

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief**

Ref.: AL KAZ 5/2025

(Please use this reference in your reply)

5 November 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 58/14, 52/9, 59/4 and 58/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **reports that counter-terrorism and counter-extremism legislation in Kazakhstan, including through criminal prosecutions and financial restrictions, have been applied to target peaceful government critics, civil society actors, and individuals exercising their rights to freedom of expression, peaceful assembly, association, and religion or belief**, contrary to the International Covenant on Civil and Political Rights, to which Kazakhstan is a State party. The imposition of these restrictions is reported to additionally result in violations of rights guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Kazakhstan is a State party, including the rights to an adequate standard of living, to work, and to social security.

According to the information received:

A significant number of peaceful opposition activists, civic actors, and individuals exercising their rights to freedom of expression, peaceful assembly, association, religion or belief in Kazakhstan have reportedly been subjected to financial restrictions as a result of prosecutions under vague and overly broad extremism and terrorism-related provisions of the Criminal Code, which have been applied in cases without any demonstrated nexus to violence, incitement to violence, or the financing of terrorism.

Under Kazakhstan's Criminal Code, 15 offences are designated as "terrorist" and 12 as "extremist" offences. Three provisions in particular have reportedly been used to prosecute non-violent conduct: article 405 (organizing or participating in the activities of a public or religious association or other organization after a court decision banning their activities in connection with extremism or terrorism); article 174 (inciting social, ethnic, tribal, racial, class or religious discord); and article 256 (terrorism propaganda or public calls to commit an act of terrorism).

Following conviction under these provisions, affected individuals are automatically included on Kazakhstan’s national “list of organizations and people associated with financing terrorism and extremism” (the “Financing Terrorism List”), pursuant to article 12 of Law No. 193 of 11 December 2009, “On combating the legalization (laundering) of proceeds from crime and the financing of terrorism.” The Financing Terrorism List was first introduced in 2010 and is maintained by the Financial Monitoring Agency, an authority reporting directly to the President.

While the list was created with the stated purpose of fulfilling Kazakhstan’s international obligations on money laundering and terrorism financing, in practice its application appears to extend punitive financial restrictions to individuals whose conduct is unrelated to terrorism financing.

As of September 2025, the “Financing Terrorism List” reportedly contained 1,410 names. Nearly half of these individuals were convicted under articles 405, 174 or 256 of the Criminal Code, often for conduct protected under international human rights law, such as online criticism of the government, participation in peaceful protests, engagement in opposition political activity or civic activism, or the practice of religion or belief outside State-approved institutions.

Persons listed are subject to “targeted financial sanctions related to the prevention of terrorism and the financing of terrorism,” which entail sweeping restrictions, including:

- freezing of bank accounts and denial of access to debit and credit cards;
- prohibition on conducting transactions at notaries and post offices;
- blocking of access to wages, pensions, and social benefits through the banking system;
- denial of access to credit, loans, and mortgages; and
- obstacles to employment, as employers cannot lawfully pay salaries into blocked accounts.

Although article 12(8) of the 2009 law provides a narrow exception allowing listed persons to access the equivalent of the minimum wage for themselves and their dependents, this requires burdensome documentation and approval by the Financial Monitoring Agency. In practice, individuals report that these procedures are onerous and inconsistently applied, leaving many without access to income or social support.

The impact of these measures is reported to cause serious hardship and economic isolation. Individuals have allegedly been unable to pay utility bills, facing threats of disconnection; some have had cards frozen while attempting to purchase groceries, leaving them without the means to support their families; others have been forced to ration food and medicine, or rely on relatives to cover

basic needs. Access to housing has reportedly been jeopardized due to an inability to pay rent or mortgages, and job offers have been withdrawn because of the stigma of being listed. Targeted individuals have described the cumulative effect of these measures as an “economic blockade,” cutting them off from normal participation in society.

The financial restrictions imposed on listed individuals have also had serious secondary effects on children, including due to the inability of parents to access wages, alimony, or social benefits, resulting in difficulty meeting basic needs such as food, housing, and healthcare. In some cases, children have been left reliant on extended family or informal support networks to secure necessities, illustrating how the sanctions’ impacts extend beyond the designated adults to affect their families.

It is further reported that sanctions are imposed automatically and without prior notice, are frequently not mentioned in court judgments, and are applied with no clear avenues for appeal or independent review. Many individuals only discover their designation when financial transactions are blocked. Concerns have been raised that this framework allows counter-terrorism measures to be used to suppress political dissent, independent civic activity, and religious practice, rather than to address genuine threats of terrorism or its financing.

Without prejudging the accuracy of the afore-mentioned allegations, we express serious concern at reports that counter-terrorism and counter-extremism legislation in Kazakhstan is being applied to prosecute and sanction peaceful government critics, civic activists, and individuals exercising their rights to freedom of expression, peaceful assembly, association, and religion or belief. We are particularly concerned that individuals convicted of non-violent “extremist” or “terrorist” offences are automatically subjected to sweeping financial restrictions through inclusion on the Financing Terrorism List, resulting in economic isolation, social stigma, and long-term hardship for themselves and their families.

Should these allegations be confirmed, they would constitute violations of Kazakhstan’s obligations under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by Kazakhstan on 24 January 2006, and the Convention on the Rights of the Child (CRC), ratified on 12 August 1994.

*Legality and the Rights to Freedom of Expression, Peaceful Assembly, Association, and Religion or Belief*

We are concerned that individuals in Kazakhstan have reportedly been prosecuted under broadly worded “extremism” and “terrorism” provisions for conduct that does not involve violence or incitement to violence. This includes expressing political opinions on social media, participating in lawful demonstrations, engaging in opposition political activity, or practicing religion or belief outside State-approved institutions. These activities constitute the peaceful exercise of rights guaranteed under the ICCPR and should not be criminalized or classified as extremist or terrorist in nature.

These allegations would be contrary to the principle of legality under article 15 of the ICCPR which requires that criminal offences be clearly defined in law so that individuals can reasonably foresee the consequences of their actions and regulate their conduct accordingly. Vague and overbroad definitions and offences are prone to abuse and may lead to violations of human rights.

Further, they would violate the following ICCPR articles: the right to freedom of expression (article 19), freedom of peaceful assembly (article 21), freedom of association (article 22), and freedom of thought, conscience, and religion or belief (article 18). These rights are essential for the functioning of a democratic society. The Human Rights Committee has repeatedly emphasized that limitations cannot be imposed for the purpose of suppressing political opposition, peaceful dissent, or independent religious practice.

In relation to article 256 of the Criminal Code (terrorism propaganda or public calls to commit an act of terrorism), we are concerned that restrictions on expression relating to countering terrorism should require an objective intention to incite terrorism as well as an objectively reasonable probability that a terrorist act will be committed (A/HRC/40/52, para. 37) and should be consistent with the criteria recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (see A/HRC/16/51, para. 31, reproduced in the annex to this letter). The Human Rights Committee has emphasized that States must ensure that any counter-terrorism measures are compatible with article 19(3) of the ICCPR and that any offences should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression (general comment No. 34, para. 46).

With regard to article 174 of the Criminal Code (inciting social, ethnic, tribal, racial, class or religious discord), restrictions on expression should comply with the six criteria of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, annex, reproduced in the annex to this letter), concerning context, speaker, intent, content and form of speech, extent or reach of speech, and the likelihood or imminence of harm.

#### *Sanctions and Economic, Social and Cultural Rights*

We are particularly concerned that following their criminal convictions individuals have been automatically subjected to sweeping financial sanctions by inclusion on the Financing Terrorism List, including the freezing of bank accounts, denial of wages and pensions, and restriction of access to credit. The automatic, indiscriminate and seemingly punitive nature of these measures, applied without individualized assessment of their necessity or proportionality, due process or judicial oversight, for the peaceful exercise of expression, peaceful assembly, association, or religion or belief appears incompatible with Kazakhstan's obligations to respect, protect, and fulfil the right to work (article 6), the right to social security (article 9), and the right to an adequate standard of living (article 11) as per the ICESCR, and risks chilling legitimate civil and religious activity. The Committee on Economic, Social and Cultural Rights (CESCR) has stated that these rights require States to refrain from measures that arbitrarily deprive individuals of access to work, social benefits, or

essential resources.

The blanket freezing of bank accounts, denial of access to wages, pensions, and social benefits, and restrictions on access to loans and mortgages appear to amount to deliberate measures of economic exclusion. Such restrictions have reportedly left individuals unable to meet basic needs, including food, medicine, and housing. These consequences are inconsistent with Kazakhstan's obligations under the ICESCR and undermine the enjoyment of minimum essential levels of economic and social rights.

#### *Right to Privacy and Protection of Reputation*

We are concerned that the public listing of individuals on the "Financing Terrorism List," particularly in the absence of violence-related convictions, may expose them to stigma, discrimination, and social exclusion, constituting an interference with their right to privacy and reputation. Moreover, the imposition of such restrictions without adequate notice, judicial justification, or avenues for review raises concerns of arbitrariness. Automatic designation and public exposure in this manner cannot be considered a necessary and proportionate response. Such measures would violate article 17 of the ICCPR, which protects against arbitrary or unlawful interference with privacy, family, home, and correspondence, as well as unlawful attacks on honour and reputation.

#### *Non-discrimination*

Allegations that individuals have been prosecuted, listed and subjected to financial sanctions because of their political activity, religious practice, or peaceful expression of dissenting views suggest unlawful discrimination on political and/or religious grounds in violation of articles 2 and 26 of the ICCPR, article 2(2) of the ICESCR, and article 2 of the CRC.

We are particularly concerned about the impact of these measures on children. Article 2 of the CRC requires States to ensure that children are protected from discrimination on the basis of the status, activities, expressed opinions, or beliefs of their parents or legal guardians. Information received indicates that children of parents who have been convicted under broad extremism or terrorism provisions and automatically placed on the Financing Terrorism List have faced indirect discrimination and deprivation of essential support. Due to financial restrictions, some mothers have been unable to access alimony payments to support their children or to apply for maternity benefits. In such cases, the economic and social consequences of sanctions imposed on parents effectively fall upon their children, potentially constituting violations of article 2 of the CRC.

#### *Due Process and Effective Remedy*

We note with concern that individuals have reportedly learnt of their designation on the "Financing Terrorism List" only after their financial accounts were frozen, and that such sanctions are not consistently mentioned in court judgments nor subject to clear procedures for appeal or review. The absence of transparency, notice, and judicial oversight in the imposition of such severe restrictions undermines the right to due process and deprives affected persons of an effective remedy under articles 2(3) and 14

of the ICCPR. The automatic and indefinite nature of the sanctions is particularly troubling, as it leaves individuals with no realistic path to challenge or remove their designation.

We emphasize that the designation of individuals or organizations as “terrorist” must meet the requirements of legality, 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, annexed to this letter).

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the terrorism and extremism offences under Kazakhstan’s Criminal Code are consistent with the requirement of legality under article 15 of the ICCPR, and as relevant with international standards on incitement to terrorism and the Rabat Principles.
3. Please indicate the measures adopted by your Excellency’s Government to prevent the misuse of counter-terrorism and counter-extremism legislation for the suppression of political dissent, independent civic activity, or religious practice.
4. Please clarify the factual and legal basis for the inclusion of individuals on the “Financing Terrorism List,” including the precise criteria used to determine designations.
5. Please indicate how the application of such financial restrictions complies with Kazakhstan’s obligations under the ICCPR, ICESCR, and CRC, particularly with respect to the rights to freedom of expression, peaceful assembly, association, religion or belief, work, social security, an adequate standard of living, privacy, and non-discrimination. Please explain what safeguards are in place to ensure that financial sanctions are imposed only where strictly necessary and proportionate to a legitimate aim, and not in relation to the peaceful exercise of rights protected under international human rights law.
6. Please clarify the procedures available for individuals to challenge their designation on the “Financing Terrorism List”, including whether there is access to an independent and impartial review mechanism, legal assistance, the possibility of removal from the list, and effective remedies for violations of their rights under the ICCPR and ICESCR.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Irene Khan

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

Gina Romero

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

Nazila Ghanea

Special Rapporteur on freedom of religion or belief

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

#### *Freedom of religion and belief*

Article 18(1) of the ICCPR states that “[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. Peaceful expression of one's thought and conscience cannot be restricted unless such restrictions have fulfilled stringent tests of legality, proportionality and necessity. Article 18(3) of the ICCPR states that “freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Further, the Human Rights Committee emphasized that article 18(3) of the ICCPR “is to be strictly interpreted... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated” (general comment No. 22, para. 8).

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states in article 2(1) that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief”. Furthermore, article 4(2) of the Declaration provides that: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs”.

#### *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 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” (general comment No. 34, 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).

The Human Rights Committee has also emphasized that States must ensure that any counter-terrorism measures are compatible with article 19(3) of the ICCPR and that any offences should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression (general comment No. 34, para. 46).

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

Article 21 of the ICCPR states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1). Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

The Human Rights Committee has stated that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be

discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect” (general comment No. 37, para. 36). In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities, effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para. 11). The Special Rapporteur emphasized the weaponization of unjustified accusations of terrorism, facilitated by broad anti-terrorism laws, to stifle civic activism and civil society critical of government policies (paras. 32-35).

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

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with privacy, family, home or correspondence, as well as unlawful attacks on an individual’s honour and reputation. In particular, article 17(2) states that “[e]veryone has the right to the protection of the law against such interference or attacks”. Any interference must be strictly necessary and proportionate in pursuit of a legitimate aim. The Human Rights Committee noted that “no interference can take place except in cases envisaged by the law” and “even interference provided for 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” (general comment No. 16, paras. 3 and 4).

*Right to work*

Article 6 of the ICESCR guarantees the right to work, which includes the right of everyone to the opportunity to gain a living by work which the individual freely chooses or accepts. It provides that States must take appropriate steps achieve the full realization of this right, including through “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

In its general comment No. 18, the CESCR noted that the right to work imposes on States an obligation to respect, protect and fulfill such right. It stated that “[t]he obligation to *respect* the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of that right. The obligation to *protect* requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to work” (para. 22). It further noted that States should “refrain from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees, members of minorities and migrant workers” (para. 23).

### *Right to social security*

Article 9 of the ICESCR protects the right of everyone to social security, including social insurance. The Human Rights Committee has noted that “[t]here is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level” (CESCR, general comment No. 19, para. 42). States are required to refrain from interfering directly or indirectly with the enjoyment of the right to social security, including through arbitrary or unreasonable restrictions of existing social security coverage (paras. 9 and 44).

### *Right to an adequate standard of living*

Article 11 of the ICESCR guarantees the right to an adequate standard of living for individuals and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. It provides that “States Parties must take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

### *Equality and non-discrimination*

Article 2 of the ICCPR and the ICESCR requires that States respect and ensure to all individuals the rights protected under both Covenants 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.” The Human Rights Committee reminds that non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a “basic and general principle” relating to the protection of human rights (general comment No. 18, para. 1). It also noted that article 26 prohibits discrimination in law or in fact in any field regulated and protected by public authorities (para. 12).

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

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

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

#### *Right to an effective remedy*

Article 2(3) of the ICCPR enshrines the right to an effective remedy. It provides that States parties have the obligation: (a) to ensure that any person whose rights or freedoms recognized in the ICCPR are violated have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy has such right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) to ensure that the competent authorities enforce such remedies when granted.

The right to an effective remedy is a key element of the full enjoyment of human rights. Without access to an effective remedy, human rights violations go unpunished, and victims may be deprived of justice, compensation and their human dignity.

### *Rights of children*

The Convention on the Rights of the Child (CRC) similarly protects the rights of children, including the right to be free from discrimination of any kind, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” As set forth in article 3, in all actions concerning children, the best interests of the child must always be the primary consideration, including by all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children (Committee on the Rights of the Child, general comment No. 14, para. 25). As noted by the Committee on the Rights of the Child, “[e]very legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children” (general comment No. 5, para. 4).

### *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.<sup>1</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. Disregard for these principles can have exceptionally harmful effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society. States must ensure that measures to combat terrorism do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

Although no universal treaty generally defines “terrorism”, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,<sup>2</sup> the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, “best practice” guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28).

The principle of legality under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct

---

<sup>1</sup> Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others

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

constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and 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).

As stated by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “the term ‘extremism’ has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights” (A/HRC/43/46, para. 14).

#### *Incitement to terrorism*

For an expression to constitute an “inchoate offence, there must be a reasonable probability that it will succeed in inciting the commission of a terrorist act and that a certain causal link or real risk that the offence will be committed can therefore be established” (A/HRC/40/52, para. 37). The offence of incitement to terrorism must contain a requirement to prove both a subjective intention to incite as well as an objective danger that a terrorist act will be committed (A/HRC/16/51, para. 30).

In the implementation of article 5 of the Convention on the Prevention of Terrorism, and 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. 31), the offence of incitement to terrorism:

- (a) must be limited to the incitement to conduct that is truly terrorist in nature, as properly defined pursuant to practice 7 above;
- (b) must restrict the freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals;
- (c) must be prescribed by law in precise language, including by avoiding reference to vague terms such as “glorifying” or “promoting” terrorism;
- (d) must include an actual (objective) risk that the act incited will be committed;
- (e) should expressly refer to two elements of intent, namely intent to communicate a message and intent that this message incite the commission of a terrorist act; and
- (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful” incitement to terrorism.

### *Terrorist listings and designations*

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

- (a) there must be reasonable grounds to believe that the person or entity has knowingly engaged in terrorism, as properly defined according to international standards, including the requirement of legality;
- (b) the listed person or entity must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights;
- (c) there must be a right to apply for de-listing and to have it reviewed within a reasonable time, and a right to judicial review of any resulting decision, in both cases affording due process, including sufficient disclosure of evidence and access to a lawyer;
- (d) the listed individual or entity must be afforded the right to make a fresh application for de-listing or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;
- (e) listings must lapse automatically after 12 months unless renewed afresh; and
- (f) reparation, including compensation, must be available for any wrongful listing.

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