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Egypt's Draft Counter-Terrorism Law

Following the assassination of the Prosecutor-General, Hisham Barakat, on 29 June, and attacks by armed groups in the Sinai two days later that left dozens dead, the Egyptian government has brought forward various legislative initiatives, including a draft Counter-Terrorism Law (the Draft Law).¹ The Draft Law was approved by the State Council on 2 July and is expected to be signed by President Sisi in the coming days.

The ICJ believes that the Draft Law violates Egypt's obligations under international standards in numerous ways. It erodes the principle of legality, including by providing for vague and imprecise definitions of terrorism and terrorism related acts. It could also potentially criminalize acts that amount to the legitimate and peaceful exercise of fundamental freedoms, including the rights to freedom of expression, association and assembly. Further, the Draft Law shields state officials from criminal responsibility for any use of force in the course of their duties, grants far-reaching surveillance and detention powers to the prosecutor and establishes a new terrorism court with expedited procedures. The President is also granted sweeping, discretionary powers to "take the necessary measures" to maintain public security, where there is a "danger of terrorist crimes", potentially opening the door to abusive executive orders that undermine the rule of law and human rights.

The International Commission of Jurists (ICJ) therefore urges the authorities in Egypt to refrain from adopting the draft Counter-Terrorism Law. If the authorities are to proceed with the adoption of the Draft Law, it should be subject to a process of meaningful, transparent and broad and inclusive consultation, including with national and international civil society and UN and other human rights experts, and comprehensively revised so as to fully comply with international standards.

1. The Draft Law and the principle of legality

The Draft Law uses vague and overbroad language in its definitions of "terrorist group", "terrorist crime" and "terrorist act". These terms are key to the scope and application of criminal offences and other measures established under the law.

A "terrorist group" is defined as any group of three or more individuals "that aims at committing one or more terrorist crimes or if terrorism is one of the means that it uses to achieve or execute its criminal goal" (article 1). A terrorist crime is any crime "using one of the means of terrorism or with the goal of achieving or executing a terrorist goal or with the goal of calling for the commission of any crime listed in the law or threatening to commit it..." (article 1). The definition of "terrorist act" is the use of force, violence, threats or fear to achieve certain aims. Many of the aims listed in the definition are broad in scope and vague – they include, "undermining public order", "compromising national unity or social peace", "harming the environment" and

¹ The ICJ has been unable to obtain an official version of the Draft Law. It has therefore relied on media reports reproducing the Draft Law, including, as published by Masrawy on 4 July 2015 and in Shorouk News on 4 July 2015, available at: <http://www.shorouknews.com/news/view.aspx?cdate=04072015&id=bc563999-93df-4c15-8150-f04ef89ee68d>

“obstructing the application of any of the provisions of the constitution or laws” (article 1). “Terrorism” is not defined in the Draft Law.²

The inclusion of vague, imprecise and ill-defined crimes in the Draft Law is contrary to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a party.³

Under international law, the principle of legality requires criminal offences to be clearly and precisely defined so that an individual can know from the wording of the provision, as interpreted by the courts, what acts and/or omissions would make him or her criminally liable. This principle is absolute and non-derogable, even in times of emergency.⁴ Furthermore, in order to respect the principle of legality, every element of the crime as defined in national law must be capable of being properly proven by evidence in court.⁵ Vague provisions in the draft such as “compromising national unity or social peace” prevent an individual from knowing in advance what acts and/or omissions may amount to a crime. It is unlikely that they can be objectively substantiated by evidence in court.

The ICJ notes that the Draft Law also criminalizes as terrorism offences, acts that do not involve serious violence. For example, article 16 criminalizes *inter alia* anyone who tries with “threats or fear” “to...change the Constitution of the State...”. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in 2009, criticized the already-existing terrorism law in Egypt for overbroad definitions of terrorist crimes, and recommended a working definition that would restrict it to acts that are terrorist in nature involving serious violence against people.⁶

In addition, article 10 imposes an “aggravated prison sentence” for “whoever joins a terrorist group or participates in it in any form with knowledge of its goals”. The simple membership part of this provision does not appear to be restricted to membership or participation in a group that has already been designated in a published list through a fair process. The knowledge part of this provision appears to confuse knowledge of a group’s goals with knowledge of the methodologies (i.e. in the case of terrorism, violent methods) the group uses to achieve those goals. As such, article 10 is itself rendered unpredictably vague and overbroad by incorporating the vague and overbroad definition of “terrorist group” under the Draft law.

Further, article 4 of the Draft Law states, “inciting the commission of any terrorist crime shall be punished with the same penalty provided for the crime, and this whether the incitement is targeting a particular person or group, or if the incitement is general and public or not public, whatever the means used and even if the incitement does not result in anything”. Incitement to commit terrorism should only be criminalized where there is a subjective intention to incite acts of violence, and where the speech concerned causes the commission of an act of terrorism or an imminent risk of such an act.⁷ Article 4 of the Draft Law does not contain any explicit

² The Draft Law also annuls the definition of terrorism in Egypt’s Criminal Code.

³ See also, the African Charter on Human and Peoples’ Rights (ACHPR), article 7.2; the Arab Charter on Human Rights (ACHR), article 15.

⁴ The ICCPR, article 4.2; the ACHR article 4(b); Human Rights Committee, General Comment No. 29, States of emergency (Article 4), para. 7.

⁵ Human Rights Committee, decision of 19 March 2004, Communication N° 1080/2002, Case of David Michael Nicholas v. Australia, para. 7.5.

⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mission to Egypt, 2009, para 9-11.

⁷ Johannesburg Principles on National Security, Freedom of Expression and Access to Information, principle 6, endorsed by the UN Special Rapporteur on the right to freedom of opinion and expression (UN document E/CN.4/1996/39, Appendix). They were also referred to by the former UN Commission on Human Rights in several resolutions (see Resolution 2000/38

requirement of subjective intention to incite acts of terrorism, nor does it require that the incitement lead directly to violence or the imminent risk of violence.

The expansive definitions of crimes in the Draft Law are also overbroad in so far as they have the potential to criminalize the legitimate and peaceful exercise of fundamental rights and freedoms, including the rights to freedom of expression, association and assembly.⁸ For example, article 16 of the Draft Law criminalizes anyone who "tries with force, violence, threats, fear or of any of the other means of terrorist acts to overthrow the governing regime, to change the Constitution of the State or its republican form, or the form of the government". The inclusion of "any of the other means of terrorist acts" is particularly vague and unpredictable, not to say confusing, since the definition of "terrorist acts" under the law does not in fact list any other means. Even leaving that aside, this provision could potentially be used to prosecute peaceful demonstrators against the government or those who legitimately call for constitutional reforms, if the courts were to find such acts could amount to "threats or fear", since in article 16 (and in the definition of "terrorist acts") the Draft Law fails to restrict these terms to "threats of force or violence" or the subjective intent of causing fear that the person will use force or violence.

In addition, article 33 of the Draft Law criminalizes "whoever deliberately publishes inaccurate information or statements about any terrorist operation contradicting official statements issued by competent authorities". This provision is a flagrant violation of the right to freedom of expression. The ICJ believes that article 33 is particularly open to abusive investigation, arrest and prosecution of journalists, bloggers, human rights defenders and social media users who publish credible information on human rights violations committed in the course of counter-terrorism operations, or operations the government claims are against terrorism but are in fact targeting political or other opposition groups, where the authorities dispute the facts.

The ICJ is also concerned that a wide range of acts criminalized under Articles 10 to 33 of the Draft Law are punishable with the death penalty. For example, the Draft Law criminalizes the establishment of a "terrorist group" with either life imprisonment or death (article 10), while the financing of a "terrorist group or a terrorist act" is punishable by death (article 11). In addition, any "financing of terrorism" is punishable by life imprisonment and anyone who "promotes or prepares for the promotion, directly or indirectly" of the commission of a "terrorist crime" must be sentenced to a minimum of five years imprisonment (article 26); the inflexibility in these provisions coupled with the very broad definitions of the underlying terms creates a risk of disproportionate sentences.

The ICJ opposes the death penalty in all circumstances as a violation of the right to life and the prohibition of torture and other cruel, inhuman or degrading punishment.⁹

2. Immunity and impunity of law enforcement officers

The Draft Law states that, "Those entrusted with carrying out the provisions of this law shall not be held criminally responsible if they use force to carry out their duties, or to protect themselves from an imminent danger about to be inflicted on person or property, and all of this when their use of this right is to the extent necessary to ward off the danger." (article 6).

of 20 April 2000) as well as by the Inter-American Commission on Human Rights. See also, Legal Commentary to the ICJ Berlin Declaration: Counter-terrorism, Human Rights and the Rule of Law, Geneva, 2008, p.78.

⁸ ICCPR, articles 19, 21 and 22.

⁹ ICCPR, articles 6 and 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 2 and 16.

As enshrined by articles 6 and 9 of the ICCPR, everyone is entitled to the right to life and to security of the person. No one shall be arbitrarily deprived of his or her life.¹⁰ Further, the right to life and to security obliges States to take measures not only to prevent and punish the unlawful deprivation of life and the injuring of persons, but also to prevent such acts by the security forces. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials require that any use of force by law enforcement officials must be strictly necessary and proportionate, and lethal force may be used only when strictly unavoidable in order to protect life.¹¹

The ICJ is concerned that the broad immunity provided by article 6, in particular when combined with existing permissive powers granted to law enforcement officers, could potentially undermine the right to life and the right to security of the person. The provision does not, for example, clearly exclude the deliberate use of lethal force merely to protect property, or for protection from dangers to people other than those that threaten their life. The final phrase of the provision appears to be alluding to some form of proportionality requirement but is too clumsily constructed to clearly reflect any international standard.

Further, under the current framework, including the Police Act, police officers are permitted to use firearms to disperse gatherings or demonstrations of at least five people when public order is under threat and after warning the protesters to disperse.¹² Law no. 107 of 2013, on the right to organize public meetings, processions and peaceful demonstrations, gives security forces sweeping powers to use lethal force in dispersing protests, including when it is not strictly necessary to protect lives.¹³

The ICJ is concerned that the cumulative effect of such provisions will enhance impunity in Egypt, and that the new immunity provision will deepen it. For decades, Egyptian authorities have failed to meet their obligations under international law to investigate, prosecute and punish human rights violations committed by state officials and law enforcement officers. Since the overthrow of the Mubarak regime, impunity for those responsible for human rights violations, including the killing and injuring of protestors by law enforcement officials during the 2011 and following the ouster of President Morsi has continued unabated. The ICJ has highlighted how permissive laws governing police powers have contributed to such impunity.¹⁴

3. Fair trial, liberty and privacy rights

Under the Draft Law, within 24 hours of his or her arrest, a detainee must be brought before a prosecutor or "other competent investigative authorities" who can order that the person be held in detention for up to seven days (article 38). At the end of the seven day period the detainee must be brought before the prosecutor again, who can question him within a further period of up to 48 hours (article 40). The prosecutor must then listen to the detainee and decide whether he or she should be released or remanded in "preventive detention" for consecutive periods of up to 45 days for a

¹⁰ See also, article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948.

¹¹ Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana, from 27 August to 7 September 1990.

¹² Police Authority Law, No.109 of year 1971, article 102.

¹³ Article 13.

¹⁴ See, for example, the ICJ's submission to the Universal Periodic Review of Egypt, March 2014, paras.21-22, available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/ICJ-UPR-EGYPT-STAKEHOLDER-SUBMISSION-FINAL-14-MARCH-2014.pdf>

maximum of 6 months, “where the interests of the investigation so require” (article 41 of the Draft Law and article 143 of the CCP). An appeal by the accused against a “preventive detention” order must be heard by a judge within three days or the accused must be released (article 42).

International law recognizes the right to liberty and the right not to be arbitrarily deprived of liberty.¹⁵ Pursuant to these rights, anyone arrested or detained on suspicion of involvement in criminal activity must be brought before a judge or judicial officer promptly.¹⁶ Any delay longer than 48 hours must be absolutely exceptional and be justified under the circumstances.¹⁷ A public prosecutor cannot be considered as a judicial officer for such purposes.¹⁸

The Draft Law removes the right of a person arrested or detained to be brought before a judge automatically. Instead, detention can be ordered by the prosecutor for a period of up to six months and ten days. A detainee will only be brought before a judge if he or she appeals a preventive detention order and even then it could be up to 13 days before his or her first appearance before a judge.

Decisions to detain an accused pending trial should be taken by a judge and be an exceptional measure based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹⁹ As the UN Human Rights Committee has made clear, “The relevant factors should be specified in law and should not include vague and expansive standards”.²⁰

The ICJ considers that administrative or other “preventive” detention on security grounds is in principle not capable of justification in the absence of a valid derogation in a declared state of emergency, and the Draft Law is consequently deficient in this regard. In any event, the Human Rights Committee, acknowledging that any preventive detention not in contemplation of criminal prosecution taken for security reasons presents severe risks of arbitrary detention, has said that under the ICCPR such detention must be limited to the most exceptional circumstances, involving a present, direct and imperative threat presented by the detained person. In such cases, the Committee has said, the burden of proof lies on States to show that the individual poses such a threat, that it cannot be addressed by alternative measures, that the detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that all guarantees provided for by article 9 of the ICCPR are fully respected. Prompt and regular review by a court is required as is access to independent legal advice and disclosure of the essence of the evidence on which the decision is taken.

¹⁵ ICCPR, article 9; Convention on the Rights of the Child, article 37, International Convention for the Protection of All Persons from Enforced Disappearance, article 17; ACHPR, article 6; ACHPR, Principles and Guidelines on the right to a fair trial and legal assistance in Africa, principle M; American Declaration of the Rights and Duties of Man, articles I and XXV; American Convention on Human Rights, article 7, Arab Charter on Human Rights, article 14 and European Convention on Human Rights, article 5.

¹⁶ ICCPR, article 9(3); ACHPR, article 6; ACHPR, Principles and Guidelines on the right to a fair trial and legal assistance in Africa, principle M.3; and ACHR, article 14. Human Rights Committee, General Comment No.35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35.

¹⁷ Human Rights Committee, General Comment No.35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 33. See, for example, Communication No. 625/1995, *Freemantle v. Jamaica*, CCPR/C/68/D/625/1995, March 2000, para. 7.4, where four days was not prompt.

¹⁸ Human Rights Committee, General Comment No.35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 32.

¹⁹ ICCPR, article 9(3). See also, Human Rights Committee, General Comment No.35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 38.

²⁰ Human Rights Committee, General Comment No.35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 38.

The ICJ considers that the current circumstances in Egypt cannot justify a derogation that would allow any security detention regime, no matter how many safeguards were included, to be justifiable. In any event, however, the Draft Law contains none of the restrictions or safeguards that the Human Rights Committee has said are necessary for pre-trial detention or security detention, and instead grants the prosecutor broad powers to order "preventive detention" for consecutive periods of 45 days up to six months if it is "in the interests of the investigation".

The Draft Law also violates international standards on the right to be granted prompt access to legal counsel, including during interrogation, and to notify family members, or have them notified, of their arrest and to have access to them.²¹ Under article 39 of the Draft Law, the right of a detainee to "inform whatever relatives he wishes of what happened and enjoy the assistance of a lawyer" is "without prejudice to the interests of the investigation and preliminary investigations". Given the breadth of this restriction, article 39 enhances the risk of a detainee being held incommunicado. As pointed out by the UN Special Rapporteur on Torture, "incommunicado detention should be made illegal and is the most important determining factor as to whether an individual is at risk of torture".²²

The above-mentioned restrictions on the rights to defence are particularly problematic in particular in light of articles 44 to 47 of the Draft Law, which grants the Office of the Public Prosecutor (OPP) and "other competent investigative authorities" sweeping powers to search premises, seize property, monitor and intercept communications, impose travel bans, freeze assets, examine bank accounts and other financial information and, for certain crimes, order the closure of places, premises or houses. For example, article 44 of the law permits the OPP or investigating authorities "in any terrorist crime" to "authorize a reasoned decision for a determined period or periods" to monitor, record and intercept any communications, messages, materials or packages.

Such sweeping powers raise concerns with regards to a range of rights, including the right to privacy. The right to privacy is recognised by article 17 of the ICCPR and requires that everyone is protected against arbitrary or unlawful interference with a persons' privacy, family, home or correspondence.²³ The UN Human Rights Committee has said that any such interference or restriction should be essential in the interests of society, and national legislation must specify in detail the precise circumstances in which such interference is possible.²⁴

In light of the broad powers granted to the prosecutor and the lack of safeguards and restrictions, the ICJ is concerned that the Draft Law permits arbitrary infringements on the right to privacy. In particular, the prosecutor's powers lack sufficient clarity as to when they can be applied and are not sufficiently limited to measures that are essential in the interests of society.

²¹ The International Convention for the Protection of All Persons from Enforced Disappearance, article 17; The Standard Minimum Rules for the Treatment of Prisoners, rules 37, 92 and 93; The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15 to 19; the UN Basic Principles on the Role of Lawyers, principles 1, 5, 6, 7 and 8; the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution, principle 6; and the Principles and Guidelines on the right to a fair trial and legal assistance in Africa, principle M.

²² Report of the Special Rapporteur, E/CN.4/2004/56, para. 37, and Report of the Special Rapporteur, A/57/173, 2 July 2002, para. 16.

²³ The Universal Declaration of Human Rights, article 12; ICCPR, article 17; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 14, American Convention on Human Rights, article 11; and European Convention on Human Rights, article 8.

²⁴ Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy), 28 September 1988, para.1.

Furthermore, there is a lack of requirement for judicial authorization and judicial remedy in relation to such decisions. The Human Rights Committee has found, for example, that the monitoring or censorship of correspondence should be subject to satisfactory legal safeguards, including judicial oversight and judicial remedy. There is no such judicial oversight in relation to article 44 of the Draft Law.

In addition, the Draft Law establishes a new terrorism court to hear all crimes under the Draft Law (article 48). The "organization of the court's work" shall be determined by the High Judicial Council, which can also establish circuits of the terrorism court in other governorates. It is not clear from the wording of article 48 what is encompassed by the "organization of the court's work" and whether this relates to the court's by-laws or also to its composition and procedures. What is clear is that all cases must be dealt with "expeditiously" (article 48). The ICJ is concerned that the creation of this specialized terrorism court, the composition and procedures of which are as yet unknown, has not been demonstrated to be justified and is likely to undermine the rights of the accused to a fair trial before an independent and impartial tribunal.

Since July 2013, the use of specialized circuits, in particular in trials involving suspected members of the Muslim Brotherhood, has increased dramatically in Egypt. The ICJ has highlighted the litany of fair trial violations seen in such cases.²⁵

The right to a fair trial by an independent and impartial tribunal is recognized and protected by universal human rights standards, including in treaties to which Egypt is party.²⁶ The Human Rights Committee has stated that the right to an independent and impartial tribunal is "an absolute right that may suffer no exception".²⁷ Furthermore, the UN Basic Principles on the Independence of the Judiciary provide that "[e]veryone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals".²⁸

4. Executive powers

Under the Draft Law, the President is granted broad powers to "take the necessary measures" to maintain public security, where there is a "danger of terrorist crimes" or such a crime has resulted in an environmental catastrophe (article 54). Such measures are not limited in scope but can include evacuations, isolation of an area or curfews and can extend for renewable periods of up to six months. Any such decision must be submitted to the Parliament, or to the Cabinet when no Parliament exists, within seven days for approval.

The granting of almost limitless power to the President to take whatever measures are considered necessary in a variety of vaguely-defined circumstances undermines the rule of law and separation of powers, in particular because no Parliament currently exists in Egypt and because of the absence of direct recourse to the Constitutional Court to challenge the constitutionality of presidential decrees.

The Draft Law should be amended to ensure that the exercise of the President's powers in situations where there is a "danger of terrorist crimes" or a "terrorist crime

²⁵ See for example, <http://www.icj.org/egypt-end-mass-death-sentences/>

²⁶ ICCPR, article 14; and the African Charter on Human and Peoples' Rights, articles 7 and 26.

²⁷ Decision of 28 October 1992, Communication N° 263/1987, Case of Miguel González del Río v. Peru, para. 5.2, CCPR/C/46/263/1987, 20 November 1992. See also the Arab Charter on Human Rights, articles 4 and 13.

²⁸ UN Basic Principles on the Independence of the Judiciary, principle 5. See also, the former Commission on Human Rights, Operative paragraph N° 2 of Resolutions N° 2002/37 of 22 April 2002 and N° 2003/39 of 23 April 2003.

has resulted in an environmental catastrophe” is fully in line with Egypt’s obligations under international human rights law.

As the Human Rights Committee has made clear in relation to the ICCPR, “States parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant”.²⁹ The Committee has further pointed out that, where restrictions are made, “States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right”.³⁰

Indeed, many of the kinds of acts contemplated by these provisions would only be capable of lawfully being carried out, if at all, under a derogation in situations of emergency that threaten the life of the nation, as under article 4 of the ICCPR. Such derogations are subject to even more stringent conditions set out in the ICCPR and explained by the Human Rights Committee General Comment 29 on States of Emergency (2001). Neither the high threshold, nor the restrictions and conditions on such derogations, have been incorporated into the Draft Law.

Recommendations

The ICJ urges Egyptian authorities to refrain from adopting the Draft Law. If the authorities are to proceed with the adoption of the Draft Law, they should ensure it is comprehensively revised through a meaningful public consultation process so as to fully comply with international law and standards, including by:

- i) Amending the definitions of terms in the Draft Law, and adding definitions for relevant terms currently undefined, in order to ensure that crimes are defined using precise and clear language that enable persons to know from the wording of the provision what acts and/or omissions would make him or her criminally liable;**
- ii) Ensuring that crimes of terrorism are limited to acts that involve serious violence to human life;**
- iii) Amending article 4 of the Draft Law so as to ensure that any criminalization of incitement requires a subjective intention to incite acts of violence, and a causal link between the incitement and the commission of an act of violence or an imminent risk of such an act.**
- iv) Amending the definitions of terrorism and/or terrorism-related crimes under the Draft Law, including article 33, so as to ensure that the legitimate and peaceful exercise of the rights to freedom of expression, association and assembly are not criminalized.**
- v) Ensuring that the applicable penalties for any crimes are commensurate with the character and gravity of the crime and the culpability of the offender.**
- vi) Removing the death penalty as an applicable penalty under the Draft Law;**
- vii) Ensuring that the use of force under the Draft Law by State officials is permitted only when strictly necessary and proportionate, and lethal force may only be used when strictly unavoidable in order to protect life;**

²⁹ Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, 29 March 2004, para.6.

³⁰ *Ibid.*

- viii) **Amending article 6 to ensure that there is no immunity for law enforcement officials responsible for the unlawful use of force or any other human rights violations, including in the course of their duties;**
- ix) **Incorporating the requirement that anyone arrested or detained be brought before a judge or other judicial officer within 48 hours and that any delay longer than 48 hours is exceptional and can be justified in the individual circumstances of the case and that the person, his lawyer, or his family has the full right to challenge the lawfulness of deprivation of liberty before a court, at all times;**
- x) **Ensuring that any pre-trial detention decision is taken by a judge and not left for days or weeks to the sole discretion of a prosecutor, and is an exceptional measure based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, including specific and relevant factors defined in the law, such as to prevent flight, interference with evidence or the recurrence of crime, and that the accused has the right to regular judicial review of their detention;**
- xi) **Removing the regime of security detention entirely.**
 - a. **(If despite this recommendation, any provision for security detention is retained, it must be subject to stricter legal controls such as:**
 - i. **Requiring that it be absolutely exceptional and restricted to persons representing a present, direct and imperative threat and that the relevant safeguards apply, including:**
 - ii. **Requiring the State to show that the individual poses such a threat, that it cannot be addressed by alternative measures, that the detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that all guarantees provided for by article 9 of the ICCPR are fully respected;**
 - iii. **Prompt and regular review of the detention by a court;**
 - iv. **Access to independent legal advice; and**
 - v. **Disclosure of the essence of the evidence on which the decision is taken);**
- xii) **Amending article 39 to ensure that any person arrested or detained has the right to prompt access to legal counsel, including during interrogation, and to notify family members, or have them notified, of their arrest and to have access to them;**
- xiii) **Prohibiting all forms of arbitrary deprivation of liberty;**
- xiv) **Prohibiting any use of incommunicado detention;**
- xv) **Preserving or restoring the jurisdiction of ordinary courts over all terrorism offences.**
 - a. **(If despite this recommendation a specialized terrorism court is to be established under the law, ensuring that it is composed of civilian judges who are selected and appointed by the judiciary from among its members, according to procedures that ensure the independence and impartiality of the court, and that such a court applies established procedures in full compliance with international law and standards);**
- xvi) **Ensure that any requirement to expedite proceedings of offences under the law does not undermine the rights of the accused to a fair trial, including the right to be presumed innocent, the rights to defence, the equality of arms, and the right to appeal;**
- xvii) **Deleting or amending articles 44 to 47 to ensure that any restrictions on the right to privacy are not arbitrary, including by ensuring that any interference in or restriction on privacy:**
 - a. **is essential in the interests of society;**

