

**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 and the Special Rapporteur on the independence of judges and lawyers**

Ref.: AL BGD 6/2025  
(Please use this reference in your reply)

29 December 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 and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 58/14, 60/8 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the banning of the Bangladesh Awami League under recent amendments to the Anti-Terrorism Act 2009 and the International Crimes (Tribunals) Act 1973, and related measures that reportedly impose unnecessary and disproportionate restrictions on the rights to freedom of association, peaceful assembly, expression, and to participate in public affairs, and affect the right to a fair trial, contrary to Bangladesh's obligations under the International Covenant on Civil and Political Rights (ICCPR).

According to the information received:

*Nationwide protests and government change*

In July and August 2024, nationwide protests escalated after a Supreme Court ruling preserved public-sector employment quotas for descendants of the 1971 "freedom fighters" in the war of independence from Pakistan.

As unrest intensified, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the then Government led by then Prime Minister Sheikh Hasina (also President of the Awami League) and its security and intelligence apparatus, together with violent elements associated with the Awami League, systematically engaged in serious human rights violations, including hundreds of extrajudicial killings, other use of force violations involving serious injuries to thousands of protesters, extensive arbitrary arrest and detention, and torture and other forms of ill-treatment.<sup>1</sup> Approximately 1,400 people were killed. These incidents were the subject of communication [BGD 6/2024](#), sent to the former Government and to which it did not reply.

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<sup>1</sup> <https://www.ohchr.org/en/documents/country-reports/ohchr-fact-finding-report-human-rights-violations-and-abuses-related>.

Parliament was dissolved on 5 August 2024 and Sheikh Hasina left Bangladesh and sought refuge in India. As the Constitution had no provision regarding the creation of an interim or caretaker government, the President of Bangladesh sought the opinion of the Appellate Division of the Supreme Court as per article 106 of the Constitution. The Supreme Court opined that, in view of the resignation of the Prime Minister and the dissolution of the Parliament by the President, an interim government could be formed to carry out the executive functions of the State and the President could appoint a Chief Adviser and other advisers to the interim government.

An interim government called the Advisory Council (“Interim Administration”) was formed and sworn in on 8 August 2024, led by Dr. Muhammad Yunus as its Chief Adviser. The Interim Administration unveiled a cabinet without Awami League representation. The Interim Administration has promised elections in February 2026.

#### *Attacks on Awami League members*

During and immediately after the change of government in August 2024, numerous people linked to the Awami League were attacked and in some cases killed by protesters. Property belonging to high profile Awami League members was destroyed, and police stations were also attacked, with some officers killed. On 14 October 2024, the authorities issued a blanket immunity order for perpetrators of such violence, under section 11 of the Emergency Powers Ordinance.

In February 2025, the authorities launched Operation “Devil Hunt,” led by army and police units, resulting in mass arrests of persons perceived to be affiliated with the Awami League or otherwise allegedly engaged in unrest. According to the Awami League, there were over 400,000 arrests, with between 30,000 and 35,000 reportedly still in custody as of November 2025. They further reported that some journalists aligned with the Awami League and some lawyers representing its members were detained, and several detainees allegedly died in custody, with signs of torture reported on some of the bodies.

#### *International Crimes Tribunal Bangladesh*

In August 2024, the Interim Administration amended the jurisdiction of the International Crimes Tribunal Bangladesh, which was originally established under the International Crimes (Tribunals) Act 1973 to prosecute atrocities committed during the 1971 war of independence. The amendments extended the Tribunal’s remit to enable the prosecution of those responsible for alleged offences connected to the student protests that preceded the Interim Administration’s formation. Some have expressed concerns regarding the fairness of trials before the International Crimes Tribunal. In particular, defendants have reportedly been denied counsel of their choosing and have been obliged to rely on State-appointed counsel with little or no communication. Reports have also suggested that lawyers associated with the former government have been intimidated and harassed.

Sheikh Hasina and other senior Awami League figures have reportedly been indicted, with proceedings to be held in absentia. A request for Sheikh Hasina's extradition from India is reportedly pending. On 17 November 2025 Sheikh Hasina was convicted in absentia of crimes against humanity, including incitement, ordering killings, and failing to prevent atrocities, and sentenced to death by hanging. The former Home Minister was also sentenced to death, and the former police chief was sentenced to five years in prison. Sheikh Hasina is also a defendant in three other cases before the Tribunal, two concerning enforced disappearances and one on mass killings in 2013.

### *Ban of Awami League*

Between 10–12 May 2025, the Interim Administration adopted further amendments. A new section 20B of the International Crimes (Tribunals) Act 1973 empowers the Tribunal to suspend or dissolve organisations and confiscate their property if deemed to have “aided, incited, abetted or otherwise facilitated” international crimes.

The Anti-Terrorism (Amendment) Ordinance 2025, gazetted on 12 May 2025, amends the Anti-Terrorism Act 2009 to allow an entity to be temporarily suspended, and to prohibit all activities (physical, digital or expressive) of a person or an entity “against whom action has been taken” under the Act, without having to proscribe or list it formally as being involved in terrorist activities as under the pre-existing Anti-Terrorism Act 2009. The amended section 20 also introduces an explicit prohibition on “any publicity”, including press statements, social media content, or public gatherings in support of such persons or entities. Restrictions can further be imposed on departure from the country, and income and expenditure must be disclosed.

On 12 May 2025, a Gazette notification formally banned all Awami League activities “until the completion of proceedings before the International Crimes Tribunal” against Sheikh Hasina and other party leaders, citing national security and the protection of plaintiffs and witnesses. The ban reportedly prohibits all forms of political engagement by the Awami League, including participation in elections, public meetings, publications, and media advocacy.

Although described as temporary, trials may extend beyond February 2026, effectively excluding the party from political participation. The measures were imposed by executive order without prior notice, judicial oversight, or an opportunity to be heard. The decision was not based on the ordinary procedure for the dissolution of political parties under the Political Parties Ordinance 1978. Observers have characterised the measure as a de facto proscription under counter-terrorism powers, with serious implications for civil and political rights, democracy, and civic space.

On 12 May 2025, Bangladesh's Election Commission cancelled the registration of the Awami League, preventing it from participating in elections, including the planned national election in February 2026.

Measures have also been taken to restrict Awami League communications, and in particular those of Sheikh Hasina. In December 2024, the day after she delivered an online speech from India, an interim administration-appointed bench of the International Crimes Tribunal Bangladesh reportedly granted a request from the Interim Administration-appointed prosecutor to ban the publication of any of her speeches. Around the same period, Dr. Muhammad Yunus publicly urged the Indian Government not to allow Sheikh Hasina to issue statements from India that could jeopardize peace and security in Bangladesh, including on social media.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the reported restrictions on the activities of the Awami League and its leadership—including bans and limitations affecting their communications, and legislative measures enabling the suspension, dissolution or asset-seizure of organisations—may amount to unnecessary and disproportionate interferences with the rights to freedom of association, peaceful assembly, expression, and to participate in public affairs, as protected under articles 19, 21, 22 and 25 of the ICCPR, ratified by Bangladesh on 6 September 2000. The measures may risk entrenching restrictions on political pluralism and democratic participation.

We emphasise that individuals, including those in positions of authority within the former Awami League-led Government, who are allegedly responsible for crimes under international law and serious human rights violations, must be held individually accountable through fair trials before independent and impartial courts in line with international law. We also underline the necessity of ensuring accountability for reported human rights violations committed against Awami League members and affiliates, as a key element in restoring and sustaining stability, security, human rights and the rule of law in Bangladesh.

#### *Freedom of association*

We note that the banning of a political party and its affiliates, under counter-terrorism and international crimes frameworks, amounts to one of the most severe forms of interference with the right to freedom of association. We call the attention of your Excellency's Government to article 22(2) of the ICCPR, which requires that restrictions on this right be prescribed by law and strictly necessary and proportionate in a democratic society for specified legitimate aims, such as national security or public safety. A ban or prohibition of an organisation or its activities is among the most severe forms of restriction of freedom of association, and the threshold for such a ban is high and must be a last resort, limited to circumstances where it would avert a real and not only hypothetical danger to national security or democratic order ([OHCHR Technical Note](#), May 2025). The Human Rights Committee has recognised that associations, including political parties, play an indispensable role in enabling citizens to exercise the rights protected under articles 19 and 25 of the ICCPR, and that their dissolution severely limits participation in public life. The Special Rapporteur on the rights to freedom of peaceful assembly and association has similarly affirmed that the freedom of political parties to express opinions, conduct campaigns, and impart information is essential to the integrity of democratic elections, and that prohibition is lawful only when a party uses or advocates violence or incites hatred constituting incitement to

discrimination, hostility or violence (A/68/299, para. 38) and prohibition is necessary and proportionate.

The amendments to the Anti-Terrorism Act 2009 and the International Crimes (Tribunals) Act 1973 appear to grant the executive and the Tribunal broad discretion to prohibit or dissolve organisations for alleged engagement in terrorism or international crimes, without establishing a sufficiently precise and high threshold or requiring any assessment of the proportionality of such action. Thus, no consideration is required of the availability of alternative effective means for addressing the threat, such as investigating and prosecuting individuals associated with the Awami League who are accused of crimes; or of the impact of the ban on many Awami League members who were not involved in criminal activity, on their civil and political rights, and on democracy and civic space in Bangladesh.

The suspension of the Awami League under the Anti-Terrorism (Amendment) Ordinance 2025 may further fail to meet the international law requirement that a restriction on association be properly authorised by law, since the new procedure circumvents the established legislative powers under the Anti-Terrorism Act 2009 and does not conform with international standards for prohibiting organisations under counter-terrorism law. To list an organization as terrorist under international law, it must have the substantial purpose of engaging in genuinely terrorist offences as properly defined, to a high standard of proof (A/80/284, para. 23; see Annex), in addition to providing due process and judicial safeguards. The restrictions flowing from suspension may also not strictly be necessary and proportionate in the case of the Awami League. We emphasize that the use of counter-terrorism powers to suppress a political party, rather than to address specific, individualized, and credible threats of violence, risks undermining the very democratic order that such laws are intended to protect.

#### *Freedom of peaceful assembly*

The reported prohibition on public gatherings, meetings, or demonstrations in support of the Awami League appears to constitute an unnecessary and disproportionate limitation on the right to peaceful assembly. Under article 21 of the ICCPR, restrictions must be narrowly tailored to prevent a concrete threat to public order, not imposed as a general preventive measure against a category of actors or political movements. We emphasise the need for an individualised assessment of the conduct of participants and the assembly concerned; blanket restrictions on peaceful assemblies are presumptively disproportionate (Human Rights Committee, general comment No. 37, para. 38). Any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it, and restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect (para. 36). Prohibition must be a measure of last resort, after first applying less intrusive measures (paras. 37 and 40). If the detriment outweighs the benefit, a restriction is disproportionate (para. 40). There is a high threshold for restrictions based on national security (para. 42). We are concerned that the blanket denial of peaceful assembly in support of a major political party, with consequences detrimental to individual political rights and democracy, may outweigh the seemingly speculative security benefit of an overbroad, blanket ban.

### Freedom of expression

The reported blocking of online speeches, social media content, and publications associated with the Awami League, including by Sheikh Hasina and other Awami League leaders, raise concerns about the right to freedom of expression and public access to information. The amendments replaced targeted restrictions with blanket prohibitions on “any publicity” related to proscribed entities or entities whose activities are banned. Such measures risk silencing political opinion and debate rather than addressing genuine incitement or advocacy of violence or hatred.

Under article 19(3) of the ICCPR, any restriction on expression must be provided by law, pursue a legitimate aim (such as national security or public order), and be necessary and proportionate to that aim. The Human Rights Committee has emphasised that these limiting conditions must be interpreted strictly; the State must demonstrate a direct and immediate connection between the expression and the protected aim, and adopt the least intrusive means among those that might achieve the protective function (general comment No. 34, para. 22). Laws restricting expression must be clear and precise to avoid arbitrary application (para. 25), and the scope of permissible restrictions may not be used to suppress advocacy of multi-party democracy, democratic tenets or human rights (paras. 11–13 and 20). We emphasise that political discourse, commentary on public affairs, and criticism of public institutions enjoy heightened protection (para. 38).

### Right to participate in public affairs

We are concerned that the reported ban on the Awami League appears to impose disproportionate restrictions on the right of citizens under article 25 of the ICCPR to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections by universal and equal suffrage, and to have equal access to public service. The ban excludes a major political party from participation in elections and potentially prevents millions of citizens from supporting, voting for and being represented by its candidates. Such measures appear to deny voters a genuine choice of representatives and risk undermining pluralism, which is central to the effective enjoyment of article 25(b) (Human Rights Committee, general comment No. 25, para. 19).

The Human Rights Committee has underlined that article 25 of the Covenant lies “at the core of democratic government based on the consent of the people” and that persons otherwise eligible to stand for election “should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation” (paras. 1 and 15). The Committee has further emphasised that the effective exercise of article 25 rights depends upon the full enjoyment of the freedoms guaranteed in articles 19 (expression), 21 (association) and 22 (peaceful assembly) of the ICCPR, which are essential to ensure the free communication of information and ideas, the existence of an informed electorate, and the meaningful participation of citizens in public life (para. 25).

### Due process and effective remedy

Furthermore, the amendments do not require prior notice, provide the organisation with an opportunity to respond, or require judicial review of the decision,

raising further concerns about the lack of due process, judicial safeguards and effective remedies under international law. The absence of procedural guarantees, such as timely notification of reasons, access to relevant evidence, and an independent avenue for review, raises concerns regarding the right to an effective remedy under article 2(3) of the ICCPR. International law requires that affected entities are entitled to due process and judicial safeguards, as set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 35 and A/80/284, paras. 17-39), including as regards the grounds of listing, notification and reasons, opportunity to be heard, adequate disclosure of evidence, legal representation, a right of appeal, expiry of a listing after 12 months, and reparation, including compensation, for unlawful listing. The reported executive ban on the Awami League, without judicial oversight or a right of appeal, does not appear to meet these minimum safeguards.

*Accountability for violations of the rights to life, liberty and security of person*

We are deeply concerned at allegations of arbitrary detention of Awami League members and others perceived to be associated with them (including journalists and lawyers exercising their professional functions), torture and other ill-treatment, and suspicious deaths in custody. We are alarmed that a blanket immunity has been given to alleged perpetrators under section 11 of the Emergency Powers Ordinance. We emphasise that allegations of human rights violations must be promptly and independently investigated, and if confirmed, the perpetrators must be prosecuted, and victims must receive full reparation, including compensation, in line with international law (see Annex). Blanket immunities are incompatible with international law.

While recognizing the challenges your Excellency's Government has inherited on multiple fronts, we stress the need for a transitional justice process that promotes accountability for all violations irrespective of who are the perpetrators. This is essential to ensure that all victims and families of victims of crimes can obtain justice and reparations, and that society can move forward through a comprehensive truth and reconciliation process. Investigations into human rights violations and trials of perpetrators must guarantee the right to fair trial.

*Fair trial*

We also express our serious concern about procedural aspects of the trial and sentence of Sheikh Hasina by the International Crimes Tribunal Bangladesh. The Tribunal was established to prosecute perpetrators of atrocities in the 1971 Liberation War and its hasty repurposing in 2024 to prosecute contextually different violations by the former Government of Sheikh Hasina may not be appropriate.

Further, a violation of fair trial guarantees, including the right to trial by an independent and impartial tribunal, under article 14 of the ICCPR renders a death sentence arbitrary and in violation of the right to life under article 6 of the ICCPR (Human Rights Committee, general comment No. 36, paras. 41 and 45). Although Sheikh Hasina was represented by a court-appointed lawyer in her absence, we are concerned that she was denied the ability to choose her counsel and that there was inadequate time to prepare a defence under article 14 of the ICCPR, given the speed of the prosecution, the complexity of the case, the scale of the crimes alleged, the

seriousness of the international crimes charged, the reported denial of some defence cross-examination requests, and the highly politicised context of the trials. We are also concerned that lawyers associated with the former government have faced harassment and violence, possibly hindering their ability to provide defence representation and impeding equality of arms.

Furthermore, the death penalty may only be carried out after the person has had the opportunity to resort to all judicial appeal procedures (general comment No. 36, para. 46). In this regard we are concerned that articles 47(3) and 47A of Bangladesh's Constitution remove the constitutional rights of persons accused of international crimes to protection of the law (article 31), fair trial (article 35), and to seek remedies from the Supreme Court for the violation of fundamental rights (article 44).

We are also alarmed that the method of execution, by hanging, violates the prohibition on torture and other cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified by Bangladesh on 5 October 1998.

Finally, we affirm the view of the Human Rights Committee that “[t]he death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights” (general comment No. 36, para. 50).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what specific, current and concrete risks to national security or public order are relied upon to justify a party-wide ban on the Awami League and prohibitions on publicity relating to it, how such measures are necessary, proportionate and non-discriminatory, and why less intrusive, individualised measures would not be sufficient.
3. Please clarify what the intended duration of the ban and of related restrictions is; whether these lapse automatically or require renewal; and what objective criteria, evidence and timetable govern periodic review and lifting, especially in light of upcoming elections.
4. Please explain whether the Awami League or its representatives were notified and afforded an opportunity to be heard before the measures were adopted. Please detail what avenues exist to challenge (a) the party-wide ban, (b) “any publicity” restrictions, and (c) online

blocking/takedowns, and whether these remedies exist before an independent and impartial body with access to the underlying evidence.

5. Please detail what steps are being taken or are envisaged to ensure voters retain a genuine choice of candidates and that pluralistic political debate remains possible during the pre-election period, including the Election Commission's position on party registration and candidacy.
6. Please explain how the phrases "against whom action has been taken" and the prohibition on "any publicity" under the Anti-Terrorism (Amendment) Ordinance 2025 are defined in law and applied in practice. Please indicate what steps will be taken to amend or repeal the Ordinance to ensure it is consistent with international human rights law.
7. Please provide the legal basis, orders and review mechanisms for the reported International Crimes Tribunal Bangladesh decision banning publication of Sheikh Hasina's speeches, and indicate whether any requests were made to foreign governments or platforms to restrict her communications.
8. Please detail all measures taken to safeguard the right to a fair trial and due process in proceedings before the International Crimes Tribunal Bangladesh, including in the proceedings against Sheikh Hasina. Please provide details on the mechanisms available to appeal the death sentence in this case.
9. Please provide disaggregated data on arrests, charges, pre-trial detention, prosecutions and releases of persons perceived to be affiliated with the Awami League, and information on investigations into reported custodial deaths and allegations of arbitrary detention, torture and ill-treatment, including outcomes, since August 2024.
10. Please indicate what steps will be taken to repeal the blanket immunity order for perpetrators of violence under section 11 of the Emergency Powers Ordinance.

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 respectfully urge your Excellency's Government to review and amend the measures detailed in this letter to ensure full conformity with Bangladesh's obligations under the ICCPR, to guarantee that counter-terrorism and international crimes frameworks are not misused to suppress lawful political activity, and to take all necessary steps to restore conditions for free, fair and inclusive democratic participation and elections. Taken by executive decree and applied to a major political party during the pre-election period, these measures risk limiting meaningful political pluralism and disenfranchising a substantial part of the electorate, amid further concerns about mass arrests and custodial abuses linked to "Operation

Devil Hunt,” all in the absence of adequate procedural safeguards and effective remedies. We stand ready to provide your Excellency’s Government with any technical advice it may require.

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

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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

## 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 the principles and international standards applicable to this communication.

#### *Equality and non-discrimination*

Article 2 of the ICCPR requires that States respect and ensure to all individuals within their territory and jurisdiction the rights protected under the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of the ICCPR further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. It requires that the law "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

#### *Right to an effective remedy*

Article 2(3) of the ICCPR enshrines the right to an effective remedy. It provides that States parties have the obligations to ensure that: (a) any person whose rights or freedoms are violated have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) any person claiming such a remedy has such right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) the competent authorities enforce such remedies. The right to an effective remedy is a key element of the full enjoyment of human rights. Without access to an effective remedy, human rights violations go unpunished, and victims may be deprived of justice, compensation and their human dignity.

#### *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 parties must respect the right to life, have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life, and must take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials (para. 7). 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). Loss of

life occurring in custody creates a presumption of arbitrary deprivation of life, which can only be rebutted on the basis of a proper investigation which establishes the authorities' compliance with international law. The death penalty should be abolished.

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.

#### *Right to liberty and security*

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). Access to a lawyer, including immediately after arrest, is an

essential safeguard of the right to challenge the legal basis of one's detention under article 9(4) of the ICCPR.

Any detention due to the peaceful exercise of rights, including the rights to freedom of expression, freedom of assembly and freedom of association, is arbitrary (general comment No. 35, para17). Detention is arbitrary where it is based on discrimination, including on the basis of political or other opinion (general comment No. 35, para.17).

*Freedom from torture and other cruel, inhuman and 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, codified in article 7, read alone and in conjunction with article 2(3), of the ICCPR and at least, articles 1, 2, 15 and 16 of the CAT.

Attached to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment 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.

In line with the principles enshrined in the CAT, States should establish all acts of torture as offences under domestic law (article 4); exercise jurisdiction over said offences (article 5); receive complaints and examine them promptly and impartially (article 13); and investigate those allegations promptly and impartially (article 12). Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (article 15). Victims are to be protected from reprisals or intimidation during said investigations (article 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (article 14). At no time shall torture be used to extract information or a confession (article 1), and 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 (article 15).

The standards of conditions and treatment of persons deprived of their liberty are contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which 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. Similarly, article 10 of the ICCPR requires States to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person.

*Right to a fair trial and due process*

Article 14 of the ICCPR guarantees the right to a fair trial and due process. The provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military; trials of civilians in military or special courts must fully conform with the requirements of article 14 (general comment No. 32, para. 22). The Human Rights Committee has raised concern that trials of civilians before such courts may not

comply with the equitable, impartial and independent administration of justice and should therefore be exceptional, limited to cases where it can be shown that “resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials” (para. 22). In addition, it has affirmed that: “In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)” (para.59).

In accordance with the Basic Principles on the Role of Lawyers, lawyer must be able “to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and should “not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics” (para. 16).

The General Assembly in resolution 72/180, paragraph 5(s), has urged States to ensure due process guarantees while countering terrorism, consistent with all relevant provisions of the Universal Declaration of Human Rights and the ICCPR, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, and the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto in their respective fields of applicability.

#### *Freedom of peaceful assembly and association*

Article 21 of the ICCPR 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”.

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). Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

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

association highlighted that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities, effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para.11). The Special Rapporteur emphasized the weaponization of unjustified accusations of terrorism, facilitated by broad anti-terrorism laws, to stifle civic activism and civil society critical of government policies (paras.32-35).

### *Freedom of 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 includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para.11). The Committee further noted 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).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. Restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. To be provided by law, a restriction must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly, must not confer unfettered discretion, and must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (para. 25). The State has the burden of proof to demonstrate that any such restrictions are compatible with the ICCPR, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (para.35). The relation between right and restriction and between norm and exception must not be reversed. A restriction must be “the least intrusive instrument among those which might achieve their protective function” (para.34). 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).

### *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” and “[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”. The Human Rights Committee noted that “[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association” (general comment No. 25, para.8).

The Human Rights Committee has also emphasized that “[t]he effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person’s candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office” (para. 15). The full enjoyment of rights protected by article 25 requires full respect for the rights guaranteed in articles 19, 21 and 22 of the ICCPR, “including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas” (para. 25).

### *Terrorist listings and designations*

The designation of “terrorist” individuals or organizations must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para.35 and A/80/284, paras. 17-39). Specifically:

- (a) There must be reasonable grounds to believe that the person or entity has knowingly engaged in terrorism, as properly defined according to international standards, including the requirement of legality.
- (b) The listed person or entity must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights.
- (c) There must be a right to apply for de-listing and to have it reviewed within a reasonable time, and a right to judicial review of any resulting decision, in both cases affording due process, including sufficient disclosure of evidence and access to a lawyer.

- (d) The listed individual or entity must be afforded the right to make a fresh application for de-listing or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing.
- (e) Listings must lapse automatically after 12 months unless renewed afresh.
- (f) Reparation, including compensation, must be available for any wrongful listing.

In addition, to list an organization, it must have the substantial purpose of engaging in terrorist offences (A/80/284, para. 23). It is not enough that some individuals commit isolated acts of terrorism while acting outside of the organization's legitimate purposes and leadership. Even where an individual or organization meets the formal criteria, listing must still be necessary and proportionate in the circumstances, including by demonstrating that less invasive means, such as surveillance and criminal investigation, would be ineffective. Proportionality will also depend on the nature and scope of the restrictive measures that flow from designation, including whether they apply automatically or in a tailored manner, and whether any offences are overbroad. Where listing activates criminal liabilities, the link between the organization and any offences must be articulated in a sufficiently narrow and precise manner, to avoid unjustified liability (A/80/284, para. 34).

*Respect for human rights while countering terrorism*

Although no universal treaty generally defines "terrorism", States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,<sup>2</sup> the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). 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 are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent illdefined and/or overly broad laws which are open to arbitrary application and abuse, including to target civil society on political or other unjustified grounds (A/70/371, para.46(b)) and suppress the exercise of fundamental rights and freedoms (A/HRC/40/52).

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

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<sup>2</sup> See [https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml).

law.<sup>3</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. Disregard for these principles can have exceptionally harmful effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society. States must ensure that measures to combat terrorism do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para.10(a)).

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<sup>3</sup> Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others