

**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 and the Special Rapporteur on the situation of human rights in the Russian Federation**

Ref.: OL RUS 26/2023  
(Please use this reference in your reply)

27 October 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 and Special Rapporteur on the situation of human rights in the Russian Federation, pursuant to Human Rights Council resolutions 49/10, 51/8, 52/9, 50/17 and 51/25.

In this connection, we offer the following comments on the **Federal Law No. 35-Fz of 6 March 2006 on Counteraction Against Terrorism**, the **Federal Law N 157-FZ of 28 April 2023** introducing life imprisonment for treason and the **Draft Law “On amending article 1 of the federal law ‘On the territorial jurisdiction of district (fleet) military courts’**”. We respectfully address several serious 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 life, on the right to liberty and security of person, 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 these laws to ensure that they comply with the Russian Federation's international human rights obligations.

*Applicable International and Human Rights Law Standards*

We refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which the Russian Federation ratified on 16 October 1973. In particular, we would like to draw your Excellency's Government attention to articles 6, 7, 9, 14, 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 a fair trial, 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 (Human Rights Committee, General Comment 31, para 13(2004)). 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 also call your Excellency's Government's attention to Article 22(1) of the ICCPR, which 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 their domestic legal system is compatible with its international treaty obligations. 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.<sup>1</sup>

We 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's requirements. 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).

We also 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. We highlight in particular articles 1 and 2 which hold that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at both national and international levels, and that each

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<sup>1</sup> General Assembly Res. 60/288.

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 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.<sup>2</sup>

We further recognize the urgent need to address, and take concrete steps to prevent and stop, the use of legislation that hinders or unduly limits 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)).<sup>3</sup>

### Background

On 6 March 2006, Federal Law No. 35-FZ on Counteraction Against Terrorism (hereinafter Counter-terrorism Law) was promulgated. The Law has been amended several times, a total of 20 times during its existence, the last one being under Federal Law N 155-FZ of 26 May 2021. Some of these amendments have been very minimal (i.e. Federal Law N 155-FZ of 26 May 2021 only amended article 3 of the Counter-terrorism Law), whilst others have introduced more substantial changes (i.e., Federal Law of 8 December 2020 N 429-FZ which added the new paragraph 3 to article 4 of the Counter-terrorism Law). The legal basis for the measures and activities taken under the Counter-terrorism Law is the Constitution of the Russian Federation, generally recognized principles and rules of international law, and international treaties binding on the Russian Federation.<sup>4</sup> The Special Rapporteur also highlights a practical consequence following from the operationalization of terrorism-related offences by way of the criminal code, observing that such operationalization appears to have the effect of expanding the scope of the definition of ‘terrorist activity’ under the Counter-terrorism law.

On 18 April 2023, the State Duma adopted the Federal Law N 157-FZ, which was subsequently approved by the Federation Council on 26 April 2023 and signed by the President of the Russian Federation on 28 April 2023. This Law introduces life imprisonment for the offence of high treason and includes a new article 284.3 punishing assistance to international organizations and foreign state bodies. The Special Rapporteur notes that while Federal Law N 157-FZ, is not classified as a counter-terrorism law *per se*, she observes an inter-relationship between this national security-related law and strict counter-terrorism laws which have a combined and significant effect on the protection of human rights within the Russian Federation.

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

<sup>3</sup> A/78/520

<sup>4</sup> Article 1 of the Counter-terrorism Law.

### 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, proportionality, and non-discrimination. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions<sup>5</sup>, the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to 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), and endorsed by all subsequent Special Rapporteurs, 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 3 of the Counter-terrorism Law of the Russian Federation defines "terrorism" in the following manner:

*"The ideology of violence and the practice of influencing the adoption of a decision by public authorities, local self-government bodies or international organizations connected with frightening the population and (or) other forms of unlawful violent actions".*

Article 3 also defines a "terrorist activity" as an activity including:

*"a. arranging, planning, preparing, financing and implementing an act of terrorism; b. instigation of an act of terrorism; c. establishment of an unlawful armed unit, criminal association (criminal organization) or an organized*

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<sup>5</sup> 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.

*group for implementation of an act of terrorism, as well as participation in such structure; d. recruiting, arming, training and using terrorists; e. informational or other assistance to planning, preparing or implementing an act of terrorism; f. popularisation of terrorist ideas, dissemination of materials or information either calling for terrorist activities, or substantiating or justifying the necessity of the exercise of such activity”.*

The article further defines a terrorist act as “*making an explosion, arson or other actions intimidating the population and posing the danger of loss of life, of causing considerable damage to property, or other grave consequences, for the purpose of destabilising the activities of authorities or international organisations or influence of their decision-makings, as well as the threat of committing the said actions for the same purpose.*”<sup>6</sup> We observe that the definition is confusing in its Russian language version with the Russian grammatical construction suggesting that the act might only be constituted by all elements, but judicial practice related to this section appears to take a wider view whereby singular elements can be constitutive of a terrorist act.

We positively note that these definitions include the objective of frightening or intimidating the population and posing the danger of loss of life. Furthermore, the Special Rapporteur recognizes that the definition in Article 3 can be viewed as narrower than the definition contained in the criminal code as classified by the Supreme Court.<sup>7</sup> Although the ideological aspect of a terrorist actor or act could be more clearly outlined, we welcome that these definitions reflect some elements that are also contained in the Model Definition referred to previously, and also make reference to acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

Nevertheless, these definitions do not restrict the acts they criminalize to violent acts, as they include a range of ambiguous terms, such as “destabilizing the activities of authorities or international organizations”, and “influence authorities’ decision-makings”, which raise issues regarding 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, would significantly distance the Counter-terrorism 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 regrettably 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”. Moreover, the criminalization of these terms, without clearly stipulating what activities they encompass, would also increase 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.

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<sup>6</sup> As amended by the Federal Law № 130-FZ of 5 May 2014.

<sup>7</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation 9 February 2012. On Certain Issues of Judicial Practice in Criminal Cases on Offences of Terrorist Orientation (as amended by Plenum Decision No. 41 of 3 November 2016) No. 41 of 3 November 2016

We take note of the link between this law and the Law on Countering Extremist Activity (2002) whereby the broad definition of terrorism is further expanded by the definition of extremist activity. The extremism law defines "extremist activity" as including (among others) "public justification of terrorism and other terrorist activities". This creates an explicit link between the two legal frameworks and makes it entirely unclear how one legal framework is different from the others. We believe that such overlap will make it clear why some organizations are designated as 'terrorist' and some as 'extremist' heightening uncertainty about applicable legal standards.

We further observe that article 24 of the Counter-terrorism Law prohibits the establishment and activities in the Russian Federation of organizations whose goals or actions are aimed at *popularization, justification or support of terrorism* or at *committing the crimes* stipulated in Articles 205-206, 208, 211, 220, 221, 277-280, 282.1-282.3, 360 and 361 of the Criminal Code of the Russian Federation. The article further establishes that an organization shall be recognized as *terrorist* if the organization itself or the person who controls it arranges, prepares and commits one of the aforementioned crimes. We recall that while some of those violent crimes, such as creating a danger of death, causing considerable damage to property, hostage-taking with the use of violence dangerous to life or health, illegal handling of nuclear materials or radioactive substances, or other ambiguously defined terms that could be understood or interpreted as including violent conduct, such acts should only be punished as terrorist acts if they are truly of a terrorist nature. 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 behavior of a truly terrorist nature that is designated and prosecuted as terrorist conduct.

We draw attention to articles 205.2 and 205.4 of the Criminal Code of the Russian Federation - to which the Counter-terrorism Law refers - which criminalize respectively: a) terrorism propaganda, including any acts committed through the use of mass media and telecommunication networks (art. 205.2); b) support of terrorism, intended as the provision of services, material, financial or any other assistance that contributes to the implementation of terrorist activities (art. 205.4); c) participation in a terrorist community (art. 205.4). We observe that the potential punishments for those accused of having committed these offences 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. The vague definitions of such offences may undermine the principle of legal certainty and further increase the risks of conflation of civil disobedience and opinions critical of or contrary to that of the government with "terrorism propaganda", "support of terrorism" and "participation".

We also take due note that the Federal Law N 157-FZ of 28 April 2023 introduced the new article 284.3 to the Russian Criminal Code, which punishes anyone who *assists* "in the enforcement of decisions of international organisations in which the Russian Federation is not a party or of foreign state bodies to prosecute officials of public authorities of the Russian Federation in connection with their official activities, other persons in connection with their military service or in volunteer formations assisting in the performance of tasks assigned to the Russian Federation Armed Forces". We highlight what appears to be the broad and vague definition of criminal offences under the Russian CT legal framework, and we note

the negative effect that such a provision could have on human rights defenders and CSO representatives engaging with international human rights mechanisms, including United Nations Special Procedures mechanisms. 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 "assistance" that the legislation appears to allow. In this regard, we would like to remind your Excellency's Government of the protections afforded under the UN Declaration on Human Rights Defenders.

We also wish to bring to the attention of your Excellency's Government article 275 of the Russian Criminal Code, which was amended by Federal Law N 157-FZ and now provides for life imprisonment for "high treason". We observe that, as formulated, the definition of high treason seems overly broad and vague, and consequently the imposition of life imprisonment risks being unlawfully disproportionate due to the broad range of people that could be deemed as being criminally liable under such a provision, particularly persons who disagree with your Excellency's Government. On these grounds, we reiterate the observations raised above regarding the principle of legal certainty and we also remind your Excellency's Government that, although life imprisonment is not *per se* incompatible with international human rights law, an arrest or detention may be arbitrary in the absence of elements of reasonableness, necessity and proportionality (General comment No. 35, CCPR/C/GC/35, para. 12). Furthermore, we recall that, in its General Comment No. 35, the Human Rights Committee stated that every decision to keep a person in detention should be open to periodical review, in order to reassess the necessity of detention and detention should not continue beyond the period for which a State party can provide appropriate justification (CCPR/C/GC/35, para. 12).

#### *Regime of Antiterrorist Operation and Powers of the Executive*

Article 3 of the Counter-terrorism legislation defines an antiterrorist operation as "a set of special, operational-combat, military and other measures with the use of military equipment, weapons and special means to suppress an act of terrorism, neutralize terrorists, ensure security of individuals, organisations and institutions, as well as minimizing the consequences of an act of terrorism."

In addition, we observe that article 11 of the Counter-terrorism Law provides a special regime for counter-terrorism operations with both the aim to suppress or disclose an act of terrorism, including criminal offences under Articles 206, paragraph 4, 211, 277, 278, 279, 360 of the Criminal Code of the Russian Federation. This regime "may be established for the period of conducting it and within the limits of the territory where it is to be conducted by decision of the official, who has decided to conduct it [...]" (art. 11.1). Article 11 further allows the Government to take a series of measures and restrictions, including but not limited to:

- control of identity documents,
- removal of natural persons from some areas,
- improvement of public order maintenance,
- control over telephone communications and information transmitted via telecommunication channels,
- searching in electronic and postal communication channels,

- suspending/restricting the use of communication services to legal entities and natural persons,
- introduction of quarantines,
- free access to individual's residential and other premises, as well as to territories and premises of organizations,
- inspection of natural persons and vehicles when they entry to and exit from (driving) the territory where the antiterrorism regime is in force.

We observe that the definition of antiterrorist legislation, as defined under the relevant piece of legislation, appears overly broad, permissive and seems to function as an emergency legal framework within the ordinary domestic legal framework. The terms used, such as “special measures” and “neutralizing terrorists” (article 3), appear to positively encourage the use of excessive force rather than contain it. We observe that such a provision appears inconsistent with article 6 of the ICCPR with respect to the protection of 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 Russia, 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 rights to life and the liberty and security of the person.

We also note that the antiterrorist legal regime will be adopted within the temporal and geographical limits provided under article 11 of the Counter-terrorism Law. The territories where the legal regime is established appear to be designed areas of exceptional legal practice sealed off from oversight, review, and transparency of geographical locations where antiterrorism operations 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 utilized, it should be applied in accordance with international law and the framework of derogation on the basis of necessity, proportionality, and nondiscrimination (A/HRC/37/52, paras 10 to 12).

Furthermore, we note that the Counter-terrorism Law, as formulated, gives enhanced police powers that raise issues of compatibility with international human rights law as they appear to be operating absent prior judicial authorization or control. Considering the wide range of measures that can be adopted under article 11, this provision provides for a high risk of arbitrary or unlawful decisions, potentially

undermining fundamental rights and freedoms. In particular, we take note that these broad monitoring powers – i.e., checking individual’s documents, control over telephone communications, inspection of persons and vehicles – may lack sufficient procedural and judicial safeguards and could violate the right to due process, movement and privacy granted under article 17 ICCPR, thus potentially obstructing individuals’ and organizations’ activities. We recall that any restrictions on the right to privacy on counter-terrorism grounds must comply with the objective criteria of legality, proportionality, necessity, and non-discrimination. The measures restricting fundamental freedoms and rights must therefore be the least restrictive measure available. “The onus is on the Government to prove that a threat to one of the grounds for limitation exists and that the measures are taken to deal with the threat.” (A/61/267, para. 20). Furthermore, the investigatory powers could in turn impede the full enjoyment of the rights to freedom of expression and opinion.

We further emphasize the attribution of what appear to be exhaustive powers to the Executive as the Counter-terrorism Law provides that:

- the President defines the main directions of state policy on counteraction against terrorism, establishes the scope of authority of the federal executive bodies in charge of the antiterrorism operations and directs its activities, and decides the use of Russian Armed Forces and special units for counter-terrorism operations (art. 5, para 1);
- the Government determines the scope of competence of the federal executive bodies, organizes the elaboration and implementation of CT measures, as well as the support of the activities of the federal executive bodies, establishes mandatory requirements and related procedures for antiterrorist security of territories (art. 5, para 2);
- the federal executive bodies, executive bodies of the constituent entities of the Russian Federation and local self-government bodies are allowed to counteract against terrorism within the scope of competence thereof, as determined under articles 5.1 and 5.2;
- the head of the federal executive body in charge of security decides whether to initiate or terminate an antiterrorism operation (art. 12) and is indicated as the head of the antiterrorist operation (art. 13, para. 1).

Given the imprecise and overly flexible definition of terrorism and other related offences included in the Counter-terrorism Law, such an attribution of powers to the Executive in terms of the law’s implementation could lead to arbitrary and unreasonable use of these powers. This could potentially further contribute to the criminalisation or persecution of organisations or individuals that are not “genuinely” terrorist in nature, as persons or groups whose views are merely deemed contrary to those of the Executive branch might be the worst impacted by this multifaceted ambiguity. This would again be contrary to Security Council resolution 1566 (2004) and the model definition referred to previously, as well as in contravention of international standards on a broad range of fundamental rights. Moreover, the counter-terrorism law is entirely silent on judicial safeguards of counter-terrorism operations. We respectfully take this opportunity to remind your Excellency’s Government that countering terrorism does not give States a “carte blanche” which automatically legitimates any interference with individual rights. We observe that all these articles related to the powers of the Government may foster or worsen practices that would be contrary to your Excellency’s Government obligations under international human rights law, as the powers they stipulate, as well as the limitations to them, are not

outlined in a clear, precise and human rights-consistent manner. Instead, their lack of precision, appears to give the relevant authorities carte blanche to interpret and employ an already overly imprecise Law in a potentially subjective, inconsistent, and/or punitive manner.

*Sanctions against terrorist organizations*

We observe that article 24, paragraph 2, of the Counter-terrorism Law establishes that those organizations deemed as terrorist shall be subject to liquidation by a court decision (including the organization's regional and other structural subdivisions). In addition, any property of the terrorist organization left after the liquidation procedure pursuant to article 24, paragraph 3, shall be subject to confiscation, entering to the revenues of the State.

We reiterate our observations (see Section "Definition of terrorism") that such a provision may fall short of the required level of legal certainty and proportionality necessary when imposing punishment for unlawful conduct. The fact that any action or activity deemed as terrorist under this piece of legislation, from the least serious to the gravest, can ultimately lead to liquidation is *prima facie* disproportionate. We fear that the wide discretionary powers granted to courts by this provision could lead to an arbitrary application of the law posing a clear threat to the right of freedom of association in Russia. As per the necessity of respecting the principle of legal certainty, we underscore that article 15(1) of the ICCPR requires precision concerning what conduct constitutes criminal offences under law and what the legal consequences of committing such offences are. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counter-terrorism and national security legislation, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.

We further note that article 24, paragraph 5, establishes that:

*"The federal executive body in charge of security shall keep the comprehensive federal list of organizations, including foreign and international organizations, determined as terrorist in accordance with the legislation of the Russian Federation as terrorist. [...] The said list shall be published in official periodicals determined by the Government of the Russian Federation within ten days from the date of receipt of a copy of the relevant court decision by the said federal executive authority".*

The terrorism designating or listing process has been the subject of concern for Special Procedures. We underscored that the process of listing constitutes an arbitrary, independent and severe legal penalty, which profoundly affects the civil and administrative rights of individuals and thus requires the full rights of fair process under international law, including access to independent legal representation. In our view, your Excellency's Government's policy would appear to confirm an alarming pattern, whereby the "listing" of individuals and organizations to the terrorism list is conducted on the basis of limited information or notice available to an accused or defence and may be conducted in conjunction with prolonged patterns of arbitrary arrest and pre-trial detention. We further emphasize that placement of individuals or

groups on a terrorism list implicates a range of human rights, including freedom of movement, association, expression, the rights to privacy, property, health, due process, family life, and social and economic rights, including the right to work.

*Freedom of expression, assembly and association*

We respectfully bring your Excellency's Government attention to articles 205.2, 205.4 and 280<sup>8</sup> of the Russian Criminal Code and article 24 of the Counter-terrorism Law, respectively, and the effects that the inclusion of essentially undefined terms such as "public calls to carry out terrorist activities", "propaganda of terrorism", "participation in a terrorist community" or "public calls for extremist activities" could have on freedom of expression and association in Russia. Such broad terms may affect human rights defenders, the nonprofit 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 laws concerned, 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 rights or reputation 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

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<sup>8</sup> Article 280 criminalizes public calls for extremist activities.

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 objective<sup>9</sup>.

Lastly, States have the burden of proof to demonstrate that any restriction is compatible with the requirements under human rights law.<sup>10</sup> 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.<sup>11</sup> 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.”<sup>12</sup>

We respectfully bring your Excellency’s Government attention to the inclusion and criminalisation of several categories of crimes under both Russian Criminal Code and Counter-terrorism Law and their compatibility with the requirements of legitimate aim, legality, necessity and proportionality. We find that these provisions could seriously undermine the right to freedom of expression, peaceful assembly, and association in Russia 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 the Russian counter-terrorism legislation seems to lack any relevant justification under international law, as the broad terminology used would constitute a restriction on fundamental rights such as freedoms of expression and peaceful assembly. We further observe that, as formulated, the concerned provisions do not appear to give a clear and defined indication as to the categories of crimes in the laws, 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 these laws. Compelling examples are articles 205.2, 205.4 and 280 of the Russian Criminal Code, which, by failing to provide a clear and precise definition of terms such as “public calls” or “propaganda”, inevitably risk criminalizing anyone deemed to have committed those actions proscribed 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 the right to freedom of expression, peaceful assembly, and association.

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<sup>9</sup> A/71/373.

<sup>10</sup> Ibid., para. 9; see also Human Rights Committee, General Comment no. 34 (2011), para. 27.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

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. There is a real risk that the breadth of the criminalized forms of expression contained in the Counter-terrorism Law, as well as in the Criminal Code, may affect the right to freedom of expression itself. In this regard, we note that individual provisions could permit the criminalisation of political dissent, critical discussion on human rights, independent journalism and media independence, among many others.

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<sup>13</sup>. 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 public calls or propaganda of any terrorism-related activity, 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.

#### *Territorial Jurisdiction in case of terrorism-related charges*

We note that the Draft Law “On amending article 1 of the federal law 'On the territorial jurisdiction of district (fleet) military courts’” would extend the territorial jurisdiction of the district military courts to the territory of all the constituent entities of the Russian Federation for cases concerning terrorism-related charges. We take note of the reasons for which Your Excellency’s Government has proposed this draft

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<sup>13</sup> Please see, Special Prodecures mandate holders communcations: AUS 5/2019; and OTH 46/2018

legislation, and which are stated in the explanatory note of the Draft Law<sup>14</sup>, but we observe that the exceptionality of such courts may undermine the requirements set out in article 14 ICCPR.

Considering the special nature of military courts, we recall that the Human Rights Committee in General Comment no. 32 has highlighted that although the ICCPR does not prohibit the trial of civilians in special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned (General Comment no. 32, CCPR/C/GC/32, para 22). The Committee also stressed the importance of taking all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14 of the ICCPR. Furthermore, national authorities should provide evidence that such trials are necessary and justified by objective and serious reasons and that the regular civilian courts do not have the competence to undertake trials related to a specific category of criminal offences. In addition, we respectfully remind Your Excellency's Government that the General Assembly has stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide individuals with a fair and public hearing and has urged states, while countering terrorism, to ensure due process guarantees in accordance with their obligations under international law (A/RES/73/174, para. 9; A/RES/72/180, para. 5(s)).

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 all 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 provide an explanation of the applicable definitions of the terms "terrorism" and "terrorist activity" and how they are in line both with UN Security Council resolution 1566 and with the model definition discussed previously. In particular, please clarify the inclusion of the terms such as "destabilising the activities of authorities or international organizations", "influence authorities' decision-makings", and how the criminalisation of these activities is in line with the requirements of legal precision and clarity under the ICCPR.

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<sup>14</sup> The explanatory note explains that: "Organizational problems in holding court hearings in this category of cases are due to the need to:

- transportation of multi-volume criminal cases
- familiarization of participants of court hearings, especially convicted persons, with materials of criminal cases while they are being held in custody in places located far from Moscow and Khabarovsk
- handing over voluminous records of court hearings (more than three volumes) and copies of their translation into a language known by the convicted person
- Organizing for the convicted persons to listen to audio recordings of court hearings audio recordings of court hearings."

3. Please provide further information concerning the definition which pertains to “participation in a terrorist community” and address how it complies with your Excellency’s ICCPR obligations.
4. Please explain how the criminalization of certain behaviors under the Russian Counter-terrorism legal framework 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.
5. Please provide information about specific safeguards for the oversight of surveillance and what independent authority, if any, is in charge of effective oversight, whether a law enforcement or national security agency, and how these measures comply with your Excellency’s obligation under article 17 of the ICCPR.
6. Please explain how the Draft Law “On amending article 1 of the federal law 'On the territorial jurisdiction of district (fleet) military courts’”, if passed, would comply with your Excellency’s obligation under article 14 of the ICCPR.

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

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

Mariana Katzarova

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