

**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 right to education; 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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
OL CHN 18/2019

1 November 2019

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 right to education; 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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on the right to privacy; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/16, 42/22, 36/6, 26/17, 34/18, 41/12, 33/9, 34/5, 34/6, 37/2, 40/10 and 34/19.

In this connection, we offer the following comments on the effect and application of the **Counter-Terrorism Law of the People's Republic of China (Counter-Terrorism Law) promulgated on 27 December 2015 effective as of 1 January 2016 and its Regional Implementing Measures, the 2016 Xinjiang Uyghur Autonomous Region Implementing Measures of the Counter-Terrorism Law of the People's Republic of China**. The letter follows the joint communication from 12 November 2018, concerned with the extensive limitations on the exercise of fundamental rights in Xinjiang.<sup>1</sup> Related concerns related to law and policy that criminalizes fundamental rights in various regions of China have been raised in several communications sent by various Special Procedures mandate holders, including communications sent on 12 January 2018 (ref. no CHN 1/2018); on 16 February 2018 (ref. no CHN 4/2018); 6 March 2018 (ref. no CHN 5/2018); 6 April 2018 (ref. no CHN 7/2018); 14 June 2018 (ref. no CHN 12/2018); 11 July 2018 (ref. no CHN 13/2018); 6 August 2018 (ref. no CHN 14/2018); 22 August 2018 (ref. no CHN 15/2018) and on 28 August 2018 (ref. no CHN 17/2018);

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<sup>1</sup> OL CHN 21/2018.

The application of the Counter-Terrorism Law and related practices raises serious concerns regarding increasing practices of arbitrary detention, enforced disappearance, absence of judicial oversight and procedural safeguards and restrictions of the right to freedom of expression, the right to freedom of thought, conscience and religion, the right to freedom of peaceful assembly, the right to education and the right to freedom of movement within an increasingly securitized environment, particularly for designated minorities, notably Uyghurs and Tibetans.

We encourage review and reconsideration of certain key aspects of this legislation to ensure it is in compliance with the People's Republic of China's international human rights obligations. We note that best international practice encourages States to independently review counter-terrorism and emergency law regularly to ensure that it remains necessary and international law compliant. The experts also affirm that the ordinary law, where sufficient, should be used to address security and terrorism challenges experienced by the State and when exceptional or emergency law is utilized it be applied in accordance with international law and the framework of derogation on the basis of necessity, proportionality, and non-discrimination.<sup>2</sup>

We concur with the conclusions of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism about the use of the terminology of 'extremism' in national law and practice.<sup>3</sup> She notes that 'extremist' crime is a very vague and problematic category. Absent a qualifier of 'violent' extremism conducive to terrorism, the terms remain broad and overly vague and may encroach on duly protected human rights. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism takes the view that 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 and is per se incompatible with the exercise of certain fundamental human rights. Concerns have previously been noted when the term "extremism" is deployed, not part of a strategy to counter violent extremism, but as an offence in itself.<sup>4</sup>

### **Overview of international human rights law standards applicable**

We would like to reiterate your Excellency Government's obligation to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR). China also signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 27 October 1997 and ratified it on 27 March 2001, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to by China on 29 December 1981, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) signed on 12 December 1986 and ratified on 2 March 1992.

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<sup>2</sup> A/HRC/37/52, paras 10, 11 and 12.

<sup>3</sup> A/HRC/31/65, para. 21.

<sup>4</sup> A/HRC/31/65, para. 21.

In particular, we refer to the articles 3 and 9 UDHR, which reflect customary international law, whereby the State is under a duty to respect and ensure the right to security and liberty of a person including the right not to be deprived arbitrarily of liberty. We also refer to articles 5, 7, 11,12, 13, 18, 19 and 20 UDHR, article 2 and 13 ICESCR, articles 2 and 5 ICERD and articles 2 and 16 CAT, which guarantee the right to freedom of opinion and expression, the right to be free from discrimination, the right to a fair trial, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to freedom of thought, conscience, and religion, freedom of movement and freedom of peaceful assembly and association, as well as the right to education. Many of the core elements of the UDHR, such as right to security and the prohibition on arbitrary detention, are also considered reflective of customary international law.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations 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); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law. We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 which 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, as well as to articles 5(a) and (b), 6(b) and (c) and 12, paras 2 and 3. We further refer to the Declaration on the Protection of all Persons from Enforced Disappearance, in particular articles 2, 3 and 7 which state respectively that that no State shall practise, permit or tolerate enforced disappearances and that states should take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction and that no circumstances whatsoever may be invoked to justify enforced disappearances.

### *Background*

The elaboration of new practical standards by the Supreme People's Procuratorate, the Supreme People's Court, the Ministry of Public Security and Ministry of Justice of China in order to "identify new crimes of terrorism" emerge from a set of legal opinions based on three Chinese legal codifications relating to the Criminal Law, to the Criminal Procedure Law and, more recently, to the Law on Counter-Terrorism. The

latter's purpose is to "lawfully punish terrorist activities and extremist crimes, to preserve national security and social stability, and to protect public's security."<sup>5</sup>

The Counter-Terrorism Law of the People's Republic of China passed on 27 December 2015 and effective as of 1 January 2016, is part of a set of adopted and proposed national security laws, including the Counter Espionage Law adopted on 1 November 2014, the National Security Law effective as of 1 July 2015, the Law on the Management of Overseas NGOs' Activities in Mainland China effective as of 1 January 2017, and the Cybersecurity Law effective as of 1 June 2017. The Xinjiang Uygur Autonomous Region's government also introduced the De-Extremism Regulations in April 2017, the first comprehensive regulations specifically on countering extremism.

The De-Extremism Regulations have been criticised by UN Special Procedures mandates for their lack of compliance with international human rights standards.<sup>6</sup> Following the introduction of those laws, an estimated million Uyghurs and other Turkic Muslims have reportedly been sent to internment facilities under the guise of "counter-terrorism and de-extremism" policies since 2016. The Committee against Torture has also previously expressed concerns at consistent reports that human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities continue to be charged, or threatened to be charged, with broadly defined offences related to "terrorism" as a form of intimidation.<sup>7</sup>

### *Definition of Terrorism*

We note that article 3 of the Counter-Terrorism Law and the Xinjiang Uighur Autonomous Region Implementing Measures sets out a number of definitions that frame the proposed legislation. These include defining terrorism as "propositions and actions that create social panic, endanger public safety, violate person and property, or coerce national organs or international organizations, through methods such violence, destruction, intimidation, so as to achieve their political, ideological, or other objectives."<sup>8</sup> This broad and lengthy formulation may allow for the conflation of domestic protest, dissent, peaceful human rights activism or religious activity with international terrorism.<sup>9</sup> In this context, the United Nations High Commissioner for Human Rights and regional bodies have criticized laws that criminalize "extremism" for their targeting of non-violent conduct and their use of broad and imprecise definitions.<sup>10</sup>

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<sup>5</sup> Note that this refers to a non-official translation of the legislation.

<sup>6</sup> OL CHN 21/2018.

<sup>7</sup> CAT/C/CHN/CO/5, para. 36.

<sup>8</sup> Counter-Terrorism Law of the People's Republic of China (2015), art. 3.

<sup>9</sup> A/61/267 para. 11; E/CN.4/2006/98 para 62.

<sup>10</sup> A/HRC/33/29, paras. 18 and 61; European Commission for Democracy through Law, Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, No. 660/2011, CDL-AD (2012)016, paras. 31, 35–36, 49; and European Court of Human Rights, Case of Mariya Alekhina and Others v. Russia, application No. 38004/12, Judgment of 17 July 2018, paras. 257 and 267–268.

Article 7 of the Counter-Terrorism Law and the Implementing Measures indicates that “[e]xtremism is the ideological foundation of terrorism, preventing and punishing extremist activities is an important strategy for countering the roots of terrorism.” This formulation may conflate ‘terrorism’ with ‘extremism’ linked to religious belief and practice, giving scope for the penalization of peaceful expression of Tibetan or Uyghur identity or manifestation of a religious identity, acts of non-violent dissent, or criticism of ethnic or religious policies, contrary to articles 2, 18 and 19 of the UDHR. We note that the CERD already expressed concern in its 2018 Concluding Observations that “the broad definition of terrorism, the vague references to extremism and the unclear definition of separatism in Chinese laws could potentially lead to the criminalization of peaceful civic and religious expression and facilitate the criminal profiling of ethnic and ethno-religious minorities, including Muslim Uighurs, Buddhist Tibetans and Mongolians.”<sup>11</sup> The Committee against Torture has also expressed particular concern at the broadly defined crimes grouped under the categories of “terrorism,” which targets human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities.<sup>12</sup> Although extremism is not defined under the law, a list of “75 behavioural indicators of religious extremism” issued by Xinjiang authorities in 2014 gives an indication of the expansive types of behaviour considered extremist by the government, including young and middle-aged men wearing beards and short trousers, women wearing a face veils (niqab) and wearing clothing or owning goods with a star and crescent [symbol of Islam].<sup>13</sup> Moreover, we note a lack of clarification of the definition of terrorist organization enshrined in article 3(4).

The Counter-Terrorism Law fails to define terrorist threats precisely.<sup>14</sup> We would like to bring to the attention of your Excellency’s Government that counter-terrorism legislation should be sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political, religious or other unjustified grounds.<sup>15</sup> We recall that the “principal of legal certainty” under international law enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence.<sup>16</sup> This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations.<sup>17</sup> We note that to be “prescribed by law” the prohibition must be framed in such a way that the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with

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<sup>11</sup> CERD/C/CHN/CO/14-17, para. 36.

<sup>12</sup> CAT/C/CHN/CO/5, para. 36.

<sup>13</sup> OL CHN 21/2018, sections 9 (8) and (5).

<sup>14</sup> European Court of Human Rights, Application No. 20190/92, *C.R. v The United Kingdom*, Judgment of 22 November 1995, para. 34.

<sup>15</sup> A/70/371, para. 46(c).

<sup>16</sup> UA G/SO 218/2 Terrorism.

<sup>17</sup> A/73/361, para. 34.

sufficient precision so that the individual can regulate his or her conduct.<sup>18</sup> We recall that a failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures unduly restrict the enjoyment of rights and freedoms in absolute ways including for example the exercise of freedom of expression, movement, family life, religious belief, education and health, they will fundamentally offend the principles of necessity and proportionality that govern the permissibility of any reasonable restriction on human rights.<sup>19</sup>

We remind your Excellency's Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism considers that use of the counter-terrorism conventions as a trigger for determining what conduct is to be proscribed in the fight against terrorism is the proper starting point, in the absence of a universal and comprehensive definition of terrorism.<sup>20</sup> This includes the International Convention for the Suppression of the Financing of Terrorism, Security Council resolution 1566 (2004), as well as the report of the Secretary-General's High-level Panel on Threats, Challenges and Change.<sup>21</sup> The definition of terrorism and terrorism activity must be confined to acts that are 'genuinely' terrorist in nature in accordance to the three cumulative elements identified by the Security Council in its resolution 1566 (2004), paragraph 3 and the model of definition of terrorism developed by this mandate and recommended as best practice (A/HRC/16/51).<sup>22</sup> Those elements include,

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.<sup>23</sup>

We note that this cumulative approach acts as a safety threshold to ensure that it is only conduct of a truly terrorist nature that is identified as terrorist conduct under law and

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<sup>18</sup> E/CN.4/2006/98 para. 46.

<sup>19</sup> E/CN.4/2002/18, Annex, para. 4 (b).

<sup>20</sup> E/CN.4/2006/98 para. 32.

<sup>21</sup> A/59/565 (2004), para. 164 (d).

<sup>22</sup> Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'The Death Penalty, Extended Detention, Fair Trial and Foreign Fighters,' 4; A/HRC/16/51 para. 28.

<sup>23</sup> E/CN.4/2006/98, para 37.

practice of States.<sup>24</sup> Criminal offences must thus be set out in “precise and unambiguous language that narrowly defines the punishable offence.”<sup>25</sup>

We recall that crimes not having the quality of terrorism regardless of how serious, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism reaffirms earlier statements of the Sub-Commission’s Special Rapporteur on terrorism and human rights to the same effect.<sup>26</sup> For that purpose, we would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.<sup>27</sup>

In light of those broad definitions, we remind your Excellency’s Government of the right to be free from discrimination enshrined in article 7 of the UDHR, article 2 of the ICESCR, and articles 2 and 5 of ICERD. According to the information received the Counter-Terrorism Law leaves ethnic minorities vulnerable to racial profiling and discrimination due to its broad definition and vague references to extremism.<sup>28</sup> The Committee on Economic, Social and Cultural Rights has been concerned about the persistent and widespread discrimination against ethnic minorities. The Committee has previously reiterated the duty of your Excellency’s Government to take all necessary measures to ensure the full and unrestricted enjoyment by minorities, including Tibetans, Uyghurs and Inner Mongolians, of their right to enjoy fully their own cultural identity and take part in cultural life, and to ensure the use and practice of their language and culture.<sup>29</sup> In this regard, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has previously noted that any terrorist profiling practices based on a person’s ethnicity, national origin or religion are “unsuitable and ineffective, and therefore a disproportionate, means of countering terrorism. (..) For terrorist-profiling practices entail considerable negative effects that must also be factored into the proportionality assessment.”<sup>30</sup>

*Arbitrary Detention, Enforced Disappearance, Torture and the Right to Movement*

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<sup>24</sup> E/CN.4/2006/98, para 38.

<sup>25</sup> Inter-American Court of Human Rights, *Castillo-Petruzzi et al v Peru*, Judgment of 30 May 1999, Series C, No. 52, para. 121.

<sup>26</sup> E/CN.4/2006/98 para 47.

<sup>27</sup> A/HRC/RES/22/6 para. 10.

<sup>28</sup> CERD/C/CHN/CO/14-17, para. 36.

<sup>29</sup> Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, Adopted by the Committee at its fifty-second session (28 April–23 May 2014), E/C.12/CHN/CO/2, 13 June 2014, para. 36.

<sup>30</sup> A/HRC/4/26, para. 54-55.

We are concerned that the Counter-Terrorism Law may serve as a continuation of previously existing practices of administrative detention contrary to customary international law, expressed in articles 3 and 9 of the UDHR. Extended detention may result from articles 29 and 30 of the Counter-Terrorism Law, which provide for the placement of an individual after the completion of his or her judicially handed down criminal sentence in an “education placement”, i.e. re-education facilities, instead of being freed, if the individual is believed to constitute a danger to society. The term “those that are truly dangerous to society” inscribed in article 30 of the Counter-Terrorism Law, however, is not sufficiently specified by the Law. Furthermore, article 81 of the Counter-Terrorism Law allows for administrative detention “when extremism is exploited to carry out” several different types of conduct, including “forcing others to participate in religious activities” and “other acts of using extremism to obstruct the implementation of the national legal system.” The Counter-Terrorism Law also allows for an administrative detention process not reviewed by a judge, with no standard differentiation between what conduct is “minor” and thus not at the level of criminality and conduct, which will result in criminal sanctions under articles 80, 81 and 82 of the Counter-Terrorism Law.

In this context, previous communications by the Special Rapporteur on freedom of religion or belief and the Working Group on Arbitrary Detention have voiced their concern that the “re-education facilities,” sometimes termed “vocational training centres,” due to their coercive character, amount to detention centres.<sup>31</sup> It is alleged that between 1 million to 1.5 million ethnic Uyghurs and other minorities in Xinjiang may have been arbitrarily forced into these facilities, where there have been allegations of deaths in custody, physical and psychological abuse and torture, as well as lack of access to medical care.<sup>32</sup> It is also reported that in several cases they have been denied free contact with their families and friends or been unable to inform them of their location and denied their basic freedom of movement.

No time limit for the “educational placement” is specified in the Counter-Terrorism Law and Implementing Measures. In this regard, we remind the Excellency’s Government that a detention is unlawful if a person remains imprisoned after having served his/her custodial sentence.<sup>33</sup> We also recall that a person may only be deprived of liberty in accordance to procedural safeguards governing detention and if this detention is not arbitrary in the sense of being inappropriate, unjust, unreasonable, or unnecessary.<sup>34</sup> Essential procedural rules entail limits established under national law on the duration of detention and rules governing the process for authorizing detention and continued detention.<sup>35</sup> States are obliged to demonstrate that detention does not last longer as

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<sup>31</sup> OL CHN 21/2018.

<sup>32</sup> CERD/C/CHN/CO/14-17 para. 38 and 40; CAT/C/CHN/CO/5, para. 40 and 42.

<sup>33</sup> Communication No. 138/1983, *Mpandanjila v. Zaire*, Views adopted by the Human Rights Committee on 26 March 1986, para. 9.

<sup>34</sup> E/CN.4/2005/6, para. 58(a).

<sup>35</sup> European Court of Human Rights, *Wynne v United Kingdom (No.2)*, Judgment of the European Court of Human Rights, 16 October 2003. Note that the Rome Statute of the International Criminal Court provides



absolutely necessary, that the length of possible detention is limited and that the State in question respects the guarantees provided for article 9 cases.<sup>36</sup> Detention is arbitrary if it is based on counter-terrorism legislation providing for lengthy administrative detention and bypassing normal criminal justice processes and protections.<sup>37</sup>

While arbitrary deprivation of liberty does not necessarily amount to torture or other cruel, inhuman or degrading treatment or punishment, there is an undeniable link between both prohibitions. In conjunction, the arbitrary character of detention, its protracted and/or indefinite duration, the refusal to provide information, the denial of basic procedural rights and the severity of the conditions of detention can cumulatively inflict serious psychological harm which may well amount to torture or other ill-treatment (CCPR/C/116/D/2233/2013). The longer a situation of arbitrary deprivation of liberty and inadequate conditions of detention lasts, and the less the affected person can do to influence their own situation, the more intense their mental and emotional suffering will become - and the higher the likelihood that the prohibition of torture and ill-treatment has been breached (A/HRC/37/50, paras. 25-27).

The Working Group on Enforced or Involuntary Disappearances has expressed concern at the very high number of enforced disappearances of Uyghurs, which escalated with the introduction of “re-education facilities.”<sup>38</sup> It is alleged that the whereabouts of half a million individuals remain unknown to date. Enforced disappearances have a detrimental effect on the economic, social and cultural rights of family members including gendered consequences for women victims.<sup>39</sup> It has further been reported that there exists a close link between Xinjing’s re-education campaign and methods used against various minority communities such as Falun Gong members, Tibetans and human rights defenders.<sup>40</sup> We remind the Excellency’s Government that the detention of persons, who are suspected of terrorist activities, shall be accompanied by concrete charges, with sufficient and transparent evidence provided to prove such charges, the opportunity to challenge such evidence and independent legal representation to defend against such charges.<sup>41</sup> We further remind that individuals must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.<sup>42</sup>

### *Absence of Judicial Oversight and Right to a Fair Trial*

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for automatic review of life sentences after 25 years, and at periodic intervals thereafter (art. 110(3) and (5)).

<sup>36</sup> Communication No. 770, Gridin v Russian Federation, Views adopted by the Human Rights Committee on 20 July 2000, para. 8.1.

<sup>37</sup> See Human Rights Committee, General Comment No. 35, paras. 3, 15 and 40; Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, paras. 61-62.

<sup>38</sup> A/HRC/39/46. See also OL CHN 21/2018, A/HRC/WGEID/115/1, A/HRC/39/46 and A/HRC/42/40; See also A/HRC/WGEID/115, annex I and A/HRC/39/46 para. 88.

<sup>39</sup> See A/HRC/WGEID/98/2 para.2.

<sup>40</sup> CERD/C/CHN/CO/14-17, para. 38.

<sup>41</sup> A/HRC/10/21, para. 54.

<sup>42</sup> Declaration on the Protection of all Persons from Enforced Disappearance, article 1.

We are concerned that the Counter-Terrorism Law does not provide sufficient guarantees for effective remedies, particularly access to independent judicial review of ‘terrorism designations,’ contrary to articles 8, 9, 10 and 11 of the UDHR, article 5 ICERD and articles 13 and 14 of the CAT. Article 15 of the Counter-Terrorism Law stipulates that individuals or organizations designated as ‘terrorist’ can appeal for review “to the working body of the national leading institution for counter-terrorism efforts,” whose decision will be final and only subject to administrative, not to judicial review. Moreover, the leading groups involved in overseeing the new law are themselves overseen by the executive branch of government. We are concerned that in light of the absence of an independent judiciary, the absence of judicial oversight results in a lack of mechanisms to protect the right to religious belief and prohibition of discrimination under article 6 of the Counter-Terrorism Law, or any other human rights and fundamental freedoms.

In this regard, we would like to bring to your Excellency Government’s attention that pursuant to international human rights law, all persons who are detained have the right to access to legal counsel and all persons who are detained have the right to challenge the legality of their detention before an independent, impartial and competent court (right to habeas corpus).<sup>43</sup> This right is not subject to derogation. As previously expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “[t]he requirements of independence and impartiality [of courts and tribunals] must be treated as absolute requirements, which are not capable of limitation.”<sup>44</sup> The absence of a remedy of habeas corpus constitutes, per se, a human rights violation by depriving the individual of the human right to protection from arbitrary detention.<sup>45</sup> The right to have the legality of a detention determined by a court always applies, irrespective of the reason for or the form of detention.

*Freedom of Opinion and Expression, Freedom of Assembly, Freedom of Movement and the Right to Education*

The mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has identified multiple allegations referring to the “systematic persecution and repression of certain religious and ethnic minorities,” including Uyghurs, “though undue restrictions on their rights to freedom of religion or belief, freedom of expression and peaceful assembly.”<sup>46</sup> In numerous instances, limitations to the rights to freedom of association and assembly clearly went beyond the scope necessary to counter-terrorism and could be used to limit

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<sup>43</sup> See CAT/C/CHN/CO/5, paras. 22-23;; Working Group on Arbitrary Detention, opinion No. 3/2004 (Israel), E/CN.4/2005/6/Add.1, para. 33; CPED art. 17(2)(f); Body of principles for the protection of all persons under any form of detention or imprisonment, principles 11(1) and 32; Human Rights Council resolution 15/18, para. 4(d); A/HRC/42/L.23, para. 7.

<sup>44</sup> A/63/223, para. 23.

<sup>45</sup> A/HRC/19/57, para. 61.

<sup>46</sup> A/HRC/40/52, para. 57.

the rights of political parties, trade unions or human rights defenders.<sup>47</sup> Provisions on extremism and terrorism have been applied to criminalise the peaceful exercise of freedom of expression and of thought, which is incompatible with a society governed by rule of law and abiding by human rights principles and obligations.<sup>48</sup> In this regard, we also note that arrest or detention as punishment for exercising freedom of opinion and expression (article 19 of the UDHR), freedom of assembly (article 20 of the UDHR), freedom of association (article 20 of the UDHR), and the freedom of movement (article 13 of the UDHR) is arbitrary.

Given the broad and ambiguous definition of terrorism under the Counter-Terrorism Law, the provisions for disallowing and halting internet and telecommunications services with regard to ‘terrorist content’ according to articles 18 and 19 of the Counter-Terrorism Law may affect the exercise of the right to freedom of expression. Article 19 of the Counter-Terrorism Law grants departments for network communications the power to “interrupt transmission of information...that cross borders online.” Law enforcement holds vast powers to delete or block content, order websites to be shut down, and terminate other services without judicial review pursuant to article 19 of the Counter-terrorism Law. Telecoms operators and ISPs are required to provide law enforcement with decryption and other technical interfaces according to article 18 of the Counter-Terrorism Law. We note that the failure to abide by these provisions can result in a large fine or administrative detention of responsible managers or personnel under article 84 of the Law. Moreover, the Implementing Measures grant authorities vastly expanded police power over information disseminated over the Internet and prohibits “encouraging minors” from participating in religious activities pursuant to article 51(2) of the Law.

Following a terrorist attack, article 61 allows authorities to control media reporting. Pursuant to article 63 and 99 of the Counter-Terrorism Law, the provision requires media to only release information provided from authorities on terrorist incidents under threat of large fines and possible administrative detention. In this context, we remind your Excellency’s Government that electronic modes of expression are a critical means for civil society to exercise their freedom of opinion and expression, and are particularly important in repressive societies. Restricting such platforms— blocking, filtering or removing content—can affect civil society, journalists, human rights defenders and others disproportionately.<sup>49</sup> In this regard, we note that article 19 of the UDHR guarantees an expansive right to “seek, receive and impart information and ideas of all kinds”, one which must be protected and respected regardless of frontiers or type of media.<sup>50</sup> The enjoyment of the right to freedom of expression entails the promotion of media diversity and independence, and the protection of access to information.<sup>51</sup>

In this regard, the Special Rapporteurs have already indicated that counter-

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<sup>47</sup> See A/59/401 and E/CN.4/2006/95 on human rights defenders.

<sup>48</sup> A/HRC/37/52 para 47.

<sup>49</sup> A/HRC/40/52, para. 26.

<sup>50</sup> OL CHN 21/2018.

<sup>51</sup> OL CHN 21/2018.

terrorism laws across the globe that criminalize freedom of thought and expression implicate serious concerns of legality.<sup>52</sup> The application of such provisions has been targeted at, inter alia, the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.<sup>53</sup> We remind your Excellency's Government that according to article 6 b) and c) of the UN Declaration on Human Rights Defenders, everyone has 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; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters. Further, article 5 (a) and (b) of the Declaration establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to meet or assemble peacefully, as well as to form, join and participate in non-governmental organizations, associations or groups.

It is alleged that persons taken to re-education facilities are subject to specific 're-education and vocational training programmes', which may amount to indoctrination for unspecified periods of time.<sup>54</sup> Practices of indoctrination negatively interfere with the right to form and hold opinions.<sup>55</sup> This right requires freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions. Indoctrination programmes, such as "re-education facilities", or threats of violence designed to compel individuals to form particular opinions or change their opinion violate article 19 of the UDHR.<sup>56</sup> They are also in contradiction with the right to education, which must always be free of propaganda and imply access to information and a focus on the free development and exercise of critical thinking.<sup>57</sup>

Unlike the right to form and hold opinions, the rights to express and access information and ideas may be subject to restrictions under limited circumstances as prescribed by the UDHR. Restrictions must meet the standards of *legality*,<sup>58</sup> meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals. Although "national security" is often recognized as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the

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<sup>52</sup> OL AUS 5/2019; OL OTH 46/2018.

<sup>53</sup> AHRC/37/52, para. 47.

<sup>54</sup> OL CHN 21/2018.

<sup>55</sup> The CRC has particularly condemned the indoctrination of children, see Nepal, CRC/C/15/Add.261, para. 81, Pakistan, CRC/C/PAK/3-4, paras. 152-153.

<sup>56</sup> OL CHN 21/2018.

<sup>57</sup> A/74/243, paras. 35-36.

<sup>58</sup> UDHR article 11(2).

sole interest of a Government, regime, or power group” (A/71/373). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373).

We are concerned that restrictions of the right to freedom of expression related to the application of the Counter-Terrorism Law may disproportionately target minorities raising discontent in terms of their enjoyment of economic, social and cultural rights, including health and education services, within a climate of increasing vulnerability and intimidation against minorities.<sup>59</sup> In this regard, we recognize that compliance with human rights is necessary to address the long-term conditions conducive to the spread of terrorism, and that effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing goals.<sup>60</sup>

We note that under article 21 of the Counter-Terrorism Law, individuals can be refused services, including transportation and accommodation, if their identity is not clear or they refuse to undergo an identity check. This legal provision may restrict freedom of movement without due process and may create a system that leads to racial profiling and discrimination against ethnic groups. Pursuant to article 53 of the Counter-Terrorism Law, individuals suspected of terrorism but not officially detained as a suspect of any crime can have their freedom of movement curtailed by law enforcement including restrictions to leave their residence or the confiscation of their passports. A failure to abide by these restrictions may result in administrative detention under article 89 of the Counter-Terrorism Law. Due to the expansive and vague definition of terrorism, the threshold to restrict freedom of movement is very low potentially violating the right to freedom to movement enshrined in article 13 of the UDHR.

### *Freedom of Thought, Conscience and Religion*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has been concerned at the adverse impact of the use of extremism in the context of freedom of thought, conscience and religious belief.<sup>61</sup> Freedom of religion and belief is a universal right, an intrinsic aspect of a person’s humanity, which allows everyone to practice their religion or belief, individually and in community with others, in private or in public, to manifest his religion or belief in worship, observance, practice and teaching (A/HRC/31/18). Such a right exists independently of administrative approval.<sup>62</sup> Although article 6 of the Counter-Terrorism Law provides for freedom of religious belief and ethnic customs, articles 17 and 19 taken in conjunction with other sections of the Counter-Terrorism Law, have

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<sup>59</sup> A/HRC/35/26/Add.2, para. 44; CERD/C/CHN/CO/14-17.

<sup>60</sup> A/HRC/34/61, para 8; General Assembly resolution 60/288, Annex.

<sup>61</sup> A/73/362, para. 14.

<sup>62</sup> A/HRC/28/66/Add.1 para 19 and para 26.

allowed for the denunciation of members of religious groups violating article 18 of the UDHR.

Vague and arbitrary definitions raise concerns of the conflation of religious extremism and terrorism considering that many Uyghurs have been jailed and convicted on charges related to public displays of Uyghur culture or Islam more generally and under the Counter-Terrorism Law.<sup>63</sup> Article 4 of the Counter-Terrorism Law links religion to terrorism and criminality in an overbroad way by not defining what constitutes “distorted” religious teachings. Those broad and unclear definitions allowed for the consideration of a major religious teaching by the Dalai Lama in exile, the Kalachakra in Ladakh in 2014, as inciting terror. In this regard, we condemn the misuse of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of thought, conscience and religion.<sup>64</sup> We note our concern about the opaque concept of ‘extremism’ in the new Counter-Terrorism Law open to interpretation according to the political climate and as justification for convictions against specific individuals. We further observe that those violations mostly affect minorities and further reduce their room to express discontent, particularly in relation to concerns of poverty-related inequality or to lodge a complaint or to any access to remedy.<sup>65</sup>

Article 51 of the Implementing Measures include explicit references to Islam by mentioning “halal” products, thereby targeting Uyghurs and other Muslim minorities as counter-terrorism threats. The conflation of dietary requirements essential to the practice of religious observance as explicit or implicit counter-terrorism threat is regrettable and deeply concerning. Terrorist activity pursuant to article 3 (2) of the Counter-Terrorism Law encompasses “compelling others to wear or bear clothes or symbols that advocate terrorism in a public place.” Profiles of persons considered to be linked to terrorist threats built on stereotypical assumptions based on religion, race, ethnicity, gender and socioeconomic status and so on are not only discriminatory but also ineffective.<sup>66</sup> The peaceful practice and manifestation of religious beliefs should not be criminalized and could only be subject to limitations when it is prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others as provided by a range of international and regional human rights treaties.<sup>67</sup>

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<sup>63</sup> Amnesty International (29 August 2019). See also *The Fight Against Terrorism and Extremism and Human Rights Protection in Xinjiang* available at [http://www.china.org.cn/government/whitepaper/node\\_8011005.htm](http://www.china.org.cn/government/whitepaper/node_8011005.htm). The White Paper released in March 2019 by the government claims that “since 2014, Xinjiang has destroyed 1,588 violent and terrorist gangs, arrested 12,995 terrorists, seized 2,052 explosive devices, punished 30,645 people for 4,858 illegal religious activities, and confiscated 345,229 copies of illegal religious materials.”

<sup>64</sup> In its resolutions, HRC noted its grave concern that “in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law” (A/HRC/RES/25/18, A/HRC/RES/27/31, A/HRC/RES/32/31 and A/HRC/RES/34/5).

<sup>65</sup> CERD/C/CHN/CO/14-17, para. 18.

<sup>66</sup> A/73/362 para. 25.

<sup>67</sup> A/73/362.

Derogating measures of human rights, where such a restriction is permissible, do not involve discrimination solely on the ground of religion or social origin.<sup>68</sup>

Previous communications by several mandates have indicated that the detention of a significant proportion of the Uyghur and Kazakh minorities in particular would seem to prevent many of them from enjoying their own culture, using their own language, or practicing their own religion. We recall that 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Article 1.1 of the UN Declaration requires that States protect the existence and the national or ethnic, linguistic or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).)

We remind the Excellency's Government that the Special Rapporteur on freedom of religion or belief has recognized the complementary, interdependent and mutually reinforcing relationship between the promotion and protection of human rights, including freedom of religion or belief, and national security.<sup>69</sup> It should be noted that "national security" is not a permissible ground for restricting manifestations of religion or belief.<sup>70</sup> When some policy practices for countering violent extremism have perceived religion or belief as a threat requiring extraordinary, punitive legal and policy measures, freedom of religion or belief and the range of rights on which it depends are being undermined or violated, public trust and societal resilience is being enfeebled and efforts to prevent violent extremism are being undercut.<sup>71</sup>

#### *Transfer of Broad Powers to the Executive and the Right to Privacy*

We are concerned with the transfer of broad and increased powers provided to governmental authorities. The Special Rapporteurs have noted a growing number of complaints that legislation introduced to combat terrorism restricts rights by precluding or limiting recourse to an independent judiciary and accords broad powers to the executive.<sup>72</sup> Pursuant to article 53 of the Counter-Terrorism Law, vague powers are provided to public security organs at the county level, who upon approval by the

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<sup>68</sup> General comment No. 29, op.cit. paras. 8 and 13(c).

<sup>69</sup> A/73/362, para. 7.

<sup>70</sup> A/73/362, para. 8.

<sup>71</sup> A/73/362, paras. 10-11.

<sup>72</sup> A/63/223 para. 13; See, also, report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, para. 32.

responsible party for a public security organ at the county level or above, may investigate suspected terrorist activities and may order to restrict movement and communication of “persons suspected of terrorist activities.” Furthermore article 8 indicates that “relevant departments shall establish a joint coordination mechanism that relies upon and mobilizes villagers' committees, residents' committees , enterprises and public institutions, and societal organizations to jointly develop counter-terrorism efforts” “along public security organs, national security organs and people's procuratorates, people's courts, judicial-administrative organs and other relevant state organs.” Persons suspected of terrorist activities may be subjected to restriction on their right to freedom of movement. Since those restrictions apply prior to the stage of investigations, the police may order preventive detention. As aforementioned, those practices contradict the principle of legality encompassing the legal guarantee of the right to legal counsel and other procedural safeguards.

We remind your Excellency’s Government that where the law relating to terrorism confers discretionary powers upon public agencies, adequate safeguards, including judicial review, must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably. Where the exercise of functions and powers pursuant to counter-terrorism legislation involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall a) be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and b) be proportionate to the benefit obtained in achieving the legitimate aim in question. We recall that where the law relating to terrorism confers discretionary powers upon public agencies, adequate safeguards, including judicial review, must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably. Counter-terrorism measures should, to the broadest possible extent, be entrusted to civilian authorities whose functions relate to combating crime and whose performance of counter-terrorism functions is pursuant to ordinary powers.<sup>73</sup>

Furthermore, according to information received authorities have collected biometric data (DNA samples, fingerprints, iris scans, and blood types) of all residents of the Xinjiang Uyghur Autonomous Region between the ages of 12 and 65, under guise of a public health program, where the patients may not have been correctly and fully informed of the use made of their data. Furthermore, this collection has allegedly been made mandatory for individuals categorized under the “focus personnel” group, a broad terminology used to include any individual perceived as a dissident and including profiles of persons considered to be linked to extremism. The Committee on the Elimination of Racial Discrimination noted that all collection, retention and use of biometric data shall be regulated in law and in practice, is narrow in scope, transparent, necessary and proportionate to meeting a legitimate security goal.<sup>74</sup> Therefore, this vast collection of data based on the Counter-Terrorism Law may amount to an “arbitrary” interference with the right to privacy under article 12 of the UDHR.

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<sup>73</sup> A/HRC/16/51, Annex, Practice 3(1).

<sup>74</sup> CERD/C/CHN/CO/14-17, para. 42(e).



This is also violates individual's health confidentiality and the right to health protected by article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights in its General Comment 14 establishes acceptability as an essential component of the right to health: health services must be respectful of medical ethics and must be designed to respect confidentiality and improve the health status of those concerned (para 12 (c)). The Committee further warns that accessibility of health-related information should not impair the right to have personal health data treated with confidentiality (para.12 (b)).

The collection of health data under alleged false pretences also violates the right to informed consent. Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services. The Special Rapporteur on the right to health has signalled as examples of violations of the right to informed consent: non-consensual testing and compromised confidentiality of clinical trials which raise ethical concerns relating to, among other things, the inadequate provision of information. (A/64/272, Para.76)

#### *Principle of Non-Refoulement*

We note that article 71 of the Counter-Terrorism Law allows your Excellency's Government to reach bilateral security agreements with third countries for the deployment of People's Armed Police Force personnel abroad on counter-terrorism missions. We are concerned with the lack of specific requirement, transparency and due process and that this provision may permit the refoulement of Uyghurs to China where they will be at risk of being sentenced on terrorist charges and of enforced disappearance, arbitrary detention and other human rights violations. This concern follows previous cases of individuals being deported from foreign countries to China and sentenced on terrorist charges or subjected to enforced disappearances.<sup>75</sup> We note that the expulsion, return, or extradition of a person to a State where she or he risks suffering serious human rights violations is prohibited under international law.<sup>76</sup> Furthermore, the Working Group on Enforced or Involuntary Disappearances has observed that all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes.<sup>77</sup>

#### *Concluding Remarks:*

We caution that the Counter-Terrorism Law in its current form does not conform to best practices in relation to counter-terrorism law and practice. We, therefore, recommend that the Counter-Terrorism Law as well as other provisions that may lead to

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<sup>75</sup> A/HRC/WGEID/115/1; CERD/C/CHN/CO/14-17, para. 39 (d); A/HRC/WGEID/115/1, p. 20, Annex 1 para. 5.

<sup>76</sup> CAT Art. 3; Geneva Convention Relating to the Status of Refugees, Art. 33(1); See CAT/C/CHN/CO/5 para. 47, Declaration on the Protection of all Persons from Enforced Disappearance, article 8.

<sup>77</sup> A/HRC/36/39/Add.2, para. 60.

practices that violate the rights to freedom of expression, freedom of association, freedom of peaceful assembly, and freedom of religion or belief, the right to education and the right to be free from arbitrary detention and enforced disappearance should be reviewed in order to bring them in line with international human rights standards as previously requested.<sup>78</sup> Furthermore, all persons subjected to charges of terrorism or measures according to the Counter-Terrorism Law should be granted due judicial process, which includes access to legal representation and fair and impartial judicial remedies. We note that compliance with all human rights represents a best practice as an indispensable part of a successful medium- and long-term strategy to combat terrorism.

We are aware of the many security challenges that China faces and of the duty of the State to ensure the safety and security of its people, including through preventive approaches. However, we are gravely concerned that the Counter-Terrorism Law's measures to address this objective are neither necessary nor proportionate. While cognizant of the security situation that China may face, we are deeply concerned that the approaches taken in the Counter-Terrorism Law not only violate fundamental rights but also may contribute to further radicalization of persons belonging to the targeted minorities, creating major and growing pockets of fear, resentment and alienation. The disproportionate emphasis placed by the authorities on the repression of rights of minorities risks worsening any security risk.

We recall the fundamental importance of ensuring that every restriction imposed on rights are fully compatible with international human rights law. We call upon the authorities to recognize, both in law and practice, freedom of expression, including religious belief, as an individual rights, subject only to those restrictions that are permitted under international human rights law.

We are concerned that the revision of the Counter-Terrorism Law takes place in a context of increasing pressure and limitation of fundamental rights in China. Despite China's legal obligations and commitments, multiple laws, decrees and policies, in particular those concerning national security and terrorism, deeply erode the foundations for the viable social, economic and political development of society as a whole.

Therefore, we encourage a process of independent review that offers the government an important opportunity to tighten and ensure that the definition of terrorism contained in national law is appropriately narrow and tailored, and that use of counter-terrorism law and practice is in conformity with international human rights standards, and strictly contained to those specifically violent acts that constitute terrorism under international law. We offer technical assistance to this purpose and affirm our goal to engage positively with your Government. In adopting such an approach China would present a model of good practice for other States, using its strong legal culture as a means to amend, review and tighten legal definitions to show the responsiveness of its legal system.

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<sup>78</sup> CERD/C/CHN/CO/14-17, para. 37.

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 therefore 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 information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law.
3. Please provide further information of how the definition of terrorism in the Counter-Terrorism Law and Implementing Measures is narrowly construed to guarantee that measures taken pursuant to it do not unduly interfere with human rights while complying with the principle of legality. Please also explain how the current definition aligns with the model definitions developed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
4. Please explain how the Counter-Terrorism Law (and any changes made to it since the date of this communication) is compatible with your Excellency's Government's obligations under articles 7, 11 and 12 of the UDHR, article 2 and 13 of the ICESCR, articles 2 and 5 of the ICERD and articles 13 and 14 of the CAT.
5. Please provide information in details of how the Xinjiang Implementing Measures for the Counter-terrorism Law comply with China's obligation to respect and protect the legitimate exercise of the right to peaceful assembly and freedom of expression in line with international human rights standards, in particular with articles 13, 18, 19 and 20 UDHR; the United Nations 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); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.
6. Please provide more detailed information concerning power extended to law enforcement agencies, the judicial role in independent oversight, and safeguards to ensure that surveillance is conducted only as provided for by law, using only measures which are necessary and proportionate in a democratic society.

7. Please provide detailed information on the judicial oversight and control exercised by judges over persons placed in re-education facilities following charges under the Counter-Terrorism Law. Please also explain the procedures in place to ensure that persons placed in those facilities are interrogated and treated in compliance with your Excellency Government's obligations under CAT.
8. Please provide information on the content of re-education programmes or classes conducted in re-education facilities and their compliance with the right to education as enshrined in article 13 of the ICESCR.
9. Please further elaborate on the specific requirement and transparency and due process in relation to the deployment of People's Armed Police Force personnel abroad on counter-terrorism missions pursuant to article 71 of the Counter-Terrorism Law.
10. Please provide information as to the specific measures that have been put in place to ensure human rights defenders, including minority rights defenders in China can carry out their legitimate work in a safe and enabling environment without fear of judicial harassment of any kind.
11. Please provide information about the measures taken to protect biometric individual data and to guarantee individuals' health confidentiality. Kindly also explain how the collection of biometric data has complied with medical ethics, the adequate provision of information and with people's right to informed consent. This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

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

Koumbou Boly Barry  
Special Rapporteur on the right to education

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

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

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes  
Special Rapporteur on minority issues

Joseph Cannataci  
Special Rapporteur on the right to privacy

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

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