

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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL EGY 5/2026

(Please use this reference in your reply)

28 July 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 58/14, 60/8, 54/14, 59/4, 61/22 and 61/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and prosecution on terrorism charges of Mr. **Ismail Alexandrani** and Mr. **Al-Sayed Sobhy Ahmed Eid**, reportedly arising from their peaceful expression of opinions and, in the case of Mr. Eid, in relation to his son's human rights advocacy. We are concerned that these measures appear to involve the misuse of counter-terrorism and related laws to sanction legitimate expression that is protected under international human rights law. We are further concerned by allegations of arbitrary detention, enforced disappearance, torture and ill-treatment, and denial of legal safeguards including adequate access to legal counsel, contrary to Egypt's obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982.

Mr. Ismail Al-Sayed Omar Mohamed Tawfiq, also known as Ismail Alexandrani, is a 42-year-old Egyptian investigative journalist and researcher. Mr. Al-Sayed Sobhy Ahmed Eid is a 63-year-old retired Egyptian national.

According to the information received:

Case of Mr. Ismail Alexandrani

On 24 September 2025, Mr. Alexandrani was reportedly arrested at a police checkpoint in Marsa Matrouh while returning from Siwa. Contact with him was cut off for more than 12 hours following his arrest. He was allegedly blindfolded and transferred to Cairo, where he was brought before the State Security Prosecution and interrogated for several hours.

During the interrogation, he was questioned about a number of posts published on his Facebook account, which he acknowledged authoring and described as reflecting his personal opinions and ideas but denied that they contained

rumours or false news. He also denied any affiliation with any political party or organisation. He complained to the prosecution that he had been blindfolded for an extended period; however, no action was taken in response to this allegation.

Mr. Alexandrani was subsequently ordered into pre-trial detention for 15 days in connection with Case No. 6469/2025 on charges including spreading false news, joining a terrorist group and using a website to promote ideas allegedly linked to terrorist acts. He is currently being held in pre-trial detention in the 10th of Ramadan Prison (Prison 6). His detention was last renewed on 8 June 2026 for a period of 45 days. It is further reported that he suffers from respiratory difficulties and requires the use of a respirator to sleep, and from hemorrhoids. Due to restrictions on communication with his lawyers, it is unknown whether Mr. Alexandrani has been able to access medical care.

Mr. Alexandrani had previously been detained for more than seven years following his arrest in November 2015 on unfounded charges of “disclosing State secrets,” spreading “false news” and “membership of a banned group”. He was sentenced to ten years in prison in May 2018 by a military court and was released in December 2022 after his sentence was reduced.

Case of Mr. Al-Sayed Sobhy Ahmed Eid

Mr. Eid is the father of a human rights defender who is a political researcher and podcast host addressing and reporting on conditions in detention facilities in Egypt.

On 22 October 2025, at approximately 2 a.m., a number of plainclothes National Security agents reportedly raided Mr. Eid’s residence, searched the premises and seized electronic devices. He was reportedly arrested without the presentation of a warrant. Mr. Eid’s arrest occurred a few days after an episode of his son’s podcast went viral with excerpts widely circulated by news platforms and on social media.

Following his arrest, Mr. Eid was reportedly subjected to enforced disappearance for a period of four days in an undisclosed location. During this time, he was allegedly subjected to torture and ill-treatment, including beatings, slapping and electric shocks, and was reportedly threatened with the arrest of members of his family.

On 25 October 2025, Mr. Eid was brought before the State Security Prosecution and questioned in the absence of legal counsel. He was charged in connection with Case No. 6468/2025 with joining and financing a terrorist group. It is reported that the prosecution did not address allegations concerning his enforced disappearance or treatment in detention. On 11 June 2026, Mr. Al-Sayed Eid was referred to the Terrorist Circuit of the Criminal Court pending Case No. 4509/2026.

Mr. Eid is currently held in pre-trial detention in the 10th of Ramadan Prison II. It is reported that, during his period of enforced disappearance, he was questioned about his son’s human rights advocacy. He was shown an episode of

his son's podcast reporting on detention conditions, and threatened with further ill-treatment in connection with this content.

Without wishing to prejudge the accuracy of the information received, we are concerned that, if confirmed, these allegations may constitute violations of the rights to liberty and security of person (ICCPR, article 9), to be free from torture and other cruel, inhuman or degrading treatment or punishment (ICCPR, article 7, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Egypt on 25 June 1986), fair trial (ICCPR, article 14), the requirement of legality (ICCPR, article 15), and the rights to freedom of opinion and expression (ICCPR, article 19), peaceful assembly and association (ICCPR, articles 21 and 22), and to take part in public affairs (ICCPR, article 25). Enforced disappearance would violate articles 6, 7, 9, and 16 of the ICCPR, read alone and in conjunction with article 2(3) and, with regards to the individual's family, articles 7 and 17.

We previously brought the detention of Mr. Alexandrani to the attention of your Excellency's Government in 2015 ([EGY 1/2016](#)). We expressed concern that his arrest and detention appeared related to his work as a journalist and the legitimate exercise of his right to freedom of expression. We regret that we received no reply from your Excellency's Government and that, more than ten years later, the authorities appear to continue to target Mr. Alexandrani for the legitimate exercise of his rights.

Freedom of opinion and expression

The arrest, detention, including incommunicado detention for 12 hours, and prosecution of Mr. Alexandrani appear to be directly linked to a series of Facebook posts which he acknowledged authoring and described as reflecting his personal views. Similarly, the arrest, enforced disappearance, and detention of Mr. Eid appear to have arisen in part as a result of the content of his son's podcast addressing conditions in detention facilities in Egypt. These activities involve the expression of opinions on matters of public interest, including criticism of State practices, as well as the promotion, protection and defence of human rights. Freedom of expression concerning public affairs, including commentary on State institutions and the treatment of detainees, lies at the core of the protection afforded by article 19 of the ICCPR and warrants a particularly high level of protection. The Human Rights Committee has clarified that the right to freedom of expression protects political discourse, including criticism of public authorities and government policies, and that such expression may not be subject to restriction unless it meets the strict requirements of legality, necessity and proportionality under article 19(3) of the ICCPR, including where the specific restrictions under article 20(2) also apply. In this context, the reliance on broadly formulated offences, including the dissemination of "false news" and terrorism-related charges, appears to criminalise legitimate expression (see general comment No. 34, paras. 11, 13, 38).

We are concerned that the arrests of Mr. Alexandrani and Mr. Eid are part of a well-documented pattern of targeting individuals for exercising their right to freedom of expression and for exposing human rights abuses in Egypt and promoting, protecting and defending human rights (see CCPR/C/EGY/CO/5, para. 45 and EGY 3/2026).

Use of counter-terrorism legislation in relation to non-violent conduct

Both individuals have reportedly been charged with terrorism-related offences, including joining or financing a terrorist group, in circumstances where the underlying conduct appears to consist of expression which does not incite violence or in any way contribute to terrorist activities by any genuinely terrorist organization as properly defined according to international standards. The application of such charges raises serious concerns that counter-terrorism legislation is being misused against critics of the authorities or, in the case of Mr. Eid, against family members. International standards require that counter-terrorism measures be confined to conduct involving or causally linked to serious acts of violence, particularly those that intentionally cause death or serious bodily injury for a terrorist purpose (Security Council resolution 1566 (2004); model definition of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/61/52). The application of vague and overbroad terrorism offences to non-violent expression further appears to violate the principle of legality under article 15(1) of the ICCPR. We have previously raised similar concerns about legality and criminalisation of freedom of expression through the misuse of terrorism charges in prior communications to your Excellency's Government, including letters [EGY 13/2019](#), [EGY 6/2020](#), [EGY 7/2023](#), [EGY 3/2024](#), [EGY 7/2025](#) and EGY 3/2026. We thank your Excellency's Government for the substantive responses it provided to three of these communications¹ and encourage it to reply to the others.

In addition, we are concerned that Egyptian law on the designation of organizations as "terrorist", which underlies the charges in the present cases, does not meet international standards concerning the permissible grounds and procedures for designation (see Best Practices to Protect Human Rights while Using Administrative Measures to Counter Terrorism, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/80/284). We have raised concerns about the misuse of terrorist listings in numerous previous communications (see e.g. [EGY 11/2015](#), [EGY 13/2019](#), [EGY 11/2020](#), [EGY 5/2023](#), [EGY 7/2023](#), [EGY 7/2025](#) and EGY 3/2026).

Liberty and security of person

The deprivations of liberty of Mr. Alexandrani and Mr. Eid stemming from charges that criminalize legitimate expression appear to be arbitrary and contrary to article 9 of the ICCPR. We are further concerned that the imposition and continuation of pre-trial detention does not meet the requirements of necessity and proportionality. Article 9 requires that detention be an exceptional measure, justified on an individualized basis. On the information available, no grounds have been presented that would justify the continued detention of either individual, particularly given that the charges appear to relate to non-violent expression.

¹ Response to EGY 13/2019, received on 6 March 2020:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35195>
Response to EGY 3/2024, received on 15 October 2024:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38705>
Response to EGY 7/2025, received on 12 January 2026:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=39524>

The denial of access to legal representation in detention raises further concerns. Prompt and regular access to a lawyer, including after arrest, is an essential safeguard on the right to liberty under article 9 of the ICCPR and to prevent torture and other ill-treatment (general comment No. 35, para. 58). Denial of legal representation also undermines the right to a fair trial under article 14 of the ICCPR.

Enforced disappearance

The enforced disappearance of Mr. Eid would violate the absolute and non-derogable prohibition of enforced disappearances which has attained the status of *jus cogens*, and includes short-term disappearances (joint statement of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances: see annex). Enforced disappearance violates articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3). Moreover, it violates articles 7 and 17 of the ICCPR, read alone and in conjunction with article 2(3) of the ICCPR, with regard to the relatives of Mr. Eid. We also draw attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances (see annex).

We emphasize that incommunicado detention and enforced disappearance are incompatible with article 9 of the ICCPR, including the right to be promptly brought before a judicial authority and to challenge the lawfulness of detention. Prompt appearance of detained individuals before a judge or other officer authorized by law to exercise judicial power serves as an important safeguard against torture and cruel, inhuman or degrading treatment (general comment No. 35, para. 34).

Prohibition of torture and ill-treatment

The allegations that Mr. Eid was subjected to beatings, electric shocks and threats during a period of enforced disappearance, if confirmed, would violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 7 and 10 of the ICCPR, and, at least, articles 1, 2 and 16 of the CAT. The reported sequence of arrest, disappearance and coercive interrogation raises serious concerns as enforced disappearance creates conditions in which such violations are known to occur. The questioning of an individual during a period of enforced disappearance further raises concerns as to whether any statements obtained could have been given freely and without coercion. The use of any such statements in criminal proceedings would further violate articles 7 and 14 (fair trial) of the ICCPR and article 15 of the CAT.

The apparent failure to address these allegations raised by Mr. Eid at the time of his appearance before the prosecution raises further serious concerns regarding the State's obligation to promptly, effectively and impartially investigate allegations of torture and ill-treatment, including under the articles 12 and 13 of the CAT and article 7 of the ICCPR, read in conjunction with article 2(3) of the ICCPR.

Reprisals and targeting of family members

The reported arrest and detention of Mr. Eid in connection with the human rights advocacy of his son raises serious concerns regarding the imposition of punitive measures on the basis of familial association and reprisals to deter human rights work. Holding an individual responsible for the acts or expression of a family member is incompatible with the general principle of individual criminal responsibility, as reflected in articles 14 and 15 of the ICCPR. Such measures may amount to a form of reprisal and risk creating a chilling effect on the exercise of freedom of expression and the right to defend, promote and protect human rights.

Additionally, reprisals against human rights defenders through the targeting of their family members are incompatible with article 12 of the United Nations Declaration on Human Rights Defenders, which establishes that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms; and that the State shall take all necessary measures to protect everyone exercising their rights under the Declaration against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action, and ensure effective legal protection.

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the arrest, detention and prosecution of Mr. Alexandrani and Mr. Eid, including the specific acts attributed to them and how these acts meet the elements of the offences charged as properly defined according to international standards.
3. Please provide information on the measures taken to ensure that the rights of both individuals under article 9 of the ICCPR have been respected, including access to legal counsel, prompt judicial oversight, and the ability to challenge the lawfulness of their detention. Please detail the measures taken to ensure the right of Mr. Alexandrani and Mr. Eid to a fair trial and due process under article 14 of the ICCPR.
4. Please provide information on the current legal status and health condition of Mr. Alexandrani, including any measures taken to ensure access to necessary medical care.
5. Please provide detailed information regarding the allegations of enforced disappearance and torture and other ill-treatment of Mr. Eid, including

any investigations conducted, their findings, and any steps taken to hold those responsible accountable. In case no investigation has been undertaken, please explain the reasons why.

6. Please indicate what measures have been taken to ensure that statements obtained under coercion or during periods of incommunicado detention or enforced disappearance are not relied upon in judicial proceedings.
7. Please clarify the legal basis for the arrest and detention of Mr. Eid in connection with the human rights advocacy of his son, and indicate what safeguards are in place to prevent the targeting of individuals on the basis of familial association.
8. Please provide information on measures taken to ensure that counter-terrorism legislation and procedures, including vague and overbroad offences and terrorist designations, are consistent with international human rights law, including the right to freedom of expression and the principle of legality.

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 prevent any irreparable harm to the life and personal integrity of Mr. Alexandrani and Mr. Eid, including by means of provision of adequate medical assistance to Mr. Alexandrani, 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.

Finally, we would like to inform 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 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.

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

Gina Romero

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

Andrea Bolaños Vargas

Special Rapporteur on the situation of human rights defenders

Alice Jill Edwards

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

Annex

Reference to international human rights law

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

Freedom of opinion and expression

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline, and 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).

Freedom of peaceful assembly and association

Article 21 of the ICCPR guarantees the right of peaceful assembly and states that "[n]o 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.” In its general comment No. 37, the Human Rights Committee noted that “the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants” (para. 8). The Committee further emphasized that while the right to freedom of peaceful assembly may in some cases be restricted under the conditions listed in article 21, “[r]estrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government” (para. 49).

In addition, article 22 of the ICCPR protects the right to freedom of association, including the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies and can only be limited through necessary and proportionate restrictions that serve a legitimate public purpose that is consistent with international standards.

In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline.²

Further, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association, and obstructed justice for violations related to the exercise of these rights undermines their essence (A/HRC/47/24, paras. 22 and 72).

Right to defend, promote and protect human rights

Articles 1 and 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders) state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms.

Article 6(b) of the Declaration establishes the right, individually and in association with others, to freely publish, impart or disseminate to others’ views, information and knowledge on all human rights and fundamental freedoms.

Article 12(1) of the Declaration provides that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. Article 12(2) of the Declaration provides that the State shall take all necessary measures to ensure the protection of everyone against

² See also A/HRC/26/29, para. 22.

any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, article 12(3) establishes that everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Right to take part 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”. The Human Rights Committee has 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).

Right to liberty

Article 9 of the ICCPR provides that no one shall be subjected to arbitrary arrest or detention or deprived of their 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 (para. 12).

According to the same general comment (para. 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression under article 19, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

Article 9(3) of the ICCPR, as interpreted by the Human Rights Committee in its general comment No. 35, provides that pretrial detention must be an exceptional measure based on an individualized assessment, and not imposed automatically on the basis of the gravity of the alleged offence.

In addition, article 9(4) of the ICCPR states that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order for that court to decide without delay on the lawfulness of the detention and order the individual’s release if the detention is not lawful.

In its deliberation No. 7, the Working Group on Arbitrary Detention noted that although counter-terrorism measures might require the adoption of specific measures limiting certain guarantees, including in relation to detention and fair trial rights, deprivation must remain consistent with international law in all circumstances, and the right to bring proceedings before a court in order to challenge the legality of the detention is a personal right, which must “in all circumstances be guaranteed by the jurisdiction of the ordinary courts” (para. 71).

As noted by the Working Group on Arbitrary Detention no one should be deprived of his or her liberty for the crimes, real or not, committed by his or her family member by birth or marriage, in a free, democratic society. Such arrest and detention would constitute unlawful retribution against a family member as well as collective punishment and guilt by association, rendering the deprivation of liberty discriminatory, without legal basis and therefore arbitrary (see e.g. opinion 65/2019).

In accordance with article 10 of the ICCPR, every person detained must be treated with humanity and with respect for their inherent dignity. Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) reminds that the provision of health care for prisoners is the State’s responsibility and that all persons detained should have access to the same standards of health care available in the community, without discrimination on the grounds of their legal status. This includes specialized treatment in specialized institutions where needed (rule 27).

Prohibition on incommunicado detention

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 Nelson Mandela Rules provides that prisoners must be allowed “to communicate with their family and friends at regular intervals”, including through visits.

Prohibition on enforced disappearance

The absolute prohibition of enforced disappearances is a peremptory norm of *jus cogens*. 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). Enforced disappearance violates article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person), and article 16 (right to recognition as a person before the law) of the ICCPR, read alone and in conjunction with article 2 (3) (right to remedies). In this respect, we also make reference to general comment No. 36 (2018) on article 6 of the ICCPR, which states, inter alia, that extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to

personal liberty and personal security and are incompatible with the right to life (para. 57), and that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and States parties must take adequate measures to prevent the enforced disappearance of individuals, and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance (para. 58).

The absolute and non-derogable prohibition of enforced disappearances is also enshrined in 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. Articles 7, 9 to 12 and 19, state that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify an enforced disappearance; as well they 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, to the maintenance in every place of detention of official up-to-date registers of all detained persons, and to redress and the right to adequate compensation.

Notably, the failure to acknowledge the deprivation of liberty of an individual by State agents constitutes an enforced disappearance even if it is of a short duration. In this regard, we would like to refer to the Joint statement on so-called "short-term enforced disappearances" ([CED/C/11](#)) issued by the Committee on Enforced Disappearance and the Working Group on Enforced or Involuntary Disappearances, which affirms that duration is not a constitutive element of enforced disappearance under international human rights law. Enforced disappearances 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. We also highlight the Working Group's study on Enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), in particular paragraphs 33 to 37 which warn of the chilling effect of disappearances on human rights defenders. 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 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).

Prohibition on torture and ill-treatment

The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 7 and 10 of the ICCPR, and, at least, articles 1, 2 and 16 of the CAT. The prohibition of torture is an *erga omnes* and *jus cogens* norm. It

is absolute and non-derogable, and it applies in all contexts with “no exceptional circumstances whatsoever”,³ including orders from “a superior officer or a public authority”.⁴

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).

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 ICCPR 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.”

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 seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, including to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)) and suppress the exercise of fundamental rights and freedoms (A/HRC/40/52).

Respect for human rights while countering terrorism

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

³ CAT art 2(2).

⁴ CAT art 2(3).

⁵ Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others

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,⁶ the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the 2026 revised 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 and precisely defining the elements (A/HRC/61/52 and A/HRC/16/51, para. 28). 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;

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

- (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.

Terrorist designations

The designation of “terrorist” individuals or organizations must satisfy the grounds for listing, and ensure 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, the criteria for listing must be clearly established by law and publicized. There must be reasonable grounds to believe, based on credible and convincing evidence, that the individual or entity: (a) has knowingly carried out, participated in or facilitated a terrorist act; (b) intends to engage further in terrorism; and (c) is capable of so engaging. A higher standard of proof, such as the balance of probabilities, is recommended. The definition of terrorism must be limited to conduct that is genuinely terrorist in accordance with best practice international standards. To list an organization, it must have the substantial purpose of engaging in terrorist offences. Even where an individual or entity 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.

Any restriction of rights resulting from listing, including financial and criminal law measures, must be necessary and proportionate in pursuit of the counter-terrorism aim and be non-discriminatory. Measures must be applied individually and not automatically or en masse. The protracted or indefinite maintenance of restrictive measures, including asset freezes and travel bans, may become disproportionate and quasi-punitive over time. Protracted listings should also be more intensively scrutinized because they will likely have reduced the threat over time.

The following minimum due process rights should apply to listings: (a) a right to be promptly informed of the listing (ordinarily ex ante, exceptionally ex post facto) and its factual grounds, the consequences of listing and the procedural rights. There must be sufficient disclosure of the information supporting the listing to enable the person to effectively challenge it, instruct their lawyer and enjoy equality of arms in proceedings; (b) a right to apply to the decision maker for delisting or non-implementation of the measures, and a subsequent right to re-apply for such relief where there is a material change of circumstances or new evidence; (c) a right to judicial review of the listing, affording due process, legal assistance and legal aid as required. The court must have the power to suspend the listing pending final decision. Judicial review should be prompt and automatic, not only on application; (d) the listing should be regularly reviewed, at least every six months, to determine whether the listing and the measures are still lawful, necessary and proportionate; (e) the listing should lapse automatically after 12 months, unless renewed afresh; (f) reparation, including compensation, must be available for wrongful listing, including for affected third parties.