

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 Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL KWT 1/2026

(Please use this reference in your reply)

8 June 2026

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; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 58/14, 60/8, 54/14 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arbitrary arrest, detention, enforced disappearance and abusive criminal prosecution of journalist Ahmed Shihab-Eldin, which appear contrary to your Excellency's Government obligations under international law.**

Mr. Ahmed Shihab-Eldin is a United States-born citizen of the United States and Kuwait of Palestinian descent. He is an internationally respected investigative journalist, film-maker, and commentator, with a focus on social justice and human rights. He has worked for and his commentary has appeared in leading global news outlets, and he has spoken at major global forums including the United Nations and the World Economic Forum. He has received notable international and national media awards. Until recently, he worked in Italy as an adjunct professor and he was previously an adjunct lecturer at Columbia University.

According to the information received:

Arrest and detention in Kuwait

On 3 March 2026, Mr. Shihab-Eldin was arrested by plain clothes police officers at a family home while visiting his family in Kuwait and then detained. The police officers did not provide any reasons for his arrest. After his arrest, Mr. Shihab-Eldin's fate and whereabouts remained unknown for four days, during which he was held incommunicado and in solitary confinement, including without any communication with his family or his lawyer. On 7 March 2026, it was confirmed that Mr. Shihab-Eldin was being held in Kuwait's central prison after being transferred from an unknown location. His place of detention changed twice thereafter.

On 11 March 2026, a hearing date for an extension of imprisonment pending trial, with the possibility of applying for bail, was set for 18 March 2026, and was then rescheduled to 30 March 2026 and later to 6 April 2026. The case was

assigned to a “special court” on “national security and terrorism”. On 31 March, the trial date was rescheduled yet again to 22 April 2026.

Despite the rescheduling, on 6 April 2026 Mr. Shihab-Eldin was brought to a courthouse by bus and held there for 12 hours. He was not brought before a judge, his lawyer was not present, and no information was provided about the legal basis for his detention or any charges. Mr. Shihab-Eldin was unable to apply for bail and was held for over seven weeks before being brought before a judge. He was denied access to physical visits by family members and had limited phone contact with them.

Mr. Shihab-Eldin, his lawyer or his family were not provided with any arrest warrant, charge sheet or formal notification of any charges. It is understood that the charges included spreading false and malicious information online, harming national security, and misusing a mobile phone.

It is believed that such charges may have related to his online republication of, and commentary on, publicly available images and video footage of military activities relating to the armed conflict involving Iran, the U.S. and Gulf States including Kuwait. For example, on 2 March 2026 – the day before his arrest – he republished on an online platform a “friendly fire” video, verified by an international broadcaster, of a U.S. fighter jet crash near a U.S. air base in al Jara, west of Kuwait City. Mr. Shihab-Eldin commented that the crew had ejected and survived and that the video also showed local residents assisting one of the crew members.

On 22 April 2026, Mr. Shihab-Eldin appeared before a judge for the first time. The preliminary verdict issued on 23 April 2026, acquitted him on the first charge, while refraining from pronouncing punishment on convictions for the second and third charges, subject to a pledge of good conduct for six months.

He was released the same day in accordance with the verdict. His release was apparently contingent on leaving the country, with the Kuwaiti authorities intending to bring him to the border with Saudi Arabia and giving assurances that his departure did not require his Kuwaiti passport. However, his departure was delayed

[REDACTED], with the authorities claiming that it was necessary to locate his Kuwaiti passport. He was taken to various family addresses and those properties were ransacked. He eventually departed Kuwait on 24 April 2026.

On 26 April 2026, the prosecution appealed the disposition of the second and third charges. The hearing of the appeal is scheduled for 11 June 2026.

On 29 April 2026, he was reportedly stripped of his Kuwaiti citizenship. Although Kuwaiti law does not permit dual nationality, the timing and speed of these revocations of citizenship appear to have been punitive, as well as being linked to a wider pattern of revocations against individuals of Palestinian descent.

Enforced disappearance, [REDACTED] and conditions of detention

During the initial four days of detention, Mr. Shihab-Eldin was subjected to enforced disappearance, since the authorities did not acknowledge his detention and did not provide information on his fate and whereabouts. During those days, he was held incommunicado [REDACTED]

The interrogations focused on many issues that were unrelated to any suspected criminal activity or national security concerns, including his journalism and public statements, sexual orientation, nationality, Palestinian descent, perceived religion, accent, and family.

Mr. Shihab-Eldin was detained in unsanitary and inhumane conditions. [REDACTED]

[REDACTED] poor conditions of detention, have had significant negative impacts on Mr. Shihab-Eldin's mental and psychological state, and he reportedly felt depleted and suffered negative thoughts. [REDACTED] further impeded his ability to meaningfully engage with his local lawyer and to contribute meaningfully to preparing his defence before trial.

It is reported that medical care is routinely denied to detainees, particularly where urgent medical attention is required. Detainees only have access to the prison's medical clinic on Sundays and, even then, are not guaranteed a visit or to receive required medication. Conditions of detention and lack of medical care routinely lead to the propagation of bacteria and infections. At least three deaths in detention have been reported as a result of the failure to provide urgent medical care.

Context and legal reforms

Mr. Shihab-Eldin's treatment is reportedly part of a recent pattern of repression by Kuwaiti authorities of dissenting opinions, journalists and social media users, including through the misuse of arrest, detention and criminal prosecution. This pattern has aggravated with the onset of the U.S. and Israeli aggression against Iran in late February 2026 and Iran's retaliatory strikes against U.S. facilities and allies in the Gulf, including Kuwait.

On 2 March 2026, Kuwait's Ministry of Information warned against filming or publishing videos or information related to Iranian attacks, noting that several people had been arrested for spreading false news. The authorities have indicated that such publicity could sow chaos and destabilize public opinion.

On 6 March 2026, the Ministry of Information announced that it had referred individuals accused of violating media laws to the public prosecution, and "called on all media institutions and social media users to act responsibly and professionally and to prioritize the national interest in a way that contributes to maintaining security and stability". The authorities justified legal proceedings as necessary to address "unacceptable behaviour" such as the offences of broadcasting false news, harming the national interests of the country, misusing a telephone, and espionage for photographing military objects.

On 15-16 March 2026, two new laws were adopted. Decree Law No. 13 of 2026 on Securing and Protecting Supreme Interests of Military Entities establishes an offence for anyone who "broadcasts news, publishes statements, or spreads false rumours related to military entities, with the intent of weakening confidence in these entities, diminishing their prestige, casting doubt on their existence, or undermining their morale", with penalties from 3 to 10 years imprisonment and fines of 5,000 to 10,000 Kuwaiti dinars.

Decree Law No. 47 of 2026 on Combating Terrorism Crimes establishes new terrorist offences, with penalties of up to life imprisonment and the death penalty and certain mandatory minimum sentences, as well as aggravated penalties for other offences linked to terrorism. Legal entities can also be liable. Article 1 defines terrorism broadly as: "Every act or threat that results in the death of a person, their detention, harming them, or causing damage to any national wealth, private or public property, public utilities, land, sea, or air means of transport, or cybersecurity, in implementation of an individual or collective criminal project aimed at spreading terror among people, endangering the safety and security of society, or compelling a public authority or an international or regional organization to perform or refrain from performing any act. It also includes acts considered terrorist acts under relevant prevailing legislation and what is stipulated in international conventions and protocols ratified by the State."

There are concerns that both laws contain vague and overbroad provisions that would allow the authorities to target members of civil society with dissenting opinions, such as journalists, bloggers, internet activists and others, and subject them to harsh penalties.

On 31 March 2026, the Government established a new specialised body, the Prosecution of State Security, Terrorism, and Its Financing, with exclusive authority to investigate and prepare cases involving crimes that threaten the State's integrity, security, and stability, including under the above-mentioned Decree Law Nos. 13 and 47, other terrorist financing offences under Law No. 106 of 2013, crimes affecting internal and external state security under Law No. 31 of 1970, and international crimes under Decree Law No. (156) of 2025. The Government also established specialised courts with "exclusive jurisdiction over felonies and misdemeanours involving state security and terrorism", with authority over preventive detention.

Without prejudging the accuracy of these allegations, we are concerned that if proven to be true, they may constitute violations of Kuwait's international human rights law obligations, as detailed in the Annex to this letter.

We are deeply concerned that Mr. Shihab-Eldin's detention appears to have been arbitrary, contrary to article 9 of the International Covenant on Civil and Political Rights, which Kuwait ratified on 21 May 1996, given the absence of any notified reasons or charges, the lack of judicial review of detention, and the apparent misuse of detention and criminal prosecution in response to the legitimate exercise of his right to freedom of expression, particularly his work as a journalist, protected under article 19 of the ICCPR.

We are further alarmed that during the initial four-day period of incommunicado detention, he was allegedly victim of enforced disappearance, without notification of or access to lawyers, family members or a court, which is contrary to the articles 6, 7, 9 and 16, read alone and in conjunction with article 2(3) of the ICCPR, the Declaration on the Protection of all Persons from Enforced Disappearance, and customary international law.



We are alarmed at the reported conditions of detention of Mr. Shihab-Eldin as well as the report of at least three deaths in custody due to denial of medical care. States have an obligation to treat all persons deprived of their liberty with humanity and dignity (article 10, ICCPR, and rule 1, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)). The absolute and non-derogable

prohibition of arbitrary deprivation of life under article 6 of the ICCPR requires the State to investigate every death in custody to determine the circumstances and cause of death, and whether it resulted from an unlawful act, to hold any perpetrators accountable, and to provide effective remedies, including reparation.

We are further concerned that Mr. Shihab-Eldin's right to a fair trial under article 14 of the ICCPR, including adequate time and facilities to prepare a defence, may have been violated by factors including incommunicado detention, the failure to notify him of any presumed charges, arbitrary rescheduling of court hearings, restrictions on legal visits, [REDACTED], and the possibility of trial before specialised courts that may not meet international standards of fair trial by an independent and impartial tribunal.

We emphasize that States parties to the ICCPR are required to guarantee the right to freedom of expression online and offline, including political discourse, commentary on one's own and on public affairs, discussion of human rights and journalism (Human Rights Committee, general comment No. 34, para. 11), and extending to information that may criticize, shock, or offend. Individuals also cannot be attacked, including through arbitrary arrest [REDACTED], because of the exercise of their freedom of opinion or expression (para. 23). Any restrictions on freedom of expression must meet the requirements of article 19(3) of the ICCPR (see Annex).

We are concerned that vague offences such as spreading false news or rumours, harming national security, or misuse of a mobile phone may not meet the legitimate aim, necessity and proportionality requirements of article 19(3) or satisfy the requirements of legality and certainty under article 15 of the ICCPR. In this context, "it is not compatible with article 19 (3) [...] to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security" (general comment No. 34, para. 30). Further, States must put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23).

Finally, we express concern at the reported stripping of the citizenship of Mr. Shihab-Eldin. While Kuwaiti law does not permit dual citizenship, we are concerned at reports that in these cases the revocations were punitive and part of a wider pattern of selective, arbitrary enforcement against human rights voices and those of Palestinian descent. We remind your Excellency's Government of the prohibition of arbitrary deprivation of nationality under article 15 of the Universal Declaration of Human Rights, of denial of the right to enter one's own country under article 12(4) of the ICCPR, and of arbitrary or unlawful interferences with private life under article 17 of the ICCPR.

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 disclose the factual and legal basis for the arrest and detention of Mr. Shihab-Eldin and the charges brought against him. Please detail the measures taken to ensure Mr. Shihab-Eldin's right to a fair trial and due process.
3. Please explain why Mr. Shihab-Eldin was not brought promptly before a judge to review the lawfulness of his detention under Kuwaiti law and article 9 of the ICCPR.
4. Please indicate what measures were taken to secure Mr. Shihab-Eldin's prompt release from arbitrary detention, and whether any further deprivation of liberty remains possible in connection with the ongoing proceedings. In this regard, please detail the conditions of his release, including the content and scope of the "pledge of good conduct".
5. Please indicate what measures will be taken to investigate the enforced disappearance of Mr. Shihab-Eldin, and what measures will be taken to ensure such practice is not repeated, including by ensuring prompt notification of family members and lawyers and access to a court.
6. 
7. Please indicate what measures will be taken to address the inhumane and undignified conditions of detention in which he was detained and the conditions of detention in Kuwaiti detention facilities generally. Please also detail all steps taken by your Excellency's Government to ensure that prompt and adequate medical care is provided to all individuals deprived of their liberty, in accordance with international standards, including the Nelson Mandela Rules.
8. Please explain the timing and procedure applicable to any criminal proceedings to which Mr. Shihab-Eldin remains subject, including whether they fall under the authority of the new Prosecution of State Security, Terrorism, and Its Financing and specialised security and terrorism courts. If so, please indicate how such procedures are consistent with the right to fair trial by an independent and impartial tribunal under article 14 of the ICCPR.
9. Please explain the legal basis for stripping Mr. Shihab-Eldin of his citizenship and explain how these measures are compatible with your

Excellency's obligations under international law, including in the prohibition on arbitrary deprivation of nationality and guarantees of due process.

10. Please detail the measures taken or proposed to be taken to protect the right of Mr. Shihab-Eldin, and others including journalists, human rights defenders, dissidents and social media users, to freedom of expression.
11. Please explain how Decree Law Nos. 13 and 47 of 2026, and the new procedures for national security prosecutions and specialised courts, are consistent with international human rights law.
12. Please indicate what administrative, legislative and judicial measures have been, or will be, taken to ensure that the alleged violations detailed in this communication will not re-occur, and that victims of violations receive reparation in line with international law.
13. Please provide information on measures taken to ensure that all deaths in custody are promptly, effectively, and impartially investigated in accordance with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and where possible, with a view to ensuring accountability, prosecuting those responsible for deaths resulting from unlawful acts, and providing effective remedies.

This communication, and any response received from your Excellency's Government, will be made public via the communications reporting [website](#) at the 60 days mark. Should your Excellency's Government respond within 60 days, both the communication and the response, may be published before the 60 days mark. The communications and responses will also be made available in the subsequent periodic report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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 allegation letter and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegations concerning individual cases of enforced disappearances for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be examined by the

Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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 advised that a copy of this communication has been sent to the Government of the United States.

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

Ganna Yudkivska

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

Gabriella Citroni

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the following provisions of international human rights law.

Right to 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 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 right to freedom of expression, is arbitrary (general comment No. 35, para 17). Detention is arbitrary where it is based on discrimination (*ibid*).

Incommunicado detention and enforced disappearance

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 (general comment No. 36, 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) provides that prisoners must be allowed "to communicate with their family and friends at regular intervals", including through visits.

The Human Rights Committee has noted that "[e]nforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention" (general comment No. 35, para. 17). The prohibition of enforced disappearances is a peremptory norm of *jus cogens*, which establishes obligations applicable *erga omnes*. Enforced disappearances amount to violations of articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3). Moreover, they entail a violation of article 7, read alone and in conjunction with article 2(3) of the ICCPR with regard to the relatives of a disappeared person. The absolute and non-derogable prohibition of enforced disappearances is also enshrined under articles 2 and 7 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 on 18 December 1992. The Declaration sets forth States' obligations to prevent and eradicate this practice. In particular, articles 2 and 3 provide that no State shall practice, permit or tolerate enforced disappearances and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We also make reference to articles 9-13 and 19, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

According to the joint statement of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances on so-called "short-term" enforced disappearances, under international human rights law, duration is not a constitutive element of enforced disappearances, which produce serious harm and consequences for the disappeared and their families regardless of duration and also present practical challenges as regards seeking protection as well as defence of their rights. Furthermore, we make reference to the Working Group's study on enforced

disappearance and economic, social and cultural rights, which highlights the chilling effect of the disappearance of journalists and human rights defender (especially at paras. 33-37). States are accordingly called on to, “ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere, which diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender” (para. 49).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Solitary confinement

With regard to solitary confinement, rules 43-45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted unanimously by General Assembly resolution 70/175, prohibit indefinite and prolonged solitary confinement and restrict its use for as short time as possible as a measure of last resort, to be used only in exceptional circumstances. Due to the prisoner’s lack of communication and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment. In addition, rule 58 of the Nelson Mandela Rules provides that prisoners must “be allowed, under necessary supervision, to communicate with their family and friends at regular intervals”, including through visits.

Conditions of detention

The standards of conditions and treatment of persons deprived of their liberty are contained in the UN 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. The human right to health under article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Kuwait on 21 May 1996, also applies in detention.

Right to life and to security of person

Articles 6 and 9 of the ICCPR enshrine the right to life and security of the person. 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. Investigations and prosecutions of potentially unlawful deprivations of life should be independent, impartial, prompt, thorough, effective, credible and transparent and undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Investigations must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. In the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction (general comment No. 36).

Right to a fair trial and due process

Article 14 of the ICCPR guarantees the right to a fair trial and due process, which includes the right of everyone charged with a criminal offence to "have adequate time and facilities for the preparation of [their] defence and to communicate with counsel of [their] own choosing". In its general comment No. 32, the Human Rights Committee noted that "[t]he right to communicate with counsel requires that the accused is granted prompt access to counsel" (para. 34). In that regard, 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 provide that the right to legal assistance is applicable at any time during the detention, including immediately after apprehension. All persons apprehended must be promptly advised of this right and access to legal counsel must be provided without delay. The right to legal assistance at all times is inherent to the right to liberty and security of the person and to the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, enshrined in articles 3, 9, 10 and 11(1) of the Universal Declaration of Human Rights and article 14 of the ICCPR. 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 provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military and 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).

Freedom of expression and opinion

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

In 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). Article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output (para. 13).

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). Recognizing how journalists and persons who engage in the gathering and analysis of information on human rights situations and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stressed that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (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 (general comment No. 34, para. 25). The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (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).

Although article 19(3) recognizes “national security” as a legitimate aim, national security considerations should be “limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group” (A/71/373, para. 18). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (para. 19). In this context, “it is not compatible with article 19(3), for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security” (general comment No. 34, para. 30).

Nor, under any circumstance, can an attack on a person, because of the exercise of their freedom of opinion or expression, including such forms of attack as arbitrary arrest [REDACTED], be compatible with article 19 (para. 23).

Principle of legality

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 constitute a criminal offence and what would be the legal consequences. This principle prevents ill-defined and/or overly broad laws which are open to arbitrary application and abuse, including to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)) and suppress the exercise of fundamental rights and freedoms (A/HRC/40/52).

Right to nationality and right to enter one’s country

Article 15 of the Universal Declaration of Human Rights guarantees the right of everyone to a nationality and prohibits arbitrary deprivation of nationality. As noted by the United Nations Secretary General, interferences with the enjoyment of nationality have a significant impact on the enjoyment of multiple rights ([A/HRC/25/28](#); [A/HRC/19/43](#)). Any loss or deprivation of nationality must thus meet certain conditions to comply with the prohibition of arbitrary deprivation of nationality, namely it must serve a legitimate purpose, be the least intrusive means to achieve the desired result, and be proportional to the interest to be protected ([A/HRC/13/34](#)).

Article 13(2) of the Universal Declaration of Human Rights and article 12(4) of the ICCPR prohibit arbitrary deprivation of the right to enter one’s own country, which

means that a State party must not, by depriving individuals of their nationality or expelling them to other countries, arbitrarily prevent those individuals from returning to their own countries (general comment No. 27, para. 21). The Human Rights Committee has noted that the right to enter one's own country implies the right to remain in one's country (para. 19). The Committee further noted that the prohibition of arbitrariness "guarantees that even interference provided by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances" (para. 21). Due process and independent judicial safeguards must also be provided.

Right to privacy

Article 17(1) of the ICCPR prohibits arbitrary or unlawful interferences with a person's privacy, family, home or correspondence, and unlawful attacks on a person's honour and reputation. Article 17(2) provides that "[e]veryone has the right to the protection of the law against such interference or attacks." Any interference with the right protected under article 17 must be strictly necessary and proportionate in pursuit of a legitimate aim.

The Human Rights Committee has emphasized the duty of States "not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons" (Human Rights Committee, general comment No. 16, para. 9).

Respect of 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.¹ Counter-terrorism measures must conform to fundamental requirements of legality, legitimate aim, necessity, proportionality, 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)).

Definition of terrorism

Although no universal treaty generally defines "terrorism", States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,² the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the revised model definition of terrorism advanced by the Special Rapporteur

¹ 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

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

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/61/52). The model definition is as follows:

1. Any person commits a terrorist offence if that person, by any serious criminal act, intentionally causes death, serious bodily injury, or hostage-taking, where:
 - (a) The purpose of the conduct, by its nature or context, is:
 - (i) To provoke a state of terror in the public or a group of persons; or
 - (ii) To unduly compel a Government or an international organization to do or to abstain from doing any act;
 - (b) The conduct is intended to advance a political or ideological purpose, which must be a substantial purpose; and
 - (c) The conduct, given its nature or context, intentionally causes serious damage to a country or an international organization.
2. A terrorist offence does not include:
 - (a) An act of advocacy, protest, dissent or industrial action that does not intentionally cause death or serious bodily injury;
 - (b) Conduct committed in armed conflict that does not violate international humanitarian law;
 - (c) The provision of humanitarian activities by impartial humanitarian organizations in accordance with international humanitarian law;
 - (d) The activities of State military forces in the exercise of their official duties, inasmuch as they are accordance with international law; and
 - (e) An act intended to establish or re-establish democracy, constitutional Government or the rule of law, or to exercise or safeguard human rights.