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促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

访问哈萨克斯坦

反恐中注意促进与保护人权和基本自由特别报告员的报告* **

概要

2019 年 5 月 10 日至 17 日，反恐中注意促进与保护人权和基本自由特别报告员菲奥诺拉·尼伊兰对哈萨克斯坦进行了正式访问。近几十年来，哈萨克斯坦在经济和社会方面取得了重大进步，确定了符合可持续发展目标的国家优先事项，包括青年政策、就业和教育。哈萨克斯坦是该地区安全问题的领导者，也是第一个当选为安全理事会非常任理事国(2017-2018 年)的中亚国家。

特别报告员赞扬哈萨克斯坦在 2019 年 1 月和 5 月开展了若干次遣返行动，从阿拉伯叙利亚共和国和伊拉克的冲突地点遣返了 516 人，其中大部分是妇女和儿童。她申明，这不仅是积极履行其根据安全理事会第 2178(2014)号决议承担的国际义务，也是令人欣慰的人道主义举措，为被关押在阿拉伯叙利亚共和国东北部难民营中的妇女、男子和儿童解决了困境，难民营人满为患，他们的生活条件不人道。

特别报告员确定了哈萨克斯坦境内正在运作的安全、反恐和极端主义框架造成的一些重大人权挑战。她发现，刑法中关于恐怖主义和极端主义的重要方面定义宽泛且含糊，直接影响到受国际法保护的基本人权，包括但不限于表达权、迁徙权、家庭生活权以及宗教和信仰自由权。她表示严重关切的是，国家法律和实践中使用“极端主义”一词。她强调指出该国使用《刑法典》第 174 条并将其适

* 本报告概要以所有正式语文分发，附于概要之后的报告本身仅以提交语文和俄文分发。

** 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。

用于民间社会活动者和宗教少数群体的活动。她得出结论认为，国内法对“极端主义”、“煽动社会或阶级仇恨”和“宗教仇恨或敌意”等概念进行广义表述，用于不适当地限制宗教自由、表达自由、集会和结社自由。

当局在关于组织公共协会、宗教协会和政党方面实施了累积的、重叠的措施，以严格限制和遏制这些团体的行动，导致他们被污名化，被边缘化，甚至被彻底禁止。

特别报告员谈及根据国内法实施制裁和金融限制以及列名的问题。她特别感到关切的是，除了被判犯有资助恐怖主义罪行的个人外，国家恐怖主义制裁名单还自动包括被判犯有其他恐怖主义相关罪行(非资助)的个人、被判犯有极端主义罪行的个人，以及被怀疑参与这些罪行但没有足够证据起诉的人员，这似乎既武断又缺乏监督。她发现，负责列名的政府机构缺乏法律明确性，被列名人员的上诉和审查程序存在重大缺陷。

特别报告员感到鼓舞的是，近几十年来，哈萨克斯坦监狱系统总体上取得了进展，监狱人口总体减少，替代性制裁也有所发展。即便如此，她认为还有改进的空间，对狱中人员遭受酷刑或不人道或有辱人格待遇的情况进行监督，并为他们提供切实的机会。她指出了关押被判犯有恐怖主义或极端主义罪的人的监狱制度中存在的人权缺陷。她就这些人的拘留条件提出了具体建议。

特别报告员敦促对互联网的监管要符合人权，避免全面关闭互联网，她认为全面关闭互联网是不相称和不必要的，侵犯了基本的表达权。

Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan

I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, conducted an official visit to Kazakhstan from 10–17 May 2019 to assess its counter-terrorism laws, policies and practices, measured against its international human rights obligations.

2. The Special Rapporteur commends the constructive way in which the Government facilitated her visit, enabling a frank and open dialogue on multiple issues. She particularly thanks the Ministry of Foreign Affairs for its well-organized engagement with her mandate. She also thanks the Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for Central Asia in Bishkek for the excellent support provided during the visit.

3. The Special Rapporteur met with the Commissioner for Human Rights; the Deputy Prosecutor General; the Chair of the Committee on Financial Monitoring of the Ministry of Finance; the Chair of the Committee of the Penitentiary System of the Ministry of Internal Affairs; the Deputy Minister of Internal Affairs; the Deputy Minister for Foreign Affairs; a Head of Department of the National Security Committee; the Chair of the Anti-Terrorist Centre; the Chair of the Constitutional Council; the Chair of the Judicial Panel of the Supreme Court; the Chair of the Committee on International Affairs, Defence and Security of the Lower Chamber of the Parliament; the Minister of Information and Public Development; and the Deputy Minister of Justice.

4. During her visit, the Special Rapporteur travelled to Nur-Sultan, Almaty and Aktau. She visited Taldykorgan prison and a family centre in Kaskelen. She thanks the Government for providing access to the Aktau "adaptation centre", providing a unique opportunity to meet returnees from the Syrian conflict zone, and with officials and staff managing the centre. She also met with a wide range of civil society organizations, activists, academics, lawyers and human rights experts, and the United Nations country team.

5. The Special Rapporteur regrets, however, that the Ministry of Defence did not agree to meet with her, indicating that it did not deal with counter-terrorism issues. This position is in clear contradiction with both the national legislation providing a role for Ministry officials in counter-terrorism operations, and the Ministry's practice, which has previously hosted international conferences relating to counter-terrorism.

A. General context and legal framework

6. The sustained economic development, infrastructure construction, urban growth and expansive policy planning of Kazakhstan has given the country an economic platform and an important regional and global voice. The Special Rapporteur commends the emphasis on youth policy, employment and education in line with the United Nations Sustainable Development Goals.

7. Kazakhstan is an important international and regional player. It was the first Central Asian country to be elected as a non-permanent member of the Security Council (2017–2018). During this time, Kazakhstan developed the Code of Conduct Towards Achieving a World Free of Terrorism. Kazakhstan is a founding member of the Shanghai Cooperation

Organization, mainly focused on regional security issues, including terrorism, ethnic separatism and religious extremism.[1]

8. The Global Terrorism Index ranks Kazakhstan in a lower risk category for terrorism (1.57),[2] with an average of 1.21 risk between 2002 and 2017. Officials from the National Security Committee confirmed that, since 2016 Kazakhstan, had been at the lowest level of threat from terrorism according to its own assessment.[3] Kazakhstan has, according to its authorities, experienced distinct acts of terrorism (e.g. in Atyrau (2011) and Aktobe (2016)). The Ministry of Foreign Affairs listed 11 terrorist attacks that had been carried out in the previous seven years, and the National Security Committee referred to the prevention of 30 acts of terrorism, but little concrete information was provided beyond these statistics. Given the importance the Special Rapporteur attaches to the rights of victims of terrorism, she regrets that she was not provided with an opportunity to meet with victims to assess their experiences and the legal framework supporting them.

9. A number of citizens of Kazakhstan have joined terrorist and non-State armed groups in the Syrian Arab Republic and Iraq. Their return poses recognized security, management and rehabilitation challenges. The Special Rapporteur commends Kazakhstan for enabling the return of 516 persons, mostly women and children, from conflict sites in the Syrian Arab Republic and Iraq in January and May 2019. She affirms that this is both a positive implementation of its international obligations under Security Council resolution 2178 (2014), and a welcome humanitarian response to the plight of those detained in overcrowded camps in the north-east of the Syrian Arab Republic experiencing inhuman conditions. She affirms the willingness of the Government to close the impunity gap from the Syrian Arab Republic and Iraq by prosecuting those individuals against whom there is sufficient evidence of criminal behaviour. She looks forward to a continued dialogue with the Government on the reintegration process and encourages Kazakhstan to provide a model of best practice in this regard.

10. Kazakhstan is a diverse multi-ethnic society with substantial human resources and capacity. Religious pluralism has been a hallmark of society, including long-standing tolerance for religious diversity, specifically for established religious communities, in a society that defines itself as staunchly secular and non-discriminatory (A/HRC/28/66/Add.1, para. 3). The Soviet-era legacy includes an executive stronghold over economic and political affairs and an important role played by the security sector in maintaining internal stability. This legacy often comes at the cost of stifling peaceful dissent, constructive criticism of government policy, and newly established religious groups, in violation of fundamental freedoms.

11. The Special Rapporteur's visit coincided with a time of critical political transition. Demonstrations and widespread arrests took place as the visit commenced and further extensive protests occurred on 9 and 10 June in multiple cities with thousands of arrests and approximately 1,000 persons penalized through administrative court proceedings,[4] raising multiple concerns regarding due process.[5] The Special Rapporteur notes that these developments are emblematic of the key challenges identified during her visit.

[1] See http://eng.sectsco.org.

[2] See https://tradingeconomics.com/kazakhstan/terrorism-index.

[3] The publicly shared national risk categorization scheme categorizes risk according to four categories: no rating, yellow, orange and red. Red represents the highest risk, while "no rating" indicates the lowest.

[4] See http://prokuror.gov.kz/eng/news/press-releases/representatives-general-prosecutors-office-and-ministry-internal-affairs. The Special Rapporteur is particularly dismayed that a foreign correspondent she met during her visit was arrested.

[5] Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, "International Election Observation Mission, Republic of Kazakhstan – Early Presidential Election, 9 June 2019, Statement of Preliminary Findings and Conclusions" (Vienna, 2019).

B. International legal framework

12. Kazakhstan is a State party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

II. Key human rights challenges in countering terrorism and preventing violent extremism

A. The scope of criminalization of terrorism and extremism offences

13. The Special Rapporteur notes that the various provisions in the Criminal Code of Kazakhstan directly criminalizing terrorism and extremism, together with offences characterized as extremist,[6] cannot be examined in a vacuum. There are numerous other provisions in legislation overlapping and intersecting with this security-based regulation through the prism of terrorism and extremism. Placing all of these elements together reveals a complex rights-limiting legal framework aimed at tightly regulating groups, individuals and activities, for which the broad and malleable terms of "terrorism" and particularly "extremism" act as overarching grounds for government action.

1. Numerous overly broad and vague provisions relating to terrorism and extremism

(a) Terrorism offences

14. The Special Rapporteur closely examined the provisions of the Criminal Code pertaining to crimes of terrorism. She finds that the domestic law regulating offences of terrorism (despite amendments in 2017) remains overly broad and ambiguously worded, in violation of international law.[7] She particularly notes the definition of acts of terrorism (Criminal Code, art. 255), including "other actions" that can inflict "significant property damage" or make "international relations more difficult". These vaguely worded expressions extend criminalization beyond acts or threats of lethal violence to acts that are protected as the legitimate exercise of fundamental freedoms. Similarly, article 256 of the Criminal Code criminalizes "propaganda of terrorism or public calls for commission of an act of terrorism" in extremely general terms, rendering it liable to arbitrary application and silencing legitimate expression.[8] She notes that, contrary to the claim of some government authorities that this article criminalizes incitement of terrorism, as required by Security Council resolution 1624 (2005), incitement of terrorism is applicable only to acts of a genuinely terrorist nature that include the essential element of "intent to incite terrorist acts" and for which there is a direct and immediate connection between the action – including an expressive act – and the actual (i.e. objective) risk of terrorist acts being committed. None of these elements are present in article 256, enabling its abusive application against the media and journalists. Article 180, which includes criminalization of "propaganda or public calls for violation of the integrity of … Kazakhstan"[9] in general terms, contains similar lacunae, enabling its application to expression protected under international law.

[6] Criminal Code, arts. 174, 179–182, 184, 258–260, 267 and 404–405.

[7] Note the position of the Human Rights Committee in its general comment No. 34 (2011) on the freedoms of opinion and expression, para. 46, in which it stated that a precise definition of extremism offences was needed.

[8] The crime carries a jail sentence of between 3 and 7 years and confiscation of property with heavier sentences for "leaders of public associations" of between 5 and 10 years.

[9] Those found to have violated article 180 face a prison sentence of up to seven years, in addition to a fine.

Furthermore, article 257, which addresses the creation and management of and participation in a terrorist group, has broader consequences when the group in question is a civil society association designated as extremist or terrorist, creating a layered and overlapping set of categories, which may infringe upon the rights to freedom of expression and association and have a disproportionate application.[10] Finally, article 258 of the Criminal Code, which regulates the financing of terrorism, is wide and raises concerns of legal certainty. Given the Special Rapporteur's concerns about the vagueness and practice of terrorism charging, terrorism financing adds another layer of legal uncertainty as its penalties have criminal, civil and administrative dimensions.

(b) Extremism offences

15. The Special Rapporteur notes her serious concern about the use of the term "extremism" in national law and practice (A/HRC/31/65, para. 21). While there is acknowledgment of the challenges of violent extremism leading to terrorism in some Security Council resolutions, as evidenced in the Secretary-General's 2016 Plan of Action to Combat Violent Extremism,[11] human rights treaty bodies have articulated concern about the use of the term "extremist activity",[12] which she shares. She holds that the term "extremism" has no purchase in binding international legal standards and, when employed 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. A former Special Rapporteur noted his concern when the term "extremism" was deployed, not as part of a strategy to counter violent extremism, but as an offence in itself (A/HRC/31/65, para. 21). She finds that all of these concerns are relevant to the exercise of articles 174, 179 and 405, among others, of the Criminal Code.[13] Article 174 of the Criminal Code, the most commonly used article against civil society activists in Kazakhstan, broadly criminalizes incitement to social, national, tribal, class, racial or religious discord, all of which are extremely vague grounds, and fails to provide genuine protection to individuals belonging to minority groups. Prison sentences for those successfully convicted are significant, particularly for leaders of public associations. This latter element appears to target civil society groups and activists, obstructing their work. She concludes that the definition of incitement to hatred is not in conformity with article 20 (2) of the International Covenant on Civil and Political Rights. While the protected grounds of national, racial or religious hatred found in article 20 (2) may not be exhaustive, the list of protected characteristics should be considered in light of the right to non-discrimination, as provided for under article 2 (1) and article 26 of the Covenant. By providing for the limitation of the right to freedom of expression on extremely vague and subjective grounds not recognized by human rights law – referring, for example, to undefined terms such as "discord" or an "insult to national honour and dignity or religious feelings", it fails to provide legal certainty for individuals to regulate their conduct accordingly. The Special Rapporteur holds that what constitutes incitement under article 174 is extremely imprecise and reiterates that, according to international standards, when judging expression as incitement, regard should be had to six elements: the general context; the speaker; intent; the content of the message or its form; the extent of the speech at issue; and the likelihood of harm occurring, including its imminence.[14] The lack of certainty is compounded by the subjectivity in determining what can be considered extremist. The Special Rapporteur notes that this is largely done on the basis of the opinions of government-appointed and security-cleared "experts" (linguists, philologists, psychologists, theologians and political scientists) who are called upon to determine whether any document, statement or group contains an extremist element. Once this opinion is obtained, it is very difficult in practice to refute or counter. The Special Rapporteur thus fully concurs with the assessment of the Human

[10] Article 257 provides for heavier sentences for "leaders of public associations" of between 10 and 15 years.

[11] See www.un.org/counterterrorism/plan-of-action-to-prevent-violent-extremism. See also General Assembly resolution 70/291.

[12] General comment No. 34, para. 46.

[13] Specifically, arts. 180–182, 184, 258–260, 267 and 404.

[14] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Rights Committee that the broad formulation of the concepts of "extremism", "inciting social or class hatred" and "religious hatred or enmity" can be used to unduly restrict freedoms of religion, expression assembly and association (CCPR/C/KAZ/CO/2, para. 13).

(c) Legal obligations placed on organized groups

16. Cumulative and overlapping measures and requirements on the organization of public associations, religious associations or political parties allow authorities to seriously circumscribe and curtail the actions of these groups, which result in their being discredited and marginalized, if not outright proscribed. For example, the double requirements under the Law on Religious Activities and Religious Associations to register as a religious organization and to comply with certain theological criteria to obtain approval for registration imposes a disproportionate burden on certain groups. Failure to obtain "religious expertise" by the Committee on Religious Affairs (Ministry of Information and Public Development), which applies to all religious groups, can be particularly challenging for non-established religious groups, and failure to obtain one can discredit a group by creating a presumption of extremism. Similarly, provisions under the Law on Public Associations, which requires that all associations be registered or face criminal sanctions,[15] and the Law on Political Parties, which imposes onerous obligations prior to registration, provide the authorities with the means to deny registration on dubious grounds. She also notes that lesbian, gay, bisexual, transgender and queer groups are continuously denied registration. Organizations whose registration is denied face multiple risks, including having their members charged and convicted as extremists. She recalls that international law protects unregistered organizations (A/HRC/20/27, para. 96). She welcomes the proposed reform of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations and encourages ongoing engagement with OHCHR in that process, and the positive direction indicated by the President as regards the inclusion of civil society.

(d) Additional post-sentence administrative restrictions

17. The Special Rapporteur affirms that civil society activists and opposition leaders are often subjected to further limitations on their fundamental freedoms after the initial sentences of deprivation or restriction of liberty have been completed on security-related grounds. Framed as "prohibitions on engagement in public activity",[16] which prevent participation in peaceful protests and political meetings, and attendance at seminars/trainings (including with international organizations), these additional restrictions can be applied for extended periods. Grounded in the same vague and context-dependent offences of extremism, they prolong disproportionate violations of civil society's rights to freedom of expression, association and participation in public affairs.

18. The Special Rapporteur expresses concern at the regime of administrative supervision applied to individuals who have served sentences for terrorism and extremism offences. This regime places these individuals under preventive law enforcement supervision for the purposes of providing social and legal assistance. She is concerned that, in practice, the focus is on monitoring rather than on provision of care. Given the breadth of the crime of extremism, administrative supervision provides an additional means for law enforcement to tightly control and stigmatize individuals who have peacefully exercised their fundamental freedoms. She is also concerned at reports she has received of the recording of conversations inside the cells of convicted individuals for the sole purpose of increasing their sentences.

(e) Measures that tightly regulate civil society

19. The Special Rapporteur is also aware of the extremely broad measures tightly regulating civil society, which authorities justify on the basis of the requirement to implement the Financial Action Task Force's recommendation 8 on non-profit

[15] Code on Administrative Offences, art. 489.

[16] Criminal Code, art. 50.

organizations.[17] She particularly notes the overly broad definition of "charitable" and "religious" organizations, against which there is a presumption of vulnerability to terrorism. She records that the introduction of burdensome requirements on mandatory annual reporting for non-governmental organizations (NGOs), combined with the criminalization of the provision of false information, not only does away with the right of NGOs to privacy, increasing government control over their activities, but it also multiplies the grounds on which they can be arbitrarily sanctioned. She highlights that the definition of "suspicious" or "unreliable" transactions includes almost any transaction made to or from a civil society organization. Such measures go beyond what is warranted by recommendation 8 and cannot be considered as either necessary or proportionate.

(f) Inclusion on the terrorism sanctions list

20. Given the overly broad nature of terrorism and extremism offences, the Special Rapporteur is particularly concerned that the national terrorism sanctions list automatically includes, in addition to individuals convicted of terrorism financing offences, individuals convicted of other (non-financing) related terrorism offences, individuals convicted of extremism offences, as well as persons against whom there is suspicion of involvement in these crimes but against whom there is insufficient evidence for prosecution,[18] which appears both arbitrary and lacking in oversight.[19] While there is a procedure for individuals to request to be taken off the list, there is no transparency in the listing process for those individuals who have not been convicted of a criminal offence (they can only be delisted if the circumstances surrounding their initial inclusion have changed). Given that the procedure does not aim to allow individuals to prove their wrongful inclusion, nor can it mitigate for over-inclusion, the procedure cannot lead to a robust and rights-compliant review. The Special Rapporteur articulates her extreme disquiet at the hardship created for family members and dependants given the impact of inclusion (asset freezing, prohibition of engaging in a number of commercial and notarial acts) and the breadth of this listing capacity, resulting in independently undermining the rights of women and children under the International Covenant on Economic, Social and Cultural Rights, and which may obfuscate the listing basis contained in Security Council resolution 1373 (2001) mandating domestic listing for terrorism financing. She finds existing domestic remedies to be insufficient to ameliorate this hardship. Turning to the ISIL (Da'esh) and Al-Qaida sanctions list, the Special Rapporteur identifies a lack of legal certainty and due process in their management, as well as a lack of clarity in the determination of the government entity that has overall responsibility and accountability for these tasks. She stresses that Security Council resolutions on counter-terrorism, including those relating to sanctions, are not a carte blanche for the denial of human rights.

2. Discriminatory, disproportionate and arbitrary impact of overlapping measures on civil society

21. The Special Rapporteur reiterates her concern about the use of cumulative and overlapping counter-terrorism measures against civil society. She is further concerned that these wide-ranging and rights-limiting provisions, which theoretically apply equally to all, appear to be invariably and unfortunately targeted at distinct groups and minorities. She affirms that legal distinctions and discriminations against minorities and distinct social groups create patterns of exclusion and broader social discrimination, and are recognized as part of the negative legal landscape that feeds the violent extremism that leads to

[17] Laws on Introducing Amendments to Certain Legislative Acts on Matters Related to Non-Governmental Organizations and on Counteracting the Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism.

[18] Non-judicial inclusion is based on data obtained from law enforcement and special State bodies compiled by the General Prosecutor's Office.

[19] According to the Financial Monitoring Committee, the list contained 1,896 individuals and 90 organizations, of which 155 were added by the General Prosecutor's Office as a preventive measure during investigations.

terrorism.[20] The Special Rapporteur also highlights that this regulatory matrix of overlapping rights-limiting measures allows intersectional discriminations, which have a particular impact on women and the lesbian, gay, bisexual, transgender and queer community.

22. The heavy-handed approach of the Government can be illustrated by the wave of arrests and detention in April and May 2019, which also led to charges under article 405. The Special Rapporteur notes that, in the last five years, dozens of civil society activists, bloggers and religious figures have been held criminally liable and dozens more arrested and detained under the provisions on extremism, suggesting overly broad application of criminal punishment for displaying dissenting opinion, such as the cases of Max Bokayev and Talgat Ayan, who were arrested for peacefully protesting against amendments to the Land Code in May 2016.[21] Overzealous judicial practice is evidenced by the number of prosecutions and convictions, particularly for extremism. Supreme Court data indicated that 37 individuals were convicted of extremism offences in 2014, while in 2018, the number rose sharply to 156. Administrative prosecutions are also increasing. According to civil society,[22] there were 165 known administrative prosecutions brought against 139 individuals, religious communities, charities and companies in 2018, while the first six months of 2019 saw at least 104 administrative prosecutions for unapproved worship, sharing faith, selling religious literature and items in shops or online, or using the word "amen" in mosque worship, of which 92 ended in convictions and fines, as well as temporary bans on activities, a permanent ban on a place of worship, and seizures and destruction of religious literature.

23. A number of security-related practices premised on countering terrorism or extremism, the aim of which appears to be to instil fear among activists and extinguish civil society capacity, are deeply worrying. Some individuals reported being followed, having their photographs taken by the intelligence services, knowing that they were under prolonged surveillance and sometimes receiving direct or indirect threats to their or their family's well-being. Some were afraid to meet or speak freely and openly with the Special Rapporteur. The Special Rapporteur is very conscious of the chilling effect that the silencing of one individual can have on an entire group. She was also informed of the alleged use by Kazakhstan of the Red Notice mechanism of the International Criminal Police Organization (INTERPOL) against civil society, political opposition and journalists. She observes that any internationalization of a Government's flawed terrorism and extremism legislation would be an extremely worrying practice.

3. Specific impact on religious rights and absolute rights to freedom of thought and belief

24. There is substantial concern that non-violent criticism of State policies can effectively constitute a criminal offence (A/HRC/37/52, para. 47). An even deeper concern is that the legislative provisions on terrorism and extremism allow the authorities to shift seamlessly from the criminalization of acts of terrorism to the criminalization of extremist thought and belief (viewed as the precursor to terrorism). She notes that in practice, however, this slippage is a fundamental change of paradigm, which lies in the differentiation between violent and non-violent actions, and between the criminalization of acts and the criminalization of thoughts and beliefs.

25. The Special Rapporteur expresses her profound disquiet at the impingement upon the absolute right of belief in the context of the broader right to freedom of religion or belief, resulting from the law and practice on extremism.[23] Such a right exists independently of administrative approval (A/HRC/28/66/Add.1, paras. 19 and 26). Limitations do not apply to belief per se and in situations in which they are applied under

[20] See United Nations Development Programme, *Journey to Extremism in Africa* (New York, 2017) and A/HRC/40/52.

[21] See A/HRC/WGAD/2017/16. Max Bokayev remains imprisoned.

[22] Felix Corley, "Kazakhstan: 104 administrative prosecutions in January–June 2019", Forum 18, 19 July 2019.

[23] International Covenant on Civil and Political Rights, art. 18 (1).

article 18 (3) of the International Covenant on Civil and Political Rights, they must be legally prescribed, clearly necessary, proportionate and non-discriminatory in intention and effect, and pursue a legitimate aim. In the name of preventing and countering extremism, and to preserve the secular nature of the country and its "religious moderation",[24] a number of measures have been adopted to regulate religion tightly that directly impinge on the right to freedom of religion and certain religious groups,[25] as noted by the Human Rights Committee in its concluding observations in July 2016. The Committee expressed concern at the targeting of members or presumed members of banned or unregistered Islamic groups, such as the Tabligh Jamaat (CCPR/C/KAZ/CO/2, para. 13). The Special Rapporteur confirms the regular practice of imposing restrictive registration requirements on the organized and public practice of religion (CCPR/C/125/D/2312/2013, para. 7.6), and limitations on the importation and distribution of religious literature, which targets distinct groups and individuals exercising their right to freedom of thought, conscience and religion. She notes with concern the post-jail bans handed down as part of sentences for individuals convicted of various forms of illegal practice of religion, which include bans on visiting places of worship or sharing their faith with others, for substantive periods.

26. The Special Rapporteur's attention was drawn to the cumulative use of these measures to target certain religious groups, notably various Protestant groups, including Baptists, Lutherans, the Revival Protestant Church, as well as Hare Krishnas and Jehovah's Witnesses. However, these measures mostly target devout non-Hanafi Muslim groups, including the Azerbaijani community. Some cases are emblematic of the overreach of the provisions on freedom of religion. Saken Tulbaev, whom the Special Rapporteur met during her visit, was sentenced to nearly five years of prison for peacefully practising his religion, after which he will be subject to a three-year ban on carrying out "activity directed at meeting the religious needs of believers". She was particularly moved by the plight of an elderly man of deep religious belief who had to serve a prison sentence for observing his faith. Teymur Akhmedov, a Jehovah's Witness, was sentenced to five years in prison and a post-jail ban of three years for praying in a private home. Zhanna Umirova was sentenced to five years' imprisonment for posting a video on social media. In her view, the terrorism and extremism legislation and administrative practice of Kazakhstan that normalizes the diminution of rights for certain groups has long-term costs, increasingly affirmed by practitioners and experts in the field of countering and preventing violent extremism. Extremism law and practice that function to limit rights in a de facto permanent manner are not a shortcut worth taking if States are genuinely committed to tackling the conditions that produce and sustain extremism and mobilization (A/HRC/37/52, para. 61).

4. Online restrictions to freedom of expression and information

27. The Special Rapporteur's visit was affected by numerous Internet blockages. She was informed that on 9 May – the day of her arrival – several independent news outlets and social media services were temporarily unavailable in some parts of the country. According to the Government, in 2017 and 2018, 317,000 web items were removed by site administrators upon the request of the General Prosecutor. Furthermore, during the same period access to more than 19,000 websites was restricted by court orders or injunctions by the General Prosecutor or other relevant State body. In addition, she was made aware of independent research indicating that up to 29,458 websites had been blocked. In the course of her meetings and information provided by the Government, it is clear that certain websites, including social media, music streaming and others, were and continue to be blocked in their entirety on the orders of the Prosecutor General on very broad grounds. Given the already very challenging environment in which activists, civil society and human rights defenders operate in Kazakhstan, the apparent lack of proportionality in the adoption of such wholesale measures premised on broad terrorism and extremism threats is very concerning.

28. It is of further concern that, despite existing legal provisions, the Government itself appeared wholly unclear about the legal basis of, and the procedure and the responsibility

[24] Note the specific role of the Ministry of Religious and Civil Society Affairs, which was created in 2016.

[25] The Law on Religious Activities and Religious Associations, last modified in 2018.

for the adoption of these measures. The use of information and communications technology for the purpose of radicalization, recruitment and incitement of others is a serious concern for States. However, given both the role played by information and communications technology in fostering the enjoyment of human rights and the very negative impact on the free exchange of ideas and information that measures to limit access can have, removals, takedowns, deletions and blockages of entire websites, web pages, blogs, videos, articles or social media posts must never be arbitrary, and should comply with the principles of legality, proportionality, necessity and non-discrimination and provide an effective remedy.

B. Treatment of individuals accused of acts of terrorism and extremism

29. The prison infrastructure of Kazakhstan has experienced substantial changes since the State's establishment. Having inherited a Soviet prison infrastructure, including extremely high levels of incarceration, Kazakhstan has moved in its general penal practice to significantly decrease its prison population, expand conditional and early release, bring rehabilitation strategies to the prison population through employment opportunities while in prison, family unification and socialization for return to ordinary life.[26] These moves are commended and constitute a positive step forward for penal policy and human rights. During her visit, the Special Rapporteur visited Taldykorgan prison, a mixed pretrial detention facility, where she was given the opportunity to both inspect cells and meet privately with inmates convicted for acts of terrorism.

1. Torture and ill-treatment

30. The Special Rapporteur is encouraged by the declared commitment of Kazakhstan to a zero-tolerance policy vis-à-vis torture and ill-treatment, the establishment of a national mechanism to prevent torture and other cruel, inhuman and degrading treatment, which carried out 2,407 visits (both preventive and special) in the last five years, including 488 in 2018, and the establishment of the national preventive mechanism under the auspices of the ombudsperson. However, she has ongoing concerns about the implementation and rigour in practice of the prohibition on torture and other cruel, inhuman or degrading treatment for persons charged with or convicted of such offences. She identifies the lack of regional presence and its location within heavily fortified and security-laden government offices as a weakness of the Ombudsperson's Office.

31. During her prison visit, the Special Rapporteur noted that some inmates were distressed and fearful of reprisals for speaking with her. She received consistent reports that, prior to their transfer to the Taldykorgan facility, some of the prisoners interviewed had experienced ill-treatment in custody, notably "welcome" beatings during "quarantine" detention.[27] She personally observed residual marks, which were consistent with the testimony of one individual interviewed regarding ill-treatment.

32. While the Special Rapporteur acknowledges the presence of a telephone and a complaint box on each corridor outside the prisoners' cells in Taldykorgan, she remarks that it is quite unlikely in practice that these will be extensively used. She was informed, by several interlocutors, that a lawyer was necessary to file a complaint of torture, which can be an insurmountable obstacle for a detainee, particularly for those in temporary detention facilities. Furthermore, she observes that, although there have been some cases in which perpetrators were sanctioned, which is much welcomed, she did not receive a clear response from any government ministry on either the exact number of convictions or on what concrete and practical remedies were directly available to ill-treated prisoners, including but not limited to rehabilitation. She is particularly concerned that it was reported that a significant number of cases were dismissed due to excessive evidentiary standards and that the only apparent remedy was the removal of the victim from the hands of the perpetrator. This is wholly insufficient in light of the gravity of the crime of torture. Worryingly, unsuccessful claimants are automatically charged with the crime of false reporting, which is a retaliatory measure.

[26] See www.prisonstudies.org/country/kazakhstan.

[27] Criminal Code, art. 93.

33. Victims of torture and ill-treatment have a right to a remedy and adequate reparation for harms suffered. In situations in which the mechanisms are ineffective or inexistent, the right to an effective remedy and reparation remains illusory and impunity prevails. In the Special Rapporteur's view, several systemic improvements must be made to these mechanisms in Kazakhstan to ensure that they are able to fulfil their preventive, protective and reparative role. She urges the Government to ensure that individuals alleging torture have the right to complain without fear of reprisals and there are prompt, thorough and effective investigations of reasonable allegations that an act of torture has been committed, to have a competent and independent authority promptly and impartially examine the evidence and to provide a remedy whenever harm has been caused.

2. Detention and prison regimes

34. The Special Rapporteur was informed that, previously, prisoners convicted of terrorism and extremism offences were held in centralized locations, in which a range of sentencing stipulations were available to them (including, family visits), but a change of practice in 2017 means that such prisoners are now distributed among pretrial detention centres of mixed regime. Overall, the Special Rapporteur is concerned that the detention and prison regimes of individuals accused or convicted of acts of terrorism are de jure (through the application of exemptions and permitted discretion) and de facto subject to exceptional rules. She underscores that terrorism offences are not subject to bail provisions or early release. Furthermore, although according to the law individuals convicted of acts of terrorism are subject to the same rules as individuals convicted of other crimes, in practice, the decision to engage them in a deradicalization programme and thus keep them separate from the regular prison population dictates the detentions centres in which they carry out their sentences. Moreover, it is extremely concerning to the Special Rapporteur that the prison regime to which they are subjected reduces privileges, such as family visits (which often take place only once a year), recreation and exercise periods, and follows from a categorization of "detrimental trajectory", which is separate from their willingness to openly and assiduously take part in the deradicalization programmes. The Special Rapporteur also received credible information on the regular use of solitary confinement for prisoners charged with these offences. She notes that the medical, social and psychosocial effects of prolonged isolation can be severe, and that solitary confinement and similar forms of deprivation of human contact for a prolonged period of time amount to inhuman or degrading treatment (A/HRC/13/39/Add.5, para. 234).

35. In her view, both the exceptionality of the regime and the withdrawal of privileges based on a subjective evaluation do not comply with international law standards. She is concerned that religious beliefs and practices are being used as a placeholder in the classification of radicalization. As the prisoner cannot materially rebut the assigned classification or challenge the criteria used to define radicalization, this may amount to both direct and indirect discrimination on the grounds of religious belief. The Special Rapporteur noted, both in discussions with legal representatives and prisoners, that the change of regime had adverse material consequences, and was in contravention of the formal legal entitlements that prisoners have as a consequence of their sentence specifying the material conditions of incarceration (Criminal Code, art. 46, and Criminal Corrections Code, art. 88). These consequences appear to contravene the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and article 9 of the International Covenant on Civil and Political Rights.

3. Conditions of detention

36. In Taldykorgan prison, the Special Rapporteur visited parts of the prison and met with a number of prisoners charged with a variety of offences related to terrorism and extremism. The prisoners visited were held in a specific prison wing. Overall, the prison was orderly and clean, sleeping provision was adequate and books were present in the cells. The toilet facility in each cell was very poor and lacked toilet paper for all prisoners visited. Outdoor access and the exercise space for prisoners was highly constrained; a small, enclosed concrete space offering no access to greenery and no meaningful opportunities to exercise. Prisoners confirmed that they were able to pray. Only some of the prisoners had family visits during the period of their stay, the length of which in some cases was extensive. All were equally distressed at the absence of consistent, regular and sufficiently long visits, which affected their familial and parental relationships.

37. The Special Rapporteur is concerned that, despite the economic progress achieved in Kazakhstan over the last 20 years, and the opulence and wealth displayed in its newly built capital city, the prisons are decrepit and prisoners do not have access to the minimum necessary for a dignified existence, including proper sanitary facilities and recreational activities. She is adamant that the way in which a society treats its detainees is one of the best indicators of its human rights culture in general. She strongly recommends that additional resources be allocated to prisons to match the overall level of development of the country.

C. Exceptionalities in terrorism and extremism trials

38. The Special Rapporteur received consistent information about various practices seriously undermining the protection of the right to a fair trial in terrorism and extremism cases. Despite the Government's insistence that no exceptional rules apply to these cases, in practice, terrorism trials (and extremism cases) are covered by specific rules and specific practices relating to State security from which profound lacunae arise with regard to the principle of equality of arms. She notes that all terrorism trials are closed in practice, and many extremism trials are shrouded in secrecy. In some cases, proceedings are closed to the public and decisions are not made public. In addition, the visit identified a selective approach to the classification of and access to evidence and the privileging of access by certain lawyers, on the basis of security clearance, to State secrets. Even in situations in which trials are open, the operation of evidential rules related to State secrets and intelligence information may render such trials de facto inaccessible. Such a lack of transparency raises serious concerns about the fairness of the proceedings. In addition to consistent accounts of the use of anonymous witnesses during trials, the legitimacy of which was questioned, the Special Rapporteur also heard persistent accounts of the use of dubious, fabricated or falsified evidence, police entrapment (e.g. in the case of Teymur Akhmedov) and of "witnesses" whom the defendants had never met (e.g. in the case of Saken Tulbayev).

39. The Special Rapporteur is concerned about an overreliance on "judicial experts", notably those dealing with theology, philology and politics, in both pretrial and trial phases of extremism and terrorism procedures. Criminal charges of extremism are often brought solely on the basis of the opinions of experts whose requisite qualifications, independence and neutrality has not been established. In trial contexts, although defendants (and judges) can call on private experts (specialists) to bring evidence, in practice, the testimonies provided by judicial experts who have undergone training at the national Centre of Judicial Expertise and who have access to confidential information that other experts cannot see, carry much more weight than any counter-expertise presented by the defendant. In the view of the Special Rapporteur, the weight given to evidence analysis per se violates the principle of equality of arms and has profound implications on fair trials.

40. Furthermore, in relation to both terrorism and extremism cases, the Special Rapporteur has repeatedly heard of the use of psychological pressure being exerted by the investigating authorities on the accused, including threats to family members, with a view to obtaining a confession of guilt at the outset of the investigation, as well as the use of "witness" status, which can then be changed and lead to charges being brought. She is concerned that many individuals accused of terrorism and extremism have no access to independent lawyers until their trials are over, and are provided with legal aid counsels who are neither viewed as fully independent nor effective in their representation, leading some to confess guilt in the hope of reduced sentences.[28] Counsels of choice are frequently hampered by late access to evidence, which seriously undermines the principle of equality of arms. The desperation felt by some of those accused of propagating religious extremism and terrorism is perhaps illustrated by reports of several individuals cutting their wrists in court following judicial rejection of a request to bring additional witnesses and experts to the stand.[29]

[28] Criminal Procedure Code, arts. 612–621.

[29] See www.rferl.org/a/terror-trial-in-kazakhstan-adjourned-after-defendants-cut-selves/29624270.html.

41. These practices, taken individually, all amount to violations of the provisions of the right to a fair trial protected by article 14 of the International Covenant on Civil and Political Rights. However, in the general climate of fear and distrust of the Government in many key segments and constituents of society, taken together, such practices are manifest breaches of the right to a fair trial and characterize such courts as exceptional courts that fall below international standards.

42. The Special Rapporteur, in particular, expresses very serious concern about the climate of fear that independent human rights lawyers, often working pro bono on terrorism and extremism cases, experience. She notes consistent testimony about being under the constant pressure of engagement with the State's security services, frequent surveillance and threats and intimidation by the Government, including the threat that their licences may be revoked, or the fear that their status will change to that of a witness in their client's trial. These practices seriously undermine societal trust in the State and its judicial system but, ultimately, in the rule of law.[30] In this regard, she recalls the obligations of States, in accordance with Human Rights Council resolution 36/21, to take all appropriate measures to prevent the occurrence of acts of intimidation or reprisal in order to effectively protect those who cooperate with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal and to ensure accountability for such acts.

D. Legal and institutional mechanisms to address a threat of terrorism

1. Prominence of the security sector

43. Despite the current terrorism threat level being "low", the Government's counter-terrorism apparatus, headed by the National Security Committee and operationalized through the Anti-Terrorism Centre and its regional offices, has more than 409 offices (205 commissions for the prevention of terrorism and 204 counter-terrorism operational headquarters) throughout the territory. The wholesale barriers to freedom of expression and assembly premised on the threat of extremism and terrorism appear disproportionate to the scale and actuality of the threat, and represent a normalization of securitization limiting the overall capacity for rule of law and human rights protection across multiple spheres.

44. The investigation of terrorism and extremism crimes is carried out both by the National Security Committee and the police, which have similar legislative law enforcement powers. Broadly, the Committee aims to detect terrorism and extremism crimes, while the police aim to respond to crimes of this nature. In practice, detection includes the use of substantial surveillance powers by the Committee. While assured that no secretive measures of detection can be used without judicial authorization, the Special Rapporteur is concerned at the repeated allegations of the use of special investigative techniques, including agents provocateurs in cases of terrorism or extremism, the rate at which investigations are initiated, which, although closed before charges are pressed, point to an overzealousness to identify individuals who might have committed terrorism or extremism offences; as well as the use of official warnings issued in the context of non-prosecution, which can act both as a threat and deterrent to the legitimate exercise of fundamental freedoms.

2. Anti-terrorist operations and emergency regimes

45. The Special Rapporteur notes that the law on anti-terrorism operations is extensive and functions as an emergency power within the domestic legal framework. She flags concerns with provisions that may enable impunity for violations committed during counter-terrorism operations. In counter-terrorism operations, authorities are given broad powers to stop and search, detain and arrest any individual without a warrant. Worryingly, such provisions allow for the use of force, including lethal force, against any individual determined to be a terrorist. Such provisions are contrary to the strict provisions under international human rights law on the right to life and the use of force by law enforcement officials, which make it clear that the use of force must be proportionate and that the use of

[30] See the Basic Principles on the Role of Lawyers and General Assembly resolution 45/166.

lethal force, as the *ultima ratio*, must be used solely in self-defence and when all other means have been exhausted, including non-lethal force.[31] She recalls that the use of force should be strictly limited, and compliant with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

46. Moreover, legislation provides for an overreaching immunity clause for law enforcement officials, which entirely shields them from accountability.[32] According to information received, the last time such immunity was invoked was in Aktobe in June 2016, a case in which 7 victims were killed and 31 injured. The ensuing counter-terrorism operation resulted in 18 suspected attackers being killed and 9 arrested. Unable to get precise information from official sources, the Special Rapporteur is struck by the secrecy that surrounds this operation. She is clear that when law enforcement officers use lethal force, there needs to be an independent, impartial, effective and public investigation carried out by the authorities to determine the legality of the use of force, and ensure accountability.

47. The Special Rapporteur is also troubled by provisions that limit burial ceremonies and keep the places of burial secret for persons who have been convicted of acts of terrorism, and of "alleged terrorists", who died at the hands of security forces in the course of counter-terrorism operations.[33] The dead must be treated with respect and dignity, which lie at the core of all international human rights law. Failures in this regard constitute a violation of the right to a family life and even a violation of the prohibition of torture and ill-treatment.[34]

E. Preventing and countering (violent) extremism

48. The Special Rapporteur was made aware of multiple initiatives in Kazakhstan to address deradicalization in the context of extremism. These include initiatives in prison, with young persons and in socially marginalized and remote areas. At this point, prison deradicalization appears to be a key initiative in terms of programming and developing methodologies.

49. While recognizing the value of such preventive work, the Special Rapporteur highlights a number of concerns. Recalling the broad and vague definitions of extremism, she notes that deradicalization work in Kazakhstan is being advanced with persons convicted of extremism and not persons convicted under a law on violent extremism. Therefore, it is unclear as a legal matter how international programming addressing violent extremism in Kazakhstan is selecting its target group, and if such selection is subject to fair and accessible legal criteria, accessible to judicial review or appeal and overseen in a transparent manner. She cautions against the legal jeopardy of creating an informal and highly stigmatizing category of violent extremism within prisons when no such legal category exists in law. Moreover, as regards existing work within prisons and with other groups, the criteria for what constitutes a "radicalized" status is unclear, and may be overlapping with protected international legal categories of speech, assembly and belief, fuelling concerns that it is indeed the *forum internum* of non-violent extremists that deradicalization targets (A/HRC/31/18, para. 7). She suggests a human rights-compliant review and oversight of deradicalization programmes, both by the Government of Kazakhstan and by international entities and programmes. United Nations entities must pay particular attention to their due diligence obligations.

50. The Special Rapporteur is also particularly concerned at the Concept of State Policy in the Religious Sphere for 2017–2020, which was approved in 2017. Aiming to detect and counter "destructive movements" and "extremists" by placing a formal duty on authorities at the local level, the broad policy gives rise to a number of discriminatory practices against individuals who display outward religious symbols or specific religious practices. The

[31] International Covenant on Civil and Political Rights, art. 6, and Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 12.

[32] Ibid.

[33] Law on Countering Terrorism, art. 21-1.

[34] See *Staselovich v. Belarus* (CCPR/C/77/D/887/1999) and European Court of Human Rights, *Sabanchiyeva and others v. Russia* (application No. 38450/05), judgment of 6 June 2013.

measures are numerous, including being listed and arrested. Furthermore, she stresses that such programmes consistently pose the problem of precise identification of the target population and involve over-inclusion ("flagging") by authorities fearful of the consequences of underreporting. This concern is particularly acute in the context of Kazakhstan where the definition of non-violent "extremism" is extremely broad. She stresses that successful policies should instead focus on assisting individuals and communities in building resilience towards the threat of violent extremism leading to terrorism.

F. Issues related to non-refoulement, citizenship and resettlement

1. Non-refoulement

51. During her visit, the question of the risks faced by ethnic Kazakhs who enter Kazakhstan from the Xinjiang Uighur Autonomous Region in China was brought to the attention of the Special Rapporteur. She notes that, in March 2019, the United Nations High Commissioner for Human Rights called for an independent assessment of the continuing reports that pointed to wide patterns of enforced disappearances and arbitrary detentions. In this respect, and without prejudging the situation, the Special Rapporteur recalls that, in any request to expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be at risk of being tortured, the principle of non-refoulement must be fully respected, as an absolute principle of international and customary law.

2. Deprivation of citizenship

52. The Constitution (art. 10 (2)), Criminal Code (arts. 40 and 50 (1)) and the recently amended Law on Citizenship (art. 19) collectively allow for the stripping of citizenship for terrorism-related offences, including for participation in foreign conflicts or extremist activities overseas. Citizens of Kazakhstan are legally permitted to hold one nationality.

53. Under international law, States may deprive individuals of nationality when they have conducted themselves in a manner seriously prejudicial to the vital interests of the State,[35] provided that the measure complies with the requisite safeguards, including the opportunity to effectively challenge decisions before an independent body (ideally judicial) (A/HRC/25/28, paras. 31–34, and A/69/10, p. 32). Decisions must respect the absolute prohibition on non-refoulement (A/62/263, paras. 50–51). The Special Rapporteur was informed that the provisions on deprivation of citizenship have not been invoked in terrorism cases; she would encourage the Government to adhere to international law standards on this matter.[36]

3. Resettlement

54. The Special Rapporteur was informed about the situation of two individuals who had been transferred to Kazakhstan from Guantanamo Bay in 2014, after having spent 10 years in detention and having being cleared for release through the stringent review process carried out by the Guantanamo Review Task Force. These individuals were released on the assurance that resettlement would be permanent and that they would be able to safely rebuild their lives. Yet, it is reported that, apart from a brief period when they received asylum-seeker documents, they were never afforded a clear legal status in Kazakhstan. She underscores that, regardless of their current status in Kazakhstan, these individuals remain fully protected under international human rights law, including by the absolute prohibitions on torture and ill-treatment, refoulement and arbitrary detention. She recalls the right of these individuals to a private and family life. She urges the Government to find a human rights-compliant solution to their plight, either within Kazakhstan or in a safe third country.

[35] Convention on the Reduction of Statelessness, art. 8 (3) (a) (ii).

[36] Ibid., art. 8 (1).

G. Foreign fighters and their family members

55. The Special Rapporteur is mindful of the challenges related to the return of foreign fighters from conflict zones, including individuals who may have committed terrorist acts or other crimes under international law. She commends the decision of Kazakhstan to actively engage in the return of its citizens from conflict zones. This good practice demonstrates leadership, which is sorely absent on this issue in many other States. Kazakhstan has been engaged in a continuous dialogue at all levels of Government aimed at finding the optimum approach to addressing the challenges related to returning its foreign fighters and their families. Kazakhstan is also deeply and positively engaged on these issues at the international level, demonstrating how to optimize partnerships with other States and international entities in tracing, identifying and delivering the practical means to extract individuals from territories under the control of non-State actors and ensure their safe return to their countries of nationality. The Special Rapporteur reaffirms that this approach is not only in line with the human rights obligations of Kazakhstan, but also that its efforts are extensive, sustained and consistent considering its long-term security interests.

56. The Special Rapporteur notes that returnees are subject to a rigorous security process to establish potential criminal culpability. Several of those returned, including at least five women, have been arrested and transferred to law enforcement authorities. The Special Rapporteur urges the Government to ensure that security measures preserve the legal rights of returnees by conforming to national and international law and enabling fair trials for those charged with committing crimes. During her visit to the "adaptation centre" in Aktau, in which 231 women and children had arrived a week earlier, she had the opportunity to meet with several returnees through the system of established "rehabilitation centres", which provide legal and other advice to ensure the normalization of the status of such women and their children. She notes and welcomes the emphasis on integration and rehabilitation in the efforts of the Government and describes the work being done by such centres as humanitarian and supportive in nature, and necessary to enable the practical integration into society of women and children who have travelled to, or been born in, conflict zones overseas.

57. The Special Rapporteur regrets, however, the overemphasis on religious normalization in such programming and stresses, in accordance with the overall findings of the present report, that the right to freedom of religious belief should be firmly protected by the Government. She voices unease at theological criteria being used as a substitute for a broader and scientifically based understanding of rehabilitation. She was notably struck that for key personnel in these centres, successful deradicalization was measured by the absence of religious garments and the length of women's clothing. She also notes the dangers of ethical compromise for professionals providing medical, social and educational services to this group being elided into a security outpost for the State, thereby compromising the provision of fundamental economic and social rights to highly vulnerable individuals.[37] While acknowledging the security concerns raised by the return of individuals who may have committed serious crimes under international law, the Special Rapporteur is also concerned at the lack of transparency surrounding both the legal basis for the detention of these women and children, who were unable to meet or have contact with their families for one month while in the camp in Aktau, as well as the clear presence of the security services and their role in interrogating detainees. Ambiguity about such clear and basic human rights issues is not necessary. She urges the Government to show more transparency, particularly as many aspects of its work in this area are to be lauded.

III. Conclusions and recommendations

58. **Since independence, Kazakhstan has gained prominence in the global peace and security agenda, including in countering terrorism. It has shown leadership in repatriating its citizens from conflict zones in which terrorist groups are active. However, parallel developments have yet to be replicated at the national level as the**

[37] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

counter-terrorism and extremism apparatus of Kazakhstan, in both its operational and legal aspects, is in need of a substantial overhaul in order for it to be brought into line with international law. An overly bloated security sector, numerous overlapping layers of legislation and bodies that exist primarily to provide the appearance of a system based on the rule of law and a professed adherence to the principle of equality that fails in practice to take into account the cross-cutting vulnerabilities of various groups and segments of the population, combined with dystopian measures to prevent and counter extremism, create conditions for ill-conceived, disproportionate and discriminatory counter-terrorism and counter-extremism measures, which have a lasting discriminatory and disproportionate impact on a number of individuals, groups and communities.

59. **In both conception and application, the counter-terrorism and extremism regimes provide excessive leeway to the authorities to target and silence those who peacefully question the established order, including various civil society actors, human rights defenders, trade unionists, journalists, bloggers, and members of marginalized communities or of communities legitimately exercising their religious freedoms. The overwhelming focus on extremism has no justification under international law. Its vagueness disqualifies it from being reconcilable with the principle of legality, while its impact on fundamental freedoms prevents it from complying with the principle of proportionality. The overly constrained judicial system contributes to the burden and impact of accusations of terrorism and extremism and fails to provide sufficient protection or remedies.**

60. **The Special Rapporteur makes the following recommendations:**

(a) **The definition of terrorism in the Criminal Code must be reviewed and narrowed down substantially to comport with best international practice, including the definition provided by the Special Rapporteur and/or Security Council resolution 1566 (2004), to ensure that its provisions are as narrow as possible. The provisions on extremism as a criminal offence must be repealed;**

(b) **Religious practice must be protected and never be criminalized as extremism. The recommendations of the Special Rapporteur on freedom of religion or belief (see A/HRC/28/66/Add.1) should be implemented in full;**

(c) **The peaceful exercise of the right to freedom of expression must never be construed as terrorism or extremism. No one should be criminalized for exercising the rights to freedom of peaceful assembly and of association. The recommendations of the Special Rapporteur on the rights to freedom of freedom of peaceful assembly and of association (see A/HRC/29/25/Add.2) should be implemented in full;**

(d) **The right to a fair trial must be protected in all terrorism and extremism cases. Trials must be open and transparent. The principle of equality of arms must be fully respected. The accused must have access to independent lawyers, who must be given sufficient time and resources to prepare the defence. Equal weight must be given to evidence from both sides, and reliance on government-appointed and security-cleared "experts" must be avoided;**

(e) **Persons convicted of terrorism or extremism charges must not face additional penalties by virtue of prison conditions, access to family, access to education and exercise regimes. Double punishment penalties for persons convicted of terrorism and extremism should be ended;**

(f) **The effectiveness and accessibility of mechanisms to complain about torture and ill-treatment in all places of detention must be increased. Investigations into allegations of torture must be launched ex officio, complaints must be processed in an effective and timely manner, confidentiality must be guaranteed and complainants must not be subject to reprisals. Specific measures to address the physical and psychological impact of torture must be established in the form of reparation and rehabilitation for victims of torture and ill-treatment;**

(g) **Minimum standards of detention in accordance with the Nelson Mandela Rules must be fully implemented. Additional resources to modernize the detention centres, commensurate with the level of economic development of the State, should be considered;**

(h) **The security sector should be downsized to adequately reflect the low level of threat of terrorism faced by the State. Emergency powers in the form of counter-terrorism operations must be subject to transparency and strict oversight; and in all cases in which lethal force is used, independent, impartial, effective and public investigations must be launched to ensure accountability;**

(i) **The basis for listing persons under terrorism financing provisions must be fundamentally reviewed to ensure conformity with existing international obligations. The use of financial penalties and controls against civil society actors, minority religious groups and other vulnerable actors must be stopped.**

61. **It is also recommended that:**

(a) **United Nations and other international or regional entities providing financial resources and material support to prevent and counter violent terrorism programmes and initiatives must review their policies and practices in light of their due diligence obligations and ensure that they are not de facto complicit in the violation of fundamental human rights;**

(b) **The Financial Action Task Force should closely monitor the implementation of recommendation 8 and ensure that it is not used as a basis for violating fundamental human rights.**