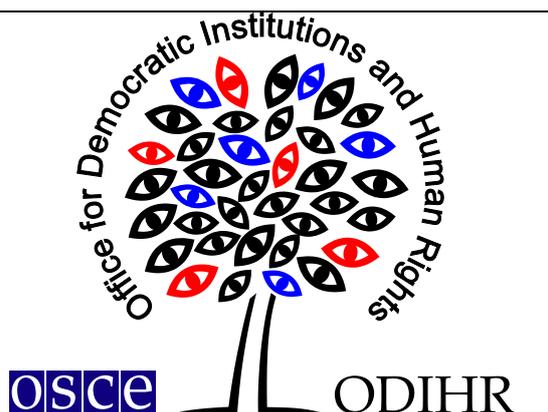


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COMMENTS

ON THE LAW ON COMBATTING TERRORISM OF THE REPUBLIC OF UZBEKISTAN

**based on an unofficial English translation of the Law commissioned by the
OSCE Office for Democratic Institutions and Human Rights**

*These Comments have benefited from contributions made by Richard Clayton QC, Barrister,
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*These Comments are also available in Russian.
However, the English version remains the only official version of the document.*

TABLE OF CONTENTS

- I. INTRODUCTION..... 3**
- II. SCOPE OF REVIEW 3**
- III. EXECUTIVE SUMMARY..... 4**
- IV. ANALYSIS AND RECOMMENDATIONS..... 7**
 - 1. International Standards on Preventing and Combatting Terrorism..... 7**
 - 2. General Remarks 1011**
 - 3. Definition of “Terrorism” and related Terms..... 13**
 - 3.1. Definition of “Terrorism”, “Terrorist Acts” and “Terrorist” 13*
 - 3.2. Definition of “Financing of Terrorism” 17*
 - 3.3. Definition of “Terrorist Activities” and Support, including “Incitement to Terrorism”, “Preparation”, “Training” and Other Terms 19*
 - 3.4. Definition of “Terrorist Organization”, “Terrorist Group” and “Anti-terrorist Organization” 2021*
 - 4. Institutional Framework for Countering Terrorism..... 2223**
 - 5. Counter-Terrorism Powers and Potential Impact of the Anti-Terrorism Law on Human rights and Fundamental Freedoms..... 2324**
 - 5.1. Potential Impact on the Right to Life 2526*
 - 5.2. Potential Impact on the Right to Liberty and Security of Persons..... 2728*
 - 5.3. Potential Impact on the Right to Freedom of Association, Freedom of Expression, Peaceful Assembly..... 2930*
 - 5.4. Potential Impact on Freedoms of Opinion and Expression and Restrictions of the Right to Access to Information..... 3032*
 - 5.5. Potential Impact on the Right to Privacy..... 3334*
 - 5.6. Potential Impact on Freedom of Movement..... 3537*
 - 5.7. Other Comments..... 3738*
 - 6. Victims of Terrorism 3940**
 - 7. Liability for Participation in Terrorist Activities 4344**
 - 8. Oversight and Accountability Mechanism 4344**
 - 9. International Co-operation 4647**
 - 10. Final Comments 4748**

Annex: Law on Combatting Terrorism of the Republic of Uzbekistan

I. INTRODUCTION

1. *On 22 May 2019, the OSCE Project Co-ordinator in Uzbekistan sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of several laws and decrees relating to countering so-called “extremism”, combatting terrorism, and regulating mass communications, information technologies and the use of the Internet. Subsequently, ODIHR decided to prepare separate legal analyses, focusing respectively on the decrees pertaining to mass communications, information technologies and the use of the Internet (the Decrees), on the Law on Countering Extremism (hereafter “the Anti-Extremism Law”) and on the Law on Combatting Terrorism (hereafter “the Anti-Terrorism Law”), which should be read together.¹*
2. *On 27 July 2019, ODIHR responded to this request, confirming the Office’s readiness to analyze these legal acts to assess their compliance with OSCE commitments and international human rights standards.*
3. *These Comments were prepared in response to the above request. ODIHR conducted this assessment within its mandate as established by the OSCE Bucharest Plan of Action for Combating Terrorism.²*

II. SCOPE OF REVIEW

4. The scope of these Comments covers only the Anti-Terrorism Law, submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of the entire legal and institutional framework on countering and preventing so-called “extremism” and terrorism in the Republic of Uzbekistan, though they should be read together with the findings and recommendations made in the [ODIHR Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan](#).
5. The Comments raise key issues and provide indications of areas of concern. In the interests of conciseness, the Comments focus more on those provisions that require improvements rather than on the positive aspects of the Law. The ensuing recommendations are based on international standards and practices related to anti-terrorism. The Comments will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women³ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Comments analyse the potentially different impact of the Law on women and men.⁴
7. These Comments are based on an unofficial English translation of the Anti-Terrorism Law, which is attached to this document as an Annex. Errors from translation may result.

¹ All legal reviews on draft and existing laws of Uzbekistan are available at: <<https://www.legislationline.org/odihr-documents/page/legal-reviews/country/55/Uzbekistan/show>>.

² ODIHR conducted this assessment within its mandate as established by the *OSCE Bucharest Plan of Action for Combating Terrorism*, see pars 6, 18 and 22 of the [Annex to OSCE Ministerial Council Decision MC\(9\).DEC/1](#), Bucharest, 3-4 December 2001.

³ *UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Uzbekistan acceded to this Convention on 19 July 1995.

⁴ See par 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004).

These Comments are also available in Russian. However, the English version remains the only official version of the document.

8. In view of the above, ODIHR would like to make mention that these Comments do not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Uzbekistan that ODIHR may wish to make in the future.

III. EXECUTIVE SUMMARY

9. While the overall objective of the Anti-Terrorism Law in the Republic of Uzbekistan is welcome, the Law raises numerous serious concerns with regard to its compatibility with international human rights standards and contains a number of provisions, which have the potential to unduly restrict the full range of human rights. In particular, the principle of legal certainty and the rights to life, liberty and security of person, privacy, freedom of expression, freedom of association and freedom of peaceful assembly, freedom of thought, conscience and religion or belief and equality may be jeopardized by the breadth and nature of relevant legal provisions, as explained below.
10. An overarching concern is the legal definition of “*terrorism*” and related terms in the Law (and in the Criminal Code of the Republic of Uzbekistan), which require amendment in order to clarify their scope and comply with the principles of legal certainty and foreseeability (and the principle of specificity of criminal law). The importance of this is clear from recent findings of UN human rights monitoring bodies specifically noting the negative impact on human rights and fundamental freedoms that counter-terrorism measures and overly broad and vague legislation have in the Republic of Uzbekistan.
11. The powers conferred by the Law to public authorities are far-reaching, yet there is currently no clear legislative framework to regulate and limit the exercise of these powers, clearly specifying the circumstances and conditions when such powers may be used, to what end, and subject to what procedures and safeguards.
12. Although the Law is commendable in its reference to victim’s rights, it fails to provide content to these rights, to take a principled approach to victimhood and to specify modalities for them to obtain full and effective reparation, beyond mere monetary compensation. More generally, the Law should be accompanied by broader policy and/or programmatic initiatives, including preventive measures, which are themselves compliant with international human rights standards.
13. More specifically, and in addition to what was stated above, ODIHR makes the following recommendations to further enhance the Law:
 - A. the definition of “*terrorism*” and other related terms in the Law (and in the Criminal Code) should be substantially revised in order to be human-rights compliant and in line with international standards, particularly by:
 - referring only to the individual criminal *intent* of provoking terror or compelling a government or international organization to do or abstain from doing something, and removing other unclear terminology, especially “*complicat[ing] international relations*”, “*violat[ing] sovereignty and territorial integrity*”, “*undermin[ing] national security*”, “*caus[ing] socio-political destabilization*”, “*achiev[ing]*

political, religious, ideological and other objectives that entail liability under the Criminal Code"; [pars 37 and 43]

- ensuring that the underlying wrongful acts correspond to an offence under the universal terrorism-related conventions or to a serious crime defined by national law that is compliant with international human rights standards and that passes a certain threshold of seriousness, such as when intended to cause death or serious bodily injury, or involving lethal or serious physical violence; [par 43]
 - strictly circumscribing, in the definition of "*financing terrorism*", the types of wrongful act (*actus reus*) only to the provision or collection of funds while limiting the mental element (*mens rea*) to the intent or the knowledge that the funds will be used in order to carry out a terrorist act; [par 49]
 - including narrowly constructed but effective exceptions to ensure that those engaged in genuine human rights and humanitarian work, including lawyers, human rights defenders, teachers, doctors or journalists, are not unduly restricted in their work by counter-terrorism legislation; [par 50]
 - ensuring that preparatory acts may be prosecuted only if there is an actual risk that the terrorist act takes place, with a meaningful proximate link between the behaviour and the ultimate wrong, and while demonstrating criminal intent to act and to cause the harm, or at least, to create a serious risk of foreseeable harm; [par 52]
 - defining "*incitement to terrorism*" as an expression that is intended to incite the commission of a terrorist act (that is truly terrorist in nature), where there is an actual (objective) risk that the act incited will be committed, while ensuring that legal defences provide the exclusion of criminal liability, especially when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest; [par 54]
- B. to remove from the Law:
- the reference to "*inevitability of punishment*" for acts of terrorism from Article 4, [par 28];
 - the wording "*destroy*" and "*destruction*" of terrorists from Articles 9, 16 and 17; [par 67]
 - the reference to propaganda or justification of terrorism from Articles 5 and 20; [pars 82 and 85]
- C. to introduce some form of external independent control over the reasonableness of the decision to initiate an "anti-terrorist operation", while ensuring that such operation is strictly limited in time and more clearly and strictly circumscribing the personal, material, geographical and temporal scopes of the powers of the authorities involved in combatting terrorism; [pars 58, 61-62 and 65]
- D. to state the key principles that should guide the use of force, including absolute necessity, restraint and proportionality, while emphasizing that the use of potentially lethal force is a measure of last resort, to be resorted to only when strictly necessary and unavoidable in order to protect life or prevent serious injury from an imminent and serious threat, and exclude in Article 19 last paragraph the use of weapons and ammunition that carries unwarranted consequences; [pars 69 and 71]

- E. to specify, in the Law or other legislation, that information obtained by unlawful means, including torture or other inhuman or degrading treatment or punishment, shall not be admissible as evidence in court; [par 72]
- F. to provide for the maximum duration of detention in the context of an anti-terrorist operation should be specified and all the procedural safeguards provided by Article 9 of the ICCPR should be applicable as detailed in pars 74-78;
- G. to revise Article 9 of the Law to ensure that the liquidation of an organization has to be pronounced by an independent and impartial court, and not by the State Security Service; [par 81]
- H. to more strictly circumscribe Article 20 of the Law to prohibit only for a short duration (during an on-going anti-terrorist operation) the publication of information only if it relates to tactical or operational aspects, while ensuring that potential wrongdoings or human rights violations committed by public authorities during such operations should not be covered by the non-disclosure; [par 84]
- I. to specify in Article 5 that the prohibition to enter the territory should not apply if this means that the persons would be sent back to a country where they would be exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment, risks of violations to the rights to life serious forms of sexual and gender-based violence, prolonged solitary confinement or to other serious human rights violations; [par 98]
- J. to broaden the scope of the provisions concerning the reparation of victims to ensure that it will cover all types of damages and that it goes beyond the mere financial compensation for damages, to encompass in particular the rehabilitation of victims, including the provision of medical, psychological, legal and social services, while ensuring that documentation and evidentiary requirements for registration as victims and for obtaining reparation be as simple as possible and that the victims are duly informed of their rights; [pars 108-112]
- K. to supplement the Law to ensure proper accountability and oversight, both internal and external, of all the activities pertaining to the prevention and combatting terrorism, including by the Parliament, the Ombuds institution, the National Human Rights Centre, the judiciary, civil society and the media; [par 120] and
- L. to reconsider Article 30 of the Anti-Terrorism Law, which exempts from liability all participants in an anti-terrorist operation, while supplementing the Law with provisions setting up an appropriate independent, impartial, prompt and effective and transparent mechanism for reviewing and investigating lethal and other life-threatening incidents in the context of counter-terrorism efforts, and prosecuting the perpetrators as appropriate. [par 124]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on Preventing and Combatting Terrorism

14. Respect for human rights for all and the rule of law should constitute the fundamental basis of the prevention and fight against terrorism.⁵ The protection and promotion of all human rights, as well as effective counter-terrorism measures are complementary and mutually reinforcing objectives,⁶ which is also the very essence of the OSCE's comprehensive concept of security. As such, there is international recognition of the importance of counter-terrorism legislation and practice complying with international law, including international human rights standards.
15. International standards on the fight against terrorism are enshrined in a number of international legal instruments to which the Republic of Uzbekistan is a party and which focus on different aspects. While the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*⁷ focuses on attacks against specific protected persons, the *International Convention against the Taking of Hostages*,⁸ the *International Convention for the Suppression of Terrorist Bombings*,⁹ as well as the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*¹⁰ are aimed at the protection of the entire population. More specifically, the *International Convention for the Suppression of the Financing of Terrorism*¹¹ focuses on the financial assets of terrorist organizations, while the *International Convention for the Suppression of Acts of Nuclear Terrorism*,¹² and the *Convention on the Physical Protection of Nuclear Material*¹³ both deal with the use of hazardous materials for the purposes of terrorism. Finally, another category of international legal instruments addresses particularly the hijacking of aircraft by terrorist organizations, and violent acts committed at airports,¹⁴ on ships, or on fixed maritime platforms.¹⁵

⁵ See OSCE, *Charter on Preventing and Combating Terrorism*, 10th Ministerial Council Meeting, Porto 2002, pars 5-7. See also UN, *Global Counter-Terrorism Strategy and Plan of Action* (2006), Pillar IV. See also the *Joint Statement* of the UN High Commissioner for Human Rights, the Secretary General of the Council of Europe and ODIHR Director (29 November 2001).

⁶ UN High Commissioner for Human Rights, *Report on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/4/88, 9 March 2007, par 2.

⁷ UN, *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted on 14 December 1973. The Republic of Uzbekistan acceded to this Convention on 19 January 1998.

⁸ UN, *International Convention against the Taking of Hostages*, adopted on 17 December 1979. The Republic of Uzbekistan acceded to this Convention on 19 January 1998.

⁹ UN, *International Convention for the Suppression of Terrorist Bombings*, adopted on 15 December 1997. The Republic of Uzbekistan ratified this Convention on 30 November 1998.

¹⁰ UN, *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, adopted on 1 March 1991. The Republic of Uzbekistan acceded to this Convention on 9 June 1999.

¹¹ UN, *International Convention for the Suppression of the Financing of Terrorism*, adopted on 9 December 1999. The Republic of Uzbekistan ratified this Convention on 9 July 2001.

¹² UN, *International Convention for the Suppression of Acts of Nuclear Terrorism*, adopted on 13 April 2005. The Republic of Uzbekistan acceded to this Convention on 29 April 2008.

¹³ *Convention on the Physical Protection of Nuclear Material*, adopted on 3 March 1980. The Republic of Uzbekistan acceded to this Convention on 9 February 1998.

¹⁴ These include: the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, adopted on 14 September 1963 (which entered into force in the Republic of Uzbekistan on 29 October 1995); the *Convention for the Suppression of Unlawful Seizure of Aircraft*, adopted on 16 December 1970 (to which the Republic of Uzbekistan acceded on 7 February 1994); *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, adopted on 23 September 1971 (to which the Republic of Uzbekistan acceded on 7 February 1994); and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted on 24 February 1988 (which entered into force in the Republic of Uzbekistan on 9 March 1994).

¹⁵ See the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, adopted on 10 March 1988 (which entered into force in the Republic of Uzbekistan on 24 December 2000); and the *Protocol for the Suppression of Unlawful Acts against*

16. The international framework also includes a number of UN Security Council Resolutions such as *Resolutions 2178(2014)* and *2396(2017)* on so-called “foreign terrorist fighters”¹⁶ and *1373(2001)* on threats to international peace and security caused by terrorist acts,¹⁷ as well as several resolutions adopted by the UN General Assembly on a number of different matters related to the fight against terrorism.¹⁸
17. International efforts in the field of counter-terrorism are also governed by the framework of the United Nations’ (UN) [Global Counter-Terrorism Strategy and Plan of Action](#) (2006).¹⁹ The UN Strategy specifies that measures to ensure respect for human rights for all and the rule of law are the fundamental basis of the prevention and fight against terrorism.²⁰ In the case of the Republic of Uzbekistan, these obligations are in particular embodied in the *International Covenant on Civil and Political Rights* (ICCPR),²¹ the *International Covenant on Economic, Social and Cultural Rights* (ICESCR),²² the *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),²³ the *UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT),²⁴ and the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD),²⁵ as interpreted and elaborated by relevant treaty-based and other international human rights monitoring bodies.
18. At the OSCE level, the participating States have also condemned terrorism and agreed to take effective measures to prevent and suppress it, while complying with international human rights and rule of law standards. OSCE participating States have explicitly stressed that strong democratic institutions, respect for human rights and the rule of law are the foundation for such protection,²⁶ as also set out more specifically in the *2001 Bucharest Plan of Action for Combating Terrorism*.²⁷ In the *Athens Ministerial Council Decision on Further Measures to Support and Promote the International Legal Framework against Terrorism* (2009),²⁸ participating States further recognized the need to incorporate universal anti-terrorism conventions and protocols into national criminal, and, where applicable, also administrative and civil legislation, thereby making acts of terrorism punishable by appropriate penalties. OSCE participating States have also

[the Safety of Fixed Platforms Located on the Continental Shelf](#), adopted on 10 March 1988 (which entered into force in the Republic of Uzbekistan on 24 December 2000).

¹⁶ See <[https://www.undocs.org/S/RES/2178%20\(2014\)](https://www.undocs.org/S/RES/2178%20(2014))> and <[https://www.undocs.org/S/RES/2396%20\(2017\)](https://www.undocs.org/S/RES/2396%20(2017))>.

¹⁷ See <<http://www.un.org/en/sc/ctc/resources/res-sc.html>>.

¹⁸ For an overview, see <<http://www.un.org/en/sc/ctc/resources/res-ga.html>>.

¹⁹ See <<https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>>.

²⁰ *ibid.* Pillar IV of the Plan of Action (Annex to the 2006 UN Global Counterterrorism Strategy).

²¹ *UN International Covenant on Civil and Political Rights* (hereinafter “the ICCPR”), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR on 28 September 1995.

²² *UN International Covenant on Economic, Social and Cultural Rights* (hereinafter “the ICESCR”), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICESCR on 28 September 1995.

²³ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “the CEDAW”), adopted by the UN General Assembly by Resolution 34/180 of 18 December 1979. The Republic of Uzbekistan acceded to the CEDAW on 19 July 1995.

²⁴ *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter “the UN CAT”), adopted by the UN General Assembly by Resolution 39/46 of 10 December 1984. The Republic of Uzbekistan acceded to the UN CAT on 28 September 1995.

²⁵ *International Convention on the Elimination of All Forms of Racial Discrimination* (hereinafter “the CERD”), adopted by the UN General Assembly by Resolution 2106 (XX) of 21 December 1965. The Republic of Uzbekistan acceded to the CERD on 28 September 1995.

²⁶ See the [Overview of OSCE Counter-Terrorism Related Commitments](#) (as last updated in March 2018).

²⁷ *Op. cit.* footnote 3 (2001 OSCE Bucharest Plan of Action for Combating Terrorism).

²⁸ [OSCE Ministerial Council Decision No. 2/09 of 2 December 2009](#).

consistently/repeatedly reaffirmed their commitments to respect and protect human rights while countering terrorism.²⁹

19. While the Republic of Uzbekistan is not a Member State of the Council of Europe (hereinafter “the CoE”), the *European Convention on Human Rights and Fundamental Freedoms* (hereinafter “the ECHR”), the developed case law of the European Court of Human Rights (hereinafter “the ECtHR”) in the field of counter-terrorism, and other CoE’s instruments may serve as useful reference documents from a comparative perspective.
20. Other specialized documents of a non-binding nature provide useful and practical guidance and examples of good practices in this field, including, among others:
 - the reports of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter “UN Special Rapporteur on counter-terrorism”)³⁰ and reports and other documents produced by treaty-based and other international human rights monitoring bodies;³¹
 - the [*ODIHR Manual on Countering Terrorism, Protecting Human Rights*](#) (2008);³²
 - the [*Practical Manual for Law Enforcement Officers on Human Rights in Counter-Terrorism Investigations*](#) (2013), jointly published by ODIHR and the OSCE Secretariat’s Transnational Threats Department / Strategic Police Matters Unit (TNTD/SPMU),³³
 - the [*ODIHR-TNTD/SPMU Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*](#) (2014);³⁴
 - the [*ODIHR Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*](#) (2018);³⁵
 - the UNODC [*Handbook on Gender Dimensions of criminal Justice Responses to Terrorism*](#) (2019); and
 - the UN Counter-Terrorism Implementation Task Force’s [*Basic Human Rights Reference Guide on Conformity of National Counter-Terrorism Legislation with International Human Rights Law*](#) (2014) and UN OHCHR’s [*Factsheet on Human Rights, Terrorism and Counter-Terrorism*](#) (2008).³⁶
21. The scope of "terrorism" and forms of support for it, and of the powers in response contemplated in the Anti-Terrorism Law, are such that they could be used in a manner that violates the full array of civil, political, economic and social rights. Particular issues arise in relation to the right to life (Article 6 of the ICCPR), the right not to be subjected

²⁹ See e.g., [*OSCE Consolidated Framework for the Fight against Terrorism*](#), adopted by Decision No. 1063 of the Permanent Council, at its 934th Plenary Meeting on 7 December 2012; [*OSCE Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism*](#) (2015); and [*OSCE Ministerial Council Declaration on Strengthening OSCE Efforts to Prevent and Counter Terrorism*](#), MC.DOC/1/16, 9 December 2016.

³⁰ Available at <<https://www.ohchr.org/EN/Issues/Terrorism/Pages/Annual.aspx>>.

³¹ Available at <<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>>.

³² See ODIHR, [*Countering Terrorism, Protecting Human Rights: a Manual*](#) (2008).

³³ See OSCE TNTD/SPMU-ODIHR, [*Practical Manual for Law Enforcement Officers on Human Rights in Counter-Terrorism Investigations*](#) (2013).

³⁴ See OSCE TNTD/SPMU-ODIHR, [*Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*](#) (2014).

³⁵ See ODIHR, [*Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*](#) (2018).

³⁶ UN OHCHR, [*Factsheet on Human Rights, Terrorism and Counter-Terrorism*](#) (2008).

to arbitrary or unlawful interference with one's privacy, family, home or correspondence, nor to unlawful attacks on one's honour and reputation (Article 17 of the ICCPR), the rights to freedom of thought, conscience and religion (Article 18 of the ICCPR), freedom of expression (Article 19 of the ICCPR), freedom of peaceful assembly (Article 21 of the ICCPR) and freedom of association (Article 22 of the ICCPR), as further developed below.

2. General Remarks

22. Article 1 sets out the purpose and main objectives of the Anti-Terrorism Law i.e., “*provision of security of the individual, society and the State, protection of sovereignty and territorial integrity of the State, maintenance of civil peace and national accord*”. It would be beneficial to **explicitly emphasize, as now commonly reflected across international standards, that countering terrorism and the protection of rule of law and human rights are “compatible [...] mutually reinforcing” objectives**. Indeed, human rights violations can create conditions that perpetuate and increase, rather than reduce, the causes of violent extremism and the related phenomenon of terrorism.³⁷
23. It is welcome that the lawmakers provided for the prevalence of international law in Articles 3 of the Anti-Terrorism Law and expressly referred to “*lawfulness*” and the “*priority of rights, freedoms and legal interests of a person*” as part of the main principles of combatting terrorism (Article 4). At the same time, it is questionable whether such a statement will in practice ensure the prevalence of international *human rights* standards. Indeed, the Law in itself is rather vague and broad in scope, thus failing to comply with the principle of legal certainty as demonstrated below. Moreover, several of its provisions have the potential to encroach on human rights and fundamental freedoms, especially the rights to life and to liberty, respect to private and family life, freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and freedom of peaceful assembly. In any case, it should be made clear in Article 1 or 4 that **the Law must be interpreted and applied consistently with respect for the rule of law and international legal framework, including international human rights, humanitarian law and refugee law**, as stated in international documents.³⁸
24. It is also essential to emphasize that non-discrimination is particularly important in the context of preventing and combating terrorism, as explicitly recognized by the OSCE participating States³⁹ and at the international level.⁴⁰ The lawmakers should consider **including an express statement under Article 4 regarding non-discrimination on any**

³⁷ *ibid.* The [UN Global Counter Terrorism Strategy](#) comprises four pillars, which include measures to address the conditions conducive to the spread of terrorism (pillar 1) and measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism (pillar 2).

³⁸ See e.g., OSCE, Preamble of the “[Declaration on the OSCE Role in Countering the Phenomenon of Foreign Terrorist Fighters in the Context of the Implementation of UN Security Council Resolutions 2170 \(2014\) and 2178 \(2014\)](#)”, adopted by the OSCE Ministerial Council in Basel on 5 December 2014, MC.DOC/5/14. The Declaration builds on the earlier “[OSCE Consolidated Framework for the Fight against Terrorism](#)”, OSCE, 7 December 2012, PC.DEC/1063, which in turn built on the “[Bucharest Plan of Action for Combating Terrorism](#)”, OSCE, 4 December 2001, MC(9).DEC/1. See also UN Security Council Resolutions [2170 \(2014\)](#) and [2178 \(2014\)](#), which repeatedly mention that the obligations enshrined therein must be applied consistently with human rights, international humanitarian law and refugee law.

³⁹ OSCE, “[Strategy to Address Threats to Security and Stability in the Twenty-First Century](#)”, 2003.

⁴⁰ See e.g., Committee on the Elimination of Racial Discrimination, [Statement on Racial Discrimination and Measures to Combat Terrorism](#), 2002, pars 5-6.

ground, including national or ethnic origin, colour, decent, religion or belief, health status, political or other opinion, and any other status.

25. Article 4 of the Anti-Terrorism Law refers to other main principles which should guide the efforts to combat terrorism, including the “*priority of terrorism prevention measures*”, the “*inevitability of punishment*”, the “*use of both overt and covert methods of combatting terrorism*”, and the “*unity of command over the anti-terrorist operation, forces and equipment employed*”.
26. First, the reference to the importance of terrorism prevention measures, further defined in Article 5, is overall welcome, since prevention, prosecution, rehabilitation and reintegration have been identified at the international level as the critical elements of an effective approach to prevent and counter terrorism and violent extremism.⁴¹ However, when looking at Article 5 of the Law supposed to specify what is meant by “*prevention of terrorist activities*”, the provision lists a number of activities that are prohibited, thus putting greater emphasis on repressive and punitive responses/approaches than on preventive and rehabilitative ones, whereas prevention and resolving conflicts should be the first priority in the fight against terrorism and preventing and countering violent extremism and radicalization that lead to terrorism (VERLT).⁴² Article 5 otherwise simply refers broadly to a “*range of political, socioeconomic, legal and other measures, implemented by government bodies, citizens’ self-government bodies and public associations, as well as enterprises, establishments and organizations*”, without specifying in concrete terms the types of contemplated measures. There are a number of initiatives which could be considered by the policy makers and/or legal drafters to address the conditions conducive to the spread of terrorism,⁴³ which could be considered as part of policy or programmatic documents and/or detailed in the Law, such as developing community policing approaches to preventing terrorism, encouraging empowerment and the participation of women as well as men, youth, communities and representatives from minorities in these efforts, seeking to enhance the transparency and accountability of counter-terrorism measures,⁴⁴ the promotion of counter-messages by credible messengers to promote alternatives to narratives of terrorist or violent extremist groups.⁴⁵ Such more general actions should be kept in mind, though they should be pursued in their own right, not just to the extent that they help countering terrorism.⁴⁶
27. Moreover, at the international level, it is recommended to **apply a gender-mainstreaming approach to activities relating to preventing and countering**

⁴¹ This is, for example, reflected in [UNSC Resolution 2178 \(2014\)](#), and OSCE commitments, such as the [OSCE Ministerial Council Declaration on Strengthening OSCE Efforts to Prevent and Counter Terrorism \(2016\)](#), par 8 and OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism](#), MC.DOC/4/15, 4 December 2015. See also *op. cit.* footnote 35, page 29 (2018 ODIHR “FTFs” [Guidelines](#)).

⁴² See Activities of the UN system in implementing the UN [Global Counter-Terrorism Strategy and Plan of Action](#) (2006), 20 April 2018, <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/840>.

⁴³ Conditions conducive to terrorism recognized at the level of the UN and the OSCE include e.g., “*prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance*” - see UN [Global Counter-Terrorism Strategy and Plan of Action](#) (2006); and OSCE, [Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy](#) (2007).

⁴⁴ See *op. cit.* footnote 34, pages 94-99 (2014 OSCE TNTD-SMPU and ODIHR [Preventing Terrorism and Countering VERLT](#)).

⁴⁵ See e.g., OSCE Secretariat, [Handbook: the Role of Civil Society in Preventing and Countering VERLT: a Focus on South Eastern Europe](#), 4 July 2019, especially pages 57 and 60. See also *ibid.* page 45 (2014 OSCE TNTD-SMPU and ODIHR [Preventing Terrorism and Countering VERLT](#)); *op. cit.* footnote 35, pages 55-59 (2018 ODIHR “FTFs” [Guidelines](#)); OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism](#), MC.DOC/4/15, 4 December 2015

⁴⁶ See *ibid.* page 44 (2014 OSCE TNTD-SMPU and ODIHR [Preventing Terrorism and Countering VERLT](#)). These include, e.g., addressing negative socio-economic factors, such as corruption and lack of good governance, as well as high unemployment, especially among youth; strengthening democratic institutions and the rule of law, including democratic policing, promoting dialogue between the state and society,

terrorism, acknowledging that responses to terrorism, including criminal justice responses, should be shaped by the varying roles and specific needs and vulnerabilities of women and men, boys and girls and young adults as perpetrators, victims and as agents involved in preventing and countering terrorism.⁴⁷ **The gender-mainstreaming approach to activities relating to preventing and countering terrorism should be expressly mentioned under Article 4 of the Law or elsewhere in the Law.**

28. Article 4 refers to the “*inevitability of punishment*”, which beyond being a rather unclear term, seems to run counter to the aim of prevention of terrorism mentioned in the same provision. Punishment should only apply if the behaviour amounts to terrorism as defined in accordance with international standards (see Sub-Section 3 *infra*) and only if the criminal offence is established beyond a reasonable doubt. Also, the fact that the punishment is “*inevitable*” would somewhat seem to leave no discretion to the judge/court to decide potential alternative measures, for instance in the case of juvenile offenders the possibility to decide to interrupt or suspend judicial proceedings in line with international good practice, which may also have the potential to impinge upon international standards on judicial independence.⁴⁸ **It is therefore recommended that the reference to “inevitability of punishment” be deleted from Article 4.**
29. It is worth noting that the exact significance of many provisions of the Law can be difficult, if not impossible to grasp on account of the many general references to “*other legislation*” (Article 3), “*other powers in accordance with the law*” (Articles 9 to 14¹), “*the law*” (Article 28) or “*established procedure*” (Article 31), without further precisions. It is recommended to **include a specific cross-reference to the relevant legislation to ensure greater accessibility, legal certainty and foreseeability.** This is particularly important in terms of knowledge of the types of liability (Article 28 of the Anti-Terrorism Law; see also Sub-Section 7 *infra*).
30. Finally, it is worth emphasizing that the legal framework on combatting terrorism is rather fragmented since it is also regulated by other laws, such as the Law concerning the functioning of the various bodies mentioned under Chapter II, especially the Law on the State Security Service⁴⁹ and the Criminal Code. This fragmentation creates uncertainty as to what checks and limitations exist on the State Security Service’s powers and other bodies involved in counter-terrorism. Indeed, Article 9 lists a number of powers regarding the detection and suppression of terrorist activities, information gathering, the detection of illegal transnational movement, etc. to be used when combatting terrorism. The question arises

and ensuring respect for human rights and fundamental freedoms; combating intolerance and discrimination, as well as promoting mutual respect, coexistence and harmonious relations between ethnic, religious, linguistic and other groups; and preventing violent conflicts, as well as promoting peaceful settlement of disputes and resolution of existing conflicts – see OSCE Consolidated Framework for the Fight against Terrorism.

⁴⁷ See OSCE, “*Chairmanship’s Perception Paper: Recommendations from the 2018 OSCE-wide Counter-Terrorism Conference on ‘The Reverse Flow of Foreign Terrorist Fighters (FTFs): Challenges for the OSCE Area and Beyond’*”, Rome, 10-11 May 2018”, Italian OSCE Chairmanship, CIO.GAL/90/18, 20 July 2018, p. 5; and *op. cit.* footnote 35, Sub-Section 3.7. (2018 ODIHR “FTFs” *Guidelines*). See also UNODC, *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* (2019), especially pages 12 and 26.

⁴⁸ See e.g., UNODC, *Justice in Matters Involving Children in Conflict with the Law - Model Law on Juvenile Justice and Related Commentary* (2013). See also UN Special Rapporteur on the independence of judges and lawyers, *Mission to South Africa: Report of the Special Rapporteur on the independence of judges and lawyers* (25 January 2001), E/CN.4/2001/65/Add.2, page 4. See also *op. cit.* footnote 35, page 39 (2018 ODIHR “FTFs” *Guidelines*).

⁴⁹ Available at <<http://www.lex.uz/docs/3610937>>.

whether this Law creates a *new* legal regime, exempted from the general rules (and safeguards) provided by the Criminal Procedure Code and other legislation.

3. Definition of “Terrorism” and related Terms

3.1. Definition of “Terrorism”, “Terrorist Acts” and “Terrorist”

31. Article 2 of the Law defines “terrorism” as “*violence, a threat of violence or other criminal acts, posing threat to human life and health, threat of destruction (damage) of property and other material objects, aiming to force a State, an international organization, an individual or a legal entity to commit or restrain from certain actions, complicate international relations, violate sovereignty and territorial integrity, undermine national security, provoke armed conflicts, intimidate population, cause socio-political destabilization, achieve political, religious, ideological and other objectives that entail liability under the Criminal Code of the Republic of Uzbekistan*”.
32. First, it is unclear why the Law would need to formulate its own, lengthy definition of “terrorism”⁵⁰ that differs from the one already included in Article 155 of the Criminal Code,⁵¹ instead of cross-referencing the relevant criminal provision, assuming that the said definition is itself in line with international recommendations (see below). Moreover, beyond being inconsistent with the definition contained in the Criminal Code, this also seems to imply that the government bodies are dealing with some acts that are not necessarily criminal in nature, which could imply that this is a *sui generis* activity, governed by different rules.⁵² This also creates a confusing legal situation where several sets of rules that are overlapping are applicable to the same conduct, which may give rise to questions as to the certainty and foreseeability of the legislation.⁵³
33. Second, the wording of the definition of “terrorism” is rather vague and broad in scope. While acknowledging that there is no internationally-agreed definition of terrorism,⁵⁴ it is key that the national legislation provides for a clearly and strictly circumscribed definition of “terrorism” that complies with the principles of legal certainty, foreseeability and specificity of criminal law. This requires that criminal offences and related penalties be defined clearly and precisely,⁵⁵ so that an individual knows from the wording of the relevant criminal provision which acts will make him/her criminally liable.⁵⁶ In that respect, the UN Special Rapporteur on counter-terrorism has noted that any definition of terrorism would require three cumulative elements to be human rights-compliant i.e., it should amount to an action: (1) corresponding to an offence under the

⁵⁰ Article 2 of the Law defines terrorism as “violence, a threat of violence or other criminal acts, posing threat to human life and health, threat of destruction (damage) of property and other material objects, aiming to force a State, an international organization, an individual or a legal entity to commit or restrain from certain actions, complicate international relations, violate sovereignty and territorial integrity, undermine national security, provoke armed conflicts, intimidate population, cause socio-political destabilization, achieve political, religious, ideological and other objectives that entail liability under the Criminal Code of the Republic of Uzbekistan

⁵¹ Article 155 of the Criminal Code defines terrorism as “*violence, the use of force, other acts that endanger the person or property, or the threat of their implementation to compel a state body, international organization, their officials, individuals or legal entities to commit or refrain from performing any activity in order to complicate international relations, violate sovereignty and territorial integrity, undermine the security of the state, provoke war or armed conflict, destabilize the socio-political situation, intimidate the population*”.

⁵² See e.g., Venice Commission, [Opinion on the Law on Preventing and Combatting Terrorism of Moldova](#), 22 October 2018, par 14.

⁵³ See, for the purpose of comparison, ECtHR, [Rekvenyi v. Hungary](#) [GC] (Application no. 25390/94, judgment of 20 May 1999), par 34.

⁵⁴ UN Special Rapporteur on counter-terrorism, [2005 Report](#), UN Doc. E/CN.4/2006/98, pars 26-28; [2010 Report on Ten areas of best practices in countering terrorism](#), UN Doc. A/HRC/16/51 (2010), pars 26-28; and 2019 [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, par 19.

⁵⁵ CCPR, [General Comment No. 29 on States of Emergency](#) (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add. 11 (2001), par 7.

⁵⁶ Article 15 par 1 of the ICCPR.

universal terrorism-related conventions (or, in the alternative, action corresponding to all elements of a serious crime defined by national law); and (2) done *with the intention* of provoking terror or compelling a government or international organization to do or abstain from doing something; and (3) passing a certain threshold of seriousness, i.e., either (a) amounting to the intentional taking of hostages, or (b) intended to cause death or serious bodily injury, or (c) involving lethal or serious physical violence.⁵⁷ It is worth emphasizing that the UN Special Rapporteur on counter-terrorism has also expressly stated that “[d]amage to property, absent other qualifications, must not be construed as terrorism”.⁵⁸ The [UN Security Council Resolution 1566 \(2004\)](#) overall takes the same approach.

34. In that respect, the definition of “terrorism” contained in the Law appears overly broad and all-encompassing, and fails to meet the above-mentioned elements. Of particular general concern is that the definition seems to effectively delink “terrorism” and associated activities from what has been recognized as a core element of such activity, namely resort to violence, and instead embraces a much broader range of uncertain behaviours that are undefined in national or international law.
35. As regards the wrongful act (*actus reus*), the definition contains an open-ended reference to “other criminal acts” (Article 2 of the Law), and as such, potentially extends to any criminal offence. Accordingly, it does not comply with the principle of legal certainty while also not necessarily meeting the above-mentioned seriousness threshold. Moreover, not all acts that are crimes under national or even international law are acts of terrorism or should be defined as such⁵⁹ and certain behaviours are criminalized under national legislation in violation to international standards, as for instance noted in the recently published ODIHR [Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan](#).⁶⁰
36. The definition of “terrorism” in Article 2 is similarly unclear as to the nature of the mental element (*mens rea*). It refers to the “aim” to trigger various objectives/consequences. **It is not clear whether this implies individual criminal intent, and should be clarified in that respect.**
37. In addition, the definition refers to a number of objectives, such as “*complicat[ing] international relations*”, “*violat[ing] sovereignty and territorial integrity*”, “*undermin[ing] national security*”, “*caus[ing] socio-political destabilization*”, “*achiev[ing] political, religious, ideological and other objectives that entail liability under the Criminal Code*”, which go beyond the above-mentioned human-rights compliant definition and appear overly vague and broad. Indeed, various forms of legitimate exercise of human rights, including notably expressions of political opposition may, for instance, be seen to “*undermine international relations*”. Moreover, broad references to political, religious or ideological objectives, pursued through any criminal means, risks targeting specific groups and infringing the right to equality. Also, reference

⁵⁷ See UN Special Rapporteur on counter-terrorism, [2010 Report](#), A/HRC/16/51, 22 December 2010, par 27; and [UN Security Council Resolution 1566 \(2004\)](#), S/RES/1566 (2004), par 3. On the definition of “terrorism” within the OSCE context, see *op. cit.* footnote 34, pages 27-30 (2014 OSCE TNTD-SMPU and ODIHR [Preventing Terrorism and Countering VERLT](#)). See also e.g., ODIHR, [Opinion on the Draft Law of Tunisia Related to the Fight against Terrorism and Prevention of Money Laundering](#), 9 December 2013, pars 18-27.

⁵⁸ See *op. cit.* footnote 54, par 75 (c) (2019 Report of the UN Special Rapporteur on counter-terrorism).

⁵⁹ See *op. cit.* footnote 54, par 38 (2005 Report of the UN Special Rapporteur on counter-terrorism).

⁶⁰ See e.g., the criminalization of certain acts in Uzbekistan was noted as violating international standards; see ODIHR, [Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan](#), 31 October 2019, Sub-Section 4.2.

to other commonly invoked but undefined terms, such as “*national security*” that is not itself a term defined internationally, compounds the problem of vagueness and uncertainty of the legal provisions.

38. The inclusion of the “*violat[ion] of sovereignty and territorial integrity*” within the concept of terrorism has little basis in international standards; it is highly questionable for example whether the law or the extraordinary legal mechanisms developed for the fight against terrorism are appropriate in the context of separatism.⁶¹ Furthermore, such formulation has the potential to capture a very large number of possible acts and omissions, which do not appear to be defined elsewhere in the Criminal Code of the Republic of Uzbekistan and do not correspond to the offences under the Universal Anti-Terrorism Instruments listed in par 15 *supra*, nor to specific serious criminal offences. Some of the language used (e.g., complicating international relations, causing socio-political destabilization) is also extremely vague and may be subject to diverging interpretations.
39. In light of the above, the definition of “*terrorism*” fails to comply with the principle of legal certainty, thus potentially leading to arbitrary application/interpretation by the public authorities in charge of the implementation of the Law. As noted in the Joint ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, “[*d*]omestic legislation designed to counter terrorism or extremism should narrowly define the terms ‘terrorism’ and ‘extremism’ so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion”.⁶² In practice, such a vague definition risks being used as a tool for the suppression of legitimate activities such as political dissent, democratic participation or human rights non-governmental organizations, labour union strike or civil disobedience,⁶³ as noted by UN human rights monitoring bodies, who expressed some concerns regarding the overly broad definition of “*terrorism*” in the Anti-Terrorism Law and in the Criminal Code of the Republic of Uzbekistan.⁶⁴
40. In any case, it must also be emphasized that even the definition of the Criminal Code appears to be overly vague and broad in scope, as it refers generally to “*other acts that endanger the person or property*” which may fail to reach the level of severity that should be required in the context of defining “*terrorism*” as a criminal offence (see par 33 *supra*). Moreover, the mental element of the criminal offence is also poorly defined and should be clarified. Similar to the definition of Article 2, the criminal provision refers to vague and broad purpose of “*complicat[ing] international relations*”, “*undermin[ing] the security of the state*” and “*destabiliz[ing] the socio-political situation*”, which is not specific and precise enough to comply with the principles of legal certainty, foreseeability and specificity of criminal law (see par 33 *supra*).

⁶¹ See e.g., *op. cit.* footnote 52, par 16 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

⁶² ODIHR-Venice Commission, [Joint Guidelines on Freedom of Peaceful Assembly](#) (2010, 2nd ed.), par 91.

⁶³ UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, par 22, which recommends to “*unambiguously exempt humanitarian actions from their counter-terrorism measures at every possible opportunity*”.

⁶⁴ See e.g., UN Special Rapporteur on freedom of religion or belief (UNSR on FORB), [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, par 98, which notes that “[*s*]everal thousands of people have been imprisoned for up to 20 years on vague charges of ‘terrorism’, ‘religious extremism’, ‘anti constitutional’ activity or membership in an ‘illegal religious group’”. See also CCPR, [Concluding observations on the fourth periodic report of Uzbekistan](#), CCPR/C/UZB/CO/4, 17 August 2015, par 11, which notes with concern the “*overly broad definition of terrorism and terrorist activities that is reportedly widely used*” and recommended to amend its “*overly broad definition of terrorism and terrorist activities*”.

41. At the same time, the definition of “*terrorist act*” under Article 2 is rather differently framed and makes references to some acts that are embedded in above-mentioned universal counter-terrorism conventions. But similar to the definition of “*terrorism*”, some of the wording under the definition of “*terrorist act*” appears vague and too broad in scope and may potentially cover legitimate activities, such as the reference to “*provoking panic and disorders in public places and during public events*”, “*pervasion of threats by any means and methods*”, “*other actions of terrorist nature as provided by laws of the Republic of Uzbekistan and generally recognized norms of international law*”. As such, the definition of “*terrorist act*” may likewise fail to comply with the principle of legal certainty.
42. In light of the foregoing, **the definition of “*terrorism*” in the Law (and in the Criminal Code) should be substantially revised in order to be human-rights compliant and in line with international standards. In any case, it is necessary that both the Criminal Code and the Law give a definition of terrorism (and its derivatives) which is as narrowly and precisely formulated as possible, and mutually consistent. Rather than providing its own definition, it would be preferable that the Law makes a cross-reference to the relevant criminal provision, providing that it is itself compliant with international standards.**
43. **In any case, the mental element (*mens rea*) and the wrongful act (*actus reus*) should be redefined in order to be more strictly circumscribed and human rights compliant as provided in par 33 *supra*. Especially, the definition of “*terrorism*” should refer only to the individual criminal *intent* of provoking terror or compelling a government or international organization to do or abstain from doing something, and remove other unclear terminology. Moreover, the underlying wrongful acts should correspond to an offence under the universal terrorism-related conventions or to a serious crime defined by national law that is compliant with international human rights standards and that passes a certain threshold of seriousness, such as when intended to cause death or serious bodily injury, or involving lethal or serious physical violence. To avoid lack of clarity, it may be advisable, as done in other countries, to cross-reference the specific provisions pertaining to serious crimes in the Criminal Code of the Republic of Uzbekistan,⁶⁵ providing that they are themselves compliant with international human rights standards.**
44. It is worth noting that the definition of a “*terrorist*” also involve the traveling abroad or across the territory of the Republic of Uzbekistan for participation in terrorist activities, generally along the lines of the definition in [UN Security Council Resolution 2178 \(2014\)](#) on “*foreign terrorist fighters*”. Various human rights issues arise when addressing the phenomenon of “foreign terrorist fighters”, as outlined in the [ODIHR Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#) (2018). In this context, the Anti-Terrorism Law **should clarify that the traveling abroad or across the territory will qualify as illegal and be punishable only if the *intent* to participate in “*terrorist activities*” can be proved and demonstrated.** While harm may ultimately be caused by another person, there must be sufficient normative involvement of an individual in the wrongful act, or at the very least in the deliberate creation of risk of such a wrongful act taking place, to justify criminal

⁶⁵ See for instance [Article 421-1](#) of the Criminal Code of France.

intervention.⁶⁶ The individual must intend to act, and to cause the harm, or at least to create a serious risk of foreseeable harm.⁶⁷ **This mental element (*mens rea*) should be specified in the Law.** It is important to emphasize that participation in “*terrorist activities*” must be distinguished from participation in an “*armed conflict*” pursuant to international humanitarian law (IHL), noting in particular that IHL encourages amnesty at the end of the conflict for participation in conflict that has not violated IHL.⁶⁸

3.2. Definition of “Financing of Terrorism”

45. Article 2 of the Law provides a definition of financing of terrorism as an “*activity, aiming to support the existence, functioning and financing of a terrorist organization, traveling abroad or across the territory of the Republic of Uzbekistan for participation in terrorist activities, preparation and commission of terrorist acts, direct or indirect provision or raising of funds, resources, provision of other services for terrorist organizations or persons, supporting or participating in terrorist activities*”. It is worth noting that Article 155³ of the Criminal Code defines the criminal offence of “*financing terrorism*” in the same manner.
46. States are obliged to prevent and prosecute the financing of terrorism, in accordance with Article 2 of the [International Convention for the Suppression of Financing of Terrorism](#),⁶⁹ to which the Republic of Uzbekistan is a State party. However, the definition contained in the Law (and in the Criminal Code) is overly broad and should be clarified. In particular, the reference to the “*provision of other services*” of an unspecified nature, and undefined “*support*” for terrorist activities, actually goes beyond the “*financing*” of terrorism, contrary to what the title of the Article suggests. These broader forms of engagement are uncertain as to their scope and are also not defined internationally. This is underscored by the broad and undefined reference to “*direct and indirect*” provision of such services or support, which is potentially all-encompassing and prone to abuse.
47. The content and scope of “*participating in terrorist activities*” mentioned in the definition of financing of terrorism is similarly unclear, thus potentially giving enforcement authorities broad latitude in determining which organizations, individuals, and activities are covered by the Law.⁷⁰ Such wording shall not be used to limit the provision of

⁶⁶ See e.g., *op. cit.* footnote 35, page 37 (2018 ODIHR “FTFs” [Guidelines](#)).

⁶⁷ *ibid.* page 38 (2018 ODIHR “FTFs” [Guidelines](#));

⁶⁸ *ibid.* pages 24-25 (2018 ODIHR “FTFs” [Guidelines](#)); and ICRC, [Customary International Humanitarian Law: Volume I: Rules](#) (2009), Rule 159.

⁶⁹ Article 2 of the [International Convention for the Suppression of Financing of Terrorism](#) defines offences under the Convention as the direct or indirect, **unlawful and wilful** provision or collection of funds with the intention of or **in the knowledge** that they will be used, in full or in part, to carry out an act which constitutes an offence within the scope of universal anti-terrorism treaties, or any other acts intended to cause death or serious bodily injury to civilians, or to any other person not taking part in an armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or compel a government or international organization to act, or abstain from action.

⁷⁰ See e.g., ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), par 34; and *op. cit.* footnote 57, par 26 (2013 [ODIHR Opinion on the Draft Law of Tunisia Related to the Fight against Terrorism](#)). See also UNODC, [Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments](#) (2006), pars 212-233. For definitions of “*participation*” in the Criminal Codes of OSCE participating States, see e.g., Article 421-2-1 of the Criminal Code of France, which states: “*The participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for under the previous articles shall in addition be an act of terrorism*”; and Article 83.18 of the Criminal Code of Canada which provides a definition as well as a list of precise criteria and factors to be taken into account to assess whether such participation exists, <<http://www.legislationline.org/documents/section/criminal-codes>>. See also the definition of “*Participating in an association or group for the purpose of terrorism*” in the [Additional Protocol to the CoE’s Convention on the Prevention of Terrorism](#), 22 October 2015, which requires that it be committed unlawfully and intentionally (see also pars 31-37 of the Explanatory Report <<https://rm.coe.int/168047c5ec>>); and Article 4 of the [EU Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA](#), which requires that the

humanitarian aid, paralyze the functioning of non-governmental organizations, or target *inter alia*, civil society, human rights defenders, journalists, minority groups, labour activists, indigenous peoples and members of the political opposition, as reported at the international level.⁷¹ In sum, the definition of the wrongful act (*actus reus*) covered by the wording “*financing terrorism*” is unlikely to fulfil the principles of legal certainty, foreseeability and specificity of criminal law, and is also much broader in scope than the provision of the International Convention for the Suppression of Financing Terrorism, which is strictly limited to the “*provision or collection of funds*”.

48. The definition is also not clear as to the type of mental element required to assess whether the wrongful act was committed. Article 2 of the International Convention for the Suppression of Financing Terrorism refers to the “*unlawful and wilful provision or collection of funds with the intention of or in the knowledge that they will be used, in full or in part, to carry out an act which constitutes a [terrorist] offence*”. In that respect, it is worth emphasizing that the definition of the mental element (*mens rea*) for support offences, including for financing terrorism, is particularly significant in terms of gender implications and the broader it is defined, the more likely it may affect the rights of child and family life, and potentially affect women disproportionately. Indeed, women in some contexts may have far less access to information and have no or very limited knowledge about the full scope of behaviour of their spouse or family members or may not be in a position to challenge that behaviour or to refuse to assist.⁷² Moreover, the broader scope of the mental element could favour the prosecution of persons who provide support to a family member engaged in terrorism, even where that support is provided out of a sense of family duty or loyalty, rather than for the purpose of supporting terrorist activities, and this has been shown as disproportionately affecting women.⁷³
49. In light of the foregoing, **it is recommended to substantively revise the definition of “financing terrorism” in the Law (and in the Criminal Code) by more strictly circumscribing the types of wrongful act to the provision or collection of funds** (see also comments regarding training, planning and preparation in Sub-Section 3.3. *infra*). Similarly, and to avoid a potential discriminatory impact of the provision, **it is recommended to define and limit the mental element to the intent or the knowledge that the funds will be used in order to carry out a terrorist act**, defined strictly in line with international recommendations (see par 33 *supra*).
50. The Law should also **include careful, narrowly constructed but effective exceptions to ensure that those engaged in genuine human rights and humanitarian work are not unduly restricted in their work**.⁷⁴ Moreover, **it should not cover the exercise of**

participation in the activities of a terrorist group, when committed intentionally, be punishable as a criminal offence, specifying that participating in the activities of a terrorist group, includes “*supplying information or material resources, or funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group*”. See, although in the context of a criminal offence for “membership in an armed organisation”, Venice Commission, [Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey](#), CDL-AD(2016)002-e, 11-12 March 2016, paras 95-121 and 128.

⁷¹ See e.g., *op. cit.* footnote 54, paras 3 and 34 (2019 Report of the UN Special Rapporteur on counter-terrorism). See also, e.g., K. Mackintosh and P. Duplat, [Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action](#), July 2013, independent study commissioned by UN OCHA and the Norwegian Refugee Council, page 40.

⁷² See *op. cit.* footnote 47, pages 41-42 (2019 UNODC [Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism](#)).

⁷³ *ibid.* page 42. See also e.g., Bérénice Boutin, [‘Has Countering the Financing of Terrorism Gone Wrong? Prosecuting the Parents of Foreign Terrorist Fighters’](#), International Centre for Counter-Terrorism, 2 October 2017.

⁷⁴ See *op. cit.* footnote 54, par 75 (f) (2019 Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 35, pages 26-28 (2018 ODIHR “FTFs” [Guidelines](#)). Exemptions for humanitarian relief organizations by other states may be instructive, such as in the New Zealand Terrorism Suppression Act 2002, sections 9(1) and (2), which explicitly allow for the provision of food, clothing and medicine, even to designated terrorist entities as far as is necessary to satisfy essential needs. Other states’ laws provide explicit exemptions for humanitarian work in conflict zones; see e.g., Article 260 (4) of the Swiss Criminal Code which states that financing terrorism does not apply if “*it is intended to support acts that do not violate the rules of international law on the conduct of armed conflicts*”.

legitimate activity of lawyers, human rights defenders, teachers, doctors or journalists for example, nor in general should it impede access to basic services to which individuals are entitled pursuant to their economic, social and cultural rights.

3.3. Definition of “Terrorist Activities” and Support, including “Incitement to Terrorism”, “Preparation”, “Training” and Other Terms

51. The definition of “*terrorist activities*” refers to a number of broader conducts, including the planning and preparation of a “*terrorist act*”, “*incitement to terrorism*”, and recruitment and training of terrorists, which are not further defined.
52. Regarding the planning and preparation of a “*terrorist act*”, it is worth noting that Article 25 of the Criminal Code of the Republic of Uzbekistan criminalizes the preparation and attempted crime, the same way as the related criminal offence, and defines the preparation as “*creat[ing] the conditions for the commission or concealment of a deliberate crime, interrupted before its commission due to circumstances beyond control*”. UN Security Council resolution 1373 (2001) requires Member States to “*ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice*”. In their counter-terrorism efforts, states have increasingly sought to use criminal law preventively – by criminalizing conduct arising before a terrorist crime is committed, which raises questions regarding broader implications for the protection of human rights and effectiveness in terms of terrorism prevention.⁷⁵ Preparatory acts, which may include planning or conspiracy with a view to committing or contributing to a terrorist offence, may be prosecuted but **only if there is an actual risk that the terrorist act takes place** (as opposed to an abstract danger), with a **meaningful proximate link between the behaviour and the ultimate wrong, and while demonstrating criminal intent** (intent to act and to cause the harm, or at least, to create a serious risk of foreseeable harm).⁷⁶ **These requirements should be reflected in the Law when addressing preparatory acts to terrorism or defining “preparation”.**
53. Regarding “*recruitment*” and “*training*” of terrorists, while criminalizing such acts is in line with international standards,⁷⁷ experience in other states suggests that “*training*” can also be broadly construed and requires clear definition, requiring an intent to contribute to terrorist violence. Otherwise, this may well cover legitimate activities, such as research and education, or be abused to target human rights organizations engaged in training of non-state actors on rule of law, international humanitarian or human rights law. It is worth noting that Article 155² of the Criminal Code refers to the knowledge by the student of the purpose of carrying out terrorist activities and somewhat describes the content of the said training. In any case, **both terms need to be clearly defined, while ensuring that the mental element is clearly specified, i.e., the intent to contribute to the commission of a terrorist offence.**⁷⁸ For that purpose, the definition of “*recruitment*” and “*training for terrorism*” provided by the Council of Europe Convention on the Prevention of Terrorism could serve as a useful reference.⁷⁹

⁷⁵ *ibid.* page 35 (2018 ODIHR “FTFs” [Guidelines](#)).

⁷⁶ *ibid.* pages 37-38 (2018 ODIHR “FTFs” [Guidelines](#)).

⁷⁷ See e.g., UN Security Council Resolutions [2396 \(2017\)](#) and [2178 \(2014\)](#).

⁷⁸ *Op. cit.* footnote 35, pages 38-39 (2018 ODIHR “FTFs” [Guidelines](#)).

⁷⁹ As a good practice, see e.g., Articles 6 and 7 of the [Council of Europe Convention on the Prevention of Terrorism](#), CETS 196, adopted on 16 May 2005. Pursuant to its Article 6, “*recruitment for terrorism*” means “*to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more*”

54. Article 2 also includes “*incitement to terrorism*”, without defining such a term, as a “*terrorist activity*”. [UN Security Council Resolution 1624 \(2005\)](#) expressly called on states to prohibit incitement to terrorism⁸⁰ and states are also obliged to do so pursuant to their positive obligations to prevent acts of violence. However, banning and prosecuting crimes based only on expression of opinion should be exceptional, and as such, the term should be clearly defined and strictly circumscribed, so as to prevent abuses, which have been increasingly frequent in counter-terrorism practice internationally. Hence, to be human rights-compliant, the offence of “*incitement to terrorism or acts of terrorism*” must be prescribed by law in a precise language and (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases,⁸¹ for instance when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.⁸² **The Anti-terrorism Law should be supplemented with a definition of “*incitement to terrorism*” as an expression that is intended to incite the commission of a terrorist act (that is truly terrorist in nature), where there is an actual (objective) risk that the act incited will be committed, while ensuring that legal defences provide the exclusion of criminal liability.**

3.4. Definition of “*Terrorist Organization*”, “*Terrorist Group*” and “*Anti-terrorist Organization*”

55. Article 2 of the Anti-Terrorism Law defines a “*terrorist group*” as “*a group of persons acting in collusion that has committed, prepared or attempted to commit a terrorist act*” while a “*terrorist organization*” is defined as “*a stable union of two or more persons or terrorist groups formed with the purpose of terrorist activities*”. Although the terms as used here are not problematic on their face – apart from the reference to the vague and

terrorist offences by the association or the group” while Article 7 defined “*training for terrorism*” as “*to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose*”, while requiring that both such offences be committed unlawfully and intentionally. See also *op. cit.* footnote 57, par 26 (2013 ODIHR Opinion on the Draft Law of Tunisia Related to the Fight against Terrorism).

⁸⁰ See also UN Security Council, [Resolution 1624 \(2005\)](#), 14 September 2005, UN Doc. S/RES/1624 (2005), par 1, which calls on states to prohibit, by law, incitement to commit terrorist acts.

⁸¹ See the model offence of incitement to terrorism provided by the UN Special Rapporteur on counter-terrorism in *op. cit.* footnote 54, par 31 (2010 [Report](#) of the UN Special Rapporteur on counter-terrorism). As expressly stated by the International Mandate-Holders on Freedom of Expression “[i]ncitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring”; see UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, [2005 Joint Declaration](#), Sub-Section on Anti-terrorism measures. See also e.g., UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information (hereafter “International Mandate-Holders on Freedom of Expression”), [2011 Joint Declaration on Freedom of Expression and the Internet](#), Section 8 on Security and Freedom of Expression, par 1 (d). See also *op. cit.* footnote 34, page 42 (2014 OSCE TNTD-SMPU and ODIHR [Preventing Terrorism and Countering VERTL](#)); and *op. cit.* footnote 35, pages 53 and 55 (2018 ODIHR “FTFs” [Guidelines](#)). See also Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights and endorsed by the UN Special Rapporteur on freedom of opinion and expression. For reference, see also Article 5 of the [2005 CoE’s Convention on the Prevention of Terrorism](#) on the “*public provocation to commit acts of terrorism*”, defined as “*the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed*”.

⁸² See e.g., OSCE Representative on Freedom of the Media, [Legal Analysis of the Proposed Bill C-51, the Canadian Anti-terrorism Act, 2015: Potential Impact on Freedom of Expression](#) (May 2015), pages 9-10.

- broadly defined “terrorist act”, “terrorist activities” – two issues arise and require clarification in relation to such definitions.
56. First, in international law, the terms “terrorist organization” and “terrorist group” are used interchangeably and it is unclear why two separate definitions are required and what the difference is between the two categories.
57. The second issue relates to individual culpability. For individuals to be prosecuted for membership in a terrorist organization, there must be convincing evidence, beyond any reasonable doubt, of material elements of actual membership, implying continued and intense organic relationship and showing that the individual acted knowingly and willingly within the hierarchical structure of the said organization.⁸³ Further, the mere expression of an opinion in its different forms should not be the only evidence before domestic courts to decide on the membership in such organization.⁸⁴ This could otherwise constitute an interference with the right to freedom of expression, which should then fulfil the strict criteria of incitement to violence.⁸⁵ Moreover, if a broad interpretation of membership of terrorist organization is adopted, thus potentially criminalizing a broad range of legitimate activities, this could deter other members of the public from attending demonstrations, participating or joining civil society organizations and, more generally, from participating in open political debate.⁸⁶
58. Finally, the definition of “anti-terrorist operation” as “a range of coordinated and interrelated special measures aiming to prevent a terrorist act and minimize its consequences, as well as to ensure security of individuals and to neutralize terrorists” also raises concern. This definition may imply that public bodies can undertake any (undefined) special measures, without mentioning the conditions and circumstances for deciding about the establishment of an “anti-terrorist operation”, the geographical and temporal limit,⁸⁷ against whom such (undefined) measures should be applied nor the scope of the powers of public bodies (though some of them are mentioned under Article 19 regarding the operation zone) and related substantive and procedural safeguards as well as proper oversight and accountability mechanism (see Sub-Sections 5 and 6 *infra*). It is also unclear what is meant by “neutralizing” terrorists (see also regarding such wording, the comments made under Sub-Section 5.1 *infra*). **Some form of external independent control (meeting evidence based criteria) must exist over the reasonableness of the decision to initiate the “anti-terrorist operation”, regardless of whoever is entrusted to initiate the said operation.**⁸⁸ **Different mechanisms of control can be envisaged – for example, court approval or the approval by some sort of parliamentary commission or sub-commission– and the legal regime of the anti-terrorist operation should be introduced for a limited period of time. If this regime is**

⁸³ See e.g., Venice Commission, *Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey*, CDL-AD(2016)002, 15 March 2016, pars 98-106. See also, for the purpose of comparison, ECtHR, *Bakır and Others v. Turkey* (Application no. 46713/10, judgment of 10 July 2018), pars 58, 65 and 67.

⁸⁴ *ibid.* par 107 (2016 Venice Commission’s Opinion on the Penal Code of Turkey).

⁸⁵ i.e., (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. See International Mandate-holders on Freedom of Expression, *2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism*, 3 May 2016, par 2 (d); and *op. cit.* footnote 81, Principle 6 (1995 *Johannesburg Principles on Freedom of Expression and National Security*). See also the UN Secretary General, *Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, A/63/337, 28 August 2008, par 62

⁸⁶ See e.g., for the purpose of comparison, *op. cit.* footnote 83, par 68 (2018 ECtHR case *Bakır and Others v. Turkey*); and ECtHR, *İşikank v. Turkey* (Application no. 46713/10, judgment of 14 November 2017), pars 65-69.

⁸⁷ See e.g., *op. cit.* footnote 52, par 53 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*).

⁸⁸ *ibid.* par 53 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*).

introduced in respect of a particularly large geographical area (for example, for the whole region or the capital city), or extended beyond the original period of time, the legislator should consider subjecting such decisions to heightened scrutiny and introducing additional safeguards – for example, by requiring the approval of such operations by an urgent sitting of the plenary Parliament.⁸⁹ The Law should be supplemented in that respect.

4. Institutional Framework for Countering Terrorism

59. Under Article 8 last paragraph of the Law, the State Security Service shall be responsible for coordinating activities of the government bodies combatting terrorism. Other authorities listed under Article 8 (the National Guard, the State Security Service of the President, the Ministry of Internal Affairs, the State Customs Committee, the Ministry of Defense, the Ministry of Emergency Situations and the Department for Economic Crimes under the Prosecutor General's Office) are also mentioned as part of the government bodies combatting terrorism. At the same time, given one of the stated priorities of the Law, i.e. "priority of terrorism prevention measures" (Article 4), some other entities may also be considered for that purpose, especially the Ministry of Public Education, Ministry of Justice, Ministry of Economy and Industry, the Ministry of Employment and Labour Relations, Ministry of Health etc.
60. It is natural that counter-terrorism activities may, at a certain point, involve all of the bodies mentioned in this Article. Regarding the central role of the State Security Service as the coordinating body, this could potentially have implications for the way in which the broad powers conferred on that body are exercised, in light of the concerns raised at the international level regarding intrusive measures and past human rights abuses, including torture, carried out by such a service,⁹⁰ though noting that it is currently being reformed.
61. It is generally recommended, to the broadest possible extent, to entrust the exercise of counter-terrorism powers to civilian authorities whose functions relate to combatting crime and whose performance of counter-terrorism is pursuant to ordinary powers.⁹¹ It is therefore recommended **to consider conferring the role of countering terrorism to civilian/ordinary law enforcement mechanism. In addition, the Law should provide for specific mechanisms when handling an anti-terrorist operation, which should be strictly limited in time, with adequate safeguards, including judicial review when the said measures restrict rights and freedoms, to ensure that the powers are not exercised arbitrarily or unreasonable.**⁹²
62. The Law establishes specific powers for certain authorities, including the State Security Service, outside the scope of the ordinary law enforcement powers. First, it must be underlined that the use of such powers for any purpose other than the combating of terrorism, as properly defined pursuant to Sub-Section 3.1. *supra*, is prohibited.⁹³

⁸⁹ *ibid.* par 56 (2018 Venice Commission's *Opinion on the Anti-Terrorism Law of Moldova*).

⁹⁰ See e.g., *op. cit.* footnote 64, par 101 (i) (UNSR on FORB *2018 Report on the Mission to Uzbekistan*); and various reports from civil society organizations in preparation for the fifth reporting cycle of the implementation of the UN CAT, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UZB&Lang=EN>.

⁹¹ UN Counter-Terrorism Implementation Task Force (UN CTITF)'s *Basic Human Rights Reference Guide on Conformity of National Counter-Terrorism Legislation with International Human Rights Law* (2014), par 60. See also *op. cit.* footnote 54, par 17 and Practice 3(1) (2010 *Report* of the UN Special Rapporteur on counter-terrorism).

⁹² *ibid.* par 60 (2014 *UN CTITF's Basic Human Rights Reference Guide*).

⁹³ *Op. cit.* footnote 54, par 17 and Practice 3(3) (2010 *Report* of the UN Special Rapporteur on counter-terrorism).

Moreover, such specific counter-terrorism powers should be limited in time and subject to regular review.⁹⁴ Further, the powers should be based on clear legal provisions that exhaustively enumerate the powers in question.⁹⁵ The provisions of the Law are problematic in this respect, since they list a number of prerogatives for each entity involved but also refer to “*the other powers in accordance with the law*”. Such a wording is rather unclear as it does not cross-reference the specific legislation in question and may potentially involve a wide range of powers (see also the additional comments on specific powers and impact on human rights *infra*). In light of the foregoing, **the Law should more clearly circumscribe the specific powers of the authorities involved in combatting terrorism and provide specific cross-references to relevant specific legislation.**

5. Counter-Terrorism Powers and Potential Impact of the Anti-Terrorism Law on Human rights and Fundamental Freedoms

63. Generally, security services by their very nature and the powers conferred to them have the potential to impinge on individual rights and fundamental freedoms, which may be legitimate only in limited circumstances, where strictly necessary and proportionate. It is therefore essential that there be internal limits as well as external limits to their activities.⁹⁶ Overall, and as evidenced below, the powers conferred by the Law are wide-reaching and there is currently no clear legislative framework for regulating the exercise of these powers, specifying the circumstances and conditions when such powers may be invoked, to what end, and subject to what procedures and safeguards. In light of the potential to encroach on several human rights and fundamental freedoms, including the rights to life, to protection against arbitrary detention, privacy, freedom of opinion and expression, association, peaceful assembly, etc., the exercise of such powers must be strictly limited.
64. It must also be pointed out that the start of an “*anti-terrorist operation*” activates a special legal regime, which allows persons engaged in the “*anti-terrorist operation*” to resort to a range of special prerogatives listed under Article 19 of the Law, which may involve restrictions on the freedom of movement, detention of individuals, free entrance at any premises and buildings, conducting personal search of individuals entering or exiting the anti-terrorist operation zone and inspection of their luggage and vehicles, etc. Declaring an area of the country an “*anti-terrorist operation zone*” seems to be a gateway to severely restrict human rights of people suspected of terrorism and third persons. It appears to create an area of exception, allowing the indiscriminate use of all kinds of weapons, unauthorized detention and searches, thus raising serious human rights issues without requiring that the criteria for “*emergency*” under Article 4 of the ICCPR is met. At the same time, the legal regime for dealing with “*public emergencies*” should be kept separate from the one dealing with “*acts of terrorism*”,⁹⁷ except if such acts reach such a severity threshold that they “*threaten the life of the nation*” as per Article 4 of the ICCPR. However, the establishment of an “*anti-terrorist operation*” should not be used to circumvent the material and procedural safeguards which apply regarding the declaration

⁹⁴ *ibid.* Practice 4.

⁹⁵ See e.g., *op. cit.* footnote 91, page 24 (2014 [UN CTITF's Basic Human Rights Reference Guide](#)).

⁹⁶ See e.g., Venice Commission, [Report on the Democratic Oversight of the Security Services \(updated\)](#), CDL-AD(2015)010, 15 December 2015, pars 1-2.

⁹⁷ See e.g., *op. cit.* footnote 52, par 54 (2018 Venice Commission's [Opinion on the Anti-Terrorism Law of Moldova](#)).

of a public emergency in accordance with international standards.⁹⁸ As such, Article 19 authorizes far-reaching measures with little mention of the circumstances when they may be used, and of the substantive and procedural safeguards to ensure the necessity and proportionality of such measures. While they may be justified in certain exceptional circumstances, it is essential to make it clear that this depends on such measures meeting the relevant legal test, which varies depending on the rights at stake.

65. In any case, **the Law should define the material circumstances and conditions in which the respective bodies may resort to their powers, in normal circumstances when preventing terrorism and also in the context of an “anti-terrorist operation”, while providing strict and clear limitations as to the personal, material, geographical and temporal scopes of such powers, with a seriousness threshold requirement for resorting to them.**⁹⁹ Second, **proportionality may be better ensured by introducing controls by external independent bodies, verifying that the powers are not abused**¹⁰⁰ (see also Sub-Section 8 *infra* on oversight and accountability). The nature of the procedural safeguard should depend on the nature and seriousness of the interference with the protected right.¹⁰¹ It is worth noting that it is possible that the government bodies, in exercising their powers, are limited by other legislation (such as the Criminal Procedure Code or other laws), in which case they should be cross-referenced, but as it is, the mentions of such other laws are not specific and clear enough in the Law and there is therefore a risk that these provisions may be abused.¹⁰²
66. Finally, it must be also emphasized that irrespective of the situation, be it a “public emergency” or an “anti-terrorist operation”, the exercise of powers by public authorities may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.¹⁰³ Consequently, even during a counter-terrorism operation, the following rights should always be guaranteed, the right to life,¹⁰⁴ the prohibition of torture or cruel, inhuman or degrading treatment or punishment,¹⁰⁵ the principle of legality in the field of criminal law,¹⁰⁶ the fundamental principles of a fair trial¹⁰⁷ i.e., the right to be tried by an independent and impartial tribunal,¹⁰⁸ the

⁹⁸ See Article 4 of the ICCPR and CCPR, [General Comment No. 29 on States of Emergency](#) (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add.11 (2001). In that respect, certain overall conditions need to be fulfilled when a State is seeking to derogate according to these provisions, namely: (i) the existence of an emergency; (ii) the temporary nature and exceptional character of the emergency and of the derogation; (iii) certain procedural requirements to be followed by the requesting State, including an official proclamation of a state of emergency;⁹⁸ and (iv) the necessity and proportionality of the measures in terms of their temporal, geographical and material scope, while excluding certain non-derogable rights from their scope of application. The OSCE Copenhagen Document (1990) states that “*the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law*” (par 25.2). As far as the official proclamation of a state of emergency is concerned, this includes informing international and regional human rights bodies, notably the UN (as per Article 4 par 3 of the ICCPR), while OSCE participating States shall also inform the OSCE (par 28.10 of OSCE Moscow Document (1991)), in particular ODIHR (see par 5 (b) of the 1992 Helsinki Document).

⁹⁹ Akin to the existence of a “*reasonable suspicion*” against a particular person, which is required to trigger certain investigative measures in the context of criminal proceedings. Concerning the threshold requirement, see, in particular, the ECtHR case of [Szabó and Vissy v. Hungary](#) (Application no. 37138/14, judgment of 12 January 2016), pars 66 et seq.,

¹⁰⁰ See e.g., *op. cit.* footnote 52, par 41 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁰¹ *ibid.* par 42. See also e.g., Venice Commission and CoE-DHR-DGI, [Joint Opinion on the draft law on amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova](#), CDL-AD(2014)009, par 30; and [Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts](#), CDL-AD(2016)012.

¹⁰² See e.g., *op. cit.* footnote 52, par 44 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁰³ *Op. cit.* footnote 54, Practice 2(2) (2010 [Report](#) of the UN Special Rapporteur on counter-terrorism).

¹⁰⁴ Article 6 of the ICCPR.

¹⁰⁵ Article 7 of the ICCPR and Article 1 of the UN CAT, which concerns specifically torture and ill-treatment “*inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”. See also pars 1 and 3 of the [General Comment no. 2 of the UNCAT Committee](#).

¹⁰⁶ Article 15 of the ICCPR.

¹⁰⁷ CCPR, [General Comment no. 32 on Article 14 of the ICCPR](#) (2007), par 6.

¹⁰⁸ Article 14 of the ICCPR; it is generally considered that while derogations from some provisions of Article 14 of the ICCPR on the right to a fair trial are permissible during emergencies, the fundamental principles of a fair trial are non-derogable (see CCPR, [General Comment](#)

presumption of innocence,¹⁰⁹ the right of arrested or detained suspects to be brought promptly before an (independent and impartial) judicial authority to challenge the lawfulness of their arrest or detention before a court.¹¹⁰

5.1. Potential Impact on the Right to Life

67. Article 9 of the Law states that the State Security Service shall “*neutralize and in the face of resistance take measures to destroy terrorists, terrorist groups within the broader area*”, a terminology further used in Article 16 regarding the command and control of anti-terrorist operations and Article 17 in case of failure of negotiations with terrorists. Further, Article 19 last paragraph states that persons engaged in anti-terrorist operations can “*use against terrorists all kinds of weapons, military equipment and impact munition at hand*”, implying that they are allowed to use lethal force against terrorists. While terrorist threat must be neutralized, such threat is distinct from the people themselves. **The wording “neutralize” and “destroy” send a dubious messages with regard to the State’s positive obligations to protect the life of all, and raise serious concerns regarding the strict tests for the permissible use lethal force under international human rights law, and should therefore be removed from the Law.**
68. Moreover, the right not to be arbitrarily deprived of one’s life that is absolute pursuant to Article 6 of the ICCPR. As noted by the UN Human Rights Committee in its General Comment no. 36,¹¹¹ the right to life under Article 6 of the ICCPR is guaranteed for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.¹¹² The General Comment further states that a deprivation of life that lacks a legal basis or is otherwise inconsistent with life-protecting laws and procedures is, as a rule, arbitrary in nature¹¹³ and that the use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary and unavoidable in order to protect life or prevent serious injury from an imminent threat.¹¹⁴ Accordingly, States shall enact appropriate legislation controlling the use of force by law enforcement officials, with procedures designed to minimize the risk they pose to human life, mandatory reporting, and an obligation to review and investigate lethal incidents and other life-threatening incidents,¹¹⁵ which should lead to criminal investigation if enough incriminating evidence is gathered.¹¹⁶ Overall, in the counter-terrorist context, law enforcement and anti-terrorist operations should be planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force and human losses while ensuring that all feasible

[no. 24](#) (1994), par 8; [General Comment no. 29 on States of Emergency](#) (2001), par 16; and [General Comment no. 32 on Article 14 of the ICCPR](#) (2007), par 5). While the nature of these “fundamental principles” has not been clearly defined, the right to be tried by an independent and impartial tribunal has been expressly considered to be non-derogable (see par 19 of CCPR General Comment no. 32).

¹⁰⁹ *ibid.* par 8 (CCPR General Comment no. 24); pars 11 and 16 (CCPR General Comment no. 29); and par 6 (CCPR General Comment no. 32).

¹¹⁰ Article 9 par 4 of the ICCPR; see *ibid.*, par 16 (CCPR General Comment no. 29); and CCPR, [General Comment no. 35 on Article 9 of the ICCPR](#) (2014), pars 32 and 64-68; see also UN, Economic and Social Council, [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](#), U.N. Doc. E/CN.4/1985/4, Annex (1985), according to which procedural rights secured in Article 9 (4) of the ICCPR (i.e. supervision by a judicial body of the lawfulness of detention) are functionally non-derogable as this is indispensable to protect other non-derogable rights.

¹¹¹ CCPR, [General Comment no. 36 on Article 6 of the ICCPR](#) (30 October 2018).

¹¹² *ibid.* par 3 (2018 CCPR General Comment no. 36).

¹¹³ *ibid.* par 11 (2018 CCPR General Comment no. 36).

¹¹⁴ *ibid.* par 12 (2018 CCPR General Comment no. 36).

¹¹⁵ *ibid.* par 13 (2018 CCPR General Comment no. 36).

¹¹⁶ *ibid.* par 27 (2018 CCPR General Comment no. 36).

precautions in the choice of means and methods of a security operation were taken.¹¹⁷ Outside of an armed conflict, the premeditated resort to lethal force is not part of the arsenal available to states. All measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted,¹¹⁸ non-lethal tactics for capture or prevention must always be attempted first, if feasible, and law enforcement officers should give suspects the opportunity to surrender and seek to employ a graduated resort to force,¹¹⁹ with the use of potentially lethal force being a measure of last resort in case of an imminent risk to life or of serious injury.

69. In light of the foregoing, if not provided by other legislation, **the Law should state the key principles that should guide the use of force, including absolute necessity, restraint and proportionality, while reflecting the above-mentioned principles, especially emphasizing that the use of potentially lethal force is a measure of last resort,¹²⁰ to be resorted to only when strictly necessary and unavoidable in order to protect life or prevent serious injury from an imminent and serious threat.¹²¹ The Law should also make it clear that every effort should be made to capture those posing the imminent threat, while ensuring that law enforcement officers give suspects the opportunity to surrender and employ a graduated resort to force.**
70. Moreover, the Law does not precisely establish the circumstances when an “anti-terrorist operation” may be ordered, and as a consequence, the use of force against “terrorists”, nor when the State Security Service can use its counter-terrorism powers, apart from a mention of a situation of (undefined) resistance by terrorists/terrorist groups (Article 9). Article 2 only specifies that an “anti-terrorist operation” aims to prevent a terrorist act and minimize its consequences, as well as to ensure security of individuals and neutralize terrorists. While it may be difficult and not necessarily advisable to set out in the legislation a precise and detailed rule concerning the negotiations, and other operational and political choices available to the security/law enforcement and the State,¹²² **the Law should provide more safeguards to more strictly limit the use of the wide-ranging counter-terrorism powers envisioned in the Anti-Terrorism Law** (see also par 58 *supra*).
71. Regarding the use of weapons mentioned in Article 19, **the Law should also exclude the use of weapons and ammunition that carries unwarranted consequences,¹²³ while including the rule prohibiting indiscriminate use of weapons not adapted to the situation.** The [*UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*](#)¹²⁴ could be a useful reference document for that purpose, noting

¹¹⁷ See e.g., *op. cit.* footnote 52, par 59 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*). See also, for the purpose of comparison in a CoE context, ECtHR, *Finogenov and others v. Russia* (Application nos. 18299/03 and 27311/03, judgment of 20 December 2011), par 208, with further references.

¹¹⁸ See OHCHR, *Human Rights, Terrorism and Counter-terrorism*, 2008, page 30.

¹¹⁹ See CCPR, views on Communication no. 45/1979, *Suárez de Guerrero v. Colombia*, 31 March 1982 (A/37/40, annex XI, paras. 12.2, 13.1–13.3). See also the 1990 *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (A/CONF.144/28/Rev.1), the *Code of Conduct for Law Enforcement Officials* (General Assembly resolution 34/169) and the *Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions* (Economic and Social Council resolution 1989/65).

¹²⁰ See 1990 *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 4.

¹²¹ See UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *2006 Report*, E/CN.4/2006/53, par 48. On the strict requirements regarding the use of force under the European Convention on Human Rights, see, inter alia, ECtHR, *McCann v. United Kingdom* [GC] (Application no. 18984/91, judgement of 27 September 1995).

¹²² *Op. cit.* footnote 52, pars 59-60 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*); and *op. cit.* footnote 117, par 223 (2011 ECtHR *Finogenov and others v. Russia*).

¹²³ *ibid.* par 62 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*); and for the purpose of comparison, ECtHR, *Tagayeva and Others v. Russia* (Application nos. 26562/07 et al.), 13 April 2017, par 598.

¹²⁴ See *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

that they are applicable even in exceptional circumstances such as internal political instability or any other public emergency,¹²⁵ hence also in the context of counter-terrorism operations.

72. Finally, ODIHR refers to the findings and recommendations made in its [Opinion on Article 235 of the Criminal Code of the Republic of Uzbekistan \(2014\)](#).¹²⁶ It must also be emphasized that the use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of “*secret evidence*” put forward by prosecuting and other authorities in judicial proceedings, in violation of the principle of non-admissibility of evidence extracted by torture, contained inter alia in Article 15 of the UN Convention against Torture.¹²⁷ Accordingly, **information obtained by unlawful means, including torture or other inhuman or degrading treatment or punishment, shall not be admissible as evidence in court and relevant legislation should be clarified in that respect.**¹²⁸

5.2. Potential Impact on the Right to Liberty and Security of Persons

73. Article 19 allows, in the context of an anti-terrorist operation and within the operation zone, the detention of individuals for the purpose of identification if they do not have identification documents.
74. Under international law, any detention should be exceptional, and while Article 9 of the ICCPR does not provide an enumeration of the permissible grounds for depriving a person of liberty, administrative detention (not in contemplation of prosecution for a criminal offence) generally presents severe risks of being arbitrary; if contemplated at all, such detention should therefore be as short as possible with its length not exceeding what is absolutely necessary and fully respect the guarantees provided for by Article 9 of the ICCPR.¹²⁹ The Law does not specify any limitation as to the maximum duration of the detention. Moreover, the Law is silent regarding the procedural safeguards that should be in place pursuant to Article 9 of the ICCPR, especially the obligation to inform the arrested individuals, in a language that they understand, of the reasons for their arrest,¹³⁰ their entitlement to contact family members, to receive legal counsel from the moment of detention and to get a proper and consented medical examination by a medical practitioner.¹³¹ Persons deprived of their liberties should also be promptly informed of such rights, in a language they understand.¹³² In this context, providing information

¹²⁵ *ibid.* par 8.

¹²⁶ See also ODIHR, [Opinion on Article 235 of the Criminal Code of the Republic of Uzbekistan](#), 10 June 2014, par 33; and *ibid.* par 5 (General Comment no. 2 of the UNCAT Committee).

¹²⁷ See Article 15 of the UN CAT. See also UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [2014 Report to the UN Human Rights Council](#), UN Doc. A/HRC/25/60, 10 April 2014, par 21.

¹²⁸ See UNCAT Committee, [Concluding observations on the fourth periodic report of Uzbekistan](#), CAT/C/UZB/CO/4, 10 December 2013, par 16. See also e.g., [Article 232 of the USIP-ICHR-OHCHR-UNODC Model Code of Criminal Procedure](#) for Post-Conflict Criminal Justice (2008), as developed by the United States Institute of Peace (USIP) in co-operation with the Irish Centre for Human Rights (ICHR), UN OHCHR, and UNODC.

¹²⁹ See e.g., CCPR, [General Comment no. 35 on Article 9 of the ICCPR](#) (2014), pars 14-15. See also, for the purpose of comparison, ECtHR, [Saadi v. the United Kingdom](#) [GC] (Application no. 13229/03, judgement of 29 January 2008), par 74; and [Kim v. Russia](#) (Application no. 44260/13, judgement of 17 July 2014), par 49.

¹³⁰ See Article 9 par 2 of the ICCPR; par 23.1. of the CSCE Moscow Document (1991); and *ibid.* par 24 (2014 CCPR [General Comment no. 35](#)). See also [UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment](#), adopted by General Assembly resolution 43/173 of 9 December 1988, Principle 10.

¹³¹ *ibid.* Principles 13 to 18 (1988 [UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment](#)). See also UN Human Rights Council, [Resolution 31/31 \(2016\)](#), par 8.

¹³² *ibid.* Principles 13–14 (1988 [UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment](#)).

leaflets in the appropriate language, including in Braille, may often assist the detainee in retaining the information.¹³³ In addition, detained foreign nationals should be informed of their right to communicate with their consular authorities,¹³⁴ or, in the case of asylum seekers, though noting that there is no dedicated legal framework on the protection of refugees, with the Office of the United Nations High Commissioner for Refugees.¹³⁵ When children are arrested and detained, though this should be a measure of last resort,¹³⁶ notice of the arrest and the reasons for it should also be provided directly to their parents, guardians, or legal representatives, while for persons with mental disabilities, notice of the arrest and the reasons should also be provided directly to persons they have designated or appropriate family members.¹³⁷

75. It is worth noting that Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan¹³⁸ mentions some of these safeguards with respect to the rights of suspects in the context of criminal proceedings, though not all of them. **It is not clear whether such safeguards would be applicable in the situation covered by the Anti-Terrorism Law, in which case proper cross-reference should be made in the Law to the relevant applicable provision(s). In any case, the maximum duration of the detention – which should be necessary and proportionate to the time required for the verification of identity – should be specified and all the above-mentioned minimum safeguards should be applicable.**
76. Article 19 further provides for the detention of individuals “*who commit offences or other actions aimed at resisting legal requests of anti-terrorist operation participants, also actions related to unauthorized or attempted penetration into the anti-terrorist operation zone*”. First, the grounds for detention are overly broad, especially the mention of unauthorized intrusion into an anti-terrorist operation zone that may not necessarily be clearly/visually delimited, and as such would fail to comply with the requirement of legal certainty and proportionality. Moreover, the Law should again provide the above-mentioned safeguards. In addition, as the triggering behaviour would allegedly constitute a criminal or administrative offence, the arrested/detained persons shall also be promptly informed of any (criminal) charges against them (Article 9 par 2 of the ICCPR) as well as brought promptly before a judge or other officer authorized by law to exercise judicial power to examine the lawfulness of the detention (Article 9 par 3 of the ICCPR), meaning that detainees should generally gain access to a judge within no more than 48 hours for adults and 24 hours for juveniles¹³⁹ (though again, detention of minors should be a measure of last resort). **The Law should clarify whether the safeguards embedded in the Criminal Procedure are applicable in such case, and again, the full range of the above-mentioned safeguards should be applicable in any case.**
77. It must also be pointed out that detention should be carried out only in facilities officially acknowledged as places of detention and a centralized official register should be kept of the names and places of detention, and times of arrival and departure, as well as of the names of persons responsible for the detention, and made readily available and accessible

¹³³ *Op. cit.* footnote 129, par 58 (2014 CCPR General Comment no. 35).

¹³⁴ See Article 36 of the Vienna Convention on Consular Relations. The Republic of Uzbekistan acceded to this Convention on 2 March 1992.

¹³⁵ See *op. cit.* footnote 130, Principle 16 (1988 *UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*); see also, *ibid.* par 58 (2014 CCPR General Comment no. 35).

¹³⁶ See Article 37 (b) of the UN CRC; and UN Committee on the Rights of the Child (CRC), *General Comment no. 10* (2007), pars 79-80.

¹³⁷ *Op. cit.* footnote 129, par 28 (2014 CCPR General Comment no. 35).

¹³⁸ Available at <<http://lex.uz/docs/111463>>.

¹³⁹ *Op. cit.* footnote 129, par 33 (2014 CCPR General Comment no. 35).

to those concerned, including relatives.¹⁴⁰ Detention conditions should be compatible with standards of human dignity,¹⁴¹ while ensuring that **minors (although the detention of minors should, as a rule, be avoided)¹⁴² be separated from adults¹⁴³ and women from men while in custody, as required by international standards.¹⁴⁴ These safeguards should be provided in relevant legislation.¹⁴⁵**

78. More generally, the Law does not include provisions on relevant applicable procedure and safeguards. The array of safeguards to protect persons deprived of their liberty (Article 9 of the ICCPR) as well as due process and fair trial protections applicable from the investigative stage throughout and after the completion of criminal proceedings, as per Article 14 of the ICCPR, should be enshrined in the Law and respected in practice. This is key in light of the findings of international human rights monitoring bodies which pointed out to deficiencies in the application of the legislation governing judicial control of detention, the lack of information of persons deprived of their liberties about their rights upon arrest, the absence of notification of relatives, the lack of access to a lawyer of their choice and to a doctor, from the very outset of detention, as well as issues pertaining to the independence of the judiciary and of judges.¹⁴⁶ **Relevant legislation should clearly provide for such rights and safeguards.**

5.3. Potential Impact on the Right to Freedom of Association, Freedom of Expression, Peaceful Assembly

79. Article 5 of the Anti-Terrorism Law prohibits the creation and functioning of “*terrorist groups and organizations*” and the “*accreditation, registration and operation of legal entities, offices (branches and representations thereof (including international and foreign organizations) involved in terrorist activities*”. In light of the vague and broad meaning of the term “*terrorism*” and “*terrorist organization*”, this cannot exclude arbitrary interpretation by registration authorities, which may then refuse to register an association, on the basis of alleged “*terrorist*” objectives or activities, or because it may constitute a so-called “*terrorist group/organization*”.
80. As emphasized in the 2015 ODIHR-Venice Commission [2015 Guidelines on Freedom of Association](#), there should be a presumption in favour of the lawfulness of the objectives and activities of an association¹⁴⁷ and “[a]ny action against an association and/or its members may only be taken where the articles of its founding instrument

¹⁴⁰ See *op. cit.* footnote 131, Principle 12 (1988 [UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment](#)). See also UN Human Rights Council, [Resolution 31/31 \(2016\)](#), par 9, which encourages States to maintain up to date official registers of persons in police custody that as a minimum, contain information about: a) the reasons for the arrest; b) the time of the arrest and the taking of the arrested person to a place of detention, as well as that of his or her first appearance before a judicial or other authority; c) the identity of the law enforcement officials concerned; and d) precise information concerning the place of detention.

¹⁴¹ This is a right granted to everyone, without distinction, by Article 10 par 1 of the ICCPR; see *ibid.* par 100.

¹⁴² *Op. cit.* footnote 129, par 62 (2014 CCPR General Comment no. 35); and UN CRC, [General Comment no. 10](#) (2007), pars 79-80.

¹⁴³ Article 37 (c) of the UN CRC.

¹⁴⁴ See [UN Standard Minimum Rules for the Treatment of Prisoners \(Nelson Mandela Rules\)](#) (2015), Article 11 (a), which states that “[m]en and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate”. See also ODIHR, [Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty](#) (2019), pages 98-99; [OSCE Guidebook on Democratic Policing](#) (May 2008), par 62.

¹⁴⁵ The recent 2019 ODIHR publication on [Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty](#) and the [Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (or Istanbul Protocol, 1999, currently under revision) can serve as useful guidance to prevent and address sexual and gender-based violence and torture and other ill-treatment in the context of deprivation of liberty.

¹⁴⁶ See e.g., UN Special Rapporteur on the independence of judges and lawyers, [Preliminary Observations on the Official Visit to Uzbekistan](#) (9 October 2019); and *op. cit.* footnote 64, par 71 (2018 UNSR on FORB’s [Report on the Mission to Uzbekistan](#)); and pars 15-16 and 21 (2015 CCPR [Concluding observations on Uzbekistan](#)).

¹⁴⁷ ODIHR-Venice Commission, [2015 Guidelines on Freedom of Association](#), par 26.

(including charters, statutes and by-laws) are unambiguously unlawful, or where specific illegal activities have been undertaken”.¹⁴⁸ This means that associations cannot and should not be prevented from registering, unless their aims and objectives clearly conflict with international human rights standards.¹⁴⁹ In that respect, the provision of the Law should not be used to prevent the registration or operation of civil society organizations which objectives or activities are not congruent with the thoughts or ideas of the majority of society or of the government/state, or even run counter to them,¹⁵⁰ for instance contesting the established order, advocating for a peaceful change of the Constitution or legislation, asserting a minority consciousness, requesting the secession of part of the country’s territory, promoting human rights and fundamental freedoms.¹⁵¹ Moreover, the prohibition of the establishment of an association on the basis of the vague and broad wording of the Law would fail to comply with the principle of legality of restrictions.¹⁵² This may lead to abuse and arbitrary application of such provisions by public authorities in order to restrict the exercise of human rights and fundamental freedoms, civil society space and to repress human rights defenders, as shown in the latest reports by international human rights monitoring bodies.¹⁵³ **Article 5 should therefore be reconsidered or more clearly circumscribed to only prevent registration of an association which aims and objectives clearly conflict with international human rights standards.**

81. Article 9 further refers to the liquidation of so-called “terrorist organizations” by the State Security Service, without the intervention of a court. Again, in light of the overly vague and broad definition of “terrorism”, “terrorist act” and “terrorist organizations”, such a provision could be abused in order to dissolve non-governmental organizations or associations which are carrying out legitimate activities, as also shown in reports of international human rights monitoring bodies.¹⁵⁴ Pursuant to Article 22 of the ICCPR, any restriction on freedom of association must be prescribed by law to pursue a legitimate aim mentioned in the ICCPR, and strictly necessary and proportionate to such an aim, while being subject to effective oversight and prompt and meaningful judicial challenge. As stated in the [Guidelines on Freedom of Association](#) and on [Political Party Regulation](#), any prohibition or dissolution of an association shall always be a measure of last resort,¹⁵⁵ and shall only occur following a decision by an independent and impartial court.¹⁵⁶ There should also be a meaningful link between a terrorist offence and the acts of the executives of the legal entity concerned.¹⁵⁷ **This provision should therefore be reconsidered or substantially revised to ensure that the liquidation of an organization has to be pronounced by an independent and impartial court.**

5.4. Potential Impact on Freedoms of Opinion and Expression and Restrictions of the Right to Access to Information

¹⁴⁸ *ibid.* par 68 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁴⁹ *ibid.* pars 88 and 181 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁵⁰ *ibid.* pars 98 and 182 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁵¹ *ibid.* par 182 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁵² *ibid.* par 109 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁵³ See *op. cit.* footnote 64, par 98 (2018 UNSR on FORB’s [Report on the Mission to Uzbekistan](#)); and par 11 (2015 CCPR [Concluding Observations on Uzbekistan](#)).

¹⁵⁴ See e.g., *ibid.* par 25 (2015 CCPR [Concluding observations on Uzbekistan](#)).

¹⁵⁵ See *op. cit.* footnote 147, pars 35, 114 and 234 (ODIHR-Venice Commission [2015 Guidelines on Freedom of Association](#)); and [2010 Guidelines on Political Party Regulation](#), par 51.

¹⁵⁶ *ibid.* par 244 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

¹⁵⁷ See, Venice Commission, [Turkey - Opinion on Emergency Decree Laws Nos. 667-676 adopted following the failed coup of 15 July 2016](#), CDL-AD(2016)037, pars 128 et seq.

82. Apart from the broad reference to “*incitement to terrorism*”, which as stated in par 54 *supra*, has the potential to unduly restrict freedom of expression, the Law also contains a number of other provisions that have the potential to violate the right to freedom of expression and information. Article 5 refers to the prohibition of the “*propaganda of terrorism*”. The term “*propaganda*” is quite general, and thus difficult to distinguish from other forms of expression protected by Article 19 of the ICCPR.¹⁵⁸ There has been consistent criticism of similar laws by multiple international human rights bodies with clear recommendation that general terms such as “*propaganda*” should be avoided.¹⁵⁹ Moreover, the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be prohibited/criminalized.¹⁶⁰ Further, in order not to be abused to limit critical or offensive speech, including social protests, the prohibited behaviour should contain all the constitutive above-mentioned elements of “*incitement to terrorism*”,¹⁶¹ in order to comply with international human rights law. Accordingly, **the word “*propaganda of terrorism*” should be replaced by “*incitement to terrorism*”, with a definition reflecting the four above-mentioned elements** (see par 54 *supra*). It must also be noted that where persons have been detained, pursuant to such “*propaganda*” laws, for acts that fail to meet the threshold of direct incitement, this also constitutes a violation of their right to liberty protected under Article 9 of the ICCPR, given the lack of sufficient clarity as to the legal basis for the detention.
83. Article 20 of the Law prohibits the publication of information that discloses “*special techniques and tactics of the antiterrorist operation*” and that “*can hinder the anti-terrorist operation, endanger human life or health*”. In that respect, the right to truth and duty of transparency are recognized aspects of the State’s human rights obligations, subject to permissible restrictions when necessary and proportionate. It might be legitimate that some operational, technical and political aspects concerning the management of anti-terrorist operations, are not disclosed to the public while the crises are on-going, in order not to jeopardise the operations.¹⁶² However, disclosure should not be limited in the absence of the Government’s showing of “*a real and identifiable risk of significant harm to a legitimate national security interest*”¹⁶³ that outweighs the public’s interest in the information to be disclosed.¹⁶⁴ If a disclosure does not harm a legitimate State interest, there is no basis for its suppression or withholding.¹⁶⁵ In any case, such a prohibition should not be used to keep public authorities’ actions from public scrutiny, protect them against embarrassment nor to limit access to information of public interest,

¹⁵⁸ See e.g., OSCE/ODIHR-Venice Commission, *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols*, 21 December 2015, pars 83-85 and 119.

¹⁵⁹ See e.g., UN OHCHR, *Factsheet on Human Rights, Terrorism and Counter-Terrorism* (2008), pages 42-43. For example, Turkey has propagandising laws, which are widely used to target legitimate human rights activities, and frequently condemned as violations of rights. See for one example among many, ECtHR, *Kavala v. Turkey* (Application no. 28749/18, judgment of 10 December 2019); *Yilmaz and Kiliç v. Turkey* (Application no. 68514/01, judgment of 17 July 2008); UN Special Rapporteur on freedom of opinion and expression, *Report on the Mission to Turkey*, A/HRC/35/22/Add.3, 7 June 2017.

¹⁶⁰ International Special Rapporteurs/Representatives on Freedom of Expression, *2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation* (10 December 2008), Section “Anti-Terrorism Legislation”, second indent.

¹⁶¹ i.e., the offence must (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases; see the references cited in footnote 81.

¹⁶² See e.g., *op. cit.* footnote 52, par 66 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*).

¹⁶³ UN Special Rapporteur on freedom of opinion and expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, par 47; and the *Global Principles on National Security and the Right to Information* (The Tshwane Principles), developed and adopted on 12 June 2013 by a large assembly of experts from international organizations, civil society, academia and national security practitioners, Principle 3 (b).

¹⁶⁴ *ibid.* par 10 (2017 UN Special Rapporteur on freedom of opinion and expression’s Report on Whistleblowers).

¹⁶⁵ See *op. cit.* footnote 167, par 30 (2011 CCPR General Comment no. 34).

especially regarding potential human rights violations or wrongdoings by state actors in the context of counter-terrorism operations, which may for instance be brought to light by whistle-blowers and investigative journalists.¹⁶⁶ Indeed, as specifically underlined by the UN Human Rights Committee, the media plays a crucial role in informing the public about acts of terrorism¹⁶⁷ (and it is a right of the public to be informed about them) and it is the main role of journalists, as “public watchdogs”, to reveal unjustified or unlawful actions.¹⁶⁸ Moreover,

84. Article 20 of the Anti-Terrorism Law provides that media “shall” be prohibited from publishing information that, among other things, “*can hinder the anti-terrorist operation*”. The wording of the Law is overly broad and lacks clarity as to what information could potentially be considered to hinder some types of counter-terrorism operation. Moreover, the provision fails to reflect the requirements of strict necessity that may justify short term restrictions on free expression and media freedom in particular, subject to necessary safeguards and due process guarantees. There is also no reference to opportunity for the media to challenge such restrictions on information, particularly when disclosure may be in the public interest. A case-by-case withholding of information which may prove necessary for effective counter-terrorism operations would be a proportionate interference, but this seems quite distinct from what is provided under Article 20 of the Law which amounts to a blanket prohibition of information concerning counter-terrorism operations. **This is at odds with the rights to freedom of expression, access to information and the principle of transparency mentioned in Article 4 of the Law and should be more clearly circumscribed. Accordingly, the limitations contained in Article 20 of the Law should be more narrowly tailored to be strictly necessary and proportionate: they should be of a short duration, be applied to a limited geographical zone, and relate to tactical or operational aspects of the *on-going* anti-terrorist operation.**¹⁶⁹ The Law may additionally establish a *strong presumption* in favour of non-disclosure of such information during the crisis, but should provide that the “public interest defence” is available to the journalists in the aftermath of the “*anti-terrorist operation*”.¹⁷⁰ In any case, potential wrongdoings or human rights violations committed by public authorities during such operations should not be covered by the non-disclosure.
85. Article 20 further provides that the media “*shall be prohibited from publishing information that [...] propagandizes or justifies terrorism.*” This limitation is again overly vague and broad, and as such inconsistent with the principle of legality. In that respect, the UN Human Rights Committee has expressed concerns about legislation “propagandizing” and “justifying” terrorism in the context of counter-terrorism measures, given their potential to lead to unnecessary or disproportionate interference with freedom of expression.¹⁷¹ Again, only “*incitement to terrorism*” as defined in par 54 *supra* should be prohibited. Also, as noted in the ODIHR [Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in](#)

¹⁶⁶ ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 144. See also *op. cit.* footnote 81, Principle 2 (b) (1995 [Johannesburg Principles on Freedom of Expression and National Security](#)). See also UN Special Rapporteur on freedom of opinion and expression, [Report on the Protection of Sources and Whistleblowers](#) (2017), A/70/361, pars 11 and 60.

¹⁶⁷ CCPR, [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, par 46.

¹⁶⁸ See also, e.g., for the purpose of comparison, ECtHR, [Stoll v. Switzerland](#) [GC] (Application no. 69698/01, judgment of 10 December 2007), pars 108 and subsequent.

¹⁶⁹ See e.g., *op. cit.* footnote 52, par 67 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁷⁰ *ibid.* par 69 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁷¹ See *op. cit.* footnote 167, par 46 (2011 CCPR General Comment no. 34).

Uzbekistan, it is questionable whether a separate regulation should specifically address content-based restrictions by the media, rather than legislation of general application governing any individual or legal entity.¹⁷² If the publication or public expression of a certain category of statement carries a sufficient risk of harm to justify a restriction on freedom of expression in accordance with international standards, this should apply regardless of the manner in which or by whom the statement is disseminated.¹⁷³ **It is therefore recommended to remove such a prohibition from Article 20 of the Law.**

86. Article 20 further prohibits the disclosure of information on the personnel of forces engaged into the operation and persons assisting the operation. This provision is less problematic in general, since the privacy of such persons should be protected, though this should again not constitute an absolute ban on information which may be in the public interest. In particular, it should not protect individuals from accountability in cases of gross human rights violations.
87. In light of the foregoing, as it is, Article 20 **may overall constitute a clear impediment to transparency, investigation, access to information, the right to truth recognised across human rights law, and to learning lessons linked to non-repetition. The implications for media freedom, as well as accountability are serious, and the provision should therefore be substantially revised along the above-mentioned principles to ensure compliance with international standards.**

5.5. Potential Impact on the Right to Privacy

88. Article 9 of the Anti-Terrorism Law provides that the State Security Service shall “*detect*” terrorist activities, a wording also reflected in Article 10 in relation to the Ministry of Internal Affairs. Additionally, the State Security Service shall also “*collect and analyse information about activities of terrorists, terrorist groups and organizations*” (Article 9 par 3). It is unclear which kind of activities may be carried out for the purpose of “*detecting*” terrorist activities, and which substantive and procedural safeguards are in place in terms of collection and processing of information. It is worth emphasizing that, in 2017, the Human Rights Council adopted a resolution in which it requested States to respect and protect the right to privacy while countering terrorism, including in the context of digital communication.¹⁷⁴ Moreover, as expressly stated by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “*States and intergovernmental organizations should refrain from establishing laws or arrangements that would require the ‘proactive’ monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to pre-publication censorship*”.¹⁷⁵ The Special Rapporteur further stated that “*States should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression*”.¹⁷⁶ At the same time, the [2006 Ministerial Council Decision on Countering the Use of Internet for Terrorist Purposes](#) invites participating States to increase their monitoring of websites of terrorist/violent extremist organizations, while ensuring respect for the rights to privacy and freedom of opinion and expression and the rule of law (par 6).

¹⁷² See *op. cit.* footnote 60, par 30 (2019 ODIHR [Comments on Freedom of Expression in Uzbekistan](#)).

¹⁷³ *ibid.* par 30 (2019 ODIHR [Comments on Freedom of Expression in Uzbekistan](#)).

¹⁷⁴ UN Human Rights Council, [Resolution on the Right to Privacy in the Digital Age](#) (22 March 2017), A/HRC/34/L.7/Rev.1, par 5.

¹⁷⁵ See UN Special Rapporteur on freedom of opinion and expression, [Report on the Regulation of User-generated Online Content](#), A/HRC/38/35, 6 April 2018, par 67.

¹⁷⁶ *ibid.* par 68.

89. In any case, Article 9 of the Law should not be interpreted as allowing invasive surveillance techniques, including the interception of private communications, without proper substantive and procedural safeguards. This would otherwise be contrary to Article 17 of the ICCPR, which states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”. If the provision implies the acquisition and recording by the State Security Service and/or other public bodies of information on individuals obtained through surveillance, interception of communication or undercover operations, such measures must be provided in a clear and precise legal framework setting out the circumstances in which such measures are permissible and the procedures which must be followed prior to their implementation.
90. In any case, in light of the above, **the Law should specify the measures contemplated in such provisions, which must be particularly precise and proportionate to the security threat.**¹⁷⁷ The said measures must also be justified, necessary, proportionate and non-discriminatory. Especially, such measures should be **subject to certain conditions and adequate and effective safeguards, *inter alia* clear grounds and circumstances justifying application of such measures (which is not the case here given the vague and over-broad definition of “terrorism”/“terrorist activities”), prior authorization by an independent body,**¹⁷⁸ **limitation of the personal and material scope and duration of the monitoring power or procedure, as well as judicial or other independent supervision/oversight.**¹⁷⁹ Furthermore, **adequate and effective guarantees against the risk of misuse or abuse of such powers by public authorities, including adequate remedies in case of abuse, must be in place.**¹⁸⁰
91. In principle, **the legislation should specify the procedure to be followed for examining, using and storing the data obtained, including the precautions to be taken when communicating the data to other parties and detail the circumstances in which data obtained may or must be erased or the records destroyed.**¹⁸¹ There should also be some rules specifying, with an appropriate degree of precision, the manner of screening of the intelligence obtained through surveillance and/or the procedures for preserving its integrity and confidentiality.¹⁸² Overall, **the legislation should also prevent undue access, use and transfer/sharing by the national authorities of any personal data, in line with international standards and good practice.**¹⁸³ Finally, it is also worth emphasizing that, as recommended by International Mandate-Holders on Freedom of Expression, “*States should never base surveillance on ethnic or religious profiling or target whole communities, as opposed to specific individuals, and they should put in place*

¹⁷⁷ UN Special Rapporteur on counter-terrorism, *2009 Report on the Right to Privacy in the Fight against Terrorism*, A/HRC/13/37, 28 December 2009, par 60.

¹⁷⁸ *ibid.* par 62.

¹⁷⁹ *ibid.* See also e.g., *op. cit.* footnote 33 (2013 ODIHR *Human Rights in Counter-Terrorism Investigations*), in particular page 38; and ODIHR, *Opinion on the Draft Law of Ukraine on Combating Cybercrime* (22 August 2014), pars 44-45. See also *op. cit.* footnote 174, par 5 (2017 UN Human Rights Council’s *Resolution on the Right to Privacy in the Digital Age*); UNODC, *Counter-Terrorism Module 12: Privacy, Investigative Techniques and Intelligence Gathering*; and, for the purpose of comparison, ECtHR, *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (Application no. 62540/00, judgment of 28 June 2007), par 76; and *Uzun v. Germany* (Application no. 35623/05, judgment of 2 September 2010), par 63.

¹⁸⁰ *ibid.* par 47(2014 ODIHR Opinion on the Draft Law of Ukraine on Combatting Cybercrime); and, for the purpose of comparison, *ibid.* par 77 (2007 ECtHR *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*).

¹⁸¹ *ibid.* par 46 (2014 ODIHR Opinion on the Draft Law of Ukraine on Combatting Cybercrime).

¹⁸² *ibid.* par 47(2014 ODIHR Opinion on the Draft Law of Ukraine on Combatting Cybercrime).

¹⁸³ See, e.g., for reference, on key principles that should regulate the protection of personal data, Section III of the EU Fundamental Rights Agency (FRA) *Handbook on European Data Protection Law* (2014). Key principles in this field include: the principle of lawful processing; the principle of purpose specification and limitation; the principles of data quality, including data relevance, data accuracy, and the limited retention of data, particularly that retention shall be limited in time; the fair processing principle; and the principle of accountability.

appropriate legal, procedural and oversight systems to prevent abuse of surveillance powers”.¹⁸⁴

92. In light of the foregoing, **all these substantive and procedural safeguards should be reflected in the Law, or proper cross-reference to specific legislation embedding such safeguards should be made.**
93. Article 19 of the Law also provides that the persons engaged in an “*anti-terrorist operation*” shall freely enter at any time any premises and transport means “*for suppressing a terrorist act and chasing suspects, if a delay can endanger human life and health, security of society and the State*”. It also further allows such persons to use for official purposes private communication and transport means for a number of purposes listed in Article 19.¹⁸⁵ Entering private premises and seizing private property are interferences with human rights and, therefore, have to be prescribed by law in accordance with international human rights standards, as well as be justified, necessary, proportionate and non-discriminatory.¹⁸⁶ While rapid intervention may be needed in case of danger to human life, **the reference to “health” and to “security of society and the State”** appears overly broad and be subject to various interpretations and potential abuse. **Such a wording should therefore be reconsidered.**
94. Finally, Article 19 provides for the conduct of personal search of individuals entering and exiting the anti-terrorist operation zone, as well as inspection of their luggage and vehicles, including with the use of technical equipment and other inspection means. Generally speaking, examinations/searches shall be **carried out with full respect for human dignity and the principles of proportionality and non-discrimination.**¹⁸⁷ Accordingly, the detailed search of a person, and his/her clothing and belongings interferes with his/her private life, while the *public* nature of a search may also humiliate and embarrass him/her and thereby compound the seriousness of the interference.¹⁸⁸ A number of safeguards should therefore be in place, in order to ensure that such measures are carried out in a human rights compliant manner, and should be specified in the Law or in relevant search protocols.¹⁸⁹

5.6. Potential Impact on Freedom of Movement

95. Article 5 of the Anti-Terrorism Law also prohibits the entry into the Republic of Uzbekistan of foreign citizens and stateless persons involved in “*terrorist activities*”. First, it is unclear how the involvement in “*terrorist activities*” will be determined, and whether this will require a judgment by a court, or being listed as a member of a “*terrorist organizations*”, or other means. It must be emphasized that there are situations where criminal law and judicial practice in a given country give a very broad definition of “*terrorism*”, beyond what is recommended at the international level (see Sub-Section 3.1.

¹⁸⁴ International Mandate-Holders on Freedom of Expression, [2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), par 2(g).

¹⁸⁵ i.e., order to prevent a terrorist act, chase and detain persons, who committed or presumably committed a terrorist act, get to the scene of the accident, and take those who need emergency medical assistance to hospital.

¹⁸⁶ See OSCE, [1991 Moscow Document](#), par 24. See also e.g., *op. cit.* footnote 33, page 64 (2013 ODIHR [Human Rights in Counter-Terrorism Investigations](#)).

¹⁸⁷ See CCPR, [General Comment No. 16: Article 17 \(Right to Privacy\)](#), 8 April 1988, par 8; pars 4 and 4.5 of OSCE Ljubljana Document (2005), “Border Security and Management Concept: Framework for Co-operation by the OSCE Participating States”; and ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), par 340.

¹⁸⁸ See e.g., for the purpose of comparison, ECtHR, [Gillan and Quinton v. United Kingdom](#) (Application no. 4158/05, judgment of 12 January 2010), par 63.

¹⁸⁹ See, for instance, the list provided in *op. cit.* footnote 33, page 80 (2013 ODIHR [Human Rights in Counter-Terrorism Investigations](#)).

supra), thus creating a risk that ordinary criminal offenders or political dissidents are labelled as “terrorists”.¹⁹⁰ **This aspect relating to the labelling as so-called “terrorist” should be clarified.**

96. If the authorities are contemplating to use as a reference the list of “terrorist organizations” designated by international or regional organizations, it must be emphasized that the UN Special Rapporteur on counter-terrorism has criticized such a listing process, noting the lack of legal certainty, procedural inadequacies and due process deficiencies.¹⁹¹ Accordingly, if this is the option chosen by the drafters, there must be access to domestic judicial review of any domestic implementing measures pertaining to persons on such list and adequate minimum safeguards must be in place, in line with international recommendations.¹⁹²
97. In addition, and while noting that the Republic of Uzbekistan is not a party to the 1951 Convention relating to the Status of Refugees, nor to the 1954 Convention relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness, pursuant to Article 7 of the ICCPR and Article 3 of the UN CAT, no one should be exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or *refoulement*.¹⁹³ Accordingly, if an asylum seeker trying to enter the territory of the Republic of Uzbekistan was convicted for “terrorism” in his/her home country, and if, in this country, there exists a serious risk for his or her life and limb, “non-admitting” this person to the national territory may be problematic from the viewpoint of Article 7 of the ICCPR and Article 3 of the UN CAT.¹⁹⁴
98. In light of the above, **the courts of the Republic of Uzbekistan should therefore be required to assess whether the alleged “terrorist” offences imputed to the person entering or crossing the territory were indeed “terrorist” offences within the meaning of international conventions,¹⁹⁵ before a foreign or stateless person is prohibited from entering the Republic of Uzbekistan, and this should be reflected in the Law. Moreover, the Law should specify that the prohibition to enter the territory should not apply if this means that the persons would be sent back to a country where they would be exposed to the**

¹⁹⁰ See e.g., *op. cit.* footnote 83, pars 98 and subsequent (2016 Venice Commission’s [Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey](#)); and *op. cit.* footnote 157, pars 128 and subsequent (2016 Venice Commission’s [Turkey - Opinion on Emergency Decree Laws nos. 667-676](#)).

¹⁹¹ UN Special Rapporteur on counter-terrorism, [Report on compliance by the United Nations with international human rights law while countering terrorism](#), UN Doc. A/65/258 (2010), pars 55-58; and *op. cit.* footnote 54, par 33 (2010 [Report](#) of the UN Special Rapporteur on counter-terrorism). See also e.g., *op. cit.* footnote 52, par 75 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁹² In addition to judicial review, the UN Special Rapporteur has identified six minimum safeguards with regard to the implementation of any sanctions against individuals or entities on any terrorist list: (1) sanctions against an individual or entity, including the terrorist listing, shall be based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act, as properly defined; (2) the listed individual or entity shall be promptly informed of the listing and its factual grounds, the consequences of such listing, and the rights pertaining to the listing (i.e. the guarantees identified in subparagraphs (3) to (6) of this paragraph); (3) the listed individual or entity shall have the right to apply for delisting or non-implementation of the sanctions, and shall have a right to a judicial review of the decision resulting from the application for delisting or non-implementation, with due process applying to such review, including disclosure of the case against the person and such rules concerning the burden of proof that are commensurate with the severity of the sanctions; (4) the listed individual or entity shall have the right to make a fresh application for delisting or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing; (5) the listing of an individual or entity, and the sanctions resulting from it, shall lapse automatically after 12 months, unless renewed through a determination that meets the guarantees in subparagraphs (1) to (3) of this paragraph; and (6) compensation shall be available for persons and entities wrongly affected, including third parties – see *ibid.* *op. cit.* footnote 54, Practice 9 (2010 [Report](#) of the UN Special Rapporteur on counter-terrorism).

¹⁹³ CCPR, [General Comment no. 20 on Article 7 of the ICCPR \(1992\)](#), par 9.

¹⁹⁴ See e.g., *op. cit.* footnote 52, par 77 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

¹⁹⁵ *ibid.*

danger of torture or other cruel, inhuman or degrading treatment or punishment,¹⁹⁶ risks of violations to the rights to life¹⁹⁷ or to the integrity or freedom of the person,¹⁹⁸ flagrant denial of justice,¹⁹⁹ serious forms of sexual and gender-based violence,²⁰⁰ prolonged solitary confinement²⁰¹ or other serious human rights violations.

5.7. Other Comments

99. Article 5 of the Anti-Terrorism Law also prohibits the “[n]on-disclosure of information and facts about planned or committed terrorist acts”. This means that any persons being aware of some information about potential future terrorist acts would have a duty to report to the competent authorities. This provision is problematic. While criminalizing omission may be permissible in criminal law, it should be exceptional, and based on the particular responsibilities attached to groups of individuals by law, and not a general duty on all individuals.²⁰² Though the objective may overall be legitimate, **this prohibition deserves clarification, or at a minimum, strict application and interpretation, to ensure the appropriateness and proportionality of interference with personal and family life, for example.** Special attention should also be paid regarding the possible implications in terms of legal certainty, as well as for the stigmatization and penalization of families and communities,²⁰³ especially media, defence lawyers, human rights groups and family members, including children. Also, the provision should not be used to provide a basis for coercive interrogations and the Law should make clear the basis for and safeguards around questioning and interrogation.
100. Article 6 of the Law provides that public as well as private entities, including public associations and individuals, “shall provide necessary support and assistance to the government bodies combatting terrorism”. While the inclusion of individuals and private entities is commonly reflected in current international resolutions and declarations on countering terrorism and VERLT, compelling natural and legal persons to assist public authorities to do so, as provided for in the Law, is more questionable. As noted by the UN Special Rapporteur on counter-terrorism, this may be counter-productive and have the

¹⁹⁶ See Articles 2 (1) and 7 of the ICCPR and Article 3 of the UN CAT. See also e.g., *op. cit.* footnote 111, par 31 (2018 CCPR General Comment no. 36).

¹⁹⁷ See e.g., *op. cit.* footnote 54, par 38 and Practice 10.5 (2010 [Report](#) of the UN Special Rapporteur on counter-terrorism); and UN Secretary General, [Report on the protection of human rights and fundamental freedoms while countering terrorism](#), A/63/337, 28 August 2008, par 45. See also OHCHR, [Technical Note on the Principle of Non-Refoulement under International Human Rights Law](#) (2018), page 1; and CCPR, [General Comment no. 31](#) (2004), par 12.

¹⁹⁸ *ibid.* par 45 (2008 UN Secretary General’s Report); and page 1 (2018 OHCHR Technical Note on Non-Refoulement).

¹⁹⁹ *ibid.* par 45 (2008 UN Secretary General’s Report); and page 1 (2018 OHCHR Technical Note on Non-Refoulement). See also, though Uzbekistan is not a Member State of the Council of Europe but for the purpose of comparison, ECtHR, [Othman \(Abu Qatada\) v. United Kingdom](#) (Application no. 8139/09, 17 January 2012), pars 258-259.

²⁰⁰ *ibid.* page 1 (2018 OHCHR Technical Note on Non-Refoulement). See also e.g., UN CAT Committee, [Njamba and Balikosa v. Sweden](#), Communication no. 322/2007, 3 June 2010, par 9.5; and CEDAW Committee, [General Recommendation no. 32](#) (2014), par 23.

²⁰¹ *ibid.* pars 39 and 42 (2008 UN Secretary General’s Report); and page 1 (2018 OHCHR Technical Note on Non-Refoulement). See also e.g., CCPR, [General Comment no. 20](#) (1994), par 6.

²⁰² See e.g., Helen Duffy, [‘The war on terror’ and the framework of international law](#) (2013), page 182.

²⁰³ See e.g., International Commission of Jurists, [Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights](#), 22 July 2009, page 134, citing the danger that media, defence lawyers, human rights groups and family members (especially children) are penalised. On the radicalising potential of such measures, and the ‘symbolic reminder of a group’s shared circumstance vis-à-vis authorities and their agents of control’, see C. Campbell, [‘Beyond Radicalization: Towards an Integrated Anti-Violence Rule of Law Strategy’](#), in A. Salinas de Frias, K. Samuel and N. White (eds.), *Counter-Terrorism: International Law and Practice* (Oxford, 2012), pp. 255–82 at p. 272.

opposite of its intended effect by potentially “*dividing, stigmatizing and alienating segments of the population*”, thus “*promoting ‘extremism’, rather than countering it*”.²⁰⁴

101. Moreover, the Law does not specify what sort of assistance or information can be requested by the government bodies combatting terrorism, and in what circumstances and under which conditions. This poses a number of challenges in terms of compliance with international human rights standards. First, this should not provide undue access to certain privileged or confidential communications, such as those protected by client-attorney privilege,²⁰⁵ the confession or *other similar communications* between adherents of a faith and ordained confessors or corresponding officers in other denominations,²⁰⁶ medical information.²⁰⁷ Moreover, the Law should probably also provide an exception concerning family or close relatives, who should not be forced to provide evidence or to testify (unless they willingly chose to do so).²⁰⁸ Introducing safeguards in that respect should prevent the rather frequent situations reported by the UN Special Rapporteur on counter-terrorism where women (and children) are more likely to be unlawfully detained and ill-treated to gain information about male family members.²⁰⁹
102. Further, Article 6 should similarly not provide unlimited powers to the government bodies to obtain any information. For instance, the confidentiality of journalists’ sources of information should always be protected, even in the context of counter-terrorism measures. As noted by the International Mandate-Holders on Freedom of Expression, “[n]ormal rules on the protection of confidentiality of journalists’ sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by other means – should apply in the context of anti-terrorist actions as at other times”.²¹⁰ Hence, this should only be possible based on a court order justified by an overriding requirement in the public interest, given the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom.²¹¹
103. Similarly, information held by associations, especially those working on human rights issues, which may be sensitive in nature, should deserve special protection. Indeed, according to the [Guidelines on Freedom of Association](#), “*the right to privacy applies to an association*” (para. 228) and “[l]egislation should contain safeguards to ensure the respect of the right to privacy of the clients, members and founders of the associations,

²⁰⁴ See e.g., UN Special Rapporteur on counter-terrorism, [Report on follow-up mission to the United Kingdom of Great Britain and Northern Ireland](#), A/HRC/35/28/Add.1, 8 June 2017, pars 13-14.

²⁰⁵ While not expressly provided by Article 14 of the ICCPR, the special nature of the lawyer-client relationship – and the need for confidence and privacy to enable counsel to obtain full instructions in order to prepare and defend a case – have been treated as requiring that counsel be able to meet their clients in private and to communicate in conditions that fully respect the confidentiality of their communications – see CCPR, [General Comment no. 32 on Article 14 of the ICCPR](#) (2007), par 34; and ODIHR, [Legal Digest of International Fair Trial Rights](#) (2012), pages 144-146.

²⁰⁶ See e.g., ODIHR and Venice Commission, [Guidelines for Review of Legislation Pertaining to Religion or Belief](#) (2004), Part II.B.E.1.

²⁰⁷ See as a comparison, good practices in the context of criminal proceedings, regarding the exclusion of certain privileged communications as evidence, as reflected in [Article 244 of the Model Code of Criminal Procedure](#) for Post-Conflict Criminal Justice (2008), as developed by the United States Institute of Peace (USIP) in co-operation with the Irish Centre for Human Rights (ICHR), UN OHCHR, and UNODC.

²⁰⁸ See e.g., *ibid.* [Article 243 of the USIP-ICHR-OHCHR-UNODC Model Code of Criminal Procedure](#).

²⁰⁹ See e.g., UN Special Rapporteur on counter-terrorism, [2009 Report](#), A/64/211, par 31.

²¹⁰ International Mandate-Holders on Freedom of Expression, [2008 Joint Declaration on Defamation of Religions and Anti-Terrorism and Anti-Extremism Legislation](#), last indent.

²¹¹ *Op. cit.* footnote 32, page 239 (2008 ODIHR’s Manual on [Countering Terrorism, Protecting Human Rights](#)).

as well as provide redress for any violation in this respect” (para. 231), including of staff and donors.²¹²

104. Also, Articles 5 and 6 should not be interpreted as a requirement for Internet service providers to conduct constant monitoring of all communications over the providers’ network, or to detect illegal conduct, as this would constitute an unreasonable and costly burden for them.²¹³ In principle, no general obligation to monitor or seek facts or circumstances indicating illegal activity should be imposed on service providers.²¹⁴
105. In sum, this general duty to support and assist the government bodies and to disclose information and facts about planned and committed terrorist acts is too broadly formulated to be *lawful*, within the meaning of the ICCPR.²¹⁵ If such a duty is nevertheless retained, in light of the foregoing, **the Law should introduce certain exceptions regarding the duty to disclose information and facts about planned or committed terrorists acts, and to assist government bodies, especially as regards attorneys, journalists, priests or ordained confessors, doctors/psychologists/psychiatrists, when information/communications are covered by specific privilege or are confidential, and close family members (and children) of alleged/suspected terrorists. The Law should also specify in what circumstances and under which conditions, such information or assistance may be requested. It should further require that the said public authorities provide a reasonable explanation for the request for information detailing why it needs certain information, which should then be validated by a court (or other independent external body).**²¹⁶

6. Victims of Terrorism

106. It is welcome in principle that Article 22 of the Law provides for the compensation of victims for “*damages caused by a terrorist act*”, while Article 23 of the Law provides for compensation by the State of “*personal injury and pecuniary damage caused to individuals or legal entities as a result of an anti-terrorist operation*”. At the same time, the right to a remedy of victims of terrorism or violations committed in the context of counter-terrorism, and scope of the assistance to victims, should be much broader than the mere (financial) *compensation* for damage and should in addition encompass the aspects detailed below.
107. Indeed, the right to an effective remedy embedded in Article 2 of the ICCPR is much broader in scope and should amount to full and effective reparation in line with international standards. This means embracing not only compensation (generally consisting of a monetary award for pecuniary and non-pecuniary loss resulting from the violation, generally together with costs for legal and other expenses reasonably incurred), but also restitution – whenever possible and appropriate, rehabilitation, satisfaction and

²¹² See e.g., ODIHR and Venice Commission, [Joint Opinion on Draft Law No. 140/2017 of Romania on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations \(16 March 2018\)](#), par 41. See also, for the purpose of comparison, Council of Europe, [Fundamental Principles on the Status of Non-governmental Organisations in Europe](#), par 67 of the Explanatory Memorandum.

²¹³ See e.g., ODIHR, [Opinion on the Draft Law of Ukraine on Combating Cybercrime](#) (22 August 2014), par 64.

²¹⁴ *ibid.* par 64. See also, for the purpose of comparison, CoE Committee of Ministers, [Declaration on freedom of communication on the Internet](#), 28 May 2003, Principle 6; and the Judgment of the Court of Justice of the European Union, [Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL \(SABAM\)](#), 24 November 2011, C-70/10.

²¹⁵ As a matter of comparison, in the ECtHR case of [Roman Zakharov v. Russia](#) [GC] (Application no. 47143/06, judgment of 4 December 2015), par 229, where the Court held that “*the domestic law must be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures*”.

²¹⁶ See e.g., *op. cit.* footnote 52, par 38 (2018 Venice Commission’s [Opinion on the Anti-Terrorism Law of Moldova](#)).

guarantees of non-repetition.²¹⁷ Such a right of victims²¹⁸ to reparation by the State is supported by the jurisprudence of international courts and bodies interpreting and applying treaties such as the ICCPR, as well as in ‘soft law’ documents such as the [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) (1985)²¹⁹ and the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) (2005).²²⁰ The UN Special Rapporteur on counter-terrorism has also developed the [Framework Principles for Securing the Human Rights of Victims of Terrorism \(2012\)](#),²²¹ which could serve as useful guidance for the purpose of supplementing the Law to ensure that victims of terrorism obtain full and effective reparation.

108. Especially, it is noted that Article 22 does not specify **the types of damages that should be compensated and unless this is clear from another legislation to which this Law should refer, this should be clarified. The relevant provision should ensure that this would cover physical and mental harm, lost opportunities, material damages and loss of earnings, moral damage and costs required for legal or expert assistance, medical, psychological and social services,**²²² as appropriate, while taking into account the differing needs of victims, especially of women and children.²²³ It should also be made clear that reparation should be provided not only to the (direct) victims but also to their family members. Moreover, the Law should elaborate more on other measures seeking to ensure the rehabilitation of victims, including the provision of medical, psychological, legal and social services.²²⁴
109. Further, the Law should specify the obligation to conduct an effective official investigation whenever individuals have been killed or seriously injured as the direct or indirect result of an act of terrorism, with a view to securing accountability and learning lessons for the future.²²⁵ The Law should also contemplate some forms of reparation schemes, which should ensure the provision for financial compensation of victims of acts of terrorism, irrespective of the fact that the perpetrator is not

²¹⁷ Full and effective reparation includes the following forms: restitution (i.e., measures re-establishing the situation of the victim prior to the violation), compensation (i.e., monetary awards for pecuniary and non-pecuniary loss resulting from the violation, together with costs for legal and other expenses reasonably incurred), rehabilitation (i.e., medical and psychological care, as well as other legal and social services), satisfaction (i.e., non-financial form of reparation that includes, inter alia, full and public verification of the facts, and formal acceptance of any State responsibility) and guarantee of non-repetition (including the investigative obligation to take all reasonable steps to identify system failures and human errors, and the obligation to reform laws and administrative practices that may have caused or contributed to the opportunity for an act of terrorism to be committed); see pars 15-23 of [UN Declaration of Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), General Assembly Resolution A/RES/60/147, 16 December 2005.

²¹⁸ For the purpose of this opinion, the term “victim” is used in its legal sense in connection with criminal proceedings and internationally recognized “victims’ rights”. This is without prejudice to other terms such as “survivor” which may be preferable in other specific contexts.

²¹⁹ [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), UN General Assembly resolution A/RES/40/34, 29 November 1985.

²²⁰ [UN Declaration of Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), UN General Assembly Resolution A/RES/60/147, 16 December 2005.

²²¹ See pars 51-62, UN Special Rapporteur on counter-terrorism, [Framework Principles for Securing the Human Rights of Victims of Terrorism](#), 4 June 2012, A/HRC/20/14, pars 51-62.

²²² *ibid.* par 51 (2012 Framework Principles for Securing the Human Rights of Victims of Terrorism); see also *op. cit.* footnote 220, par 20 (2005 UN Declaration). See also, for the purpose of comparison, the [Explanatory Report to the Council of Europe Convention on the Compensation of Victims of Violent Crimes](#), especially pars 18-19.

²²³ See e.g., *op. cit.* footnote 47, page 183 (2019 UNODC [Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism](#)).

²²⁴ *Op. cit.* footnote 220, *ibid.* par 21 (2005 UN Declaration).

²²⁵ See e.g., *op. cit.* footnote 221, par 67 (c) (2012 UNSR Framework Principles for Securing the Human Rights of Victims of Terrorism).

identified, not apprehended or insolvent, and consider introducing a programme of medical and social rehabilitation,²²⁶ among others.

110. It is also key that **all facets of reparation programmes should be based on the principles of equality and non-discrimination and that the design, implementation and monitoring of the reparation process should be a victim- and gender-inclusive process, while encouraging women to participate in such processes.**²²⁷ In addition, as a matter of good practice, other measures may be considered here as well, such as appointing family investigative liaison officers which provide victims with regular reporting on the progress of court trials following a terrorist attack; giving representatives of victims' associations the right to participate in criminal trials in support of victims; and setting up an assistance centre with a website and a telephone helpline to help victims.²²⁸
111. More generally, it is important **to ensure in the Law or other relevant legislation that documentation and evidentiary requirements for registration as victims and for obtaining reparation should be as simple as possible to avoid excluding some victims, especially women, ethnic minorities, stateless persons or refugees.** Especially, the legal drafters should, for instance, avoid providing for stringent requirements, such as “*propiska*” (compulsory permanent or temporary residence registration system), which has been considered by various international human rights bodies to be discriminatory in terms of access to various rights.²²⁹
112. Furthermore, **the Law should also create an obligation for the public authorities, including social and health care services and victim support services, to provide to the victims or the victims' families all the information necessary to exercise any rights they may have.**²³⁰ As regards child victims more specifically, **the information on existing opportunities to obtain reparation from the offender or from the State through the justice process, alternative civil proceedings or through other processes should be provided to child victims promptly and in a child sensitive manner.**²³¹ Moreover, **such information should also be provided to their parents or guardians and legal representatives.**²³² The court should likewise inform the child victim or his/her parents or guardian(s) and his/her lawyer(s) about the procedures for claiming compensation and obtaining full and effective reparation.²³³ **The Law or other relevant legislation should be supplemented accordingly.**
113. Article 23 par 2 specifies that “[p]ersonal injury caused to an individual while thwarting his/her participation in a terrorist act shall not be subject to compensation”.
114. First, while there may be limitations on the right to obtain compensation where the victim belongs to a criminal organization or association that is the target of an anti-terrorism

²²⁶ *ibid.* par 67 (l) (2012 UNSR Framework Principles for Securing the Human Rights of Victims of Terrorism).

²²⁷ See e.g., *op. cit.* footnote 47, pages 179-183 (2019 UNODC [Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism](#)).

²²⁸ For these and further suggestions, please see UN Office on Drugs and Crime (UNODC), [The Criminal Justice Response to Support Victims of Acts of Terrorism](#) (2008); and OSCE/ODIHR, [Background Paper on Solidarity with Victims of Terrorism](#) (2006).

²²⁹ See e.g., Committee on Economic, Social and Cultural Rights, [Concluding observations on the second periodic report of Uzbekistan](#), 13 June 2014, par 9. See also CEDAW, [Concluding observations on the fifth periodic report of Uzbekistan](#), 24 November 2015, par 21; and Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined eighth and ninth periodic reports of Uzbekistan](#), 14 March 2014, pars 18 and 20.

²³⁰ *Op. cit. op. cit.* footnote 221, par 67 (e) (2012 UNSR Framework Principles for Securing the Human Rights of Victims of Terrorism). See also *op. cit.* footnote 220, par 24 (2005 UN Declaration).

²³¹ See par 35 of the [Annex to the Economic and Social Council resolution 2005/20, annex \(Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime\)](#), Economic and Social Council resolution 2005/20, 22 July 2005.

²³² *ibid.* par 20 (2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).

²³³ See Article 29 pars 1 and 2 of the UNODC-UNICEF [Model Law on Justice in Matters involving Child Victims and Witnesses of Crime](#) (2009).

operation,²³⁴ Article 23 par 2 should not be interpreted as preventing accountability and reparation when the State or public bodies may have committed human rights violations in the course of an anti-terrorist operation, especially gross human rights violations, such as acts of torture, enforced disappearance, or arbitrary deprivation of life²³⁵ (see Sub-Section 5.1. *supra* and Sub-Section 8 *infra*). Indeed, it is essential to ensure that the State/public authorities remain accountable for such violations, irrespective of the identity of the persons being affected. Providing otherwise would be inconsistent with international human rights law. **The wording of Article 23 par 2 should therefore be reviewed to reflect such caveat.**

115. Furthermore, when a person against whom a gross violation of international human rights law has been committed in the context of an anti-terrorist operation, if his/her family members (who themselves are not complicit and providing that they have not themselves intentionally provided support with the intent or knowledge that this will be used to commit a terrorist act – see Sub-Section 3.2. *supra*) are affected, they should still be considered as victim and be able to obtain remedies in accordance with international human rights standards.
116. Also, the provision fails to acknowledge the specific situation of persons forced into association with a terrorist group through abduction, trafficking in persons, sexual violence or other coercive means, whereas such persons should themselves also be considered as victims of terrorism, including for the purpose of official support, reparations programmes, and rehabilitation and reintegration efforts.²³⁶ Indeed, as specifically stated in the UN [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*](#), victims of trafficking in persons are entitled to specific protection and assistance under international instruments.²³⁷ Moreover, at the international level, it has been emphasized that States should not prosecute or punish victims of trafficking for crimes they may have committed in the course of trafficking,²³⁸ though this should however not confer blanket immunity on trafficking victims who may commit other non-status-related crimes with the requisite level of criminal intent.²³⁹ In a report of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings, it is stated that the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established,²⁴⁰ while ensuring that

²³⁴ See e.g., ODIHR, [*Opinion on the Draft Law on Compensation of Damages for Victims of Criminal Acts in Montenegro*](#) (26 July 2014), par 64. See also, e.g., for the purpose of comparison, Article 8 of the [*Council of Europe Convention on the Compensation of Victims of Violent Crimes*](#).

²³⁵ See [*UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*](#) (2005).

²³⁶ See e.g., [*UN Security Council resolution 2331 \(2016\)*](#), par 10. See also e.g., *op. cit.* footnote 47, pages 179-183 (2019 UNODC [*Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*](#)).

²³⁷ The Republic of Uzbekistan ratified the UN [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*](#) on 12 August 2008.

²³⁸ UN Working Group on Trafficking in Persons, [*Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking*](#), CTOC/ COP/WG.4/2010/4 (9 December 2009), par 10. For the purpose of comparison, see also Council of Europe, [*Convention on Action against Trafficking in Human Beings*](#), CETS No. 197 (Warsaw, 2005), Article 26; and European Union, [*Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims*](#), and replacing Council Framework Decision 2002/629/JHA (5 April 2011), Article 8.

²³⁹ See also e.g., *op. cit.* footnote 47, page 54 (2019 UNODC [*Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*](#)), where UNODC also notes the two different criteria that may be used to determine the scope of conduct to which the non-punishment principle applies, i.e., (1) causation criteria, referring to whether the offence is directly related or connected to the trafficking; and (2) duress criteria, referring to offences that the trafficked person was compelled to commit.

²⁴⁰ OSCE, Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, [*Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*](#) (Vienna, 2013), page 23.

compulsion, for the purposes of interpreting non-punishment provisions, takes into account the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will²⁴¹ – not only use or threat of force, but also abduction, fraud, deception, abuse of a position of vulnerability. This should be borne in mind in the context of implementation of the Anti-Terrorism Law. In any case, the legal drafters **should include specific exceptions to the exclusion from redress mentioned in Article 23 par 2 for persons forced into association with a terrorist group through abduction, fraud, deception, trafficking in persons, sexual violence or other coercive means.**

7. Liability for Participation in Terrorist Activities

117. Article 28 of the Law states that “[p]ersons participating in terrorist activities shall be held liable under the law”. Such a provision is extremely vague and **the drafters should specify the specific laws that are applicable and clarify which behaviours will trigger which kind of liability.** If criminal liability is envisaged, then the *nullum crimen sine lege* principle embedded in Article 15 (1) of the ICCPR requires that the material and mental elements providing the basis for individual culpability and the relevant penalties, proportionate to the particular role and involvement of the individual in the particular crime, be defined clearly and precisely.²⁴² Accordingly, the culpable behaviour and necessary mental intention corresponding to the said behaviour **should be made clear and should be more precisely and specifically spelt out in the Law or other relevant legislation to which the Law should refer. Also, the relationship with other provisions of the criminal law should be clarified.**

8. Oversight and Accountability Mechanism

118. The accountability and oversight of public authorities and law enforcement agencies is a crucial aspect of ensuring that their activities and criminal investigations are human rights-compliant. Especially where the legal framework relating to counter-terrorism confers discretionary powers upon public agencies, as here, adequate safeguards, including judicial review, must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably.
119. In order to be effective, there usually needs to be a combination of interdependent mechanism of oversight and control: internal accountability mechanisms (e.g., proper and independent investigations of misconducts, disciplinary proceedings, codes of conduct, etc.), parliamentary oversight (members of parliament, parliamentary commissions of enquiry), judicial review, independent bodies such as national human rights institutions and civil society oversight.²⁴³ Without external oversight mechanisms, public bodies would have complete discretion in deciding whether to investigate or punish misconduct, which would render internal control ineffective.²⁴⁴ In that respect, it is key to reiterate that States have an obligation to conduct prompt, independent and effective investigations into credible allegations of human rights violations, including those allegedly perpetrated

²⁴¹ *ibid.* pages 11–12.

²⁴² CCPR, *General Comment No. 29 on States of Emergency* (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add. 11 (2001), par 7.

²⁴³ See e.g., OSCE, *Security Sector Governance and Reform (SSG/R) - Guidelines for OSCE Staff* (2016), page 53; and regarding policing in particular, OSCE, *Guidebook on Democratic Policing*, May 2008, par 84.

²⁴⁴ *ibid.* par 86 (2008 OSCE Guidebook on Democratic Policing).

during counter-terrorism operations, whether by law enforcement officials, intelligence services or non-State actors.²⁴⁵

120. **The Law should be supplemented to ensure proper accountability and oversight, both internal and external, of all the activities pertaining to the prevention and combatting terrorism, including by the Parliament, the Ombuds institution, the National Human Rights Centre, the judiciary, civil society and the media.**
121. As to the parliamentary control, it is important that this role is more than a simple annual reporting and that the relevant parliamentary body or committee has adequate investigative powers to control the activities of all bodies involved in the prevention and combatting of terrorism.²⁴⁶ It must be noted though that any *ex post* control by a parliamentary sub-committee (or other body) would be wholly inefficient if there are no rules requiring record-keeping within the security services and other relevant authorities, and if there are no “paper trails” of actions (especially those related to surveillance/other special measures) taken by the said services.²⁴⁷ The legislation must also provide for access by the oversight body to those records, and the records should correspond to certain parameters (they should outline the reasons for specific actions of the relevant bodies, their duration, extent, the information obtained, etc.). **The Law should be supplemented accordingly.**
122. Article 30 of the Law provides that “*military servicemen, specialist and other participants of an anti-terrorist operation shall be discharged from liability for unwillingly causing damage during the operation*”. It is not clear from this provision whether damage is strictly limited to property or material damage or whether this would also include damage to persons, and potential deaths. While acknowledging that in the course of an anti-terrorist operation, the security personnel may cause harm to the terrorists and other persons as well as damage property, such harm should be proportionate and the legislation should provide for the liability – both criminal and disciplinary – of the security personnel for *grossly disproportionate* actions causing such harm/damages and the State should in addition bear civil liability in these cases.²⁴⁸ The obligations to investigate, reveal the truth, and ensure accountability in anti-terrorist operations has been noted, and is reflected in some detail at the international level, for instance in the reports of the UN Special Rapporteur on counter-terrorism.²⁴⁹ The exclusion of liability, especially if it covers potential deaths and physical injuries, runs counter to the principle that potentially unlawful deprivations of life or arbitrary use of excessive force should, in all cases, be investigated and prosecuted as appropriate.²⁵⁰ Indeed, this principle helps ensuring that those responsible are brought to justice, promoting accountability and preventing impunity, avoiding denial of justice and drawing necessary lessons for

²⁴⁵ See *op. cit.* footnote 91, pages 29-30 (2014 *UN CTITF's Basic Human Rights Reference Guide*). See also, for the purpose of comparison, ECmHR, *Brind and Others v. the United Kingdom* (Application no. 18714/91, decision of 9 May 1994).

²⁴⁶ See e.g., Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, *Joint Opinion on the Draft Law n° 281 amending and completing Moldovan Legislation on the so-called "Mandate of security"*, CDL-AD(2017)009, 14 March 2017, par 33. See also, for the purpose of comparison, ECtHR, *Szabó and Vissy v. Hungary* (Application no. 37138/14, judgment of 12 January 2016), par 82, where it is stated: “*The Court is not persuaded that this scrutiny [by a Parliamentary committee] is able to provide redress to any individual grievances caused by secret surveillance or to control effectively, that is, in a manner with a bearing on the operations themselves, the daily functioning of the surveillance organs, especially since it does not appear that the committee has access in detail to relevant documents. The scope of their supervision is therefore limited [...].*”

²⁴⁷ See e.g., Venice Commission, *Report on the Democratic Oversight of the Security Services (updated)*, CDL-AD(2015)010, par 153.

²⁴⁸ See e.g., *op. cit.* footnote 52, par 64 (2018 Venice Commission's *Opinion on the Anti-Terrorism Law of Moldova*).

²⁴⁹ See e.g., UN Special Rapporteur on counter-terrorism, *Framework Principles for Securing the Accountability of Public Officials for Gross or Systematic Human Rights Violations Committed in the Course of States-sanctioned Counter-terrorism Initiatives* (2013) A/HRC/22/52.

²⁵⁰ See e.g., *op. cit.* footnote 111, par 27 (2018 CCPR General Comment no. 36). See also, for the purpose of comparison, e.g., ECtHR, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC] (Application no. 24014/05, judgment of 14 April 2015); and *Armani Da Silva v. the United Kingdom* (Application no. 5878/08, judgment of 30 March 2016).

- revising practices and policies with a view to avoiding repeated violations.²⁵¹ Accordingly, the wide-ranging immunity for any “*damage*” caused in the course of anti-terrorist operations results in a dangerous gap in regulating situations involving potential deprivation of life, in violation to Article 6 of the ICCPR.²⁵²
123. In addition, the term “*unwilling*” in Article 30 is ambiguous as it is not clear whether this would exempt from liability the said persons in cases where they had the necessary knowledge and provided a contribution to the criminal offence, without necessarily being “*willing*” participants, for instance if they acted upon the order of a superior. It is unclear how this would interact with defences and intent under criminal law. In that respect, it is worth emphasizing that in cases of serious human rights violations, having acted upon superior order should not be considered a valid defence and subordinates should be held to account individually.²⁵³
124. **Consequently, Article 30 of the Anti-Terrorism Law should be reconsidered entirely, while supplementing the Law with provisions setting up an appropriate independent, impartial, prompt and effective and transparent mechanism for reviewing, investigating and prosecuting, if appropriate, lethal and other life-threatening incidents in the context of counter-terrorism efforts as well as other incidents (see also Sub-Section 8 *infra*). If nevertheless retained, Article 30 should not be used as an immunity in cases of grossly disproportionate actions causing harm/damages or to preclude accountability for counter-terrorism activities in cases of excessive use of force and unlawful deprivation of life, and more broadly to prevent the thorough and effective investigation required by international human rights law in cases of human rights violations.**
125. As regards potential loss of life and limb in the context of “anti-terrorist operations”, it must be emphasized that investigations into allegations of violations of Article 6 of the ICCPR must always be independent, impartial, prompt, thorough, effective, credible and transparent.²⁵⁴ **If not provided by other legislation, this should be reflected in the Law.**
126. **Finally, the Law should also provide for criminal and disciplinary liability of the relevant counter-terrorism bodies and security personnel for grossly disproportionate actions and for inadequate planning and conduct of the anti-terrorist operations and the State should also bear civil liability in cases of harm caused by such disproportionate actions (see also Sub-Section 7 *supra*).²⁵⁵ Indiscriminate use of weapons not adapted to the situation should be prohibited under**

²⁵¹ *ibid.* par 27 (2018 CCPR General Comment no. 36). See

²⁵² *ibid.* par 27 (2018 CCPR General Comment no. 36). See also, for the purpose of comparison, *op. cit.* footnote 123, par 599 (2017 ECtHR *Tagayeva and Others v. Russia*).

²⁵³ See, for instance, in cases relating to torture and other ill-treatment, Article 2 of UNCAT and par 26 of the *General Comment no. 2 of the UNCAT Committee*. See e.g. par 10 of the *Concluding Observations* of the UNCAT Committee on the United Kingdom, CAT/C/GBR/CO/5, 24 June 2013, where it states for instance that the defence of “*lawful authority, justification or excuse*” to a charge of official intentional infliction of severe pain or suffering is contrary to the principle of absolute prohibition of torture. See also par 14 of the *Concluding Observations* of the UNCAT Committee on Israel, CAT/C/ISR/CO/4, 23 June 2009, regarding the removal of the ‘necessity defense’ exception which arises in cases of ‘ticking bombs,’ i.e., interrogation of terrorist suspects or persons otherwise holding information about potential terrorist attacks. See also e.g., page 37 of *2013 APT Report on Key Issues in Drafting Anti-Torture Legislation*; and *ODIHR Opinion on Article 235 of the Criminal Code of the Republic of Uzbekistan* (on the definition of torture) (2014), pars 33-36.

²⁵⁴ *ibid.* par 28 (2018 CCPR General Comment no. 36). See also e.g., *op. cit.* footnote 91, pars 72-77 (2014 *UN CTITF’s Basic Human Rights Reference Guide*).

²⁵⁵ See e.g., *op. cit.* footnote 52, par 87 (2018 Venice Commission’s *Opinion on the Anti-Terrorism Law of Moldova*).

the Law, and the actions of the security personnel which resulted in the loss of life or limb should be subject to an independent and effective investigation.²⁵⁶

9. International Co-operation

127. States are obliged to co-operate with one another in prevention of and response to serious crime, and the UN Security Council has underscored this obligation in recent counter-terrorism resolutions.²⁵⁷ Article 7 on “*international cooperation in combatting terrorism*” is therefore appropriate. The Law should, however, make it clear that this duty is qualified by the duty not to co-operate if, in doing so, it is contributing to a real risk of human rights violations in the other state(s). Indeed the UN Special Rapporteur on counter-terrorism has specifically “*warn[ed] against any form of co-operation, whether in the area of mutual legal assistance or intelligence sharing, that may facilitate human rights violations or abuses and note[d] that State responsibility may be triggered through the sharing of information that contributes to the commission of gross human rights violations*”.²⁵⁸
128. There is a commendable commitment to being “in line with” international treaties ratified by the Republic of Uzbekistan in relation to co-operation with other states (Article 7). This should be understood to include not only extradition and mutual legal assistance instruments but also human rights treaties. Especially, **the authorities must respect the principle of non-refoulement** (i.e., that they do not return or extradite non-nationals to a country where there is a real risk of that person being subjected to torture or other inhuman or degrading treatment or punishment, or to death, or other forms of persecution, flagrant denial of justice or other serious human rights violations; see also pars 97-98 *infra*),²⁵⁹ **which should be explicitly provided in the Law or cross-referenced as appropriate.**
129. As to intelligence-sharing, safeguards generally include independent prior authorization and/or subsequent independent review.²⁶⁰ In that respect, it is worth referring to the [Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight \(2010\)](#) of the UN Special Rapporteur on counter-terrorism, which may serve as useful guidance when considering co-operation with foreign intelligence agencies. As regards the sharing of evidence, as the UN Special Rapporteur on counter-terrorism has made clear, states must condition co-operation in light of the assessment of the human rights impact. Otherwise a state may be aiding and assisting the violation of international law.²⁶¹ Likewise, evidence should not be relied upon if there is a real risk that it has been obtained through torture or ill-treatment and other serious human rights violations (see par 72 *supra*) in the other country. The same principles may

²⁵⁶ *ibid.* par 87 (2018 Venice Commission’s Opinion on the Anti-Terrorism Law of Moldova).

²⁵⁷ See e.g., UN Security Council, [Resolution 2396 \(2017\)](#).

²⁵⁸ See e.g., UN Special Rapporteur on counter-terrorism, [Response the Call for inputs published by the OHCHR pursuant to Human Rights Council resolution 31/3](#), page 6.

²⁵⁹ See Article 2 (1) of the ICCPR; Article 3 of the UN CAT; and CCPR, [General Comment no. 36 on Article 6 of the ICCPR](#) (3 September 2019), par 31.

²⁶⁰ See UN Special Rapporteur on counter-terrorism, [2014 Report](#), A/69/397, par 45. See also e.g., UN General Assembly, [Resolution \(A/69/488/Add.2 and Corr.1\)](#), 18 December 2014, par 4(d); CCPR, [Concluding Observations on the Fifth Periodic Report of France](#), CCPR/C/FRA/CO/5, par 12; and [Seventh Periodic Report of the United Kingdom](#), CCPR/C/GBR/CO/7, par 24; and UN Special Rapporteur on freedom of opinion and expression, [2013 Report on Surveillance of Communications](#), A/HRC/23/40, 17 April 2013, par 93.

²⁶¹ According to Article 16 of the [International Law Commission’s Report on Responsibility of States for Internationally Wrongful Acts](#) (2001), as submitted to the UN General Assembly in 2001.

apply to the receipt of information. **The above-mentioned safeguards should be reflected in the Law or other relevant legislation as appropriate.**

10. Final Comments

130. When initiating amendments to the anti-terrorism legislation, States should include a **specific assessment on the compliance with international human rights and refugee law**.²⁶² In doing so, legislators should assess the implications of planned legislation and draft provisions for women and men, in a way that makes their application equally predictable for women and men,²⁶³ as well as impact on children, youth, ethnic minorities and persons with disabilities. In 2016, the General Assembly, in its [resolution 70/148](#), urged States to ensure that gender equality and non-discrimination were taken into account when shaping, reviewing and implementing all counter-terrorism measures, and to promote the full and effective participation of women in those processes.
131. Moreover, states should ensure the broadest possible political and popular support for counter-terrorism legislation through an open, inclusive, transparent policy- and law-making process.²⁶⁴ **Amendments of the legislation on countering terrorism, given their potential to encroach on human rights and fundamental freedoms, should only be made after extensive, open and free public discussions, following a timeline that allows for wide and substantive debate, and involving various, also minority and religious or belief groups/communities, and public associations even if they are critical of the government.**²⁶⁵ The transparency, openness and inclusiveness of the process are generally considered to constitute key elements needed to adopt a sustainable text widely accepted by society as a whole, and representative of the will of the people.
132. Finally, the legislature should through a specialized body or otherwise, review upon adoption but also on a regular or on-going basis the relevant legislation to ensure that it conforms to the norms of international human rights and refugee law.²⁶⁶

[END OF TEXT]

²⁶² See e.g., *op. cit.* footnote 91, par 55 (2014 [UN CTITF's Basic Human Rights Reference Guide](#)).

²⁶³ See also e.g., *op. cit.* footnote 47, page 41 (2019 UNODC [Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism](#)).

²⁶⁴ *ibid.* par 55.

²⁶⁵ See OSCE, [1991 Moscow Document](#), par 18.1, which provides that “legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”. See also [OSCE Decision No. 3/13 on Freedom of Thought, Conscience, Religion or Belief](#), adopted on 6 December 2013 in Kyiv, which calls on OSCE participating States to “[e]ncourage the inclusion of religious and belief communities, in a timely fashion, in public discussions of pertinent legislative initiatives”; OSCE HCNM, [Ljubljana Guidelines on Integration of Diverse Societies](#) (2012), Principle 2 on page 9 and Principle 23 on page 32; and [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (April 2015).

²⁶⁶ See e.g., *op. cit.* footnote 91, par 56 (2014 [UN CTITF's Basic Human Rights Reference Guide](#)).

ANNEX:

LAW OF THE REPUBLIC OF UZBEKISTAN ON COMBATTING TERRORISM

I. GENERAL PROVISIONS

Article 1. The Purpose and Main Objectives of the Law

The purpose of this Law is regulation of relations in combating terrorism.

The main objectives of the Law are provision of security of the individual, society and the State from terrorism, protection of sovereignty and territorial integrity of the State, maintenance of civil peace and national accord.

Article 2. Main Definitions

The main terms used in this Law shall be defined as follow:

hostage — an individual, seized or held by terrorists in order to force public and administrative authorities, international organizations, and individuals to commit or restrain from a certain action as a condition for releasing the seized or held individual;

terrorism — violence, a threat of violence or other criminal acts, posing threat to human life and health, threat of destruction (damage) of property and other material objects, aiming to force a State, an international organization, an individual or a legal entity to commit or restrain from certain actions, complicate international relations, violate sovereignty and territorial integrity, undermine national security, provoke armed conflicts, intimidate population, cause socio-political destabilization, achieve political, religious, ideological and other objectives that entail liability under the Criminal Code of the Republic of Uzbekistan;



Comment by LexUz

See Article 155 of the Criminal Code of the Republic of Uzbekistan.

See the previous wording.

financing of terrorism — activity, aiming to support the existence, functioning and financing of a terrorist organization, traveling abroad or across the territory of the Republic of Uzbekistan for participation in terrorist activities, preparation and commission of terrorist acts, direct or indirect provision or raising of funds, resources, provision of other services for terrorist organizations or persons, supporting or participating in terrorist activities;

(Article 2 amended by adding the fourth unnumbered paragraph under Law of the Republic of Uzbekistan No LRU-405 of April 25, 2016 — CL RU, 2016, Iss. 17, Art.173)

See the previous wording.

terrorist— a person engaged in terrorist activity, as well as the one who travelled abroad or across the territory of the Republic of Uzbekistan for participation in terrorist activity;

(the fifth unnumbered paragraph of Article 2 as amended by Law of the Republic of Uzbekistan No LRU-405 of April 25, 2016 — CL RU, 2016, No 17, Iss.173)

terrorist group — a group of persons acting in collusion that has committed, prepared or attempted to commit a terrorist act;

terrorist organization— a stable union of two or more persons or terrorist groups formed with the purpose of terrorist activities;

anti-terrorist operation — a range of coordinated and interrelated special measures aiming to prevent a terrorist act and minimize its consequences, as well as to ensure security of individuals and to neutralize terrorists;

anti-terrorist operation zone —particular land and water areas, air space, vehicles, buildings, structures, facilities, premises and adjoining territories, where anti-terrorist operation is in progress;

terrorist activities — activities including organization, planning, preparation and implementation of a terrorist act, incitement to terrorism, creation of a terrorist organization, recruitment, training and arming of terrorists, providing financial and logistical support to them;

See the previous wording.

terrorist act — commission of a terrorist crime, including seizure or holding of hostages, infringement on life of a public figure, representatives of national, ethnic, religious or other groups, foreign states and international organizations, seizure, damage or destruction of state or public facilities, including fixed off-shore platforms in the continental shelf, explosion, arson, use or threat to use explosive devices, radioactive, biological, explosive, chemical and other toxic substances, hijacking, damage, destruction of ground, water and air vehicles, provoking panic and disorders in public places and during public events, causing harm or threat to human life and health, property of individuals and legal entities by arranging accidents, manmade disasters, pervasion of threats by any means and methods, commission of other actions of terrorist nature, as provide for by laws of the Republic of Uzbekistan and generally recognized norms of international law;

(the eleventh unnumbered paragraph of Article 2 as amended by Law of the Republic of Uzbekistan No LRU-405 of April 25, 2016 — CL RU, 2016, Iss. 17, Art.173)

international terrorism — terrorism, reaching beyond the borders of one state.

Article 3. Anti-Terrorist Legislation

The anti-terrorist legislation consists of this Law and other pieces of legislation.

If an international treaty of the Republic of Uzbekistan contains rules different from the rules set out in the anti-terrorist legislation of the Republic of Uzbekistan, the rules of the international treaty shall prevail.

Article 4. The Main Principles of Combatting Terrorism

Efforts to combat terrorism shall be guided by the following main principles:

lawfulness;

priority of rights, freedoms and legal interests of a person;

priority of terrorism prevention measures;

inevitability of punishment;

use of both overt and covert methods of combatting terrorism;

unity of command over the anti-terrorist operation, forces and equipment employed.

Article 5. Prevention of Terrorist Activities

Terrorist activities shall be prevented through a range of political, socioeconomic, legal and other measures, implemented by government bodies, citizens' self-governance bodies and public associations, as well as enterprises, establishments and organizations.

Activities to be prohibited shall include:

propaganda of terrorism;

creation and functioning of terrorist groups and organizations;

accreditation, registration and operation of legal entities, offices (branches) and representations thereof (including international and foreign organizations) involved in terrorist activities;

entry into the Republic of Uzbekistan of foreign citizens and stateless persons, involved in terrorist activities;

non-disclosure of information and facts about planned or committed terrorist acts.

Article 6. Assistance to Government Bodies Combatting Terrorism

State administration bodies, local government bodies, citizens' self-governance bodies, public associations, enterprises, establishments and organizations, officials and citizens shall provide necessary support and assistance to the government bodies combatting terrorism.

Article 7. International Cooperation of the Republic of Uzbekistan in Combating Terrorism

Cooperation of Republic of Uzbekistan with foreign states, their law-enforcement agencies, special services and international organizations in combatting terrorism shall be in line with the international treaties of the Republic of Uzbekistan.

II. COUNTER-TERRORISM POWERS OF GOVERNMENT BODIES

Article 8. Government Bodies Combatting Terrorism

The government bodies combatting terrorism are:

OSCE/ODIHR Comments on the Law on Combatting Terrorism of the Republic of Uzbekistan

State Security Service of the Republic of Uzbekistan;

(the second unnumbered paragraph of the first part of Article 8 as amended by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Article 47)

See the previous wording.

National Guard of the Republic of Uzbekistan;

(the third unnumbered paragraph of the first part of Article 8 as supplemented by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Article 47)

See the previous wording.

State Security Service of the President of the Republic of Uzbekistan;

(the fourth unnumbered paragraph of the first part of Article 8 as supplemented by Law of the Republic of Uzbekistan No. 3PY-564 of September 5, 2019 - National Database of Legislation, September 5, 2019, No. 03/19/564/3690)

Ministry of Internal Affairs of the Republic of Uzbekistan;

See the previous wording.

(the fourth unnumbered paragraph of the first part of Article 6 removed by Law of the Republic of Uzbekistan No 621-II of April 30, 2004 — Collection of the Legislation of the Republic of Uzbekistan, Iss. 25, and Art.287)

State Customs Committee of the Republic of Uzbekistan;

Ministry of Defense of the Republic of Uzbekistan;

Ministry of Emergency Situations of the Republic of Uzbekistan;

See the previous wording.

Department for Economic Crimes under the Prosecutor General's Office of the Republic of Uzbekistan;

(the seventh unnumbered paragraph of the first part of Article 8 as amended by Law of the Republic of Uzbekistan No LRU-516 of January 15, 2019 — National Database of Legislation, 16.01.2019, Iss.03/19/516/2484)

The State Security Service of the Republic of Uzbekistan shall be responsible for coordinating activities of the government bodies combatting terrorism and ensuring their interaction in prevention, detection and suppression of terrorist activities and minimization of their consequences.

(part two of Article 8 as amended by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Art. 47)

See the previous wording.

Article 9. Counter-Terrorism Powers of the State Security Service of the Republic of Uzbekistan

(title of Article 9 as amended by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Article 47)

See the previous wording.

The State Security Service of the Republic of Uzbekistan shall:

(paragraph one of the first part of Article 9 as amended by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Article 47)

See the previous wording.

combat terrorism, including international, through preventing, detecting and suppressing terrorist activities;

collect and analyse information about activities of terrorists, terrorist groups and organizations, assess threats to national security posed by them, provide necessary information to corresponding ministries, state committees and agencies;

ensure safety and security of the State Border from penetration of terrorists in the Republic of Uzbekistan;

take measures to prevent, detect and suppress illegal movement across the State Border of the Republic of Uzbekistan of weapons, ammunition explosives, radioactive, biological, chemical and other toxic substances, items and materials that can be used for committing terrorist acts;

identify, neutralize and in the face of resistance take measures to destroy terrorists, terrorist groups within the border area;

ensure protection of particularly important and categorized facilities of the Republic of Uzbekistan, as well as government agencies located outside the Republic of Uzbekistan, employees of these agencies and members of their families;

See the previous wording.

(the eighth paragraph of the first part of article 9 removed by Law of the Republic of Uzbekistan No. 3PY-564 of September 5, 2019 - National Database of Legislation, September 5, 2019, No. 03/19/564/3690)

cooperate with corresponding agencies of foreign states and international organizations in combatting international terrorism;

ensure organization of activities of anti-terrorist units aimed at detection, neutralization and destruction of terrorists, terrorist groups and liquidation of terrorist organizations;

exercise other powers in accordance with the law.

(Article 9 as amended by Law of the Republic of Uzbekistan No 621-II of April 30, 2004 — Collection of the Legislation of the Republic of Uzbekistan, 2004, Iss. 25, Art.287)

See the previous wording.

Article 9¹. Powers of the National Guard of the Republic of Uzbekistan in the fight against terrorism

The National Guard of the Republic of Uzbekistan:

takes part in the fight against terrorism, ensuring law enforcement, as well as public order and security;

participates in the elimination of the consequences of terrorist acts;

exercises other powers in accordance with the law.

(Article 9¹ was introduced by Law of the Republic of Uzbekistan No. 3PY-522 of February 18, 2019 - Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Art. 47)

See the previous wording.

Article 9². Powers of the State Security Service of the President of the Republic of Uzbekistan in the field of combating terrorism

The State Security Service of the President of the Republic of Uzbekistan:

ensures the safety and security of the President of the Republic of Uzbekistan, members of his family, as well as heads of foreign states and governments, heads of international organizations and other persons subject to protection during their stay on the territory of the Republic of Uzbekistan;

ensures the security of permanent and temporary residence facilities, as well as travel routes of protected persons;

exercises other powers in accordance with the law.

(Article 9² was introduced by Law of the Republic of Uzbekistan No. 3PY-564 of September 5, 2019 - National Database of Legislation, September 5, 2019, No. 03/19/564/3690)

Article 10. Counter-Terrorism Powers of the Ministry of Internal Affairs of the Republic of Uzbekistan

The Ministry of Internal Affairs of the Republic of Uzbekistan shall:

combat terrorism, including international, through preventing, detecting and suppressing terrorist activities and minimizing their consequences;

ensure protection of particularly important and categorized facilities;

provide information about individuals, groups and organizations, linked to terrorist activities, to respective public and administrative authorities;

exercise other powers in accordance with the law.

See the previous wording.

(Article 11 removed by Law of the Republic of Uzbekistan No 621-II of April 30, 2004 — Collection of the Legislation of the Republic of Uzbekistan, 2004, Iss. 25, Art.287)

Article 12. Counter-Terrorism Powers of the State Customs Committee of the Republic of Uzbekistan

The State Customs Committee of the Republic of Uzbekistan shall:

take measures to prevent, identify and suppress attempts of illegal movement of narcotic, psychotropic and explosive substances, explosive devices, materials, weapons and ammunition, nuclear, biological, chemical weapons or other weapons of mass destruction, materials and equipment that can be used for committing terrorist acts;

exercise other powers in accordance with the law.

Article 13. Counter-Terrorism Powers of the Ministry of Defense of Republic of Uzbekistan

The Ministry of Defense of the Republic of Uzbekistan shall:

ensure safety of the air space of the Republic of Uzbekistan, protect administrative, industrial and economic centers and regions of the country, important military facilities and other facilities from airstrikes;

ensure safety and security of military facilities within its jurisdiction;

participate in anti-terrorist operations;

exercise other powers in accordance with the law.

Article 14. Counter-Terrorism Powers of the Ministry of Emergency Situations of the Republic of Uzbekistan

The Ministry of Emergency Situations of the Republic of Uzbekistan shall:

coordinate activities of ministries, state committees, agencies, local government bodies and take measures to protect the population from emergencies, ensure stable operation of particularly important, categorized facilities and other facilities that might be targeted by terrorists, and eliminate consequences of terrorist acts;

exercise other powers in accordance with the law.

See the previous wording.

See the previous wording.

Article 14¹. Counter-Terrorism Powers of the Department for Economic Crimes under the Prosecutor General's Office of the Republic of Uzbekistan

(the title of Article 14¹ amended by Law of the Republic of Uzbekistan No LRU-516 of January 15, 2019 — National Database of Legislation, 16.01.2019, Iss. 03/19/516/2484)

See the previous wording.

The Department for Economic Crimes under the Prosecutor General's Office of the Republic of Uzbekistan shall:

(the first unnumbered paragraph of Article 14¹ as amended by Law of the Republic of Uzbekistan No LRU-516 of January 15, 2019 — National Database of Legislation, 16.01.2019, Iss. 03/19/516/2484)

monitor monetary transactions or other property transactions to detect and suppress financing of terrorism;

make decisions for suspending monetary or property transactions where and as provided for by law;

exercise other powers in accordance with the law.

(Article 14¹ added by Law of the Republic of Uzbekistan No LRU-405 of April 25, 2016 — CLRU, 2016, Iss. 17, Art.173)

III. CONDUCT OF ANTITERRORIST OPERATIONS

Article 15. Terrorist Act Suppression

All necessary measures provided for by law, including anti-terrorist operations, shall be taken to suppress a terrorist act.

Article 16. Command and Control of Anti-Terrorist Operations

Command and control of anti-terrorist operations shall be arranged in each particular case, considering degree of threat and danger of a terrorist act, and shall be entrusted to corresponding defense and law-enforcement agencies.

When necessary, headquarters shall be set up to coordinate efforts of corresponding defense and law-enforcement agencies and forces, engaged in neutralization and liquidation of terrorist threat.

Article 17. Negotiating with Terrorists

Depending on nature of a terrorist act, negotiations with terrorists may be conducted to save human life and health, material values, release hostages, and assess the likelihood of thwarting a terrorist act without using force.

Negotiations shall be conducted by persons specially authorized by the commander of the antiterrorist operation.

Negotiations with terrorists cannot serve as ground or condition for their discharge from responsibility for their crimes.

If the objective of negotiations cannot be reached in their course because of terrorists' refusal to stop the terrorist act, and if a real threat to human life and health persists, necessary measures shall be taken to neutralize and destroy the terrorists.

Article 18. Boundaries of the Anti-Terrorist Operation Zone

Boundaries of the antiterrorist operation zone shall be determined by the operation command, considering local terrain and conditions, as well as degree of public threat posed by the terrorist act.

Article 19. Rights of Persons Engaged in Anti-Terrorist Operation within the Operation Zone

Persons engaged in anti-terrorist operation within the operation zone shall be entitled to:

take measures, when necessary, for temporary restriction or prohibition of vehicular and pedestrian traffic in streets and on roads, prevent vehicles, including that of diplomatic missions, consulates, and individuals, from entering certain areas and facilities, as well as tow off vehicles that have no special stickers;

check identifying documents of individuals and detain them for identification if they don't have such documents;

detain and take to corresponding bodies individuals, who commit offences or other actions aimed at resisting legal requests of anti-terrorist operation participants, also actions related to unauthorized or attempted penetration into the anti-terrorist operation zone;

freely enter (penetrate) at any time premises and buildings of enterprises, establishments and organizations, residential accommodations and other premises, land property, and transport means for suppressing a terrorist act and chasing suspects, if a delay can endanger human life and health, security of society and the State;

conduct personal search of individuals entering or exiting (on foot or by car) the antiterrorist operation zone, inspect their luggage, vehicles and cargoes they carry, including with use of technical equipment and other inspection means;

use for official purposes private communication and transport means (except for communication and transport means of diplomatic missions and other foreign and international organizations) in order to prevent a terrorist act, chase and detain persons, who committed or presumably committed a terrorist act, get to the scene of the accident, and take those who need emergency medical assistance to hospital;

use against terrorists all kinds of weapons, military equipment and impact munition at hand.

Article 20. Interaction with Mass Media

Representatives of mass media within the anti-terrorist operation zone shall interact with field command of the anti-terrorist operation.

Representatives of mass media shall be prohibited from publishing information that:

discloses special techniques and tactics of the antiterrorist operation;

can hinder the anti-terrorist operation, endanger human life of health;

propagandizes or justifies terrorism;

concerns the personnel of forces engaged into the operation and persons assisting the operation.

Article 21. Completion of an Anti-Terrorist Operation

An anti-terrorist operation shall be deemed completed upon suppression (thwarting) of a terrorist act and elimination of threat to life and health of people within the anti-terrorist operation zone.

IV. COMPENSATION FOR DAMAGE AND SOCIAL REHABILITATION OF PERSONS AFFECTED BY A TERRORIST ACT

Article 22. Compensation for Damage Caused by a Terrorist Act

Damage caused by a terrorist act shall be compensated in accordance with the procedure established by law.



Comment by LexUz

For more details, see Chapter 57 of the Civil Code of the Republic of Uzbekistan (“Obligations Arising as a Result of Damage”) and Section Five of the Criminal Procedure Code of the Republic of Uzbekistan (“Compensation for Pecuniary Damage Caused by Crime”).

Article 23. Compensation for Damage Caused as a Result of Anti-Terrorist Operation

See the previous wording.

Personal injury and pecuniary damage caused to individuals or legal entities as a result of an anti-terrorist operation shall be compensated by the State in accordance with the procedure established by law.

(first part of Article 23 as amended by Law of the Republic of Uzbekistan No LRU-389 of August 10, 2015— CL RU, 2015, Iss. 32, Art.425)



Comment by LexUz

For more details, see Chapter 57 of the Civil Code of the Republic of Uzbekistan (“Obligations Arising as a Result of Damage”) and Regulation on Compensation for Personal Injury and Pecuniary Damage, Caused to Individuals or Legal Entities as a Result of an Anti-Terrorist Operation, approved by Decree No170 of the Cabinet of Ministers of the Republic of Uzbekistan of May 24, 2016.

Personal injury caused to an individual while thwarting his/her participation in a terrorist act shall not be subject to compensation.

Article 24. Social Rehabilitation of Persons Affected by a Terrorist Act

Social rehabilitation of persons affected by a terrorist act shall be aimed at returning them to normal life and activities and shall involve provision to such persons of legal assistance, psychological, medical and professional rehabilitation, employment, decent dwelling when necessary and other kinds of assistance in accordance with law.

The procedure for social rehabilitation of persons affected by a terrorist act shall be established by the Cabinet of Ministers of the Republic of Uzbekistan.

V. LEGAL AND SOCIAL PROTECTION OF PERSONS ENGAGED IN COUNTER-TERRORISM

Article 25. Persons Engaged in Counter-Terrorism, Subject to Social Protection

Persons engaged in counter-terrorism are under state protection.

Persons subject to legal and social protection are as follows:

military servicemen, employees and specialists of government bodies directly involved in combatting terrorism;

persons on permanent or temporary basis assisting government bodies combatting terrorism in prevention, detection, suppression, investigation of terrorist activities and minimization of their consequences;

family members of the persons listed in the [second](#) and the [third](#) unnumbered paragraphs of this part, if the need for protecting them is conditioned by participation of the mentioned persons in counter-terrorism efforts.

If there is a threat to life or health of persons directly involved in countering terrorism, as well as to members of their families, they shall have an opportunity to change their appearances, last names, first names and patronymics, as well places of work and residence upon their request at the expense maintenance funds of counter-terrorism agencies.

Article 26. Compensation for Damage to Life and Health of Persons Combatting Terrorism

If a person engaged in counter-terrorism is killed during an anti-terrorist operation, his/her family members and dependants shall be paid a lump sum allowance and awarded a survivor's pension in accordance with law.



Comment by LexUz

For more details, see [Chapter IV](#) (“Survivor’s Pensions”) of the Law of the Republic of Uzbekistan “On State Pension Provision of Citizens”.

A person engaged in counter-terrorism, who received an injury during an anti-terrorist operation, resulting in loss of labor capacity and disability, shall be paid a lump-sum allowance and granted a disability pension in accordance with law.



Comment by LexUz

For more details, see [Chapter III](#) (“Disability Pensions”) of the Law of the Republic of Uzbekistan “On State Pension Provision of Citizens”.

A person engaged in counter-terrorism, who received an injury during an anti-terrorist operation that did not result in loss of labor capacity and disability, shall be paid a lump-sum allowance in accordance with law.



Comment by LexUz

Issues related to compensation of damages caused to employees are regulated by Arts.187—197 of the Labor Code of the Republic of Uzbekistan, as well as by [Rules for Compensating Damages Caused to Employees by Injuries, Occupational Diseases or Other Damages to Health Arising out of Their Employment](#), approved by Decree No 60 of the Cabinet of Ministers of the Republic of Uzbekistan of February 11, 2005.

Article 27. Privileged Service Computation

Military servicemen and government employees serving in units directly engaged in counter-terrorism efforts, shall have one day of service counted for two and one day of participation in anti-terrorist operations counted for three during service computation for assignment of pensions.

Specialists and other persons outsourced for participation in anti-terrorist operations shall have one day of participation counted for three during service computation for assignment of pensions.

The procedure for privileged service computation shall be established by law.

VI. LIABILITY FOR PARTICIPATION IN TERRORIST ACTIVITIES AND VIOLATION OF ANTI-TERRORIST LEGISLATION

Article 28. Liability for Participation in Terrorist Activities

Persons participating in terrorist activities shall be held liable under the law.



Comment by LexUz

See [Article 155 of the Criminal Code of the Republic of Uzbekistan](#).

A person, who voluntarily renounces terrorist activity, informs respective authorities about this fact and actively assists in preventing grave consequences and achievement of goals by terrorists may be discharged from liability in accordance with the law.



Comment by LexUz

Under [Article 26 of the Criminal Code of the Republic of Uzbekistan](#), discontinuance of preparations for or commission of a crime, if a person was aware of ability to complete it, as well as prevention of criminal consequence, if a person was aware of the possibility of its onset, shall be recognized as voluntary renunciation. Voluntary renunciation shall exclude liability. A person voluntarily renouncing completion of a crime shall be held liable under the Criminal Code if the actual act committed by him/her contains all elements of another crime.

Article 29. Organizational Liability for Terrorist Activities

An organization shall be designated as terrorist and subject to liquidation by court ruling.

In case of liquidation of an organization designated as terrorist, its property shall be confiscated and transferred into state ownership.

If designated as terrorist by court of the Republic of Uzbekistan, an international organization (its office, branch, representation), registered outside the Republic of Uzbekistan, shall be prohibited in the Republic of Uzbekistan and liquidated, while property of this organization (its office, branch, representation) based in the Republic of Uzbekistan, shall be confiscated and transferred into state ownership.

Article 30. Discharge from Liability for Damage

Military servicemen, specialists and other participants of an anti-terrorist operation shall be discharged from liability for unwillingly causing damage during the operation.

Article 31. Liability for Violating Anti-Terrorist Legislation

Persons responsible for violating anti-terrorist legislation shall be held liable according to the established procedure.

I. KARIMOV, President of the Republic of Uzbekistan

Tashkent,

December 15, 2000,

No 167-II

(Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2001, Iss. 1-2, Art.15; Collection of the Legislation of the Republic of Uzbekistan, 2004, Iss. 25, Art.287; 2015, Iss. 32, Art. 425; 2016, Iss. 17, Art.173; National Database of Legislation, 16.01.2019, Iss. 03/19/516/2484, 2019 e., № 2, Art. 47, 05.09.2019, Iss. 03/19/564/3690)