

**Mandates of the Special Rapporteur on minority issues; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL EGY 4/2024  
(Please use this reference in your reply)

7 October 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/5, 51/8, 50/17, 50/6 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the displacement of the Bedouin community following extensive land-clearing in North Sinai, and the alleged arbitrary detention of 54 individuals from the Bedouin community following protests against the protracted delay of their resettlement.**

According to the information received:

*Land-clearing and community displacement*

The Egyptian Armed Forces have conducted land clearing in the Sinai Peninsula since 2013 to establish a buffer zone with the Gaza Strip. The stated military purpose of the buffer zone is to prevent the exchange of weapons and materials across the border with Gaza via underground tunnels. The area designated for land clearing was increased following an attack on an army checkpoint carried out by the Sinai-based armed group "Ansar Beit al-Maqdis" on 24 October 2014.

In 2012, Defence Minister Abdel Fattah al-Sisi (now the President of the Arab Republic of Egypt) issued Decree 203 of 2012 banning private ownership of land within five kilometres of the Gaza Strip defining such land as a strategic area of military importance. On 29 October 2014, Egyptian President Abdel Fattah al-Sisi issued Decree No. 444 of 2014, which designated a five-kilometre stretch of land inside the Egyptian city of Rafah as a "restricted" border area along the Gaza Strip border. Similarly, on the same day, Prime Minister Ibrahim Mahlab issued another decree directing the evacuation and isolation of an area stretching between five and seven kilometres from the Gaza border, which included the entire city of Rafah. Under the map attached to the decree, a buffer zone was designated to extend along the Gaza border (13 kilometres) and encompass approximately 79 square kilometres of Egyptian land. The Decree also stated that the residents forcefully evacuated would receive fair compensation and alternative housing.

Subsequently, on 23 September 2021, President Abdel Fattah Al Sisi issued Decree No. 420 of 2021 designating approximately 3,000 square kilometres of land in North-Eastern Sinai as border areas subject to strict restrictions as per the previously issued decree in 2014. Numerous villages, residential communities, and major cities that housed around 190,000 people fell within the designated restricted areas.

Notably, the 2021 Decree extends the state of emergency first declared in 2014, in addition to granting a wide range of powers to the Minister of Defence which includes the evacuation of specific areas, the imposition of bans on residence, approach, or entry into specific regions, and the imposition of curfews. Nonetheless, the restrictions permitted by the Decree are not contingent on the existence of a state of emergency, and hence, constitute a significant departure from the declarations in other governorates and the ostensibly temporary nature of the state of emergency laws.

Reportedly, in the aftermath of these military operations, approximately 150,000 people were displaced to various other cities in the Sinai Region or other governorates, in addition to the complete demolition of the city of Rafah. The homes of the majority of the residents were demolished, their farms destroyed, and they lost their primary means of livelihood. Most of these families were left without any compensation for years despite a decree stipulating the issuance of fair compensation. The value of the proposed compensation remained a point of contention as it was deemed inadequate to cover the actual losses. Approximately 40,000 residents remain residing in North Sinai in areas designated as "restricted", placing them under the constant threat of forced evictions and arbitrary displacement.

#### *Protests to facilitate the return of displaced communities*

Government pledges to return displaced persons from Bedouin communities to their lands in North-Eastern Sinai have been repeatedly delayed. As a result, members of the Bedouin tribes have staged multiple protests and sit-ins to demand their right to return to their homes. On 26 August 2023, during a meeting between tribal leaders and the Commander of the Second Field Army in the city of Al-Arish, it was agreed that the displaced would be allowed to return to their lands no later than 20 October 2023. On 20 October 2023, whilst anticipating the return to their lands, the Sinai Bedouins were informed by members of the Egyptian armed forces that they could not return without any explanation or a new deadline. Subsequently, this resulted in new protests by the Bedouin tribes to demand a return to their lands.

On 23 October 2023, thousands of displaced Bedouin people from the Rumailat and Sawarka tribes gathered near the villages of Al-Wefaq (West of Rafah), Al-Mahdiya (South of Rafah), and Al-Zawar'a (in South Sheikh Zuweid) in North Sinai governorate, to peacefully protest the denial of their return by the armed forces. During these protests, the Egyptian armed forces responded with gunfire to disperse the peaceful demonstrators in Alwefaq Village. Footage allegedly captured the Egyptian armed forces firing at the protesters. Additionally, the security personnel severely beat one protester after a military armoured vehicle intentionally crashed into his car, causing him to sustain a head injury and faint. The injured protester, along with several

others, was arrested during the protest. Following these protests, at least nine people were arrested and detained during the dispersal of the protests at the headquarters of the 101<sup>st</sup> Battalion, the Sheikh Zuweid police station, and the Al-Arish first police station. After being interrogated by the military prosecution, they were transferred to and detained at the Ismailia Security Forces Headquarters, an unofficial detention facility without judicial oversight, where they were charged with national security-related offences under the Criminal Code.

On 24 October 2023, dozens of participants from the previous day's protests were arrested by police forces at the "Al-Shallaq" checkpoint, located at the entrance to the city of Sheikh Zuweid. The armed forces had compiled lists of those who participated in the protests and arrested them at the checkpoint after checking their identities. On the same day, police also raided several homes of those who had taken part in the protests and arrested the occupants. Consequently, the number of those detained following several days of protests increased to fifty-four people.

Currently, it is reported that fifty-four individuals belonging to the Sinai Bedouin communities are undergoing and are subject to a mass trial under case 80/2023 (military crimes). They have been charged with sabotage of three military vehicles, unlawful gathering, and exhibiting thuggery. In accordance with the Penal Code which establishes an offence for the intentional damage of military property (article 78/E); an offence for demonstrating an affront to public officials through gesture or speech (article 133); an offence for assault or wounding (article 137) respectively. Additionally, they have also, been charged under article 3 of the Public Assembly Law 10/1914.

It is reported that since their referral to military prosecution under military court, they have been denied the presence of a lawyer during interrogations by the Egyptian Armed Forces Officials. Following their arrests, diverse hearing dates were set between 7 November and 25 November 2023. So far, the military court has extended their custody by 30 days and 15 more days. Notably, the military court does not permit the right to appeal.

Without prejudging the accuracy of the information received, we wish to express our serious concern about the allegations regarding the extensive land clearing which displaced thousands of people from the Bedouin communities living in North-Eastern Sinai, the subsequent failure to discuss requests for return, to provide compensation and adequate resettlement. We are, in addition, concerned about the excessive use of force against protesters, and the detention of the arrested protesters, which appears to indicate a violation of the right to freedom of assembly and association as contained in articles 21 and 22 of the International Convention of Civil and Political Rights, acceded to by your government. Such actions may therefore be in contravention of the Arab Republic of Egypt's human rights international obligations.

In addition, we wish to express our serious concern about the allegations of arbitrary detention and prolonged pre-trial detention as a form of collective punishment for and criminalization of the Sinai Bedouins exercising their rights to freedom of assembly and association, in contravention of article 9 of International Convention of Civil and Political Rights.

Moreover, we wish to express our serious concern about the alleged use of military courts and military prosecution of civilians as well as the lack of access to legal representation in breach of the right to a fair trial contained in article 14 of the International Convention of Civil and Political Rights.

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 or comments in relation to the above-mentioned allegations.
2. Please explain the factual and legal grounds justifying the alleged arrest, prolonged pre-trial detention in an unofficial detention facility without judicial oversight detention, and charges brought against the 54 Individuals belonging to the Bedouin minorities and how these are compatible with your Excellency's Government's obligations under the provisions cited in the annex below.
3. Please explain the legal basis governing the functioning and competencies of military courts to prosecute civilian protesters and how these laws are compatible with your Excellency's Government's obligations under the provisions cited in the annex below.
4. Please provide us with information on other steps taken by your Excellency's Government, in accordance with international standards and best practices, in relation to any investigation and judicial or other inquiries carried out concerning the allegations of firing at and beating up protestors.
5. Please clarify what measures were taken to identify feasible alternatives to the displacement of the affected communities, why such displacement was considered unavoidable, and what measures were taken to ensure displacement was carried out in a manner that upheld the rights to life, dignity, liberty, security, and family life of those affected and in satisfactory conditions of safety, nutrition, health, and hygiene.
6. If displacement was in fact avoidable, please explain to what extent your Excellency's Government has discussed the possibility of allowing the displaced, or a part of them, to return, as some of them have been requesting.
7. Please explain what measures your Excellency's Government has undertaken to ensure that no one is evicted into homelessness and that everyone receives an adequate compensation for any property which was affected.

8. Please clarify what measures were taken or are envisaged to provide protection and assistance to those displaced, including alternative adequate housing, water, essential food and medical services, and other forms of humanitarian and/or legal assistance.
9. Please clarify what measures have been taken or are envisaged to ensure durable solutions for those affected, including access to effective remedies and justice for rights violations experienced during displacement.

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 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.

Further, we would like to inform you that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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

Nicolas Levrat  
Special Rapporteur on minority issues

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

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

Paula Gaviria  
Special Rapporteur on the human rights of internally displaced persons

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

## Annex

### Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to remind your Excellency's Government of its legal obligations under **international law** applicable to the issues brought forth.

We firstly recall that the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, is a foundational standard-setting document of the United Nations system, and recognizes in article 20(1) of the Universal Declaration of Human Rights which states that "everyone has the right to freedom of peaceful assembly and association".

We would also like to recall your Excellency's Government's obligation under the **International Covenant on Civil and Political Rights (ICCPR)**, ratified by the Arab Republic of Egypt on 14 January 1982, in particular **articles 2(1), (2), and (3)** which provides the obligations of Each State Party to the **ICCPR**. Specifically, **article 2(1)** of the Covenant stipulates that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Further, **article 2(2)** of the **ICCPR** states "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant". In addition, **article 2(3)** of the **ICCPR** provides that "each State Party undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and to ensure that the competent authorities shall enforce such remedies when granted".

Moreover, **article 9** of the Covenant provides that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 9(2) and (3) further provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and shall be brought promptly before a judge or other officer authorized by law to exercise judicial power over the detention.

In relation to State obligations pursuant to article 9 of the ICCPR, we remind your Excellency's Government of the **CCPR general comment No 35: article 9 (Liberty and security of person)** which provides any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the

person is arrested or detained on suspicion of criminal activity. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. As well as to facilitate effective review, detainees should be afforded prompt and regular access to counsel. It should immediately release those who are unlawfully detained, conduct thorough, independent investigations into those cases without delay, bring the suspected perpetrators to justice, and provide effective remedies to the victims. Ensure that all victims of arbitrary detention have access to an effective remedy and receive adequate compensation, restitution, and rehabilitation. Ensure that pretrial detention is reasonable and necessary, is based on individual circumstances, and is judicially reviewed regularly and that detainees are held only at official detention facilities, and encourage the application of non-custodial alternative measures as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures. (the Tokyo Rule)

Further, **article 14** of the **ICCPR** stipulates that, in the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, as recalled by **the Human Rights Committee** in its **general comment No. 32**, the provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military. The trial of civilians in military or special courts raises serious concerns as far as the equitable, impartial and independent administration of justice is concerned. Trials of civilians by military or special courts should be exceptional and limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials. Further, the trial of civilians in military or special courts must be in full conformity with the requirements of article 14, which cannot be limited or modified because of the military or special character of the court concerned.

Furthermore, **article 14(3)** of the **ICCPR** provides that everyone should have adequate time to communicate with a counsel of choice, we further recall **the UN Basic Principles on the Role of Lawyers**, adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990. In particular, **principles 7 and 8** on the right to have access to a lawyer without delay and in full confidentiality, which provides that, "governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention"... and..."all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. such consultations may be within sight, but not within the hearing, of law enforcement officials".

In addition, **article 21** of the **ICCPR** guarantees the right to freedom of peaceful assembly. It states that "the 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".

In relation to State obligations pursuant to article 21 of the ICCPR, we remind your Excellency's Government of the **CCPR general comment No 37: article 21 (Right of peaceful Assembly)** which stipulates that "Preventive detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. This is especially the case if detention lasts more than a few hours. Where domestic law permits such detention, it may be used only in the most exceptional cases, for no longer than absolutely necessary, and only where the authorities have proof of the intention of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate. Practices of indiscriminate mass arrest prior to, during, or following an assembly are arbitrary and thus unlawful." In addition, it states that "the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. [...] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner."

We also recall the **Human Right Council Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, (A/HRC/56/50/Add.1)** published on 20 May 2024 which affirms that "the rights to peaceful assembly and association serve as vital democratic tools for marginalized groups to peacefully voice their grievances, and to prompt authorities to address their needs. Guaranteeing and facilitating these rights enables peaceful resolution of social conflicts and leads to the adoption of policies addressing the concerns of affected groups."

Moreover, we recall the **Human Rights Council Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (A/HRC/53/38/Add.1)** published on 23 May 2023. Which affirms that "no one should be criminalized or subjected to threats, harassment, persecution, intimidation or reprisals for exercising the rights to freedom of peaceful assembly and of association and that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective judicial remedy and obtain redress".

We wish to remind your Excellency's Government that in accordance with the jurisprudence of the Working Group on Arbitrary Detention, and the **Human Rights Committee's general comment No. 35**, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of peaceful assembly and of association, is arbitrary.

We would also like to recall your Excellency's Government's obligation under the **International Covenant on Economic Social and Cultural Rights (ICESCR)**, ratified by the Arab Republic of Egypt on 14 January 1982, in particular **articles 2(1), and (2)** which provides the obligations of Each State Party to the **ICESCR**. Specifically, **article 2(1)** of the Covenant stipulates that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". Further, **article 2(2)** of the

**ICESCR**, “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Moreover, article **11(1)** of the **ICESCR** stipulates the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

We would also like to draw your attention to the 1998 Guiding Principles on Internal Displacement, which affirm the primary duty and responsibility of national authorities to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction (principle 3). Every human being has the right to be protected against arbitrary displacement from their home or place of habitual residence, including in situations of armed conflict, unless the security of civilians involved or imperative military reasons so demand (principle 6). Authorities are obliged to explore all feasible alternatives to displacement prior to any decision requiring the displacement of persons, and where such displacement is unavoidable, measures should be taken to minimize displacement and its adverse effects and the authorities responsible should ensure that proper accommodation is provided to the displaced persons and that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, without separating members of the same family (principle 7(1-2)).

If displacement occurs in situations other than during the emergency stages of armed conflicts or disasters, adequate measures should be taken to guarantee those to be displaced full information on the reasons and procedures for their displacement, their free and informed consent should be sought, and the right to an effective remedy shall be respected (principle 7(3)). Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected (principle 8) and States are under a particular obligation to protect against the displacement of Indigenous Peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands (principle 9).

The Guiding Principles further specify that attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstance (principle 10(2)) and that internally displaced persons shall be protected from arbitrary arrest and detention as a result of their displacement (principle 12(3)). All internally displaced persons have the right to an adequate standard of living, and at a minimum, competent authorities shall provide internally displaced with and ensure safe access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation (principle 18). All wounded and sick internally displaced persons should receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require (principle 19). The property and possessions of internally displaced persons shall in all circumstances be protected, including from direct or indiscriminate attacks or other acts of violence, being destroyed or appropriated as a form of collective punishment, and should be protected against destruction and arbitrary and illegal appropriation, occupation, or use (principle 21).

National authorities bear the primary duty and responsibility for providing humanitarian assistance to internally displaced persons (principle 25) and competent authorities also have the primary duty and responsibility to establish conditions as well as provide the means which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country (principle 28).

#### *Definition of “terrorism”*

We wish to underscore that although there is no internationally agreed definition of terrorism, States have an obligation to ensure that national definitions of terrorism and terrorism offences must be restricted to acts that are ‘genuinely’ terrorist in nature in accordance with the elements identified by the international counter-terrorism instruments,<sup>1</sup> Security Council in its resolution 1566 (2004), and the model definition of the Special Rapporteur on the promotion and protection of human rights while countering terrorism.<sup>2</sup> The latter has consistently warned that vague and over-broad national definitions of terrorism are open to arbitrary application and abuse, including to target members of civil society on political or other unjustified grounds,<sup>3</sup> and are incompatible with international human rights law. The principle of legal certainty under **article 15(1)** of the **ICCPR** requires criminal laws to be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. Definitions must further be strictly guided by the principles of necessity, proportionality and non-discrimination.

#### *Military trial of civilians*

We recall that the **Human Rights Committee**, in its **general comment No. 32**, has stressed that although the ICCPR does not prohibit the trial of civilians in special courts, it requires that such trials must fully comply with the requirements of article 14 and that their guarantees may not be limited or modified because of the military or special character of the court concerned (CCPR/C/GC/32, para. 22). We also recall paragraph 22 of the general comment No. 32, according to which:

*The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. The Committee notes the existence, in many countries, of military or special courts which try civilians. While the Covenant does not prohibit the trial of civilians in military or 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. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and*

<sup>1</sup> See [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml).

<sup>2</sup> A/HRC/16/51, para. 28.

<sup>3</sup> [A/70/371](#), para. 46(b).

*where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.*

*State of emergency powers*

We also recall that paragraphs 74 to 78 of A/HRC/37/52 remind States to ensure that emergency measures are in compliance with the prohibition of permanent emergency powers and that in such contact it remains under an absolute obligation to the State to protect non-derogable rights. We would also like to refer to paragraphs 36 and 75(a) to (i) of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/52) recalling the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression and does not negatively affect civil society.