

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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(Please use this reference in your reply)

14 June 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; Special Rapporteur on the rights of Indigenous Peoples; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 49/10, 51/8, 54/14, 53/4, 52/9, 50/17, 52/4, 51/16, 53/5, 52/20, 52/5, 49/5 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning efforts by the Government of the Socialist Republic of Viet Nam to secure the involuntary or forced repatriation of Vietnamese Montagnards from the Kingdom of Thailand, and Thailand's possible cooperation in such efforts.

According to the information received:

Thailand has been cooperating with the Viet Nam Government to identify Vietnamese Montagnards refugees in Thailand for their possible forced repatriation to Viet Nam. The Montagnards are refugees or are otherwise entitled to protection from return under international human rights law.¹ Some of the Montagnards are members of the organization Montagnards Stand for Justice (MSFJ). On 14 March 2024, a delegation of several Vietnamese public security police went to neighborhoods with large concentrations of Montagnards refugees in Nonthaburi Province, north of Bangkok, and in the Bang Len district of Nakhon Pathom Province. The delegation was accompanied by the Thai police. The Vietnamese delegation included the director of the Public Security Department in Gia Lai Province, an

¹ For convenience they are all referred to as 'refugees' in this communication.

investigative police officer from Dak Lak Province, two interrogators and an official from the Vietnamese embassy. The Thai police pressured Montagnards to present themselves outside their residences for interviews with the Vietnamese delegation, who pressured them to return to Viet Nam and recorded videos of them on phones and cameras. The delegation accused them of having illegally left Viet Nam, promised leniency and support for returning, and threatened them with arrest and other repercussions if they refused to return.

The Vietnamese delegation asked about the location of the six Montagnards convicted in absentia on 20 January 2024 in a trial where 100 defendants in total were convicted by a ‘mobile court’ in Viet Nam in relation to a violent attack on Vietnamese police stations that took place on 11 June 2023 in Dak Lak Province, in the Central Highlands of Viet Nam. They also showed arrest warrants and photographs of those individuals and declared they would arrest 100 other Montagnard activists. Just prior to the visit to Thailand, on 13 March 2024, Viet Nam’s Minister for Public Security met with the Thai Government to propose a bilateral extradition agreement.

There are concerns that the Vietnamese authorities may be exchanging information with the Government of Thailand regarding some of the Montagnards, including those recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR) and being considered for resettlement in third countries such as Canada and the United States and that they are seeking the forced repatriation of some of them to Viet Nam. One case already left to Switzerland seeking asylum, for fear of prosecution in Thailand. None of the Montagnards wishes to return to Viet Nam. There are well-founded fears of persecution or other serious human rights violations, including torture and enforced disappearance, on account of their activities defending the human rights of the Montagnard indigenous peoples in Viet Nam, as well as the freedom to practice minority Christian religions not officially recognized by Vietnamese law.

There is particular concern about one of the Montagnards convicted in absentia, Mr. Y Quynh Bdap, the co-founder of MSFJ and a refugee recognized by the United Nations High Commissioner for Refugees (UNHCR) who is in the process of resettlement to a third country. Mr. Bdap has always proclaimed he is innocent of those charges. He fled to Thailand in 2018. Special Procedures mandate holders have expressed concerns that his conviction did not appear to meet the international requirements of fair trial (VNM 4/2024). He has undergone two resettlement interviews with the Government of Canada, the last on 10 June 2024, and is waiting for his case to be decided.

On 4 June 2024, Thai police visited Mr. Bdap’s former residence in Bangkok and questioned neighbours about his whereabouts. On 6 June 2024, Thai police located the residence where he was staying and stationed themselves out the front, waiting to arrest him pursuant to an extradition request from Viet Nam. The National Human Rights Commission of Thailand (NHRCT) intervened to prevent the arrest and remind the Thai Police of its non-refoulement obligations under international and domestic law. On 11 June 2024, Thai police arrested Mr. Bdap under the Immigration Act and placed

him in judicial custody at the Bangkok Remand Prison. There are reasons to believe that this arrest was made in connection with an extradition request from Vietnam regarding his 10-year prison sentence for terrorism and that if he is forcibly returned to Vietnam, his life and bodily integrity may be at risk.

Further concerns are raised that the Montagnard refugees may be abducted in Thailand by Viet Nam in order to forcibly repatriate them to Viet Nam, in the light of a long-standing history of abductions of critics of the Vietnamese Government from Thailand and their return to politically motivated prosecutions in Viet Nam. Around 13-14 April 2023, a prominent Vietnamese blogger and YouTuber, Duong Van Thai / Thai Van Duong², who had been granted UNHCR refugee status in Thailand, was allegedly abducted in Bangkok by Vietnamese intelligence personnel and forcibly returned to Viet Nam, where the authorities announced that he was in custody. He had earlier been convicted in absentia under article 117 of the Vietnamese Criminal Code 2015 for ‘making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam’. Another blogger and journalist seeking asylum in Thailand, Truong Duy Nhat (see VNM 4/2020, VNM 1/2019), was abducted in Bangkok and forcibly returned to Vietnam in February 2019 and later convicted to ten years in prison for ‘abusing his position and power while on duty’ under article 356 (3) of the Vietnamese Criminal Code. In December 2017, an asylum seeker in Germany was abducted in Berlin and forcibly returned to Viet Nam (see WGAD Opinion No. 42/2020), resulting in Germany’s expulsion of two Vietnamese diplomats and conviction of one perpetrator, while another suspect was tried in Slovakia in April 2024.

While we do not wish to prejudge the accuracy of the information received, if the above allegations prove to be true, we are gravely concerned at the negative impacts on the protection of these Montagnards refugees under international refugee law and international human rights law in Thailand, while acknowledging the previous efforts of your Excellency’s Government to offer protection to them.

Non-refoulement and voluntary return

We are concerned that visits by the Vietnamese public security authorities to the residential areas of the Montagnard refugees in Thailand have threatened, harassed, intimidated, and coerced them in an attempt to force them to return to Viet Nam against their will. We emphasize that under treaty and customary international law, Thailand has an obligation not to return any individual to a country where there is a well-founded fear of persecution or substantial grounds for believing that the person would be at risk of irreparable harm on return on account of serious human rights violations. This obligation of non-refoulement would be violated by forced repatriation and any repatriation of the refugees must accordingly be voluntary (UNHCR Handbook on Voluntary Repatriation (1996), ch. 2.3). Voluntariness includes ‘the absence of measures which push the refugee to repatriate’, including ‘any physical, psychological, or material pressure’ (UNHCR Handbook on Voluntary Repatriation (1996), ch. 2.3). We are concerned that the invitation by your Excellency’s Government to the Vietnamese security authorities to visit refugee and

² The case of Duong Van Thai was transmitted to your Excellency’s Government under the urgent humanitarian procedure of the Working Group on Enforced or Involuntary Disappearances on 19 May 2023. The case was clarified during the 131st session of the Working Group according to information received by the source.

asylum seeker communities in Thailand may prejudice the voluntariness of any returns.

We emphasize that the prohibition on refoulement under international human rights law applies to any form of removal or transfer of persons, including deportation and extradition, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, cruel, inhuman or degrading treatment or punishment, or other serious human rights violations, such as arbitrary deprivation of life, arbitrary detention, or a flagrant denial of fair trial. The prohibition is absolute and without any exception. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a state exercises jurisdiction or effective control, including outside its own territory.

Risks of serious rights violations are clearly present in Viet Nam given the well documented mistreatment of Montagnard human rights activists, defenders of the freedoms of minority religions and members of MSFJ.

In this regard we welcome the entry into force on 22 February 2023 of Thailand's Prevention and Suppression of Torture and Enforced Disappearances Act, section 13 of which prohibits the Thai authorities to 'expel, deport, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance'. We urge your Excellency's Government to fully interpret and apply this law to the Montagnards refugees in accordance with the full scope of non-refoulement under international human rights and refugee law.

We are aware that some of the Montagnards refugees may be regarded by the Vietnamese authorities as suspects in the 11 June 2023 attack in Dak Lak Province in Viet Nam. We reiterate the obligation of non-refoulement under international human rights law is absolute, even in relation to persons suspected of criminal activity in another country. We further note that the charges against some persons appeared to be politically motivated and targeted them on account of their work in defending the human rights of the Montagnard indigenous minority in the Central Highlands of Viet Nam; and that the trial in absentia in Viet Nam of one member of MSJF in Thailand may not have met fair trial standards.

We recall that involuntary returns cannot be lawfully carried out without due process of law. Under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual's circumstances and protection needs, including in relation to the obligation of non-refoulement and the right to family life. In this connection, individuals facing deportation should have access to a fair, individualized examination of their particular circumstances and to an independent mechanism with the authority to appeal negative decisions. In the absence of such procedures, any forced repatriations carried out by the Thai authorities may violate the prohibition of arbitrary expulsion and the obligation of non-refoulement.

Protection of the Montagnards in Thailand

We are concerned that the imposed attendance of Vietnamese public security police at the residences of Montagnards refugees, without their consent and not at

their request, may violate their right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 29 October 1996. Thailand thus has an obligation not to interfere itself in privacy and the home and to prohibit such acts by other persons (General Comment No. 16, para. 9). Refugee protection aims to guarantee safety abroad from persecution or other serious rights violations by a country of origin. Cooperation with the state authorities responsible for persecution in their visits to a country of asylum undermines the integrity of protection. Transnational repression of refugees aggravates their fears for their safety, particularly where their legal status and rights are precarious in a country of asylum.

We are further concerned about the physical safety and security of Montagnards refugees in Thailand, given the previous communications of Special Procedures mandate-holders on illegal abductions by Vietnamese security agencies, including alleged cooperation by the Thai authorities in some of them (see for example [VNM 4/2020](#), [THA 8/2020](#), [LAO 4/2020](#) and [KHM 7/2020](#)). We note that any abduction of Vietnamese refugees in Thailand and forced repatriation to Viet Nam would not only violate the obligation of non-refoulement but also constitute an arbitrary deprivation of liberty and a violation of security of person (article 3 of the UDHR; article 9 of the ICCPR; article 12 of the ASEAN Human Rights Declaration) and an enforced disappearance. We remind your Excellency's Government of its obligation under international law to prevent and suppress known or reasonably foreseeable threats to the safety, security or liberty of any person or group of persons within its territory, including where those threats emanate from foreign state actors; it must also not itself participate in any such acts.

We also draw your attention to the fact that some of the Montagnards refugees are actively involved in non-governmental organizations in exile that advocate for the protection of the human rights of Montagnard indigenous and religious minorities in Viet Nam. For example, MSFJ has engaged with the UN human rights mechanisms, including with the Universal Periodic Review and treaty bodies (most recently the Committee on the Elimination of Racial Discrimination in November 2023). The listing of MSFJ as a terrorist organisation effectively criminalizes any Vietnamese citizen – inside and outside the country – who engages with it in connection with its human rights awareness-raising, monitoring and international advocacy, including at the United Nations. We are concerned that Viet Nam's attention on Montagnards refugees is in part aimed to transnationally repress – to prevent, silence or punish – individuals and groups who expose human rights violations or advocate for accountability from abroad, which has a further chilling effect on advocacy and dissent by Montagnards in exile and within Viet Nam. We recall that Thailand has an obligation to prevent violations by foreign states in its territory of the freedoms of religion or belief, expression, association and peaceful assembly of Montagnards in Thailand, pursuant to articles 18, 19, 21 and 22 of the ICCPR.

In this regard, we note further that Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28, 48/15 and 54/24 reaffirm the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals and to take all appropriate measures to prevent the occurrence of such acts. In this regard, we respectfully request your Excellency's Government to take effective measures to ensure that the Vietnamese

authorities do not hinder the legitimate activities of Montagnard groups in Thailand in defence of human rights in Viet Nam, including by engaging the United Nations.

Regularization of protection status

Given the risks posed to Montagnards refugees in Thailand by the Vietnamese authorities, we respectfully encourage your Excellency's Government to regularize their residency status and protect their rights in order to accord them greater protection from transnational repression by, and vulnerability to, foreign authorities. We welcome that Thailand introduced the National Protection Mechanism (NSM) on 22 September 2023 to grant protected person status to foreign nationals in Thailand who are unable or unwilling to return to their country of origin because they are at risk of being persecuted for valid reasons, as determined by the NSM. We encourage your Excellency's Government to use the NSM as a pathway to permanent protection for Montagnards refugees in Thailand, and to cure the uncertainty about their current status, their vulnerability to transnational repression, and their possible exposure to potentially protracted arbitrary immigration detention in Thailand itself. We are concerned, however, that the NSM currently excludes from eligibility for protection certain categories of individuals, including those who hold another status from the Ministry of Interior or the Cabinet, which could restrict access for some Montagnards refugees. We are also concerned that the NSM requires refugees to register with the immigration police before applying to the NSM for protected status, which could place refugees at risk of arbitrary detention or deportation. We urge your Excellency's Government to ease these eligibility and procedural restrictions on accessing protection under the NSM.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how your Excellency's Government will guarantee in domestic law the obligation of non-refoulement under international human rights and refugee law in relation to Vietnamese Montagnards asylum seekers and refugees in Thailand, including pursuant to section 13 of the Prevention and Suppression of Torture and Enforced Disappearances Act.
3. Please also explain how you will ensure that any return of Vietnamese Montagnards refugees to Viet Nam is voluntary and takes place under conditions of free, prior and informed consent; and in this regard, provide information on the measures to ensure individualized examination of each person's situation, in a fair process with adequate safeguards, prior to any decision to repatriate any person found not to be owed protection under international law.

4. Please indicate what steps your Excellency's Government has taken, or will take, to prevent and suppress any threats, harassment, intimidation or coercion, any cross-border abductions, and violations of the rights to liberty and security of person, and of privacy and the home, by any Vietnamese authorities operating in Thailand.
5. Please explain what measures are in place to ensure that Vietnamese authorities do not interfere in Montagnards' freedom of religion or belief, expression, association and peaceful assembly in Thailand and to provide an enabling environment for all human rights defenders in Thailand.
6. Please indicate what steps your Excellency's Government is taking to regularize the legal status and rights of Montagnards refugees in Thailand in accordance with international human rights and refugee law, including through Thailand's National Protection Mechanism for granting protected status and provision of legal representation of their choice.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of Montagnards asylum seekers and refugees, and members of the MSFJ living in Thailand, to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been sent to the Government of Viet Nam. A copy of this communication has been sent to the Governments of Canada, Switzerland and the United States of America.

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

Ben Saul

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

Ganna Yudkivska

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Aua Baldé
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Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
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Nicolas Levrat
Special Rapporteur on minority issues

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to this communication. We refer to the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party since 29 October 1996, particularly to articles 6, 7, 9, 10, 16, 17, 18, 19, 21, 22, and 24, read alone and in conjunction with article 2(3), which establish the right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to liberty, humane conditions of detention, the right to recognition as a person before the law, the right to freedom of thought, conscience and religion, freedom of expression, freedom of peaceful assembly, freedom of association, the right to protection for every child, and the right to an effective remedy, respectively. It is noteworthy that the General Comment No. 31 of the Human Rights Committee reaffirms that the rights in the ICCPR shall be guaranteed to all individuals, regardless of their nationality, such as asylum seekers, refugees, migrant workers or others who find themselves in the territory or subject to the jurisdiction of the State Party.

Non-refoulement

We recall that the prohibition on *refoulement* under international human rights law applies to any form of removal or transfer of persons, including deportation and extradition, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, cruel, inhuman or degrading treatment or punishment, or other serious human rights violations,³ such as arbitrary deprivation of life, enforced disappearance, arbitrary detention, or a flagrant denial of fair trial. The prohibition is absolute and without any exception and applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status. It applies wherever a State exercises jurisdiction or effective control, including outside its own territory. Customary international refugee law also prohibits *refoulement* to persecution, as reflected in article 33 of the 1951 Refugee Convention.

We draw attention to General Comment No. 31 of the Human Rights Committee, which specifies that article 2 of the ICCPR entails 'an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm' (para. 12). The duty to respect and ensure the right to life under article 6 of the ICCPR requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life would be violated (General Comment No. 36, para. 30). State parties to the ICCPR must adopt special measures and respond urgently and effectively in order to protect individuals who find themselves under a specific threat (Id., para. 23).

Article 3 (1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Thailand acceded in 2007, provides

³ See e.g., Convention against Torture, Article 3; UNHCR, 'Complementary Forms of Protection', EC/50/SC/CRP.18 (2000); UNHCR, ExCom Conclusion No. 103 (LVI) (2005); Global Compact for Migration, Objective 21; OHCHR, The Principle of Non-refoulement under International Human Rights Law 2018; OHCHR, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations 2018.

that '[n]o State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3 (2) further provides that '[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights'. In addition, principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establishes that no one shall be returned or extradited against his or her will to a country where there are substantial grounds for believing that he or she may be subjected to extra-legal, arbitrary or summary execution in that country.

In addition, article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by your Excellency's Government on 14 May 2024, establishes that no State Party shall expel, return (refouler), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. For the purpose of determining whether there are such grounds, the authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights (article 16 (2)). See also the 1992 Declaration on the Protection of All Persons from Enforced Disappearance and A/HRC/36/39/Add.2.

The Working Group on Enforced Disappearances has noted the increasing practice of forced returns by States in violation of article 8 of the Declaration and the principle of *non-refoulement*, including without the consent of the host state (A/HRC/48/57). The practice of States resorting to the deprivation of liberty of individuals and refusing to acknowledge it or to disclose the fate or whereabouts of the individual, for whatever purpose or duration and in whatever context, constitutes an enforced disappearance, in violation of *jus cogens* norms of international law. In addition, all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary or short-term disappearances (A/HRC/36/39/Add.2, para. 60). Accordingly, all migrants deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise their rights are assured (A/HRC/36/39/Add.2, para. 63).

The Working Group has also recalled the importance of respect for cultural diversity and the existence of a space in which multiple opinions, positions and interpretations of history can find expression in the public sphere, which reduces the level of vulnerability of those who question dominant ideas and positions in one way or another and thus prevents attacks against human rights defenders (A/HRC/30/38/Add.5). Also, due to the collective nature of certain economic, social and cultural rights, the disappearance of one person can have a negative impact on the community as a whole. An example is the forced disappearance of a leader of a minority community and the impact this may have on the exercise of the right to participate in the cultural life of minorities and on other members of the affected community. Such disappearances may also affect the right to political participation and the existence and protection of other human rights.

Privacy

Article 17 of the ICCPR protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. States must themselves not interfere in privacy and also prohibit such acts by other persons (General Comment No. 16, para. 9).

Liberty and security of person

Articles 9 and 14 of ICCPR guarantee the rights to liberty and security of the person and to a fair trial. Article 9 of the ICCPR prohibits arbitrary detention. Specifically, it establishes that no one shall be deprived of his or her liberty (unless it is in accordance with appropriate laws), and that anyone who is arrested shall be brought promptly before a judge officer authorized by law to exercise judicial power, and that anyone arrested shall be entitled to trial within a reasonable time. Pre-trial detention should thus be the exception rather than the rule (General Comment No. 35, para. 38). We further note that a person may only be deprived of liberty in accordance with national laws and procedural safeguards governing detention (including in relation to arrest and search warrants), and where the detention is not otherwise arbitrary. In this respect, we highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary (General Comment No. 35, para. 17). The Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

The Working Group on Arbitrary Detention has further reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In addition, the Working Group on Enforced or Involuntary Disappearances would like to reiterate that, under international law, the failure or refusal to acknowledge a deprivation of liberty by State agents or persons or groups of persons acting with their authorization, support and acquiescence, constitute enforced disappearance, irrespective of the duration of the deprivation of liberty or the type of concealment concerned. State authorities are thus obliged to take all necessary measures to effectively protect the rights of the persons deprived of their liberty, as it automatically assumes responsibility for their lives, physical integrity, and well-being.

Enforced disappearance

We would like to highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment No. 36). The prohibition of enforced disappearance is a peremptory norm, of *jus cogens* and applicable *erga omnes*, in accordance with conventional and customary international law.

We welcome your Excellency's Government ratification of the International Convention for the Protection of All Persons from Enforced Disappearance on 14 May 2024. Pending its entry into force, your Excellency's Government is obliged to refrain from acts which would defeat its object and purpose. In this sense, article 16 of the Convention guarantees non-refoulement as mentioned above; article 17 (c) requires any person deprived of liberty to be held solely in officially recognized and supervised places of deprivation of liberty; article 18 guarantees to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to the authority that orders the deprivation of liberty, the date, time and place where the person was deprived of liberty, the authority responsible, and elements related to the state of health of the person deprived of liberty, among others; and article 20 establishes that States Parties shall guarantee any person with a legitimate interest the right to a prompt and effective judicial remedy.

The 1992 Declaration on the Protection of All Persons from Enforced Disappearance sets out necessary protection by the State. In particular, it states that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). The Declaration underscores that accurate information on the detention of individuals and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel (article 10 (2)), and that states should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14).

We furthermore underline that enforced disappearances constitute a violation of the right to an effective remedy established by article 2(3)(a) of the ICCPR, the right to liberty and security of persons under article 9, and the right to a fair trial under article 14 of the ICCPR. Furthermore, enforced disappearance is a particularly aggravated form of arbitrary detention (Human Rights Committee, General Comment No. 35, para. 17). While enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones (see e.g., Committee against Torture and Human Rights Committee). The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of jus cogens, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We further highlight that families of forcibly disappeared persons should be protected from ill-treatment or intimidation if required (article 13 of the Declaration).

Freedom of religion or belief

We refer to article 18(1) of the ICCPR, which stresses that 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching'. The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states in article 2(1): '[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the

grounds of religion or other belief'. Furthermore, we would like to refer your Excellency's Government to article 4 (2) of the abovementioned Declaration, according to which: 'All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs'.

Freedom of expression

Article 19 of the ICCPR guarantees the right of everyone to freedom of expression. It protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights and journalism (General Comment No. 34, para. 11). As indicated by the Human Rights Committee, 'the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere' (Id., para. 44). While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (Id., para. 42). Detention purely due to the peaceful exercise of rights protected by the Covenant may be arbitrary (General Comment No. 35, para 53). Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists (General Comment No. 34, para. 30). Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with article 19 (General Comment No. 34, para. 23).

With respect to the use for counter-terrorism and counter-extremism justifications to restrict the legitimate exercise of freedom of expression, we underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (General Comment No. 34). We stress that counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of association and of peaceful assembly. These rights are protected under the ICCPR, and non-violent exercise of these rights must not be a criminal offence. Counter-terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members (General Comment No. 34).

Freedom of association and peaceful assembly

We also draw attention to article 21 of the ICCPR which states that '[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are 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'.

Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1).

We also refer to the fundamental principles in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Articles 1 and 2 of the Declaration 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.

We further highlight the rights in the UN Declaration on Human Rights Defenders: to form, join and participate in non-governmental organizations, associations or groups (article 5 (b)); to communicate with non-governmental or intergovernmental organizations (article 5 (c)); to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms and to study, discuss and hold opinions on the observance of these rights (article 6 points (b) and (c)); and to unhindered access to and communication with international bodies (article 9, paragraph 4, point (a)).