

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief

Ref.: AL IND 8/2025
(Please use this reference in your reply)

5 September 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; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on minority issues; Special Rapporteur on the right to privacy and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 58/14, 51/8, 53/4, 52/9, 52/10, 52/4, 59/12, 52/5, 55/3 and 58/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning India's response to the Pahalgam attack that occurred in the region of Jammu and Kashmir on 22 April 2025, resulting in the killing of 26 individuals. We strongly condemn the attack, express our deepest sympathy with victims and their families and acknowledge the efforts made to assist them. We also recognize the security and investigative challenges that your Excellency's Government faces in ensuring that the persons responsible are held accountable and in preventing the reoccurrence of attacks.

We have received information regarding the arrest and detention of around 2,800 individuals in Jammu and Kashmir and their ill-treatment in detention; the demolition of homes in acts of collective punishment; the surveillance of Kashmiri students; the increase in hate speech against and harassment of the Muslim community as a whole; and the deportation without due process of around 1,900 Muslims since the attack.

We recall concerns raised by Special Procedures mandate-holders regarding the counter-terrorism legislative and regulatory framework applicable to Jammu and Kashmir since the abrogation, in August 2019, of its special autonomous status pursuant to article 370 of the Indian Constitution ([IND 6/2023](#)). We have also addressed broader concerns regarding India's counter-terrorism framework, namely the Unlawful Activities (Prevention) Act (UAPA) and Public Safety Act (PSA) ([IND 7/2020](#) and

[IND 6/2023](#)). We also call attention to the multiple communications issued by Special Procedures mandate-holders on individual allegations of human rights violations, including arbitrary detention, extrajudicial killings, enforced disappearance, torture and ill-treatment, forced evictions and home demolitions, and intimidation of and reprisals against human rights defenders, journalists, lawyers, political dissidents, and Muslims and other minorities in Jammu and Kashmir, all on the basis of counter-terrorism or national security more broadly ([IND 4/2020](#); [IND 6/2020](#); [IND 8/2020](#); [IND 11/2020](#); [IND 4/2021](#); [IND 9/2021](#); [IND 11/2021](#); [IND 15/2021](#); [IND 19/2021](#); [IND 21/2021](#); [IND 5/2022](#) and [IND 6/2023](#)). We regret having only received a [reply](#) to IND 6/2020 and encourage your Excellency's Government to reply to the other communications.

According to the information received:

Arrests and detentions

On 22 April 2025, gunmen targeted a group of tourists in Pahalgam in the region of Jammu and Kashmir, resulting in the death of 26 individuals. In the aftermath of the Pahalgam attack, Indian authorities launched extensive security operations across the Kashmir Valley.

Around 2,800 individuals have reportedly been arrested in Kashmir since 22 April 2025 on suspicions of sympathising with or being “overground workers” of militant groups and have been subjected to prolonged detention. Journalists and human rights defenders were among those arrested, and many arrests occurred during night raids, without individuals being presented with warrants or explained the reasons for their arrest.

It is reported that many detainees were held for days without charges, were interrogated and subjected to acts of torture and other ill-treatment, including beatings. Detainees were held incommunicado, denied access to a lawyer or their family, and some were moved to detention places outside of Jammu and Kashmir, further impeding their ability to access legal representation and benefit from family visits.

Between 75 and 90 individuals have reportedly been charged under the PSA and 12 under the UAPA, with charges including involvement in subversive and criminal activities being laid and individuals being labelled “terrorist associates”. It is currently unknown how many individuals remain detained.

Use of force and extrajudicial, summary, or arbitrary executions

The State Investigation Agency is also reported to have conducted raids in multiple locations in Kashmir on the basis of the UAPA, targeting suspected members of militant sleeper cells, including youths aged 18-22 years old. Reports indicate at least 54 cases of extrajudicial, summary or arbitrary executions, among them deaths following arrests and deaths in custody including due to torture. Lynchings have also been reported.

On 28 July 2025, Indian authorities reportedly killed three armed men on the outskirts of Srinagar, whom they said were the key suspects of the Pahalgam attack.

In addition, a group of nomadic tribal men in Kashmir were allegedly beaten by an Indian army official over accusations of aiding militants related to the Pahalgam attack. Residents in the area were reportedly ordered to vacate their homes within two days.

House demolitions and forced evictions

Between 24 and 27 April 2025, Indian authorities demolished at least nine houses in Kashmir, including ancestral homes, which belonged to families of individuals perceived as supporting the militants allegedly responsible for the attack. Prior to the demolitions, villagers were ordered out of their homes but were given no further information. When the individuals returned to their homes, they found them demolished, resulting in their effective forced eviction and displacement. These families are reported to come mostly from lower socio-economic backgrounds, with neighbouring homes and structures also suffering damage. Reportedly, the authorities released a list of 14 local militants on 24 April, only 8 of whom had any connection with the homes that were demolished. The demolitions have been widely perceived as an act of collective punishment.

In addition, since the Pahalgam attack, a surge in evictions of Bengali Muslims has been reported elsewhere in India, reportedly due to the stigmatization of Muslims as a result of the Pahalgam attack. In Gujarat, over 10,000 structures, including homes, businesses and mosques, belonging predominantly to Bengali-speaking Muslims were demolished starting at the end of April, days after the Pahalgam attack. In July 2025, the authorities demolished over 3,400 Bengali Muslim homes in Assam state, leaving thousands of Muslims homeless. Muslims nationwide have been branded as “illegal infiltrators” from Bangladesh.

Restrictions on freedom of expression and journalistic activities

Between 22 and 27 May 2025, the Jammu and Kashmir Government also ordered the temporary suspension of mobile internet services, directing telecom and internet service providers to suspend mobile data services in Baderwah, Doda district. The authorities justified such actions citing the likely misuse of mobile internet services by “anti-national elements” to disrupt public order. Additionally, the Indian Government issued executive orders to block around 8,000 social media accounts, including those of Indian independent news organisations and Indian-Kashmiri journalists, with no legal justification. Some streaming platforms were requested to remove all content of Pakistani-origin on national security grounds, and journalists were summoned for questioning regarding posts on social media and threatened with charges under the PSA.

It is also reported that an increasing number of newspapers in Kashmir are being deprived of Government advertisements, which constitute a financial lifeline for

local journalism and media outlets. As a consequence, publications have struggled to remain operational and employees have gone unpaid for long periods of time.

Increased surveillance and harassment of Muslims

It is further reported that Kashmiri students have been subjected to increased surveillance and harassment from Indian authorities, including outside of Jammu and Kashmir. Following the attack, Delhi University issued a circular based on directives of the Ministry of Home Affairs, requesting personal details from students from Jammu and Kashmir, including the students' residential addresses, contact information such as numbers and emails, and course information. No similar directive was issued for students from other regions. With rising instances of harassment against Kashmiri students across India, such circular has added fear and a sense of alienation among them. It is further reported that university libraries in Jammu and Kashmir were requested to form committees to examine all contents with the goal of removing any material deemed "anti-state".

Between 22 April and 2 May 2025, around 64 events targeting Kashmiris and Muslims more generally and including campaigns of hate speech, intimidation and dehumanization were recorded. These campaigns called for violence and social and economic exclusion of the Muslim community, including through calls for the expulsion of Muslims from some areas and for boycotts of Muslim workers and businesses. It is reported that several Kashmiri shopkeepers were harassed and forced to close their businesses, and that Muslims throughout India were accused of supporting Pakistan. Anti-Muslim sentiment was allegedly further fuelled by hate speech including by Hindu group leaders and parliamentarians from the Bharatiya Janata Party (BJP).

Deportations without due process

Finally, it has been reported that following the Pahalgam attack, Indian authorities intensified deportation campaigns targeting Muslims, including individuals with valid documentation or citizenship, and Rohingya refugees, expelling nearly 1,900 people to Bangladesh, many outside any legal process.

In May 2025, the Ministry of Home Affairs issued a directive giving 30 days to all States and Union Territories to verify the credentials of persons claiming to be Indian citizens but suspected of illegally migrating from Bangladesh and Myanmar. Following this, Indian authorities conducted mass raids, forcibly returned Rohingya refugees and expelled Indian Muslims to Bangladesh or Myanmar. Reports of arrests and expulsions have included instances of torture or ill-treatment, threats of death, pressure to convert to Hinduism to avoid removal, and forced confessions. Expulsions also reportedly targeted Muslim individuals with pending citizenship claims or ongoing immigration proceedings.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at what appears to be the criminalization, repression and collective

punishment of Kashmiri individuals inside and outside of Jammu and Kashmir following the Pahalgam attack on 22 April 2025, particularly through arbitrary arrests and detention, unlawful and excessive use of force, torture and cruel, inhuman or degrading treatment or punishment, home demolitions and forced evictions, and restrictions on the media and communications. We are also concerned by the growing discriminatory treatment of Kashmiris and Muslims more generally, including through harassment of students, unjustified surveillance, arbitrary expulsions, *refoulement*, and the dissemination of hate speech and incitement to violence.

If proven true, the above allegations would violate the prohibition on discrimination and the right to equality before the law (International Covenant on Civil and Political Rights (ICCPR), ratified by India on 10 April 1979, articles 2 and 26), the right to life (ICCPR, article 6), the prohibition on torture and cruel, inhuman or degrading treatment or punishment (ICCPR, article 7), the prohibition on arbitrary detention (ICCPR, article 9), the protection against arbitrary or unlawful interference with the home and privacy and against unlawful attacks on one's honour and reputation (ICCPR, article 17), the right to freedom of thought, conscience and religion or belief (ICCPR, article 18), the right to freedom of expression and opinion (ICCPR, article 19), as well as the right to an adequate standard of living, which includes the right to housing (International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by India on 10 April 1979, article 11)) and the right to education (ICESCR, article 13).

We underscore that an effective counter-terrorism strategy requires sustained effort to address the conditions conducive to terrorism, in line with pillar I of the United Nations Global Counter-terrorism Strategy. These are stated to include prolonged unresolved conflicts, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance. We recall that effective measures to counter terrorism and violent extremism conducive to terrorism and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing.¹

Arrests and detention

We are gravely alarmed at the reported mass arrests and detention of around 2,800 individuals following the Pahalgam attack, including on the basis of the PSA and the UAPA, which appear to include many arbitrary deprivations of liberty not substantiated by reasonable suspicion of individual involvement in criminal terrorist activity. We are particularly concerned over the reported arrests of journalists and human rights defenders. We call the attention of your Excellency's Government to IND 6/2023, in which several Special Procedures mandate holders raised concerns regarding the conformity with international law of the preventive detention frameworks under the PSA and the UAPA. Notably, mandate holders expressed concern that the provisions allowing for preventive detention without charge or trial – up to two years under the PSA and up to 180 days under the UAPA – pose serious threats to the rights to liberty and security, to due process and to a fair trial. Further concerns were raised regarding overbroad and vague definitions of terrorism and terrorism-related offences in both Acts, and the resulting risk for abuse of such laws by State officials. Noting

¹ See e.g., UN Security Council Resolution 2617, S/RES/2617 (2021).

similar concerns raised by the Human Rights Committee at the fourth periodic review of India in 2024 (CCPR/C/IND/CO/4, paras. 27-28), we express deep regret that no measures appear to have been taken by your Excellency's Government to bring its counter-terrorism legislative and regulatory framework in line with international standards.

House demolitions and forced evictions

We are further concerned at the allegations of house demolitions and forced evictions with no judicial order, due process or prior notice. The demolition of at least nine homes in Jammu and Kashmir between 24 and 27 April 2025 appears to have been ordered as an act of collective punishment against families of individuals perceived to support militants allegedly responsible for the attack.

We are alarmed at the reported anti-Muslim hate speech since the Pahalgam attack which appears to have led to a dramatic surge in house demolitions targeted against Muslim individuals. We reiterate the concerns raised by Special Procedures mandate holders regarding the illegality of arbitrary and punitive demolitions, and their discriminatory nature.²

We draw the attention of your Excellency's Government to the 2024 ruling³ of the Supreme Court of India, in which it concluded that no demolition should be carried out without a prior show of cause and notice served upon the owner or occupier, and laid out specific guidelines to preserve against the demolitions of homes by State authorities. In particular, the Court recognized that the demolitions of homes of individuals accused or convicted of crimes by State authorities raise concern in regard to the presumption of innocence (para. 71), due process (para. 74), and human dignity (para. 86). The Court also stated that "if demolition of a house is permitted wherein number of persons of a family or a few families reside only on the ground that one person residing in such a house is either an accused or convicted in the crime, it will amount to inflicting a collective punishment on the entire family or the families residing in such structure" (para. 88). It noted that "[p]unishing such persons who have no connection with the crime by demolishing the house where they live in or properties owned by them is nothing but an anarchy and would amount to a violation of the right to life guaranteed under the Constitution" (para. 75). Despite continued international concerns and a clear ruling of the Supreme Court of India, we express our serious concern that arbitrary demolitions of homes persist.

We emphasize that the practice of forced evictions constitutes a grave violation of various human rights, in particular the right to adequate housing (ICESCR, article 11) and the right to be free from arbitrary interferences in the home (ICCPR, article 17). Since the right to housing is indispensable to the fulfilment of other human rights (Committee on Economic, Social and Cultural Rights, general comment No. 4, paras. 1 and 9), its violation could also result in consequential violations of other socio-economic rights, including health, education, work and an adequate standard of living, as well as impede civil and political rights. We refer your Excellency's Government to

² <https://www.ohchr.org/en/press-releases/2025/06/india-must-halt-arbitrary-demolitions-targeting-minorities-and-marginalised>

³ Supreme Court of India, In Re: Directions in the matter of demolition of structures, 2024 SCC OnLine SC 3291, Judgment, 13 November 2024.

relevant protections against forced evictions set out in general comment No. 7 of the Committee on Economic Social and Cultural Rights (CESCR), Human Rights Council resolution 13/10, and the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, annex I).

Communication blackouts and restrictions on journalistic activities

Of further concern is the reported temporary suspension of mobile internet services, the authorities' order to shut down around 8,000 social media accounts, and the increasing restrictions placed on journalistic activities since the attack. As stated by the Special Rapporteurs on promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders, "internet and telecommunications bans have the character of collective punishment and fail to meet the standards required under international human rights law to limit freedom of expression,"⁴ namely that restrictions must be strictly necessary and proportionate in pursuit of a legitimate security aim. Such communication blackouts constitute serious interferences with the rights to protect and promote human rights and to freedom of expression, which includes the right of people to seek, receive, and impart information, and jeopardize other human rights as individuals with no phone or internet connections may struggle to access life-saving services.

We emphasize that a free and uncensored press is essential in any society and constitutes one of the cornerstones of a democratic society. In line with international standards, journalists, media outlets and publishers should not be penalized for reporting or disseminating critical views and dissenting opinions. We stress the obligation to create an enabling environment for the free communication of information and ideas about public and political issues (see A/HRC/50/29).

Increased discriminatory measures against Kashmiris and Muslims generally

We are alarmed at the allegations of increased arbitrary surveillance of Kashmiri individuals, including outside of Jammu and Kashmir, which appears to constitute further encroachments on the right to privacy and home under article 17 of the ICCPR. In addition to their apparent discriminatory nature, the directives issued by the Ministry of Home Affairs requesting personal details of Kashmiri students also risk impeding on their right to education under article 13 of the ICESCR. Noting that the right to be safe in education is an integral element of the right to education, the Special Rapporteur on the right to education has emphasized that surveillance and security measures risk creating an intimidating learning environment and have a chilling effect on students and teachers (A/HRC/59/41, paras. 38 and 72).

The above allegations are all the more troubling insofar as they appear to fall within a broader pattern of harassment and vilification campaigns against Muslims, fuelled by anti-Muslim rhetoric, including by leaders of the BJP. We remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which India ratified on

⁴ Special Rapporteur on freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, "India must restore internet and social media networks in Jammu and Kashmir, say UN rights experts", 11 May 2017. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21604>.

3 December 1968, in particular article 4 relating to eradicating the incitement of racial hatred and related acts.

In this context, we also express grave concern at the allegations of expulsions of Muslim Indians and Rohingya refugees to Bangladesh and Myanmar, in what appears to be intensified targeted deportation campaigns against Muslims. These actions appear to violate multiple rights, including the right to equality and non-discrimination under articles 2 and 26 of the ICCPR; the right to enter one's own country under article 12 of the ICCPR; freedom from arbitrary expulsion and due process in the expulsion of foreign nationals under customary international law and article 13 of the ICCPR; the prohibition of torture and cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR and the Convention against Torture; and the right to freedom from arbitrary arrest and detention under article 9 of the ICCPR. In relation to the removal of Rohingya refugees to Myanmar, we echo the concerns raised by the Special Rapporteur on the situation of human rights in Myanmar in [IND 4/2025](#) and in [IND 2/2024](#). While India is not a party to the 1951 Refugee Convention or its 1967 Protocol and lacks a domestic legal framework for the protection of refugees or for complementary human rights protection, it is bound by the customary international law principle of *non-refoulement*, which prohibits the forcible return of refugees to circumstances where they would be at risk of persecution or other grave human rights violations, including arbitrary deprivation of life, torture or cruel, inhuman or degrading treatment or punishment, enforced disappearance, flagrant denial of fair trial and arbitrary detention.

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 provide a list of all individuals arrested and detained by Indian authorities under terrorism-related suspicions since the April Pahalgam attack. Please detail the factual and legal basis for such arrests and detentions, the charges brought if any, and the measures taken to safeguard the individuals' right to due process and a fair trial. Please also explain how these measures comply with India's international obligations, particularly the prohibition on arbitrary detention.
3. Please explain how the abovementioned house demolitions and forced evictions conform with international standards, particularly the protection against arbitrary or unlawful interference with the home, the protection against arbitrary displacement, the prohibition on collective punishments, the right to an adequate standard of living which includes the right to housing, and the rights to equality and non-discrimination.

Please detail what measures your Excellency's Government has taken to ensure that no one is evicted into homelessness and that everyone receives adequate compensation for any property or land lost, alongside protection and assistance to enable an adequate standard of living, including access to housing, and all other relevant measures that have been taken or are envisaged to ensure durable solutions for those affected, including access to effective remedies and reparation for any human right violations experienced during displacement.

4. Please provide information on any steps taken or envisaged by your Excellency's Government to investigate cases of extrajudicial, summary, or arbitrary executions. Please indicate how such measures comply with the Minnesota Protocol on the Investigation of Potential Unlawful Death.
5. Please detail any steps taken or envisaged by your Excellency's Government to promptly, independently and impartially investigate the above allegations of torture and other ill-treatment as well as the allegations of lynchings. If no such investigation has taken place, please explain why and detail how this complies with the requirements of investigations under international law.
6. Please detail measures and policies put in place to ensure that people belonging to ethnic, religious or other minorities in India are treated equally like other citizens and are not subjected to discriminatory measures or treatment, in line with the obligations of India under international law.
7. Please explain how your Excellency's Government intends to protect the right to freedom of expression and the right to protect and promote human rights considering the restrictions placed on independent journalism and the reported arrests of journalists and human rights defenders. Please indicate how these measures comply with India's obligations under the ICCPR and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.
8. Please provide information on the factual and legal basis for the removal of individuals to Bangladesh and Myanmar, including citizens, individuals with pending citizenship claims or ongoing immigration proceedings, and Rohingya refugees. Please explain how such measures comply with India's obligations under international human rights law and international refugee law, including the prohibition on arbitrary expulsion, *non-refoulement*, and due process in expulsion.

9. Please explain what steps your Excellency's Government intends to take to bring its counter-terrorism legislative and regulatory framework into conformity with international legal standards, including the principles of legal certainty, necessity, proportionality and non-discrimination, as detailed in IND 7/2020 and IND 6/2023.

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.

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

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.

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

Please be informed that a copy of this letter has been sent to the Government of Bangladesh.

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

Matthew Gillett

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Nicolas Levrat
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Ana Brian Nougrères
Special Rapporteur on the right to privacy

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Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to relevant international norms and standards, as well as authoritative guidance on their interpretation.

Respect for human rights while countering terrorism

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.⁵ Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The adoption and application 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.

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,⁶ the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004).⁷ 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 legality under article 15 (1) of the ICCPR requires that criminal laws be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle 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)).

In addition, measures to combat terrorism and preserve national security must comply with obligations under international law and must not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.⁸ As stated by the Special Rapporteur on the situation of human rights defenders, counter-terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights protected under international law.

⁵ 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.

⁶ See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.

⁷ A/RES/49/49, annex, para. 3.

⁸ See [A/HRC/RES/22/6](https://www.unhcr.org/refugees/2017/06/17-06-2017-a-hrc-res-22-6.html), para. 10(a); A/70/371, para. 46(c).

Right to life

Article 6 of the ICCPR guarantees the right to life and provides that “every human being has the inherent right to life [which] shall be protected by law. No one shall be arbitrarily deprived of his [or her] life.” In its general comment No. 36, the Human Rights Committee noted that States must take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. This includes procedures to ensure that law enforcement actions are properly planned, consistent with the need to minimize the risk they pose to human life, mandatory reporting review and investigation of lethal and other life-threatening incidents (para. 13). The State also has a responsibility to take “all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes violence or killings committed by non-State actors” (E/CN.4/2005/7, para. 71).

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, require a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions. Investigations must be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. In accordance with the Minnesota Protocol, families of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms. Investigations must be aimed at ensuring that those responsible are brought to justice, promoting accountability and preventing impunity, avoiding denial of and drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations, and at the responsibility of superior officials with regard to violations committed by their subordinates (general comment No. 36, para. 27). Where a violation is found, full reparation must be provided, including adequate compensation, rehabilitation and satisfaction; as well as steps to prevent re-occurrence in future.

Prohibition on torture and other cruel, inhuman or degrading treatment or punishment

The absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected, at all times, under all circumstances; it has been codified in various human rights treaties, including, at least, in article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, and no order by a superior officer or public authority may be invoked as justification for torture (CAT, article 2(2) and (3)).

Attached to such prohibition are obligations to criminalize and investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to

prosecute suspects, to punish those responsible and to provide remedies to victims (CAT, articles 4, 5, 12 and 13).⁹

Right to liberty and security of the person

Article 9 of the ICCPR guarantees the right to liberty and security of person and provides that “no one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.” As interpreted by the Human Rights Committee in general comment No. 35, the notion of “arbitrariness” is not to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality.

Article 9(2) provides that anyone arrested must be informed of the reasons for the arrest at the time of the arrest, and of the charges against him or her promptly.

Article 9(3) further provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”. In this regard, the Human Rights Committee has noted that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime” (para. 38).

Article 9(4) provides that anyone deprived of liberty by arrest or detention is entitled to take proceedings before a court so that the court may decide without delay on the lawfulness of the detention and order release if the detention is found to be unlawful. As noted by the Human Rights Committee, this right applies “to all detention by official action or pursuant to official authorization, including detention in connection with criminal proceedings, military detention, security detention, counter-terrorism detention” (para. 40).

The Human Rights Committee has noted that where incommunicado detention prevents prompt presentation before a judge, it inherently violates article 9(3). Depending on its duration and other facts, it may also violate articles 6, 7, 10 and 14 of the ICCPR (para. 35). Access to a lawyer, including immediately after arrest, is an essential safeguard of the right to challenge the legal basis of one’s detention, and is mandated under principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. Additionally, rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide that prisoners must be allowed “to communicate with their family and friends at regular intervals”, including through visits.

Right to privacy and home, and prohibition on unlawful attacks against one’s reputation

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with privacy, family, home or correspondence, as well as unlawful attacks on an individual’s

⁹ See A/77/502 and A/HRC/52/30 for further explanations.

honour and reputation. In particular, article 17(2) states that “[e]veryone has the right to the protection of the law against such interference or attacks”. In general comment No. 16, the Human Rights Committee noted that ordinarily, “[s]urveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited” (para. 8). Any interference must be strictly necessary and proportionate in pursuit of a legitimate aim.

Right to freedom of thought, conscience and religion

Article 18(1) of the ICCPR states 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”. 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”. Furthermore, article 4(2) of the Declaration provides that: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs”.

Right to 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 and protects the freedom of the press as one of its core elements. It includes not only the exchange of information that is favourable, but also that which may criticize, shock or offend, and it protects the freedom of the press as one of its core elements. In general comment No. 34, the Human Rights Committee emphasized the obligation to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para. 11). The Committee also underscored the obligation to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23).

Any restriction to the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR, meaning that it 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. Further, Human Rights Council resolution 12/16 called for refraining from imposing restrictions that are not consistent with article 19(3), 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 (see also A/HRC/47/25). Any restriction on expression or information that are invoked 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).

Freedom to protect and promote human rights

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (also known as the Declaration on Human Rights Defenders), adopted by the General Assembly in its [resolution 53/144](#) on 9 December 1998, is based on and incorporates human rights enshrined in legally-binding international instruments. The Declaration reaffirms rights that are instrumental to the defense of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. The Declaration requires that States protect human rights defenders against any arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration, and ensure access to effective remedies in the case of violations and prompt and impartial investigations of alleged violations.

Right to freedom of movement

Article 12(1) of the ICCPR protects the right to freedom of movement, including the right of everyone lawfully within the territory of a State to choose their residence. Article 12(4) provides that no one should be arbitrarily deprived of the right to enter one's own country. The Human Rights Committee has noted that no State should "by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country" (general comment No. 27, para. 21)

Prohibition against arbitrary expulsions and principle of non-refoulement

Article 13 of the ICCPR provides that "[a]n alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law". It establishes due process standards applicable to the expulsion of migrants and asylum seekers: individuals must be allowed, save compelling reasons of national security, to submit the reasons against their expulsion, to have their case reviewed by a competent authority or a person or persons especially designated by the competent authority, and to be represented for that purpose. While States may have the power to deport persons who pose a genuine terrorist threat, as defined in accordance with best practice international standards, deportations must be in accordance with law and not arbitrary, and must respect due process and judicial safeguards, as required by customary international law (see International Law Commission Draft Articles on the Expulsion of Aliens).

The principle of *non-refoulement* prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of serious harm in another country, including arbitrary deprivation of life, torture or ill-treatment, enforced

disappearance, persecution, arbitrary detention, and flagrant denial of fair trial.¹⁰ Where such risk exists, *non-refoulement* prohibits all forms of removal and transfer of any individual, regardless of their status. The principle of *non-refoulement* forms part of customary international refugee law and is reflected in the Convention Relating to the Status of Refugees 1951 and its Protocol 1967. *Non-refoulement* applies to any form of forcible removal, including deportation, expulsion, extradition, informal transfer (“rendition”), and non-admission at the border.¹¹

Under international human rights law, the prohibition on *refoulement* is enshrined in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Committee against Torture has determined that the prohibition on *refoulement* is as absolute as the prohibition on torture itself.¹²

Further, article 7 of the ICCPR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In accordance with general comment No. 20, States parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*” (para. 9).

The Human Rights Committee has also affirmed that the duty to respect and ensure the right to life under article 6 of the ICCPR requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life would be violated (general comment No. 36, para. 30).

Prohibition on discrimination and rights of minorities

Article 2 of the ICCPR and ICESCR requires that States ensure that all individuals within their territory and jurisdiction can enjoy their rights protected under the Covenants without discrimination. Under article 26 of the ICCPR, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 27 of 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”. Article 15 of the ICESCR protects the right to take part in cultural life.

In the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as prohibited under article 20(2) of the ICCPR, key terms are defined as follows: “Hatred” and “hostility” refer to intense and irrational emotions of opprobrium, enmity and

¹⁰ See e.g. UNHCR, ‘Complementary Forms of Protection’, EC/50/SC/CRP.18 (2000); UNHCR, ExCom Conclusion No. 103 (LVI) (2005); Global Compact for Migration, Objective 21; OHCHR, The Principle of Non-refoulement under International Human Rights Law 2018; OHCHR, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations 2018.

¹¹ See also A/62/263, para. 49; UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1976 Protocol, 26 January 2007, para. 7. See also UNHCR, Note on Diplomatic Assurances and International Refugee Protection, August 2006, at www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44dc81164.

¹² Committee against Torture, General Comment No. 4, para. 9.

detestation towards the target group; the term “advocacy” is to be understood as requiring an intention to promote hatred publicly towards the target group; and the term “incitement” refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups (A/HRC/22/17/Add.4, appendix, footnote 5). The Rabat Plan of Action identifies six factors to determine the severity necessary to criminalize incitement (ibid, para. 29):

- (a) The “social and political context prevalent at the time the speech was made and disseminated”.
- (b) The status of the speaker, “specifically the individual’s or organization’s standing in the context of the audience to whom the speech is directed”.
- (c) Intent, meaning that “negligence and recklessness are not sufficient for an offence under article 20 of the Covenant”, which provides that mere distribution or circulation does not amount to advocacy or incitement.
- (d) Content and form of the speech, in particular “the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed”.
- (e) Extent or reach of the speech act, such as the “magnitude and size of its audience”, including whether it was “a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement”.
- (f) Its likelihood, including imminence, meaning that “some degree of risk of harm must be identified”, including through the determination (by courts, as suggested in the Plan of Action) of a “reasonable probability that the speech would succeed in inciting actual action against the target group”.

Right to adequate housing

Article 11 of the ICESCR guarantees the right to an adequate standard of living, including adequate housing. In its general comment No. 4, the Committee on Economic, Social and Cultural Rights noted that “the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing” (para. 9). The Committee further noted that “[f]orced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant” (general comment No. 7, para. 12).

In its general comment No. 7, the Committee established that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances should evictions result in homelessness, and the State party must take all

appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced evictions, harassment and other threats. States parties must ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties must also guarantee a right to adequate compensation for any property, both personal and real, which is affected. In this regard, we also refer your Excellency's Government to the Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18 Annex 1).

In his amicus curiae submitted to the Supreme Court of India in the case of *Jamiat Ulama-i-hind vs. Union of India & Others*, the Special Rapporteur on the right to adequate housing further noted that punitive demolitions are fundamentally arbitrary and contrary to international human rights law.

Right to education

Article 13 of the ICESCR recognizes the right of everyone to education, which should “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”. The Special Rapporteur on the right to education has noted that the right to be safe in education is an integral element of the right to education, and that surveillance and security measures risk creating an intimidating learning environment and have a chilling effect on students and teachers (A/HRC/59/41, paras. 38 and 72).

Rights of internally displaced persons

In accordance with the 1998 Guiding Principles on Internal Displacement, every human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence, and the prohibition of arbitrary displacement includes *inter alia* displacement when it is based on policies of apartheid, ethnic cleansing, or similar practices aimed at or resulting in altering the ethnic, religious, or racial composition of the affected population, and displacement when it is used as collective punishment (principle 6).

Prior to any decision requiring the displacement of persons, the authorities concerned must ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures must be taken to minimize displacement and its adverse effects (principle 7(1)). The authorities undertaking such displacement must ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, and that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene (principle 7(2)). If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, a specific decision must be taken by a State authority empowered by law to order such measures, adequate measures must be taken to guarantee to those to be displaced full information on the reasons and

procedures for their displacement and, where applicable, on compensation and relocation, the free and informed consent of those to be displaced must be sought, and the right to an effective remedy, including the review of such decisions by appropriate judicial authorities, must be respected (principle 7(3a, 3b, 3c, 3f)).

Displacement must not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected (principle 8). States are under a particular obligation to protect against the displacement of Indigenous Peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands (principle 9). All internally displaced persons have the right to an adequate standard of living, and at a minimum, competent authorities must provide internally displaced persons with and ensure safe access to: essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation (principle 18). No one shall be arbitrarily deprived of property and possessions and the property and possessions of internally displaced persons must be protected, in particular against *inter alia* being made the object of reprisal and being destroyed or appropriated as a form of collective punishment (principle 21).