

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief**

Ref.: AL GBR 13/2024

(Please use this reference in your reply)

21 November 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 Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 49/10, 54/14, 52/9 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the apparently unjustified use of provisions of **the Terrorism Act 2000, the Terrorism Act 2006, and the Sentencing Act 2020** against political protesters, raising concerns about potential infringements of their fundamental rights.

According to the information received:

*Arrests at the weapons manufacturing hub*

Counter-terrorism legislation, including the Terrorism Act 2000 and the Terrorism Act 2006, appears to have been increasingly used in the context of domestic support for Palestinian self-determination and political activism against the United Kingdom's foreign policy on the conflict in the occupied Palestinian territory of Gaza. In particular, members of Palestine Action – a grassroots movement that organises direct actions against Israeli weapons factories in the United Kingdom – have reportedly been arrested under counter-terrorism legislation for conduct that appears to be in the nature of ordinary criminal offences and does not appear to be genuinely “terrorist” according to international standards.

On 6 August 2024, several activists, including [REDACTED], **Zoë Kate Rogers, Fatama Rajwani, Charlotte Head, [REDACTED], and Hannah Davidson**, broke into an Israeli weapons manufacturing hub in Bristol. The activists breached two security fences through the use of a de-commissioned prison van, entered the building and damaged equipment and property, in order to disrupt the operations of the company. The police arrived within 15 minutes of the intrusion and arrested the activists for violent disorder and assault, using pepper spray and tasers to make the arrests.

The activists were initially detained at police stations in Bristol for 24 hours under section 41(1) of the Police and Criminal Evidence Act 1984. Their period of detention was subsequently extended by 12 hours, by judicial

warrant, under section 44 of the same Act.

Upon the expiry of the extended detention order, the activists were arrested for an alternative offence under section 5 of the *Terrorism Act 2006*. Section 5 establishes the offence of the preparation of an act of terrorism or assistance to another to commit an act of terrorism. A person guilty of the offence is liable to life imprisonment for life. Their detention was extended for 7 days under a judicial “warrant for further detention” in relation to this offence, in accordance with sections 41 and 29, schedule 8 of the *Terrorism Act 2000*.

The activists were then transferred from police stations in Bristol to police stations in Hammersmith and Newbury. They were interrogated several times during their detention and had access to legal representation. They were, however, unable to contact their families or the outside world and there was a significant delay in the notifying their families of their transfer to a different police station.

#### *Arrests in connection to the demonstration*

Between 8 and 12 August 2024, several more activists, including **William Plastow, Ian Sanders, and Madeline Norman**, were also arrested under section 5 of the *Terrorism Act 2006* for their alleged connection to a demonstration at the weapons manufacturing hub in Bristol on 6 August 2024. Some of the arrests were carried out through the use of force, including the arrest of Mr. Sanders, who was surrounded by several armed officers with guns pointed towards his head.

The activists were initially held for 36 hours, without access to legal representation, and were not permitted to contact their families or the outside world. Their detention was extended by a judicial “warrant for further detention” for 7 days under sections 41 and 29, schedule 8 of the *Terrorism Act 2000*. Although the activists had access to legal representation prior to the extension of the detention order, they remained unable to communicate with their families. Some activists were interrogated on each day of their detention and experienced significant deterioration in their mental health.

#### *Prosecution for offences with a “terrorist connection”*

The Crown Prosecution Service (CPS) authorised Counter Terrorism Policing South-East to charge all of the activists with “criminal damage” and “aggravated burglary”. The activists, except for Mr. Sanders, Mr. Plastow and Ms. Davidson, were also charged for “violent disorder”. In addition, [REDACTED] was charged with [REDACTED].

The activists were not charged under section 5 of the *Terrorism Act 2006*. However, the CPS stated in a press release dated 13 August 2024 that it would submit to the court that the offences have a “terrorist connection”, which permits the court to consider the application of section 69 of the *Sentencing Act 2020*. If the court considers there to be a “terrorist connection”, the section requires the court to treat that connection as an aggravating factor and to state in open court that the offence is so aggravated.

### *Conditions of detention*

The activists appeared before the Westminster Magistrates' Court between 13 and 16 August 2024 and were placed on remand at HMP Belmarsh, HMP Bronzefield and HMP Wormwood Scrubs.

The activists experienced a significant delay in being able to contact or receive visits from their family and friends while in detention. It is reported that the activists are classified as high security prisoners with "restricted status" due to having been initially arrested under counter-terrorism legislation and/or for the alleged "terrorist connection" to the offence. The mail correspondence of the activists detained at HMP Woodworm Scrubs is reportedly monitored and has been restricted on the basis of national security. Additionally, non-association orders have been imposed by the prison administration on the activists detained at HMP Bronzefield, which has resulted in a reduced capacity for each activist to receive family visits and participate in activities, and prevented several activists from attending their court hearings.

It is also reported that some activists have experienced difficulty in practicing their religious and cultural rights. In particular, Ms. Rawjani's headscarf was forcibly removed during her arrest and she was compelled to remove the bandana beneath her headscarf when photographed at the police station. An armband with Islamic text in Arabic was also discarded by an officer at Hammersmith Police Station following its characterisation as a non-political item. Ms. Rawjani's distress and attachment to the religious item was reportedly mocked by the police officer. Furthermore, her requests for a turbah (a small piece of clay/soil that Shia Muslims prostrate on), religious books, and assistance in locating the direction of the Qibla were denied while on remand.

Furthermore, some activists have experienced difficulty in gaining access to healthcare and medication. In particular, Ms. Rogers' medication was lost during the transfer from the police station to the remand facility and the significant delay in replacing the medication caused her painful withdrawal symptoms. Due to Ms. Rogers' experience of the medication not being dispensed at consistent times, and the attendant fear of further withdrawal symptoms, she has had to decide to forgo the medication.

While we do not wish to prejudge the accuracy of these allegations, we express our concern regarding the seemingly unjustified use of counter-terrorism laws against protest activity by political activists in a democratic society, notwithstanding that it involved some alleged violence that should be prosecuted as ordinary criminal offences. Treating "direct action", albeit involving some violence, as "terrorism" over-states the nature of the conduct and seriously risks chilling the exercise of freedom of expression and opinion and the right to participate in public life, as well as political and public discourse. We are particularly concerned by the inappropriate use of the counter-terrorism legal framework during pre-charge detention, in relation to the security conditions under which detainees are held, and in the context of the potential aggravation of penalties in sentencing.

### *The misuse of pre-charge counter-terrorism powers*

The information received suggests that the UK police have exercised significant powers under counter-terrorism legislation despite the absence of a credible connection between the activists' conduct to terrorism as properly defined, and in circumstances where provisions of the ordinary criminal law would strike a more appropriate balance between the rights of the individual and the interests of national security. In this respect, it is welcome that the accused are not to be prosecuted for any terrorism offences, properly reflecting the character of their acts as ordinary criminal offences. However, we are concerned that the activists were arrested on terrorism charges at an earlier stage and that counter-terrorism detention extended detention powers were used in that connection.

While there is no binding definition of terrorist acts in international law, "best practice" international definitions limit such conduct to criminal acts intended to cause death, serious personal injury or hostage taking, in order to intimidate a population or compel a government or an international organization to do or to abstain from doing any act, and where constituting an offence under international counter-terrorism instruments or a serious crime under national law (Security Council resolution 1566 (2004); model definition of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/16/51, para. 28). Mere property damage, without endangering life, is not sufficiently serious to qualify as terrorism.

Where national law nonetheless criminalizes certain property damage as terrorist offences, it is international "best practice", as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Counter-Terrorism Executive Directorate,<sup>1</sup> and found in the law of various common law States, to exclude acts of advocacy, protest, dissent or industrial action *where they do not cause death or serious injury*. This ensures that terrorism-related offences do not unjustifiably criminalize acts committed in the context of the exercise of the rights to freedom of expression, opinion, assembly, association and political participation in a democratic society. Where such acts damage property, they should be more appropriately prosecuted as ordinary or public order offences. At present, the overbroad definition of terrorism in UK law potentially enables the application of counter-terrorism powers to violent political protest that is not genuinely terrorist in nature. While a number of the activists are alleged to have committed violence against police officers causing them injury, such conduct appears to have occurred in the course of resisting arrest rather than for the terrorist purpose, under UK law, of influencing the government or intimidating the public.

We recall also the finding of the UK Supreme Court in *R v. Gul* that any exercise of prosecutorial discretion to refrain from laying terrorism charges does not address the underlying problem of an overbroad definition of terrorism, since it abdicates the legislative responsibility to precisely define terrorist conduct and reposes the discretion to determine who is a "terrorist" in an individual case to the unelected executive, compromising the principle of legality, the rule of law and the separation of powers. Where conduct is not genuinely terrorist in nature, including violent protest that does not cause death or serious personal injury with a terrorist aim,

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<sup>1</sup> See also Counter-Terrorism Executive Directorate, "Analytical Brief: A Commentary on the Codification of the Terrorism Offence" (2024), 17.

it would be inappropriate to use the extended period of detention without charge authorized under sections 41 and 29, schedule 8 of the Terrorism Act 2000.

We fear that the application of sections 41 and 29 against political activists, including members of Palestine Action, may have the effect of unjustifiably deterring other political protests in a democracy society. Any measure taken against acts of political activism must respect the requirements of legality, necessity and proportionality to avoid chilling legitimate dissent and expression. Further, we echo the concern of the Human Rights Committee in regard to the low charge rate and blanket denial of bail of those arrested under section 41 (CCPR/C/GBR/CO/7, para. 14).

*“Terrorist connection” in sentencing*

For the same reasons explained above, we are concerned at the CPS’ submission that the offence had a “terrorist connection” for the purpose of aggravation in sentencing, which could have the effect of both increasing penalties and stigmatizing the accused. We also note the significant change in the position of the CPS from arresting the activists under section 5 of the Terrorism Act 2006 to submitting that the offence had a mere “terrorist connection” for sentencing. We are concerned that the earlier detention of the activists under the “extended warrant for detention”, and the activists’ treatment under the Terrorism Act 2000, continued in circumstances where it may have already been clear that their conduct did not constitute a terrorist offence. In this respect, we query whether counter-terrorism laws may have been used to circumvent procedural safeguards in relation to detention, and as a specific and general deterrent, given the appropriateness of, and the ultimate reliance on ordinary criminal charges.

*Procedural rights and enforced disappearance*

We are further concerned that the activists were unable to contact their family and/or the outside world for a significant period of time, and that some activists were prevented from gaining access to legal assistance for the first 36 hours of their detention. We remind your Excellency’s Government that the lack of access to a lawyer may impede the effective enjoyment of the rights protected under article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom on 20 May 1976, and that communication by a detained person with the outside world, and in particular his or her family, must not be denied for more than a matter of days (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”), principle 15). Relatedly, we are concerned that the apparent incommunicado detention of the activists for certain periods, including during their transfer from police stations, may amount to enforced disappearance. In this regard, we recall that, in order to constitute an enforced disappearance, the deprivation of liberty must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment (CED/C/11). We refer your Excellency’s Government to principle 16 of the Body of Principles which provides that the authority must promptly notify the family of the detainee after the arrest and of each transfer from one place of detention or imprisonment to another.

### *Conditions in remand*

Finally, we are concerned that the activists held on remand are being subjected to higher security protocols due to their arrest under counter-terrorism legislation and the subsequent submission that the offences have a “terrorist connection”. The reported designation of the activists as having “restricted status” may be disproportionate and inconsistent with the treatment of other individuals charged with the same ordinary offences. Crucially, given that their conduct does not appear genuinely terrorist in nature, as explained earlier, they should not be subject to high security measures applicable to suspected terrorists. Moreover, we are concerned by the effect of the security limitations on the activists’ access to medication, right to communicate with the outside world, and right to exercise cultural and religious rights while on remand, which may constitute violate international human rights law, as outlined in the annex to this communication.

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 the factual and legal grounds justifying the alleged arrest and detention of the activists under counter-terrorism laws. Please explain the reason why, and at what period of the activists’ detention, the CPS decided to downgrade the charges to ordinary offences. Please also detail the basis for the CPS’ submission that the offences have a “terrorist connection”.
3. Please explain whether the definition of terrorism in UK law will be amended to exclude acts of advocacy, dissent, protest, or industrial action in a democratic society where they are not intended to cause death or serious injury with a terrorist purpose.
4. Please outline the measures taken to safeguard the activists’ procedural rights in detention and their right to a fair trial, including their right to access legal representation immediately after their arrest and to ensure that their families are promptly notified of their detention, including any transfers between detention facilities.
5. Please explain the measures taken to ensure the activists’ access to family visits, medication and health care in detention, and to protect their cultural and religious rights, and detail how these measures are compatible with international human rights standards. Please indicate whether their restrictive high security conditions in detention will be lifted.

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 damage to the personal integrity of the persons concerned, to halt the alleged violations, and to 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 to clarify the issue/s in question.

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

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## 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 principles and international standards applicable to this communication.

#### *Respect for human rights while countering terrorism*

Although no universal treaty generally 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 international counter-terrorism instruments,<sup>2</sup> the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004).<sup>3</sup> Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism<sup>4</sup> provides clear, "best practice" guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements. Any definition of terrorism that encompasses damage to property should also exclude acts of advocacy, protest, dissent or industrial action where they do not cause death or serious injury with a terrorist aim.

The principle of legal certainty under article 15(1) of the ICCPR which requires that criminal laws be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what are the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws, which are open to arbitrary application and abuse, to target civil society on political or other unjustified grounds.<sup>5</sup>

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.<sup>6</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

#### *Arbitrary arrest and detention*

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, that anyone who is arrested shall be brought promptly before a

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<sup>2</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>3</sup> A/RES/49/49, annex, para. 3.

<sup>4</sup> A/HRC/16/51, para. 28.

<sup>5</sup> A/70/371, para. 46(b).

<sup>6</sup> 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); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.



judge or 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). 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, 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).

#### *Right to legal representation and family visits*

Under article 9(3) of the ICCPR, “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” Article 9(4) further provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention (general comment No. 35, para. 35). The right to seek release from unlawful detention and to have effective review of detention under article 9(4) of the ICCPR requires detainees to be afforded prompt and regular access to legal counsel (general comment No. 35, para. 46). Persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided promptly (Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8). Prompt and regular access should be given to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members (general comment No. 35, para. 58). Denial of access to counsel and family in detention may result in procedural violations of article 9(3) and (4) (general comment No. 35, para. 59). The communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days (Body of Principles, principle 15).

#### *Conditions of detention*

All persons, including those detained, have the right to the enjoyment of the highest attainable standard of health under article 12 of the ICECSCR, which includes the underlying determinants of health (Committee on Economic, Social and Cultural Rights, general comment No. 14). Rules 24 to 35 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Mandela Rules”), adopted in General Assembly resolution 790/175, outline the obligations of States to provide health care.

We further note that article 18 of the ICCPR enshrines the right to freedom of religion or belief and that principle 3 of the Basic Principles for the Treatment of Prisoners states that it is desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong. We recall general comment No. 22, in which the Human Rights Committee stated that “[p]ersons already subject to certain

legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18(3), both as a matter of law and of their application in specific circumstances" (para. 8). Rule 42 of the Mandela Rules further provides that as far as practicable, every prisoner should be allowed to satisfy the needs of his or her religious life by attending the services provided in the institution and having in his or her possession the books of religious observance and instruction of his or her denomination.

### *Enforced disappearance*

Enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life. 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, para. 58). Notably, the prohibition of enforced disappearance has attained the status of *jus cogens*.

The UN Declaration on the Protection of All Persons from Enforced Disappearance 1992 sets out necessary protection by the State and establishes that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance (art. 7). In particular, it states that no State shall practice, permit or tolerate enforced disappearances (art. 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 (art. 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 (art. 10(2)),<sup>7</sup> and that states should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (art. 14). Enforced disappearance constitutes a particularly aggravated form of arbitrary detention (general comment No. 35, para. 17) and amounts to a violation of articles 6, 7, 9 and 16, read alone and in conjunction with art. 2(3) of the ICCPR, with regard to the disappeared person. Moreover, it amounts to a violation of article 7, read alone and in conjunction with article 2(3) of the ICCPR, with regard to the relatives of the disappeared person.

### *Freedom of expression*

Article 19 of the ICCPR guarantees the right to freedoms of opinion and expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

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<sup>7</sup> See WGEID's General Comment on article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance.

In its [general comment No. 34](#), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para. 11). The Committee also notes that “States parties should ensure that counter-terrorism measures are compatible with paragraph 3” (para. 46). Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR, namely that restrictions must: (i) be provided by law; (ii) pursue one of the legitimate aims of respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate to those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (general comment no. 34, para. 35).