principle of legal certainty.”

We, furthermore, note the negative effect that such changes in legislation could have on human rights defenders. Where human rights defenders’ work towards the legitimate protection of human rights is misperceived as being threatening to the state, despite its peaceful and advantageous quality, they could risk being subjected to punishment under the wide interpretation of terrorism that your legislation allows. We would like to remind your Excellency’s Government of the protections afforded under the UN Declaration on Human Rights Defenders.

We caution that the definition of terrorism does not only criminalize those who “commit” any of the acts that are outlined in the law, but article 2-bis states that the antiterrorism law shall apply to “every citizen or foreigner who has committed outside the Kingdom of Bahrain an act which makes him/her a perpetrator or an accomplice in any of the crimes stipulated in this Law”.¹¹ We observe that such a broad disposition of associational conduct and extraterritoriality does not adequately define the modalities for the extraterritorial application of the law concerned in potential breach of international law.

We also wish to bring to the attention of your Excellency’s Government the jurisprudence of the Working Group on Arbitrary Detention, in which it has found the definition of terrorism contained in Law no. (58) overly vague and broad, and therefore incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant.¹² Similarly, the Human Rights Committee has expressed concern that Law No. (58) “includes an overly broad definition of terrorism that provides too much room for interpretation and may result in violations of the right to freedom of expression, association and assembly.”¹³

Freedom of expression, assembly and association

We observe that article 6 of Law no. (58) criminalizes any association, corporation, organization, group, gang or a branch of any of them whose activity has the purpose of “interrupting the provisions of the constitution or laws, preventing any of the State's institutions or public authorities from exercising its works [...] or prejudicing the national unity”. In addition, the law criminalizes whoever:

- Runs a registered organization committing one of the crimes above-mentioned (art. 9).
- Endeavors or communicates with foreign-based organizations, as well as “whoever solicits or accepts, either for himself or for any other

¹¹ Amended by Legislative Decree no. (68) of 2014.

¹² See, for example, Opinions No. 59/2019, para. 60, No. 5/2020, para. 76; No. 84/2021, para. 94; No. 65/2022, para. 98.

¹³ CCPR/C/BHR/CO/1, para. 29.

person, a grant or benefit or a promise of such, even if it is through an intermediary” from any of them (art. 12- 13).

We further note that article 11(2) establishes that:

“Imprisonment for a term not exceeding five years shall be the penalty inflicted on whoever personally or through an intermediary holds or acquires written documents or printed matters comprising advocacy of any of the foregoing if they are prepared for distribution, and whoever holds or acquires any means of printing, recording or publicizing of any kind which is used or prepared to be used, even if temporarily, for printing, recording or broadcasting such advocacy.”

We respectfully bring your Excellency’s Government attention to the inclusion and criminalization of essentially undefined terms such as “interrupt the provisions of the constitution”, “prevent the state from exercising its work”, or “prejudicing the national unity” and the effects these imprecise inclusions could have on freedom of expression in Bahrain. Such broad terms may affect human rights defenders, the non-profit sector, cultural, religious or minority associations or organizations, and civic space more broadly, as well as target any activity they carry out (i.e., protests, gatherings, critical statements against the government), particularly the legitimate exercise of the rights to peaceful assembly and association. In addition, the overly broad terminology used to define terroristic actions under the law concerned (see i.e., articles 2, 9, 11, 12, 13), appears to fundamentally undermine individuals’ right to freedom of expression.

We remind your Excellency’s Government that Article 19 of the ICCPR states that “everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The rights to opinion and expression are reflected also in global and regional human rights treaties and while the freedom of expression may be subject to certain limitations, the freedom of opinion is absolute (see e.g., General Comment no. 34, CCPR/C/GC/34, para. 9). Even where the opinions expressed by people are critical of the State, it has a positive obligation to foster and ensure an enabling environment in terms of enjoyment of the rights to freedom of expression, peaceful assembly and association, so that citizens are able to exchange, communicate, information and opinions, and contribute to the building of a just society freely and without fear (A/HRC/20/27, para 63).

The conditions for permissible restrictions are reflected in Article 19(3) ICCPR and in numerous regional and global human rights treaties:

Firstly, any restriction must be “*determined by law*”. Practice by international monitoring bodies has not only a requirement on the form but also the quality of the law. Thus, for example, the Human Rights Committee has expressed that laws must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.” (CCPR/C/GC/34, para. 25)

Secondly, any restriction must be undertaken to respect the right or reputations of others; protect national security or public order or protect public health or morals. The Human Rights Committee has explained that “it is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information” (CCPR/C/GC/34, para 30).

Thirdly, restrictions must be *necessary and proportionate* and must pursue a *legitimate objective*. The State must establish a direct and immediate connection between the expression and the threat said to exist (CCPR/C/GC/34, para. 35). Restrictions must target a specific objective and not unduly intrude upon other rights of targeted persons, and the ensuing interference with third parties’ rights must be limited and justified in the light of the interest supported by the intrusion (A/HRC/29/32, para. 35). The requirement further entails that the measure must be the least intrusive measure necessary amongst those which might achieve their protective function in order to protect a specified legitimate objective¹⁴.

Lastly, States have the *burden of proof* to demonstrate that any restriction is compatible with the requirements under human rights law.¹⁵ While national security in most treaties is recognised as a legitimate aim, it must be limited in its application to those situations in which the interest of the whole nation is at stake.¹⁶ States must “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”¹⁷

We respectfully bring your Excellency’s Government attention to the inclusion and criminalisation of several categories of crimes under Law no. (58) and their compatibility with the requirements of legitimate aim, legality, necessity and proportionality. We fear that these provisions could seriously undermine the right to freedom of expression and of peaceful assembly in Bahrain in a manner inconsistent with your Excellency’s Government’s obligations under customary international law or with Security Council resolution 1624 (2005).

We observe that the criminalisation of certain categories of crimes under Bahrain antiterrorism legislation seem to lack any relevant justification under international law, as the broad terminology used would constitute a restriction on fundamental rights such as freedom of expression and of peaceful assembly. We further observe that Law no. (58) does not appear to give a clear and defined indication as to the categories of crimes in the law, failing to comply with the requirement of foreseeability. Hence, individuals would not foresee the consequences of their actions and whether they could face criminal proceedings under this law. Compelling examples are articles 9, 11, 12, and 13 which define criminal “*whoever*” has committed those actions prescribed to be illegal. Using such broad and imprecise phrases and terms would not enable to understand which conduct falls within the ambit of the law and which does not. Accordingly, the provisions provide for a high risk of arbitrary or unlawful decisions, contrary to right to freedom of expression and

¹⁴ A/71/373.

¹⁵ Ibid., para. 9; see also Human Rights Committee, General Comment no. 34 (2011), para. 27

¹⁶ Ibid.

¹⁷ Ibid.

of peaceful assembly.

Finally, as regards the requirements of necessity and proportionality, the law seems to go far beyond what is necessary in pursuance of the legitimate aim of combating terrorism and for the protection of national security. There is a real risk that the breadth of the criminalized forms of expression contained in the Law no. (58) may affect the right to freedom of expression itself. In this regard, we note that individual provisions could permit the criminalisation of political and religious dissent, critical discussion on human rights, independent journalism and media independence, among many others. Through the vague provision on the extraterritorial application of the law, it could even unlawfully limit freedom of expression beyond the territory of Bahrain.

In this regard, we take into consideration the extent of vague provisions and the breadth of the definition of terrorism, which could possibly restrict or prevent journalists, human rights defenders, civil society, political or religious groups and other actors from carrying out their legitimate activities. We have consistently referred to counter-terrorism laws across the globe that criminalize freedom of expression and other fundamental freedoms (AUS 5/2019; OTH 46/2018). The risk of vaguely worded provisions is that they are applied to target the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others (A/HRC/37/52, para. 47). Expressions of political dissent are not a legitimate objective for a criminal-law-based restriction on the freedom of expression. The former UN High Commissioner for Human Rights has cautioned against the use of counter-terrorism measures against non-violent conduct, asserting that “States should ensure the focus of their measures is on actual conduct rather than mere opinions or beliefs” (A/HRC/33/29, para. 61).

On these grounds, we observe that such provisions could be employed in a punitive and arbitrary manner against individuals expressing criticism of the Government, rather than against those posing direct and concrete terrorism-related threats. We also note that the prohibition of joining, endeavoring, or communicating with any terrorism-related association or organization, without any attempt to restrict the manner in which these terms should be interpreted, would increase the potential restriction of a wide range of protected forms of expression, as well as the legitimate exercise of the freedom of association.

Citizenship Stripping

We bring your Excellency’s Government attention to the amendments to the Bahraini Citizenship Act (1963) concerning the circumstances for the revocation of citizenship. Following the amendments in 2014 and 2019 respectively, article 10 of the Citizenship Act establishes that Bahraini nationality may be revoked:

“[...] (c) If he causes harm to the interests of the Kingdom or acts contrary to the duty of loyalty to it.

(d) If he is found guilty in a crime stated in articles 5 to 9, 12 and 17 in the Law No (58) of 2006 with Respect to Protecting the Society from Terrorist Acts.”

We observe that article 10(c) Citizenship Act does not provide a clear definition of “*interest of the Kingdom*”, and it also does not define what actions are

deemed to be “*contrary to the duty of loyalty to it*”. We observe the overly broad and vague formulation of such a provision, and we caution that article 10(c), as currently formulated, could be used as a tool to silence dissidents criticizing the current Government. Similarly, we reiterate the issues raised above regarding the broad definition of terrorism provided under Law no. (58), which is relevant to article 10(d) of the Citizenship Act. Taking into account the broad range of activities criminalized within Law no. (58), as well as the broad range of persons that could be deemed as “terrorist” under such overly vague provisions, we caution that revocation of citizenship could be arbitrarily exercised, thus affecting also peaceful protestors, humanitarians, lawyers, academics, human rights defenders or journalists.

We remind your Excellency’s Government that, to avoid arbitrariness, deprivations of nationality must: 1) conform to domestic and international law; 2) serve a legitimate purpose consistent with international law; 3) be proportionate to the interest the State seeks to protect; and 4) occur with sufficient procedural guarantees and safeguards (A/HRC/25/28 (2013), para. 4).

Principle of Legality

Deprivations of nationality must conform with both international law and the depriving State’s own domestic law. On various occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has recalled that the deprivation of nationality must conform to the law – both to the letter of the law and its object (so as to avoid an outcome that is unjust, illegitimate or unpredictable).¹⁸ Any withdrawal of nationality by a State must have a clear basis in law and be sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality.¹⁹

Further, where States introduce new grounds for loss or deprivation of nationality, they should include transitional provisions to prevent an individual from losing their nationality due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground.²⁰ States should safeguard against the adverse consequences of the withdrawal of nationality and not artificially prolong offences or draw adverse consequences from previous acts, in line with the general principle that a person may not be tried for conduct that was not an offence at the time the conduct occurred.

Purpose

Citizenship stripping must serve a legitimate purpose consistent with international law and must be necessary and proportionate to the well-articulated

¹⁸ [UA NLD 4/2021](https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020_05_29_FINAL_Begum_Intervention.pdf); Interventions in the case of Shamima Begum: https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020_05_29_FINAL_Begum_Intervention.pdf and <https://www.ohchr.org/Documents/Issues/Terrorism/SR/Submissions26Oct2020.pdf>; Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in the case of Daoudi v. France (Application no. 48638/18) before the European Court of Human Rights, https://www.ohchr.org/sites/default/files/2022-02/SRCT_intervention_ECHR-in-Daoudi-v-France.pdf.

¹⁹ UNHCR Guidelines on Statelessness No. 5, para.92.

²⁰ UNHCR Guidelines on Statelessness No. 5, para. 93.

interest that the State seeks to protect.²¹ As set out by the International Law Commission, the State is not justified in depriving a person of nationality for the sole purpose of expelling him or her²² nor can State be justified in depriving for the purpose of denying a national entry into the territory, given that nationals have the right, enshrined in Article 13(2) of the UDHR, to return to their country of nationality.²³

Further, deprivation of citizenship which has as a basis the alleged commission of acts of terrorism, such as membership or travel, may – despite its alleged ‘administrative’ nature - also be in violation of the principle of *ne bis in idem*, particularly where the deprivation accompanies other, criminal sanctions, such a prison sentences. We are particularly mindful of the long-term human rights consequences of extended prison sentences for terrorism and cumulative administrative measures after criminal sentences are completed, which will have a substantial impact on family relationships and the human rights of individuals within families.

Necessity and proportionality

For revocation of citizenship to be proportionate, measures leading to the withdrawal of nationality should serve a legitimate purpose that is consistent with the objectives of international human rights law and be the least intrusive means necessary to achieve the aim pursued by the State.²⁴ Therefore, the consequences of loss or deprivation of nationality must be weighed against the aim pursued.

In this context, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stresses that because the right to nationality is a right that enables the practical affirmation of other rights, citizenship deprivation should never be the first option pursued and should instead only be used as a last resort when other less weighty rights-negating avenues (i.e., criminal law measures) have been sought first.²⁵ Hence, the impact of the withdrawal of nationality on the individual’s ability to access and enjoy other human rights should be taken into consideration.²⁶ A human rights-compliant proportionality assessment must be read in conjunction with the right to family life, as protected by article 17 ICCPR, as well as with article 3(1) of the Convention of the Rights of the Child, which enshrines the principle that in all actions concerning children, the best interest of the child shall be a primary consideration.

²¹ ‘Arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/10/34, 26 January 2009, para. 49; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 25. Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5.

²² ILC, ‘Draft Articles on the Expulsion of Aliens (with commentaries)’ (2014) II(2) YBILC, p. 13 (Article 8), commentary, para. 1. *See also* UN Human Rights Committee, ‘CCPR General Comment No. 27: Article 12 (Freedom of Movement)’ (1999), para. 21.

²³ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.2.1.2; and UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, *Intervention in the case of Shamima vs. Secretary of State for the Home Department*, UK Court of Appeal (2020), para. 19

²⁴ UNHCR Guidelines on Statelessness No. 5, para. 99.

²⁵ *Ibid.*

²⁶ UNHCR Guidelines on Statelessness No. 5, para. 94.

Moreover, when citizenship stripping is undertaken in response to the alleged commission of criminal offences, the seriousness of the crimes concerned,²⁷ the degree of proof and evidence available in respect of allegations made must be closely assessed by an independent judicial process in which the impugned rights of the citizen can be fully protected. States should also take into consideration the time factor in carrying out their proportionality test, including the amount of time elapsed between the commission of an act and the withdrawal of nationality.²⁸

Finally, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted that, even where the security risk is demonstrated, its displacement to their countries would positively benefit either national security or international security. Risk displacement to other countries that do not have the means to prosecute or reintegrate an individual pose broader international security challenges and run counter to the principle of solidarity and cooperation among States on security issues.²⁹

Procedural safeguards

Sufficient procedural guarantees and safeguards must be in place to protect against the risk of arbitrariness in the decision-making process. The UN has frequently underlined States' obligation to observe what it terms "minimum procedural standards" (A/HRC/12/34, paras. 43 and 63; A/HRC/RES/13/2, para. 10; A/HRC/RES/20/5, para. 10). Those standards are "essential to prevent abuse of the law" (A/HRC/13/34, para 43). They apply in all cases, whether or not statelessness is involved.³⁰ In practice, the individual concerned must be notified of the intent to deprive nationality prior to the actual decision to do so,³¹ to ensure that the individual is able to provide facts, arguments and evidence in defence of their case, which are to be taken into account by the relevant authority before any decision is taken.

In addition, due process must be respected at all times as a matter of international law.³² This obligation is made explicit in article 8(4) of the 1961 Convention, which provides that those whose nationality has been revoked must be granted the right to a fair hearing by a court of law or another independent body. The minimum content of the requirement of due process in this context is that an individual can understand the reasons why their nationality has been withdrawn and has access to legal and/or administrative avenues through which they may challenge the withdrawal of nationality.

The right to appeal must have a suspensive effect, and the individual must continue to enjoy nationality until such time as the appeal has been settled. Access to the appeal process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien is expelled (A/HRC/25/28, para 33).

²⁷ The Special Rapporteur recalls the section concerning the seriousness of the crimes outlined above.

²⁸ UNHC Guidelines on Statelessness No. 5, para. 96.

²⁹ Ibid.

³⁰ UNHCR Guidelines on Statelessness No. 5, para. 100.

³¹ Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', Principle 7.6.2.

Article 14 ICCPR; UNHCR Guidelines on Statelessness No. 5, para. 98.

Powers of the Public Prosecution Service and fair trial standards

We also bring your attention to the issues raised in communication AL BHR 2/2019 concerning the special powers provided by Law no. (58) of 2006 which have been given to the Public Prosecution Service in the case of terrorist crimes. Article 26 of the Law authorizes the Public Prosecution Service, in addition to its pre-trial detention authority under the Code of Criminal Procedure, to maintain the accused in custody pending the investigations for a period or periods totaling six months. Furthermore, under article 27-*bis*, the Investigation Officer has the power to: 1) inspect persons and public and private vehicles; 2) prohibit the transportations and communication means; 3) disconnect communications and correspondence where the antiterrorism operations are taking place for a maximum period of 12 hours (extendible to 24 hours maximum); 4) prevent anyone suspected of terrorism from entering certain areas.

The Public Prosecution Service can also:

- Monitor and record conversations and events in public and private places, and seize parcels, cables and letters without request for approval by the court (art. 29).
- Order to review any data or information related to accounts, deposits, trusts or safes at banks or other financial institutions or the relevant transaction (art. 30).
- Order a temporary travel ban, as well as prohibiting the disposing of the defendant's property (art. 31).

We observe that the duration of pre-trial detention (6 months) under Law no. (58) may be inconsistent with the applicable international law. We recall that under article 9 (3) of the ICCPR, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Human Rights Committee has clarified in general comment 35 (paras. 32, 33 and 34) that this requirement applies without exceptions and that, although the meaning of "promptly" may vary on the basis of the circumstances of the case, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing. Any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. Further, article 9 (4) of the ICCPR requires that anyone deprived of their liberty be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order the person's release if the detention is not lawful.

Considering the powers provided to the Public Prosecution Service under Law no. (58), we take note that its broad monitoring powers could violate the right to privacy granted under article 17 ICCPR, thus potentially obstructing individuals' and organizations' activities. We also bring to your Excellency's Government attention that in communications AL BHR 1/2022 and AL BHR 2/2021, the criminal proceedings against potential terrorists may be non-compliant with due process and fair trial standards. We remind your Excellency's Government that all individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. Provisions within a number of universal terrorism-related

conventions require compliance with the right to a fair trial and the rule of law.³³ The right to a fair trial is recognized not only in human rights treaties but also within international humanitarian law, international criminal law, counterterrorism conventions and customary international law (see A/63/223). We remind your Excellency's Government that article 14 of the ICCPR, ratified by Bahrain, provides *inter alia* for the principle of equality before competent, independent, and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defense, and the right of accused persons to communicate with counsel of their own choosing.

The denial of these safeguards, as well as the prolonged pre-trial detention allowed under Law no. (58), would significantly increase the risk of torture and ill-treatment and the extortion of confessions serving evidence for conviction, and may lead to unfair sentencing, subsequent deprivation of liberty possibly for life or even the deprivation of life. We further note the possibility of imposing death penalty under articles 10 and 20 of the Law no. (58). We remind your Excellency's Government that when not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements and guarantees of fair trial, including the right of anyone to be suspected of or charged with a crime for which capital punishment may be imposed, to adequate legal assistance at all stages of the proceeding.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify matters 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 justify the definition "terrorist crime" and how it is in line both UN Security Council resolution 1566 and with the model definition discussed previously. In particular, please clarify the inclusion of the terms "interrupt the provisions of the constitution", "prevent the state from exercising its work", or "prejudicing the national unity", and how the criminalisation of these activities is in line with the requirements of legal precision and clarity under the ICCPR.
3. Please explain how the criminalization of certain behaviors under Law no. (58) will not restrict the enjoyment of the right to freedom of expression, as well as the rights to freedom of peaceful assembly and association, guaranteed by articles 19, 21 and 22 of the ICCPR.

³³ See e.g., Article 17 of the International Convention for the Suppression of the Financing of Terrorism which requires the fair treatment of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law, and Article 21 which stipulates that "this Convention does not affect the enjoyment of other human rights obligations and responsibilities of States".

4. Please provide information on how the revocation of citizenship is not arbitrary and how article 10 of the Bahraini Citizenship Act complies with relevant international law standards governing citizenship stripping and statelessness.
5. Please explain how the anti-terrorism legal framework of your Excellency's Government ensures the accused's fair trial and due process rights, including the right to access to a lawyer, the right not to be compelled to confess guilt or to testify against themselves, the right to communicate with the outside world (i.e., family and lawyer) and the right to be brought promptly before a judge after their arrest.
6. Please provide information on the possibility to extend the pre-trial detention under Law no. (58) and its judicial oversight and explain how this is consistent with the human rights obligations engaged by your Excellency's Government.
7. Please provide information on the appeals process and judicial oversight of pre-trial detention, and the parameters upon which pre-trial detention can be renewed. Please also indicate what procedures are in place to ensure that persons in detention are treated in compliance with your obligations under the CAT and that their right to be protected from enforced disappearance is safeguarded.

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

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

Fionnuala Ní Aoláin

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

Matthew Gillett

Vice-Chair on communications of the Working Group on Arbitrary Detention

Irene Khan

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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

Ana Brian Nougrères

Special Rapporteur on the right to privacy