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; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL BTN 1/2024
(Please use this reference in your reply)

3 February 2025

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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 49/10, 52/9, 50/17, 53/12, 52/5 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the fate of 19 political prisoners who have been imprisoned for decades in Bhutanese jails following alleged arbitrary arrests and detention, torture and ill-treatment in detention, and unfair trials with disproportionate punishments. Primarily in the 1990s but up until 2010, they were arrested and prosecuted for their alleged participation in protests under terrorism and national security offences. The 19 individuals still imprisoned include Rinzin Wangdi, Ganga Ram Dhakal, Bhakta Bdr Rai, Moni Kumar Pradhan, Prakash Mongar, Dambar Singh Pulami, Kumar Gautam, Hasta Bdr Rai, Suk Man Mongar, Birkha Bdr (Basnet) Chhetri, Govinda Niroula, Nandalal Basnet, Om Nath Anhikari, Khagendra Khanal, Aita Raj Rai, San Man Gurung, Chatur Man Tamang, Chandra Raj Rai and Bhim Bdr Rai**.

We note that Bhutan is not a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It is nonetheless bound by customary international human rights law as reflected in the Universal Declaration of Human Rights (UDHR), the ICCPR and other treaties. We note that in the last cycle of Bhutan's Universal Periodic Review (2019) (see A/HRC/42/8), Bhutan noted numerous recommendations that it consider ratifying all the core human rights instruments to which it is not yet a party. Bhutan also noted two recommendations to issue a standing invitation to special procedures or to "respond constructively" to requests for country visits by special procedures.

According to the information received:

Context

Between 1990 and 2010, 19 individuals, among others, namely Rinzin Wangdi, Ganga Ram Dhakal, Bhakta Bdr Rai, Moni Kumar Pradhan, Prakash Mongar, Dambar Singh Pulami, Kumar Gautam, Hasta Bdr Rai, Suk Man Mongar, Birkha Bdr (Basnet) Chhetri, Govinda Niroula, Nandalal Basnet, Om Nath Anhikari, Khagendra Khanal, Aita Raj Rai, San Man Gurung, Chatur Man Tamang, Chandra Raj Rai, and Bhim Bdr Rai, were detained for offences that allegedly occurred between 1990 and 2008. Most of these inmates, officially considered "political prisoners", were convicted of national security related crimes under the 1992 National Security Act (NSA), which forbids treasonable acts defined as "conspiring, attempting, soliciting, abetting or committing offences against TSA-WA-SUM ('the king, people and country')". In addition, some of those convicted in 2008 were charged with terrorism offences under the Bhutan Penal Code. At least 14 are serving life sentences without the possibility of parole, while the remainder are serving terms of between 32 and 43 years. Five of the prisoners, namely Rinzin Wangdim, Ganga Ram Dhakal, Bhakta Bdr Rai, Moni Kumar Pradhan, and Prakash Mongari,were arrested in the 1990s, Dambar Singh Pulami was arrested in 2001, 12 were arrested in 2008, namely Kumar Gautam, Hasta Bdr Rai, Suk Man Mongar, Birkha Bdr (Basnet) Chhetri, Govinda Niroula, Nandalal Basnet, Om Nath Adhikari, Khagendra Khanal, Aita Raj Rai, San Man Gurung, Chatur Man Tamang and Chandra Raj Rai, and Bhim Bdr Rai was arrested in 2010.

The vast majority of this group – 17 political prisoners – belong to the Lhotshampa ("Southerner") community, a group descended from Nepali settlers to Bhutan over many generations and who predominantly live in the south of Bhutan, speak Nepali language, and practice Hinduism. From the late 1980s, the Lhotshampas were allegedly discriminated against by the Bhutanese Government in relation to citizenship rights; minority cultural, language and religious rights; and rights to freedom of expression, assembly and association, and political participation, particularly in connection with pro-democracy demonstrations and human rights activism. In 1990, the Bhutanese authorities reportedly committed acts of mass arbitrary detentions, excessive use of force, torture and sexual violence, home demolitions and confiscations, and forced evictions and expulsions. As a result, about 100,000 Lhotshampas fled to Nepal as refugees in the early 1990s and have not been permitted to return home.

In relation to these alleged violations, there has been no meaningful process of accountability and reparation and impunity has prevailed. Lhotshampas and other refugees have not been permitted to return to live in Bhutan, or to resume or acquire their Bhutanese citizenship that is their right under international law. There has been no restitution of or compensation for Lhotshampa and other property seized or destroyed, and often redistributed to other people, during and after that period. This includes housing, agricultural land, businesses and other forms of livelihood. There have been no independent and impartial investigations or criminal prosecutions for the many alleged cases of excessive use of force, torture and ill-treatment in detention, and arbitrary detention.

Bhutan has undergone significant constitutional, legal and political reforms since the political tensions, violence and violations of the late 1980s and early 1990s, particularly as a result of extensive reforms in 2008. There reportedly remains significant discrimination against the Lhotshampa community, including in citizenship rights, and thus also in voting rights; employment and religious freedom; and in obtaining police security clearance certificates, causing flow on barriers to establishing businesses, accessing higher education, registering property, obtaining passports and government employment. In addition, Lhotshampas face restrictions on establishing political parties or obtaining permission for public gatherings; excessive speech-related offences chill freedom of expression and generate self-censorship; and non-governmental organizations are not permitted to work on Lhotshampa-related issues.

2008 convictions

Among those Lhotshampa imprisoned for life are Kumar Gautum, Hasta Bdr Rai, Suk Man Mongar, Birkha Bdr Chhetri, Govinda Niroula, Nandalal Basnet, Om Nath Adhikari, Khagendra Khanal, Aita Raj Rai, San Man Gurung, Chatur Man Tamang, Chandra Raj Rai, who became refugees when they were small children, fleeing Bhutan with their families due to the above-mentioned discriminatory laws and practices. In 2008, they returned to Bhutan as young men involved with the Bhutan Communist Party, to campaign for the right of the refugees to return. Shortly after their return, most were captured, some with small arms and others with political pamphlets. They were arrested by the Bhutanese authorities, who allege that they intended to participate in an armed campaign for refugee repatriation and minority rights.

The defendants were charged with "treason" under the NSA and sentenced to life in prison, with no chance of parole. Under the NSA, "treasonable acts" against the TSA-WA-SUM and acts "with intent to give aid and comfort to the enemy in order to betray the TSA-WA-SUM" are both subject to "imprisonment for life". They were also convicted of parallel offences under the Bhutan Penal Code, including treason (article 327) and terrorism (article 329) – both classified as a first-degree felony punishable by 15 years to life in prison (article 8). Under article 329 of the Bhutan Penal Code, a defendant shall be found guilty of the offence of terrorism if the defendant:

(a) With intent to subvert the state, uses or assists, recruits, or trains another person to use a bomb, dynamite, firearm, or other lethal weapon against Bhutan.

(b) Engages in a violent act or insurrection against Bhutan that is designed primarily to generate fear in a community or a substantial section of the society.

The defendants denied the charge of terrorism; even the prosecution at their trials did not allege that they had committed any acts of violence. The defendants were also charged with possession of illegal weapons (articles 478 to 483).

Also related to the 2008 cases is another Lhotshampa man, Bhim Bahadur Rai, who was not a returned refugee, but who identified as a member of the Nepali minority group, and who allegedly supported Lhotshampa refugees who returned from abroad. He was arrested in 2010 and received four life terms.

1990s convictions

Of the 17 Lhotshampa political prisoners, Ganga Ram Dhakal, Bakta Bdr Rai, Moni Kumar Pradhan, Prakash Mongar were convicted and imprisoned in the 1990s for protesting mistreatment of their community. One other political prisoner, Dambar Singh Pulami, was arrested in 2001, when he returned to Bhutan, after having sought refuge in Nepal, to "see his property". Upon his arrival he was arrested and sentenced to 43 years in prison for "extortion, kidnapping, murder and subversive activities". He suffers from severe ill-health and was hospitalized in May 2022.

The remaining prisoner belongs to the Sharchop ("Easterner") community, the largest ethnic and indigenous group in Bhutan. Rinzin Wangdi is imprisoned for alleged connections to a banned political party, the Druk National Congress, which campaigned for parliamentary democracy and human rights.

Reportedly, many of those imprisoned since in the 1990s were denied due process and fair trials, including access to lawyers, both in preparation for and during their trials, resulting in a significant lack of understanding of the nature of the charges brought against them and the implications of their sentences. Many prisoners claim that they missed the 10-day appeal period as they did not know or understand their right to appeal, while others argue that they were charged with crimes that were unrelated to terrorism or unsubstantiated with evidence and/or documentation. It is further reported that none of the court documents were in Nepali despite most prisoners only being able to speak and understand Nepali.

Prison conditions and allegations of torture and other cruel, inhuman or degrading treatment or punishment

All of the prisoners are held at the Chemgang Central Prison near Thimpu, in a block reserved for "political prisoners". Political prisoners are reportedly given inadequate food, water, heating, bedding and warm clothing in a generally cold climate, and hygiene is poor. In addition, detainees suffer shortages of medicines and access to doctors. Those with physical illnesses – some as a result of alleged torture – do not receive necessary medical treatment, which may have contributed to the death of two detainees. Detainees are prevented from receiving visitors or making or receiving telephone calls to or from Nepal or other countries where their relatives are resettled, or sending letters, while their families do not know whether the letters they send are delivered. This is despite chapter 9, article 1 of the Prison Act of Bhutan 1982 which guarantees these rights of communication.

It is also alleged that the detainees experienced torture and ill-treatment, either to coerce them to confess, to coerce a prisoner to agree with the version of events

submitted by the prosecution, or as punishment. Such torture has included, among other things, detainees being tied and heavily beaten with cane sticks or wooden batons, sometimes for weeks or even months at a time, ice water immersion, sleep deprivation, burns, physical beatings, handcuffs and psychological torment. *Chepuwa* was a commonly used torture method for those arrested during the 1990s, which included, among other things, crushing of the thighs between pieces of wood, beating prisoners before putting them in a sack and taking them away in a vehicle, stress positions involving barbed wire and creating the fear of extrajudicial execution amongst the detainees. Many prisoners have suffered severe and persistent health problems, particularly as a result of their torture.

Power to pardon

The King of Bhutan may choose to grant *kidu* (relief) as well as "amnesty, pardon and reduction of sentences." The Sentencing Guideline of the Judiciary of Bhutan states that an offender "sentenced to life in prison shall remain in prison until he or she dies or until pardoned or otherwise commuted to a fixed period, or receives Royal pardon, amnesty or clemency."[1] In 1999, the former King, His Majesty Jigme Singye Wangchuck, granted amnesty to 40 political prisoners, including some serving life sentences. In 2022, the present King of Bhutan granted amnesty to a political prisoner serving a life term.

After visiting many of the political prisoners that had been imprisoned under the NSA, the Working Group on Arbitrary Detention concluded that "those detainees serving life sentences have no prospect of release, with the exception of amnesty" (A/HRC/42/39/Add.1, para. 59). The current King has not yet exercised the power to pardon in relation to the prisoners who the subject of this communication.

Without prejudging the accuracy of the information received, we express our serious concern over the continued imprisonment of the 19 political prisoners. Should the above allegations prove to be true, under customary international human rights law they may amount to violations of the individuals' rights to liberty; a fair trial; freedom from torture and cruel, inhuman or degrading treatment or punishment; and the principle of legality. We further express our concern about the current detention conditions, which fall well short of international legal standards. We also emphasize the need to address the structural conditions underlying the political tensions in the late 1980s and early 1990s, and to ensure accountability and remedies for any alleged violations of international human rights law during that period.

Fair trial and judicial safeguards

We express our concern that the prisoners' fair trial rights were violated, in particular that most of the defendants did not have access to a lawyer, did not understand the offences they were accused of, and did not have the opportunity to effectively challenge the charges and the evidence brought against them. In 2019, the UN Working

[1] The Royal Court of Justice – Judiciary, January 2022, "Sentencing Guideline of the Judiciary of Bhutan, 2022", available at: https://www.judiciary.gov.bt/storage/files/1/Sentencing%20Guideline%20for%20the%20Judiciary%20of%20Bhutan%202022.pdf

Group on Arbitrary Detention interviewed several people then imprisoned under national security legislation as a result of trials in the 1990s. The Working Group found that "at the time, there were no legal practitioners in the country." They noted that "individuals accused of terrorism offences should have legal representation. It appears that such representation was not always provided, which is of particular concern in the case of those sentenced to long-term or life imprisonment" (A/HCR/42/39/Add.1, para. 59).

Because the prisoners were denied access to legal representation, they were compelled to represent themselves, with many appearing to have little understanding of court procedures, their right to appeal their sentences (and the time limitations therein), or the full implications of their sentences. Some reported having been convicted for actions that appeared to the Working Group on Arbitrary Detention to be unrelated to terrorism. Some former prisoners were sometimes unable to describe the offence for which they had served long sentences, in recognizable or specific legal terms. Similarly, families of serving prisoners said that they have not been provided with any official documentation (A/HCR/42/39/Add.1, para. 59).

We are further concerned that the prohibition on double jeopardy/punishment may have been infringed as a result of some of the individuals in the 2008 trials being convicted of "treason" offences under both the NSA and article 327 of the Bhutan Penal Code. The principle of double jeopardy prevents prosecuting a person more than once for the same offence of which he or she has been previously finally convicted or acquitted.

Allegations of torture and other cruel, inhuman or degrading treatment or punishment

We express our deep concern at reports of detainees being severely tortured, both to extract confessions and to punish them. These reports allege that authorities routinely used torture and other ill-treatment to compel detainees to confess to actions they denied, to make their statements at trial correspond to the prosecution's allegations or the testimony of other defendants or witnesses.

Allegations of forced or coerced confessions, in addition to the use of torture as punishment, would violate article 5 of the UDHR, which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. They may also violate the principle of customary international law that no information or confession shall be extracted by torture and such information acquired via torture or other ill-treatment shall be admitted into any legal proceedings, which further violates the right to a fair trial. We remind your Excellency's Government that norms of international customary law are accepted and recognized by the international community of States as a whole, to reflect and protect fundamental values of the international community. They cannot be derogated from and must be universally applied.

Vagueness of terrorism and national security offences

We express our concern about the nature of the charges brought against the 19 political prisoners mentioned above, under the Bhutan Penal Code and the NSA. In

particular, we are concerned at the vague scope of the terrorist-related offences under article 329 of the Bhutan Penal Code. General terms such as "intent to subvert the state" or "generate fear in a community" are vague, uncertain and overly broad in their practical application. We are similarly concerned about the vagueness and overbreadth of the definition of "treasonable acts" regarding what would constitute "betray[al]", "harm [to] the national interest", or "comfort to the enemy".

We remind your Excellency's Government that any counter-terrorism legislation should be limited to criminalising conduct that is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments, including UN Security Council resolution 1566 and the model definition set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and should be strictly guided by the principles of legality, necessity, proportionality and non-discrimination. We underscore that the definition of terrorism and related offences must be accessible, formulated with precision, non-discriminatory and non-retroactive (A/HRC/16/51).

We recall that the principle of legal certainty expressed in article 11 of the UDHR requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognises that ill-defined and/or overly broad laws are inherently susceptible to arbitrary application and abuse, including discrimination, and cannot serve as a legal basis for necessary or proportionate restrictions on rights or freedoms (A/HRC/43/46, para. 15). As such, the broad and vague definitions, combined with the severity of the punishments, have a severe chilling effect on the enjoyment of human rights, including freedom of expression, freedom of peaceful assembly and association, and the right to participate in public affairs, and consequently on democratic life and civic space in the country.

We express further concern about the severity of the penalties provided for by the law, namely 15 years to life imprisonment for terrorism and life imprisonment for certain treasonous acts. Given our concerns expressed above regarding the vague and overly broad definitions of the offences, and the limited evidence of involvement in violence by the defendants, we are concerned that these penalties as applied in their cases may be unlawfully disproportionate to the acts committed and therefore incompatible with international law.

Concerns related to the cruel, inhuman or degrading conditions of detention

We are concerned that the above-mentioned conditions for prisoners held at the Chemgang Central Prison appear to violate the requirement of humane treatment of prisoners under international law, including the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which deal with the standards of conditions and treatment of persons deprived of their liberty and which establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, in human or degrading treatment or punishment (see A/HRC/55/52). Such conditions would further violate the human rights to adequate food, water, sanitation, clothing and health care under international law. The denial or restriction of communication with family and friends would further violate the human right to family life and the Nelson Mandela Rules, which guarantee prisoners the right to communicate

with their family and friends at regular intervals, both by correspondence and receiving visits.

Power to pardon

In light of the apparent violations outlined in this communication, the guarantees under the Bhutanese Constitution against key human rights violations, including torture and unfair trial, and the Buddhist principle of compassion underpinning Bhutanese law, we implore the King to exercise His Majesty's power to pardon and release from prison the remaining political prisoners, so as to demonstrate Bhutan's commitment to upholding human rights and its international legal obligations.

Rights of the Lhotshampa minority and refugees

We are concerned that the above-mentioned continuing restrictions on the Lhotshampa community appear to violate Bhutan's international obligations concerning non-discrimination; the right to nationality and freedom from arbitrary deprivation of nationality; the right to vote and to participate in political life; the right to education; freedom of religion; the right to leave and return to one's own country; the right to work; freedom from arbitrary interference in the home; freedoms of expression, association and assembly; the right to cultural life and minority rights.

We are further concerned that there has been no meaningful process of accountability or transitional justice for the alleged systematic violations of human rights, including killings, torture, arbitrary detention and forced displacement, allegedly committed during the late 1980s and early 1990s, and that impunity has prevailed. This is contrary to the right to an effective remedy and reparation under customary international law, reflected in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2006.

In this regard, we further concerned that Bhutan has not permitted Bhutanese refugees to return home, to resume or (re-)acquire their Bhutanese citizenship, or to receive restitution or compensation for their property that was seized, destroyed or redistributed. This additionally violates the right of every person to return to their own country and not to be arbitrarily deprived of their nationality. As such, the conditions that precipitated the political unrest in the late 1980s and 1990s remain un-redressed.

There appears to have been no independent and impartial investigations or criminal prosecutions for the many alleged and documented cases of excessive use of force, torture and ill-treatment in detention, and arbitrary detention. Under international human rights law, all States are required to provide effective remedies for violations of human rights, including accountability and reparation.

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 whether the 19 prisoners or any others will be pardoned by the King of Bhutan.

3. Please provide information on the detention conditions of the 19 detainees, including details about family visits and communication with lawyers, and the state of their physical and psychological well-being.

4. Please provide detailed information on the legal and factual bases for the arrest, prosecution, conviction and sentencing of the above-mentioned prisoners, including whether international fair trial standards were respected (including access to lawyers, adequate time and facilities to prepare their defence, disclosure of the evidence, and a fair opportunity to contest the allegations) and whether sentences were proportionate.

5. Please indicate whether and how the terrorism and treason offences under the NSA and the Bhutan Penal Code will be amended to comply with the principle of legality and to prevent unnecessary or disproportionate interferences in the human rights to freedom of opinion and expression, assembly, association, and political participation.

6. Please explain how the treatment of each 19 detainee complies with the prohibition against torture and other ill-treatment, the obligation to exclude forced confessions from legal proceedings, and the duty to independently and impartially investigate alleged violations.

7. Please indicate what administrative, legislative and judicial measures have been, or will be, taken to ensure that the alleged violations detailed in this communication (current and historical) are investigated, will not reoccur, and that victims of any violations receive reparation in accordance with international law.

8. Please indicate what measures have been taken to ensure that human rights defenders and political activists in Bhutan are able to carry out their peaceful and legitimate work in a safe and enabling environment, without the risk of being prosecuted for national security and terrorism-related charges.

9. Please indicate what measures will be taken to eliminate discrimination against the Lhotshampa community, including in relation to citizenship and the public and private sectors; to enable and safeguard their rights to freedom of opinion and expression, freedom of assembly and association, political participation, and minority cultural and religious rights; and to permit NGOs to freely work on Lhotshampa-related issues.

10. Please explain what measures will be taken to permit Lhotshampa refugees to return to Bhutan, to resume or acquire Bhutanese citizenship, and to receive reparation for violations of human rights law, including restitution of, or reparation (including compensation) for, property losses, and investigations and prosecutions for alleged perpetrators of excessive use of force, torture or ill-treatment, arbitrary detention, and forced displacement.

11. Please indicate what steps are being taken by your Excellency's Government to ratify the core human rights instruments to which it is not yet a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. 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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Nicolas Levrat
Special Rapporteur on minority issues

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant norms and standards under international law and customary international law, as reflected in the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966.

Arbitrary arrest and detention

Articles 3 and 9 of the Universal Declaration on Human Rights provide that everyone has the right to life, liberty and the security of person and no one shall be subjected to arbitrary arrest, detention or exile. We remind your Excellency's Government that the prohibition of arbitrary detention is part and parcel of customary law that bears an absolute character and is in fact a peremptory norm (*jus cogens*) of international law and therefore binding upon all States, irrespective of their treaty obligations (A/HRC/30/37, para. 11; A/HRC/22/44, paras. 37-75).

Article 9 of the ICCPR prohibits arbitrary detention. Specifically, it establishes that no one shall be deprived of his or her liberty (unless it is in accordance with appropriate laws), and that anyone who is arrested shall be brought promptly before a judge 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 accordance with the jurisprudence of the Working Group on Arbitrary Detention and general comment No. 35 (para. 17), the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights. We further recall that the Working Group on Arbitrary Detention has found that the detention of individuals owing to their political opinions is discriminatory and therefore arbitrary.

Right to a fair trial and due process

All individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. These rights are recognized not only in human rights treaties but also within international humanitarian law, international criminal law, counterterrorism conventions and customary international law (see A/63/223), and include the rights of the accused to the presumption of innocence and to defend oneself, the right to equality before the courts and tribunals and the right to a fair trial in line with articles 10 and 11 of the UDHR and article 14 of the ICCPR.

We recall that the right to legal assistance at all times is inherent to the right to liberty and security of the person and to the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, enshrined in articles 3, 9, 10 and 11(1) of the UDHR. International standards also provide that accused persons must have adequate time and facilities for the preparation of their

defence and to communicate with counsel of their own choosing. This entails access to documents and other evidence, which includes all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Counsel should be able to meet their clients promptly, in private, and in conditions that fully respect the confidentiality of their communications. The Human Rights Committee has explained that the "availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way".

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).

Freedom from torture or cruel, inhuman or degrading treatment

Torture or cruel, inhuman or degrading treatment or punishment, is prohibited under article 5 of the UDHR, article 7 of the ICCPR and under the Convention against Torture. It is universally and unequivocally accepted as an absolute, non-derogable prohibition, meaning no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for the use of torture or impunity for it. States are required to take measures to criminalize torture and cruel, inhuman or degrading treatment or punishment; exercise jurisdiction over said offences; receive complaints and examine them promptly and impartially; and investigate allegations promptly and impartially (see also A/77/502 and A/HRC/52/30). The use of a confession extracted through ill-treatment contravenes article 15 of the Convention against Torture and principles 1, 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of

Detention or Imprisonment. Any statement which has been obtained via such methods, shall be excluded from any proceedings except against a person accused of torture as evidence that the statement was made. Victims are to be protected from reprisals or intimidation during said investigations and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.

Furthermore, as noted by the Human Rights Committee, giving prompt and regular access to family members, and to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security (general comment No. 35, para. 58).

Humane treatment of prisoners

Article 10(1) of the ICCPR provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". The Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. These rules also stipulate that prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9). States also have a duty to protect the health of prisoners and detainees in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and renamed the "Mandela Rules"), in particular rule 24 that establishes that the provision of health care for prisoners is a State responsibility and rule 27(1), which provides that all prisons shall ensure prompt access to medical facilities and treatment.

Principle of legal certainty

The principle of legal certainty expressed in article 11 of the UDHR and article 15 of the ICCPR requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. We reiterate that vaguely and broadly worded provisions undermine the principle of legality.

There is no internationally agreed definition of terrorism, and States may thus resort to establishing their own definitions. We stress, however, that States should ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act or terrorist organisation, or facilitating or funding terrorism, unless it can be shown that the person intended to participate in terrorism as defined under national law.

Freedom of opinion and expression

Article 19 of the UDHR and of 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 includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend. Any restriction of the right to freedom of expression must be "provided by law" and meet the criteria established by international human rights law. Limitations must conform to the strict tests of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to those purposes. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

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" (CCPR/C/GC/34, para. 11). The Committee further asserts that States Parties to the ICCPR "shall put in place effective measures to protect against attacks aimed at silencing those who exercise their right to freedom of expression" (para. 23). Resolution 12/16 of the Human Rights Council, which called on States to refrain from imposing restrictions that are not consistent with article 19(3) of the ICCPR, including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (A/HRC/RES/12/26).

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, including to suppress peaceful minority groups and their members (general comment No. 34).

Freedom of peaceful assembly

We further wish to draw the attention of your Excellency's Government to article 20 of the UDHR, which states that "[e]veryone has the right to freedom of peaceful assembly and association". In accordance with article 29 of the UDHR, limitations to the rights therein may only be imposed "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Article 21 of the ICCPR similarly states that '[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those

imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others'.

Freedom of association

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

Right to participate in public affairs

Article 25(a) of the ICCPR provides that: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions… [t]o take part in the conduct of public affairs". Article 25(a) of the UDHR similarly provides for the right to take part in the government of one's country.

Freedom of religion or belief

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 […] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". Article 18 of the UDHR similarly protects freedom of thought, conscience and religion. The Human Rights Committee emphasizes in article 18 of ICCPR "distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice" (general comment No. 22, para. 3). 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".

Minority cultural rights

Article 27 of the ICCPR provides that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Additionally, article 2 of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which provides that persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination." They also "have the right to participate effectively in cultural, religious, social, economic and public life" and they should also participate "in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation." We recall that States should "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" and "take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law" (articles 1 and 3).

Remedies for human rights violations

Finally, we remind your Excellency's Government that States must provide victims of human rights violations with effective remedies, pursuant to article 2(3) of the ICCPR and article 8 of the UDHR. Similarly, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed, equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.