Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy

Ref.: AL GBR 15/2024
(Please use this reference in your reply)

4 December 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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 49/10, 52/9, 50/17 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the potentially inappropriate use of provisions of the Terrorism Act 2000, the Terrorism Act 2006, and the Anti-Terrorism and Border Security Act 2019. These provisions appear to have been employed to investigate, detain, collect data, and prosecute political activists and journalists, raising concerns about potential infringements of their fundamental rights.

According to the information received:

Powers under counter-terrorism legislation have been used on multiple occasions to examine, detain, and arrest journalists and activists, particularly at the UK border. It is alleged that journalists and activists who are critical of Western foreign policy in the context of the conflict in the Middle East and the Russia-Ukraine war are especially affected by the reported misuse of these powers. In particular, schedule 7 of the Terrorism Act 2000, and schedule 3 of the Counter-Terrorism and Border Security Act 2019, have been used to examine and obtain data from journalists and activists, including **Johanna Ross (Ganyukova), John Laughland, Kit Klarenberg, Craig Murray** and **Richard Medhurst** in circumstances where they appear to have no credible connection to "terrorist" or "hostile" activity. Furthermore, section 12 of the Terrorism Act 2000 has been used to charge journalists and activists, including **Richard Barnard** and **Richard Medhurst**, for allegedly expressing support for a "proscribed organisation" in the course of activism and media reporting.

Without having knowledge of the material that may have substantiated the investigations or charges, we raise concern about an alleged pattern of over-use, or other misuse, of counter-terrorism legislation to target legitimate freedom of expression and opinion, including public interest media reporting, and related freedoms of peaceful assembly and association, and political dissent or activism.

Incidents related to conflict in the Middle East

Richard Barnard

Mr. Barnard is the co-founder of Palestine Action. He reportedly became aware that he was "wanted" by the Police for "conspiracy to commit criminal damage" and "perverting the course of justice" through his lawyer on 6 November 2023. Mr. Barnard and his lawyer arranged to hand himself into the Police on 9 November 2023. The Metropolitan Police interviewed Mr. Barnard and explained that the charges related to his comments on a podcast and the conduct of Palestine Action outside a courthouse.

Following the interview, Mr. Barnard was interrogated by counter-terrorism police who arrested him under section 12(1A) of the Terrorism Act 2006. The section establishes an offence for expressing an opinion or belief that was supportive of a proscribed organisation and being reckless as to whether it encouraged support for that organisation. Mr. Barnard was also charged under section 44 of the Serious Crime Act 2007 for committing an act capable of encouraging the commission of an offence with the intention to encourage or assist its commission. The charges are believed to relate to speeches given by Mr. Barnard at pro-Palestine protests in Manchester and Bradford on 8 and 11 October 2023. The speeches, which were reported by a mainstream media outlet, advocated for direct action against companies that supply arms or weapons components to Israel.

Upon the completion of the second interview, Mr. Barnard was also charged under section 44 of the Serious Crimes Act 2007 by the Bradford Police for a speech given on 11 October at Bradford City Centre. Mr. Barnard was granted conditional bail on the condition that he must report to the authorities once a week and is prohibited from going within 100 meters of a protest or demonstration or entering Bradford City Centre.

Craig Murray

Mr. Murray is a former British Ambassador, a whistleblower on torture and transnational rendition, a critic of the United Kingdom's foreign policy in the Middle East, and a peaceful advocate for Palestinian self-determination.

On 16 October 2023, Mr. Murray was examined for one hour upon arrival at Glasgow Airport under section 2, schedule 7 of the Terrorism Act 2000. Mr. Murray's bank cards and electronic devices, including a mobile phone, were confiscated by the examining officer. Mr. Murray was required to provide the passwords and PIN codes for his electronic devices.

A letter from Police Scotland, Border Policing Command, dated 19 October 2023, informed Mr. Murray that the confiscated mobile phone will be retained for "as long as deemed necessary, in the interests of the investigation" under section 11(2)(a), schedule 7 of the Terrorism Act 2000. The retention of the device indicates that Mr. Murray remains subject to a counter-terrorism investigation.

Mr. Murray reportedly has no known links to terrorism, terrorist groups, or proscribed organizations. He reportedly advocated for the right of "armed resistance under international law" against Israeli "genocide", but not for attacks on civilians. His examination under schedule 7 was allegedly motivated by his political dissidence, blogging, and participation in protests.

Richard Medhurst

Mr. Medhurst is an independent journalist and political commentator from the United Kingdom. He is known for his coverage of a high-profile extradition case involving the UK, and for his criticisms of Western foreign policy in the Middle East.

On 15 August 2024, Mr. Medhurst was arrested by six plainclothes police officers at Heathrow Airport under section 12(1A) of the Terrorism Act 2000. Mr. Medhurst's conditions of detention were allegedly dehumanizing and oppressive. He was held for nearly 24 hours, was denied the right to contact his family during detention and was first interrogated 15 hours into his detention. Mr. Medhurst had restricted access to legal counsel and, on one occasion, was unable to communicate with his lawyer in private. His media equipment, including his microphone, mobile phones, and headphones, were confiscated and have been retained by the Police.

The National Union of Journalists and The International Federation of Journalists have issued joint statements condemning his arrest and calling for the immediate return of his equipment. It is alleged that Mr. Medhurst's arrest is connected to his coverage of Palestinian self-determination and Middle Eastern affairs, particularly in relation to two organisations based in the Middle East that are proscribed under the Terrorism Act 2000. It has been reported that Mr. Medhurst's commentary is based in international humanitarian law, unequivocally condemns all forms of terrorism, and does not intentionally or recklessly encourage support for any proscribed organization.

Incidents related to alleged foreign interference

Johanna Ross (Ganyukova)

Ms. Ganyukova is a British freelance journalist who previously contributed to Russian-based news platforms. Her reporting was critical of Western media narratives on Russia and UK foreign policy.

On 18 February 2022, Ms. Ganyukova was approached by plain clothes police officers at the border control of Edinburgh airport, who informed her they were conducting a "spot police check". Ms. Ganyukova was then examined under schedule 3 of the Counter Terrorism and Border Security Act 2019. Ms. Ganyukova was informed that she could be arrested if she did not answer the questions of the examining officer and that she did not have the right to speak to a lawyer until the one-hour period had elapsed.

Ms. Ganyukova was searched and compelled to hand over all electronic devices in her possession with their attendant passwords. Ms. Ganyukova was questioned, *inter alia*, on her financial renumeration for writing articles for Russian-based websites, and whether she was aware that the website was considered to be affiliated with the Russian military intelligence service "GRU".

Ms. Ganyukova's electronic devices, including her mobile phone and her daughter's mobile phone, were returned on 23 February 2022. Ms. Ganyukova was later informed by the Investigatory Powers Commissioner's Office that the data from the devices would be retained "in the interests of national security".

The stress caused by the examination, coupled with the fear of future examination when traveling internationally, led Ms. Ganyukova to cease writing for the foreign news platform.

John Laughland

Dr. Laughland is a British academic and political commentator with a long-standing background in European politics and international relations. He is known for his criticisms of the European Union, and has previously worked for the European Parliament, the Dutch Parliament, and Eurosceptic think-tanks.

On 7 October 2022, he was examined upon arrival at Gatwick Airport under schedule 3 of the Counter-Terrorism and Border Security Act 2019. The interrogation commenced with an officer informing Dr. Laughland that he did not have the right to a lawyer because he was not being "detained" under the Act.

The examining officer questioned Dr. Laughland on his opinion on the war in Ukraine and his professional affiliation with organisations that are allegedly linked to the Russian Federation. Dr. Laughland's passport, wallet, phone, laptop computer, keys, and personal belongings were confiscated by the examining officer. Dr. Laughland's laptop computer was retained by Police Scotland for three weeks.

In April 2023, the UK Home Office's Homeland Security Group issued a letter to Dr. Laughland informing him that "[w]e have reason to believe that [he] may be linked to individuals engaged in interference activity directed by, or otherwise linked to, the Russian state". The letter included a request for Dr. Laughland to submit representations regarding the retention of data from his laptop computer. The reasons for having formed this view may be based on work that Dr. Laughland completed for a think-tank funded by Russian companies between 2008 and 2017, or for other work completed at the European Parliament and the Dutch Parliament from 2018 to 2022.

Kit Klarenberg

Mr. Klarenberg is a British freelance national security journalist and the UK Investigations Desk Chief at an online media organisation. Mr. Klarenberg resides abroad and his reporting is often critical of Western interference in foreign governments and the influence of intelligence agencies on the media.

On 17 May 2023, Mr. Klarenberg was detained and questioned for approximately five hours on arrival at Luton airport under schedule 3 of the Counter-Terrorism and Border Security Act 2019. Mr. Klarenberg was interrogated on his life in Serbia, his contact with the Russian Government, his work for the news organisation, the funding of the news organisation, and whether the news organisation has an agreement of any kind with Russia's Federal Security Bureau to publish information obtained through online hacking.

Mr. Klarenberg was fingerprinted, subjected to oral DNA swabs, and photographed by the examining officer. His belongings were searched and he was compelled to provide the passwords to his digital devices, which included a smartphone, tablet, and two cameras. The memory cards and SIM cards of the electronic devices were copied outside the interrogation room and were retained by the police. The memory card of his tablet has now been retained for a period exceeding a year and five months. The retention of Mr. Klarenberg's data under section 11(2)(b) of the Counter-Terrorism and Border Security Act 2019 has led indicates that Mr. Klarenberg remains under criminal investigation.

While we do not wish to prejudge the accuracy of these allegations, we express our concern regarding the potential misapplication of counter-terrorism laws against journalists and activists who were critical of the policies and practices of certain governments, which may unjustifiably interfere with the rights to freedom of expression and opinion and participation in public life, lead to self-censorship and have a serious chilling effect on the media, civil society and legitimate political and public discourse.

We are particularly concerned by the broad scope of section 12(1A) and schedule 7 of the Terrorism Act 2000 and schedule 3 of the Counter-Terrorism and Border Security Act 2019.

Section 12(1A) of the Terrorism Act 2000

We are concerned at the vagueness and overbreadth of the offence in section 12(1A) of the Terrorism Act 2000, which criminalizes expressing an opinion or belief that is supportive of a proscribed organisation and being reckless as to whether it encouraged support for that organisation. We reiterate the many concerns about this offence identified by the UK Joint Parliamentary Committee on Human Rights in its report on the bill that introduced the offence.[1]

[1] Legislative Scrutiny: Counter-Terrorism and Border Security Bill, 4 July 2018, paras. 9-18.

The term "support" is undefined in the Act and in our view is vague and overbroad and may unjustifiably criminalize legitimate expression. In *R v Choudary and Rahman* [2016] EWCA Crim 1436 at para. 46, the Court of Appeal affirmed (in relation to another section 12 offence also referring to the term "support") that "[i]n its ordinary meaning, 'support' can encompass both practical or tangible assistance, and what has been referred to in submissions as intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported". The Court of Appeal further indicated that it could include "encouragement, emotional help, mental comfort and the act of writing or speaking in favour of something". The Court reasoned that "[the] organisation as a body, and the individual members or adherents of it, will derive encouragement from the fact that they have the support of others, even if it may not in every instance be active or tangible support".

As the UK Joint Parliamentary Committee on Human Rights observed, however, in the context of section 12(1A) the meaning of expressing support for a proscribed organization is ambiguous and could capture speech that is neither necessary nor proportionate to criminalize, including legitimate debates about the de-proscription of an organization and disagreement with a government's decision to proscribe. The Committee warned that the offence "potentially catches a vast spectrum of conduct".

We note that there is no requirement that the expression of support relate to the commission of violent terrorist acts by the organization. As such, the offence may unjustifiably criminalize the expression of opinion or belief that is not rationally, proximately or causally related to actual terrorist violence or harms. The offence further does not require any likelihood that the support will assist the organization in any way. It goes well beyond the accepted restrictions on freedom of expression under international law concerning the prohibition of incitement to violence or hate speech. The suggestion by the Court of Appeal that any support will somehow encourage the organization is nebulous and tenuous, and over-extends liability to capture speech that may have a very remote and speculative relationship to terrorist violence.

We note that some proscribed organizations are de facto authorities performing a diversity of civilian functions, including governance, humanitarian and medical activities, and provision of social services, public utilities and education. Expressing support for any of these ordinary civilian activities by the organization could constitute expressing support for it, no matter how remote such expression is from support for any violent terrorist acts by the group.

We note further that an organization may be prescribed under section 3 of the Terrorism Act 2000, inter alia, when it merely promotes or encourages terrorism, including through unlawful glorification, even if the organization is not itself involved in committing, participating in, or preparing for violent terrorist acts. As such, it is an offence to express support for an organization that promotes/encourages but does not commit terrorism, seriously attenuating any meaningful causal link to the eventual commission of a violent terrorist act. We note further that view of the United Nations Human Rights Committee that the predicate definition of terrorism in section 1 of the Terrorism Act 2000 is itself over-broad and "unduly restrictive of political expression", and has been criticized also by the two Independent Reviewers of

Terrorism Legislation and the UK Supreme Court in *R v. Gul* (2013) (CCPR/C/GBR/CO/7, para. 14).

Further, the section 12(1A) offence does not require the person to intend to encourage others to support the organization. The lower mental element of "recklessness" is sufficient, namely where the person had some subjective foresight that their conduct will result in the proscribed outcome and nonetheless engages in it in circumstances where a reasonable person would not. The UK Joint Parliamentary Committee on Human Rights has warned that a mental element of recklessness when applied to acts of speech alone is dangerous; and that this is aggravated by the lack of clarity as to what speech constitutes an expression of support.

The principle of legality under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what conduct constitutes an offence and the legal consequences of committing an offence. This principle seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, including to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)). We are concerned that section 12(1A) does not meet this standard because of its vagueness and overbreadth.

We are further concerned that the absence of legal certainty may have a chilling effect on the media, public debate, activism, and the activities of civil society, in a context where there is a heightened public interest in discussion of the conflict in the Middle East, including the conduct of the parties and the underlying conditions conducive to violence in the region. We are further concerned that a person could be prosecuted for isolated remarks or sentences that mischaracterize the overall position of the individual, or despite the individual's intentions or continued and express disavowal of terrorist violence, given the subjectivity and contested meanings of certain expressions in relation to sensitive or controversial political conflicts.

In sum, we are concerned that vagueness and overbreadth of section 12(1A) constitutes and unnecessary and disproportionate restriction of freedom of opinion and expression under article 19 of the ICCPR. We note that freedom of expression may only be restricted if the threshold established by article 19(3) of the ICCPR – which refers, *inter alia*, to the protection of "national security" – is satisfied. The Human Rights Committee has stipulated that these restrictions must be "the least intrusive instrument" among those which might achieve the desired result and must be "proportionate to the interest to be protected" (general comment No. 27, para. 14). In this respect we emphasize that the section 12(1A) offence is unnecessary since there is already an offence of "encouragement of terrorism" under section 1 of the Terrorism Act 2006, which is a more calibrated and proportionate offence targeting encouragement of terrorist crimes.

We encourage your Excellency's Government to repeal section 12(1A), or otherwise to amend it to protect freedom of expression, and to develop prosecutorial guidelines for its appropriate use to avoid the unnecessary or disproportionate incrimination of political dissent.

Schedule 7 of the Terrorism Act 2000

We are concerned that police powers at UK border areas and ports under schedule 7 may be unjustifiably used against journalists and activists who are critical of Western foreign policy. We note that the examination of each journalist named in this communication under schedule 7 was premeditated, and that the examination, confiscation of devices, and DNA prints were conducted despite the apparent absence of a credible "terrorist" connection. We are concerned that such powers carry a risk of intimidating, deterring, and disrupting the ability of journalists to report on topics of public importance without self-censorship.

Schedule 7, section 2 of the Act empowers an examining officer to stop, question, and detain a person for the "purpose of determining whether he appears to be a person falling within section 40(1)(b)". Section 40(1)(b) provides that "terrorist" means a person who "is or has been concerned in the commission, preparation or instigation of acts of terrorism". Section 2 applies to a person if he is at a port or in the border area, and the examining officer believes that the person's presence in that area is connected with his entering or leaving Great Britain or Northern Ireland. Section 2(4) provides that an examining officer may exercise his powers to stop, question or detain whether or not he has grounds for suspecting that a person falls within section 40(1)(b).

A person examined under schedule 7 can be held without charge for one-hour under section 6A(2). Although the person examined is not considered to be "detained" under the Act, and does therefore not enjoy the right to silence or legal counsel, section 18 establishes an offence for the wilful failure to comply, obstruct, or frustrate a duty, search, or examination under schedule 7. If the individual is formally detained, fingerprints, photographs, and non-intimate DNA samples can be taken pursuant to schedule 8 of the Terrorism Act 2000.

We are concerned that the distinction between "examination" and "detention" under the Act is artificial given the punitive sanctions for of non-compliance, and that this distinction may be inconsistent with the accepted meaning of "arrest" or "detention" under article 9 of the ICCPR. We are further concerned that the extensive powers authorised under section 2 do not require any degree of suspicion that a person falls within the meaning of "terrorist" at section 40(1)(b). The extreme breadth of such power enables unnecessary, disproportionate, arbitrary or discriminatory interference with an individual's rights, including freedom from arbitrary detention, freedom of movement under article 12(1) of the ICCPR, and the rights to leave and enter one's own country under article 12(2) and (4) of the ICCPR. There is no material on which to form a rational judgement as to whether the use of the powers are necessary or proportionate in the individual case. Even a "hunch" or the "professional intuition" of the officer concerned could be the basis on which the powers will be exercised. The arbitrary potential of the power is compounded by the low threshold of determining whether a person merely "*appears*" to fall within section 40(1)(b). The safeguards around the power, such as restrictions on the location, duration, type of questioning and search, and the supervision of the Independent Reviewer of terrorism legislation, are insufficient to prevent the misuse of the power and the potential harm caused to the rights of the individuals examined.

We are further concerned that the retention of electronic data under section 11A(3)(a) "for so long as is necessary for the purpose of determining whether a person falls within section 40(1)(b)" is disproportionate, particularly if it were used to justify retention indefinitely so as to provide a bank of data for future use in connection with subsequent investigations or the collection or receipt of additional information. We consider that the retention of data for a long period should require an objectively established ground for the suspicion and be strictly necessary and proportionate to that law enforcement objective. In this regard, we refer your Excellency's government to article 17 of the ICCPR which requires that "[n]o one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence, nor to unlawful attacks on [their] honour and reputation". We note that several journalists detained under schedule 7 have had their electronic devices confiscated for a significant period of time and have not been updated on the use, retention or destruction of their data, or advised in relation to their personal data protection rights.

We urge your Excellency's Government to consider the growing number of instances where schedule 7 may have been inappropriately directed towards journalists and activists, and to consider addressing this through amendments to the legislation, guidance for relevant officials, and training of border security officers. We further encourage your Excellency's Government to address the judiciary's concerns regarding the retention of electronic data.

Schedule 3 of the Counter-Terrorism and Border Security Act 2019

Schedule 3 of the *Counter-Terrorism and Border Security Act 2019* largely mirrors schedule 7 of the *Terrorism Act 2000*. The primary difference is that an examining officer may question a person for the purpose of determining whether the person appears to be a person who is, or has been, engaged in "hostile activity" rather than falling within section 40(1)(b) of the *Terrorist Act 2000*. The term "hostile act" is defined at section 1(6) as an act which: "(a) threatens national security; (b) threatens the economic well-being of the United Kingdom in a way relevant to the interests of national security; or (c) is an act of serious crime". We raise similar concerns regarding the vague and over-broad definition of "hostile activity", which includes the sweeping terms "national security" and "economic well-being". The ambiguity within these concepts reposes an extraordinary discretion in the police when exercising the relevant powers, increasing the risk of unnecessary, disproportionate or otherwise arbitrary interferences in the rights to liberty and privacy, and having a chilling effect on freedoms of thought, conscience, opinion and expression, including in relation to journalists and activists.

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 indicate how the application of counter-terrorism laws against the activists and journalists is consistent with international human rights law, and an appropriate application of the law.

3. Please indicate the measures taken to prevent the misapplication of counter-terrorism laws against journalists, activists, and human rights defenders, in order to ensure that they do not interfere with freedom of expression.

4. Please provide an update on the retention of data taken from the journalists, and the existence of criminal investigations against them.

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.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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

Ana Brian Nougrères
Special Rapporteur on the right to privacy

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.

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 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). 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 (principle 9 and guideline 8 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court). 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.

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". Rule 42 of the Nelson 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.

Freedom of opinion and expression

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of 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, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

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 states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output. Additionally, according to the Committee "the penalization of a media outlet, publishers or 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" (para. 43).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction,

which are the 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 for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant (general comment No. 34, para. 35). The Human Rights Committee stated that the restrictions must be "the least intrusive instrument among those which might achieve their protective function" (para. 34).

With respect to invoking counter-terrorism and counter-extremism justifications to restrict the legitimate exercise of freedom of expression, 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 peaceful assembly (general comment No. 34). The Human Rights Committee has stated that "States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression" (general comment No. 34, para. 46).

Freedom of peaceful assembly and of association

Article 21 of the ICCPR states that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline. Article 22 of the ICCPR protects the right to freedom of association, including the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

The Human Rights Committee stated that "the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect" (general comment No. 37, para. 36).

In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that "negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities,

effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights" (A/79/263, para. 11).

Freedom of thought, conscience and religion

We emphasise that article 18 of the ICCPR provides that: "[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and 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." General comment No. 22 of the Human Rights Committee emphasises that article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to *manifest* religion or belief. The article is interpreted to unconditionally protect freedom of thought and conscience, and the freedom to have or adopt a religion or belief of one's choice. The Committee further reiterated that "article 18(3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others." The Committee observed that article 18(3) is to be strictly interpreted and that restrictions are not allowed on unspecified grounds even if circumstances where they would be permitted as restrictions to other rights protected in the ICCPR. 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) that "[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".

Right to privacy

Article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation, and that everyone has the right to protection of the law against such interference or attacks. Further, in its general comment No. 16 in relation to article 17, the Human Rights Committee asserted that surveillance, whether electronic or otherwise, should ordinarily be prohibited.

Freedom of movement

Article 12(1) of the ICCPR provides that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." The permissible limitations which may be imposed on the right are stated at article 12(3) to include those provided by law and necessary to protect national security, public order, public health, or morals or the rights and freedoms of others. However, these limitations must not nullify the principle of liberty of movement and require consistency with the other rights recognized in the Covenant. Moreover, article 12(3) clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Furthermore, the restrictive measures must be appropriate to achieve their protective function; they must be the least intrusive instrument

amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected (general comment No. 27, para. 14).

Right to leave and enter one's own country

Article 12(2) of the ICCPR provides that "[e]veryone shall be free to leave any country, including his own" and article 12(4) states that "[n]o one shall be arbitrarily deprived of the right to enter his own country." In its general comment No. 27, the Human Rights Committee clarified that the right "may not be made dependent on any specific purpose or period of time the individual chooses to stay outside the country" (para. 8). The aforementioned limitations provided by article 12(3) of the ICCPR similarly apply to articles 12(2) and 12(4). In its general comment No. 27, the Human Rights Committee further stated that restrictions should use precise criteria, not confer unfettered discretion on those charged with their execution, abide by principles of necessity and proportionality, and not impair the essence of the right (paras. 13-15).

Human Rights Defenders

The fundamental principles set forth 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 (the UN Declaration on Human Rights Defenders), articles 1 and 2, state that everyone has the right to promote and to 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 also refer to articles 5(a), 6(c), 9 and 12, which state that everyone has the right, individually and in association with others, to meet or assemble peacefully for the purpose of promoting and protecting human rights; to study, discuss, form or hold opinions on the observance of all human rights and fundamental freedoms; to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms. Human Rights Council Resolution 13/13 urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Right to health

Articles 2(2) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrine the right of all persons, including those detained, to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has interpreted the "right to health" in general comment No. 14, as:

> *[A]n inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food [and] nutrition.*

Rule 24(1) on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandella Rules") further provides that "[p]risoners should enjoy the same standards of health care that are available in the community".

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,[2] the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). 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 provides clear, "best practice" guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28).

The principle of legal certainty under article 15(1) of the ICCPR requires that criminal laws are 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. 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 (A/70/371, para. 46(b)).

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirming 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.[3] 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.

States must ensure that measures to combat terrorism and preserve national security do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

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[2] See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.

[3] 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.