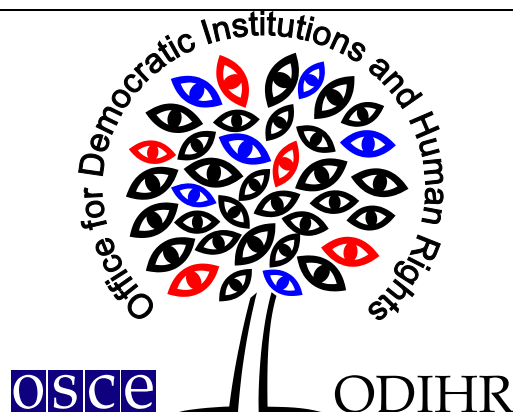


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COMMENTS

ON THE LAW ON COUNTERING “EXTREMISM” OF THE REPUBLIC OF UZBEKISTAN

**based on an unofficial English translation of the Law provided by the Office of the
OSCE Project Co-ordinator in Uzbekistan**

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

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Annex: Law on Countering Extremism 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 (ODIHR) a request for a legal review of several laws and decrees relating to countering “extremism”, combatting terrorism, 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 Combatting Terrorism (hereafter “the Anti-Terrorism Law”) and on the Law on Countering Extremism (hereafter “the Anti-Extremism Law”), which should be read together.¹*
2. *On 27 May 2019, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal review on the compliance of these legal acts with OSCE commitments and international human rights standards. In light of the subject-matter, in July 2019, ODIHR invited the OSCE Representative on Freedom of the Media to contribute to this legal review.*
3. *These Comments, which analyze the Anti-Extremism Law, 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-Extremism 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 “terrorism” and so-called “extremism” in 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 relevant international standards and OSCE commitments. 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 (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-Extremism Law provided by the Office of the OSCE Project Co-ordinator in Uzbekistan, which is attached to this document as an Annex. Errors from translation may result. These

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 See, especially, pars 6, 18 and 22 of the *OSCE Bucharest Plan of Action for Combating Terrorism, 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 (hereafter “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).

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. Countering violent extremism and radicalization that lead to terrorism (VERLT) is a strategic focus area for the OSCE in the fight against terrorism.⁵ At the same time, ODIHR and other international bodies have consistently raised concerns pertaining to “extremism”/“extremist” as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation.⁶ In that perspective, the 2018 Law on Countering Extremism, on account of its broad and imprecise wording, particularly of the basic notions defined by the Law – such as the definitions of “extremism”, “extremist activity”, or “extremist materials”, gives too wide discretion to those tasked with its implementation, thus potentially leading to arbitrary application/interpretation. More generally, it is questionable whether specific legislation on countering so-called “*extremism*” should be retained at all, given the inherent difficulty of providing a legal definition of the term “*extremism*”, the serious human rights concerns arising from vague and overbroad definitions and provisions as well as the substantial overlap of such legislation with other provisions, especially criminal legislation.
10. Overall, the scope of the Law itself is overbroad and vague, especially the prohibitions enshrined in the Law. The term “*extremism*” is not always necessarily connected with acts of violence or criminal offences (defined in compliance with international human rights standards) and covers other forms of amorphous “threats”. The breadth and ambiguity of the definitions cast doubts regarding the purpose of the Law and the potential range of prohibited conducts or activities, which creates a particular risk that it will be used as a tool for the suppression of legitimate activities or expressions such as political dissent, democratic participation, human rights or civil society activism. If the Law is nevertheless retained, the legal drafters should substantially revise it to ensure its compliance with international human rights standards and OSCE commitments and to reflect the need to safeguard legitimate activities, especially the exercise of human

⁵ OSCE, Permanent Council Decision No. 1063, [Consolidated Framework for the Fight against Terrorism](#).

⁶ See e.g., ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, pp. 21 and 31; and OSCE, [Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), Sub-Section 2.3.1. See also ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), pars 21-24; ODIHR, [Comments on the Draft Laws of the Republic of Kazakhstan “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities”](#) (11 February 2005), pars 2-3 and 11-15; ODIHR, [Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan](#) (20 October 2004), pages 5-7; and ODIHR, [Preliminary Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan](#) (23 June 2004), pars 4.1. to 4.3. See also UN Special Rapporteur on freedom of religion or belief, [2014 Report on the Mission to the Republic of Kazakhstan](#), A/HRC/28/66/Add.1, 23 December 2014, pars 44-51; ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), pars 100, 205 and 213; Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, par 30; UN Human Rights Committee (CCPR), [General Comment No. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, par 46, where the Committee has stressed the need to ensure that offences such as “*extremist activity*” are clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression.

rights and fundamental freedoms and activities of human rights and humanitarian organizations. The activities that are prohibited by the Law for being “*extremist*” and leading to preventive and corrective measures should always require violence as an essential element and be defined with sufficient precision to allow individuals to regulate their conduct or the activities of an organization so as to avoid the application of such measures. The powers conferred to public authorities by the Law are in turn far-reaching, and there is currently no clear legislative framework to regulate and limit the exercise of these powers, clearly detailing the circumstances in which such powers may be used, to what end, and subject to what procedures and safeguards, especially relating to accountability mechanism and access to remedies. More generally, the Law should be accompanied by broader policy and/or programmatic initiatives, including preventive measures, that are themselves compliant with international human rights standards.

11. More specifically, and in addition to what was stated above, ODIHR makes the following recommendations:
 - A. to reconsider whether the Law should be retained at all and if it is, to substantially revise its definitions and other substantive provisions to ensure that it exclusively addresses “*violent extremism*”, and more generally is more precisely defined, while safeguarding legitimate activities, especially the exercise of human rights and fundamental freedoms and activities of human rights and humanitarian organizations; [pars 21 and 29]
 - B. to ensure that so-called “*incitement to racial, national, ethnic or religious hatred*” as part of the definition of “*extremism*” and “*extremist activities*” is prohibited only if the expression is intended to incite imminent violence, is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; [par 25]
 - C. to provide in the Law protection or exceptions for statements or dissemination of materials when they are 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, as well as when there are legitimate justifications for possession of such materials, for example by academics, artists, journalists or lawyers; [pars 27 and 48]
 - D. to remove the reference to “*inevitability of punishment*” from Articles 4 and 5; [par 32]
 - E. to amend Articles 7 and 8 of prevention of (violent) “*extremism*” by:
 - removing references to repressive measures; [par 35]
 - reflect the objective of respecting, protecting and facilitating human rights and fundamental freedoms as a means to prevent VERLT; [pars 31 and 36]
 - explicitly refer to the promotion of equality and non-discrimination; [par 37]
 - supplement them by other types of preventive measures to address the conditions conducive to violent extremism (such as creating economic, educational and employment opportunities; developing community policing approaches; partnering with civil society; engaging and empowering women, youth, communities and representatives from minorities or vulnerable groups in policy-making and implementation, etc.); [par 38]
 - reflect the objective of rehabilitation and reintegration; [par 38]

- remove the reference to “*strengthening cultural traditions, spiritual, moral and patriotic upbringing*” from Article 8; [par 39]
- F. to specify the procedures available in order to guarantee the effective enjoyment of the right to appeal the warning/notice issued before an independent and impartial tribunal, including the right to access - and meaningfully challenge - the information on which the warning and notice is based; [par 42]
- G. to ensure that suspension of legal entities provided in Article 10 can only be imposed or reviewed by a court and that, concerning prohibition of legal entities, the Supreme Court will promptly review both facts and laws and not automatically pronounce their prohibition and respect all due process guarantees, while ensuring that suspension and prohibition can only be pronounced for activities that constitute criminal offences, which are themselves compliant with international standards; [pars 43 and 45]
- H. to provide in Article 11 that the restriction of Internet access and other telecommunications networks and media should only be possible when the said behaviours constitutes a criminal offence in national law, which should itself be in compliance with international human rights standards, and only if imposed by judicial bodies, following appropriate court procedures respecting minimum due process guarantees; [pars 49 and 51]
- I. to more strictly define “financing of (violent) extremism” while ensuring that any suspension of financial transaction and freezing of funds or other property can only be applied to individuals convicted for “violent extremism” or organizations designated as (violent) “extremist organizations” based on a court ruling and providing clear and specific references to due process and outline the procedure whereby an individual or a legal entity can promptly challenge the freezing of funds or other property or the suspending of transactions before an independent and impartial tribunal; [pars 52-56] and
- J. to ensure that in the context of “international co-operation”, the authorities must respect the principle of *non-refoulement* and provide adequate substantive and procedural safeguards when expelling non-nationals, as well as when transferring/sharing personal data. [pars 59-61]

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

IV. ANALYSIS AND RECOMMENDATIONS

1. Relevant International Standards and OSCE Commitments

12. The term “*extremism*” is not an agreed upon legal concept and has multiple meanings. It may describe ideas that are diametrically opposed to a society’s core values, and/or refer to the “*ruthless methods*” by which political ideas are realised, namely by “*show[ing] disregard for the life, liberty, and human rights of others*”.⁷

⁷ See e.g., OSCE Chairperson in Office’s Special Representative on Countering Radicalisation and Violent Extremism, [Report on Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE](#)

13. There is no consensus at the international level on a legal definition of “*extremism*”.⁸ It is noted, however, that, in the context of the Shanghai Cooperation Organization, of which the Republic of Uzbekistan is a member, two conventions that the Republic of Uzbekistan has ratified contain some definitions of “*extremism*”. While the [Shanghai Convention on Combating Terrorism, Separatism, and Extremism \(2001\)](#),⁹ requires violence as an essential element of the definition of “*extremism*”,¹⁰ the 2017 [Convention to Combat Extremism](#) no longer necessarily requires violent acts but refers more broadly to “*violent and other unconstitutional actions*” when defining so-called “*extremism*”.¹¹
14. ODIHR and other international bodies have previously raised concerns pertaining to “*extremism*”/“*extremist*” as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation.¹² As 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”) noted in a recent report, the term “*extremism*” is *per se* “*a poorly defined concept that has already been used to target civil society and human rights defenders*”.¹³ Indeed, it is extremely vague, too broad in scope and could potentially be subject to various and potentially arbitrary interpretation, thus failing to fulfil the requirement of legal certainty and foreseeability. This is even more important in the context of criminal legislation, where the *nullum crimen sine lege* principle requires that criminal offences and related penalties be defined clearly and precisely.¹⁴ Such a principle requires that individuals know from the wording of a criminal provision which acts will make them criminally liable, while criminal law should also ensure that each crime has a defined material and mental element providing the basis for individual culpability and that there is a close connection between the individuals’ own conduct and a harm suffered or serious danger caused.
15. Generally speaking, actions or behaviours sometimes defined as “*extremist*” do not necessarily, in themselves, constitute a threat to society and as such cannot justify restrictions to rights, if it is not connected to violence or other criminal acts, which should themselves be defined in compliance with international human rights law.¹⁵ At the same time, actions involving violence, as a rule, are generally covered by criminal legislation. The possibility to peacefully pursue a political, or any other, agenda – even

[Region](#), 29 September 2017, p. 15, referring to Roger Scruton, *The Palgrave Macmillan Dictionary of Political Thought*, 3rd ed. (Basingstoke: Palgrave Macmillan, 2007).

⁸ See e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter “UN Special Rapporteur on counter-terrorism”), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras 11 and 21, noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”.

⁹ See <<http://www.cfr.org/counterterrorism/shanghai-convention-combating-terrorism-separatism-extremism/p25184>>. The Republic of Uzbekistan ratified the Convention on 30 August 2001.

¹⁰ Article 1 of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism defines “*extremism*” as “*an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties*”.

¹¹ Shanghai Cooperation Organization, [Convention of the Shanghai Cooperation Organization to Combat Extremism](#) (Astana, 9 June 2017), ratified by the Republic of Uzbekistan on 4 April 2018 (see [here](#)). Article 2 par 1 (2) of the Convention defines “*extremism*” as: “*ideology and practices aimed at resolving political, social, racial, national and religious conflicts through violent and other unconstitutional actions*”.

¹² See the reference documents cited in *op. cit.* footnote 6.

¹³ UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, par 19.

¹⁴ CCPR, [General Comment No. 29 on States of Emergency](#) (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add. 11 (2001), par 7.

¹⁵ *Op. cit.* footnote 8, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 6, pages 42-43 (2014 ODIHR’s Guidebook on Preventing Terrorism and Countering VERTL).

where different from the objectives of the government and considered to be “*extreme*” – is protected by the right to freedom of expression.¹⁶

16. In practice, the vagueness of the term “*extremism*” generally allows States to adopt highly intrusive, disproportionate and discriminatory measures,¹⁷ as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called “*extremism*” charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment in the Republic of Uzbekistan.¹⁸
17. In its current wording, the 2018 Law on Countering “Extremism” could especially affect the exercise of the rights to freedom of thought, conscience and religion (Article 18 of the ICCPR), freedom of expression (Article 19 of the ICCPR), freedom of association (Article 22 of the ICCPR) and freedom of peaceful assembly (Article 21 of the ICCPR). All of these rights are also part of the OSCE commitments, which participating States committed to adhere to. Of particular importance are paragraphs 9 and 10 of the [1990 Copenhagen Document](#).¹⁹ Any restriction of those rights must thus be “*prescribed by law*” (i.e., provided in precise and accessible law that makes clear when the restrictions will be necessary), pursue a “*legitimate aim*” provided by international human rights law, be “*necessary in a democratic society*”, and as such respond to a pressing social need, and be non-discriminatory.
18. Among the key human rights concerns is the impact on freedom of expression. It is often reiterated that freedom of expression protects all forms of ideas, information or opinions, including those that “*offend, shock or disturb*” the State or any part of the population,²⁰ even “*deeply offensive*” speech.²¹ While the right to freedom of expression may in limited cases be restricted, any such restrictions must strictly conform with the requirements of international human rights standards.²² In that respect, Article 20 par 2

¹⁶ *ibid.* par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism).

¹⁷ See also UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, par 19.

¹⁸ See UN Special Rapporteur on freedom of religion or belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, pars 98 and 101. UN General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018); and CCPR, [Concluding Observations on Uzbekistan](#), CCPR/C/UZB/CO/4 (17 August 2015), pars 17 and 22.

¹⁹ [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#); the relevant parts of paragraphs 9 and 10 state: “*everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.*” (9.1); “*the right of association will be guaranteed*” (9.3) “*In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information*” (10.1).

²⁰ *Op. cit.* footnote 8, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also for the purpose of comparison e.g., European Court of Human Rights (ECtHR), [Handyside v. United Kingdom](#) (Application no. 5493/72, judgment of 7 December 1976), par 49; and [Bodrožić v. Serbia](#) (Application no. 32550/05, judgment of 23 June 2009), pars 46 and 56.

²¹ See *op. cit.* footnote 6, pars 11 and 38 (2011 CCPR General Comment No. 34).

²² See e.g., Article 19 (3) of the UN International Covenant on Civil and Political Rights (ICCPR), which states that the right to freedom of expression may “be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals”. See also Article 20 of the ICCPR as well as Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination, Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, and UN [Security Council resolution 1624\(2005\)](#). Under Article 20 of the ICCPR, States are required to have legal prohibitions for certain forms of expression (“any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, see below). However, as the UN Human Rights Committee has noted, every case in which the State restricts freedom of expression, including those covered by Article 20, must be in strict conformity with the requirements of Article 19 ICCPR, see *op. cit.* footnote 6, pars 50-52 (2011 CCPR General Comment No. 34).

of the International Covenant on Civil and Political Rights (ICCPR)²³ states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Moreover, pursuant to Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination²⁴ (hereafter “CERD”),²⁵ “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” shall be considered offences punishable by law. However, for forms of expression to constitute “incitement” that is prohibited, the following three criteria need to be met cumulatively: (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.²⁶ Otherwise, simply peacefully expressing views that are considered “radical” or “extreme” under any definition should never be prohibited or criminalized, unless associated with such violence or criminal activity, itself defined in compliance with international human rights standards.²⁷

19. At the OSCE level, participating States expressly committed to countering VERLT,²⁸ which is directly connected with violence and terrorism, and as such is clearly distinct from so-called “extremism”. These commitments have been reaffirmed, in particular, in the [2012 OSCE Consolidated Framework for the Fight Against Terrorism](#) and the [2015 Ministerial Declaration on “Preventing and Countering Violent Extremism And Radicalization that lead to Terrorism”](#).²⁹

2. General Remarks

²³ *UN International Covenant on Civil and Political Rights* (hereafter “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.

²⁴ *International Convention on the Elimination of All Forms of Racial Discrimination* (hereafter “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.

²⁵ While recognizing that the term “race” is a purely social construct that has no basis as a scientific concept, for the purpose of the opinion, the term “race” or “racial” may be used in reference to international instruments using such a term to ensure that all discriminatory actions based on a person’s (perceived or actual) alleged “race”, ancestry, ethnicity, colour or nationality are covered – while generally preferring the use of alternative terms such as “ancestry” or “national or ethnic origin” (see e.g., ODIHR, [Hate Crime Laws: A Practical Guide](#) (2009) pages 41–42; see also the footnote under the first paragraph of Council of Europe’s Commission on Intolerance and Racism (ECRI), [General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination](#), adopted on 13 December 2002, where it is stated that “[s]ince all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘races’”. However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to ‘another race’ are not excluded from the protection provided for by the legislation”). Except when part of a citation from a legal instrument or case law, the word “race” or “racial” is placed in quotation marks in this Opinion to indicate that underlying theories based on the alleged existence of different “races” are not accepted.

²⁶ See UN Special Rapporteur on freedom of opinion and expression (hereafter “UN Special Rapporteur on freedom of expression”), the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereafter “the International Special Rapporteurs/Representatives on Freedom of Expression”), [2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), 3 May 2016, par 2 (d); and 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 convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on freedom of opinion and expression. 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.

²⁷ *Op. cit.* footnote 8, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 6, page 42 (2014 ODIHR’s Guidebook on Preventing Terrorism and Countering VERLT). It is worth noting that, with respect to the freedom of thought can never be punished or limited, in accordance with the principle *cogitationis poenam nemo patitur*, i.e., nobody endures punishment for thought.

²⁸ OSCE Ministerial Council, [Decision on “Further Promoting the OSCE’s Action in Countering Terrorism”](#), MC.DEC/10/08, 5 December 2008.

²⁹ See OSCE, [Permanent Council Decision No. 1063](#), PC.DEC/1063, 7 December 2012; and OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism](#), MC.DOC/4/15, 4 December 2015.

20. At the outset, it is worth noting that “*extremism*” *per se* does not constitute a criminal offence under the Criminal Code of the Republic of Uzbekistan, though a number of behaviours or activities listed under the definition of “*extremist activities*” in Article 3 themselves constitute, or overlap to a certain extent with the definition of, specific criminal offences, especially Articles 155 (Terrorism), 156 (Incitement of National, Racial, Ethnic, or Religious Enmity), 159 (Violations of the constitutional system of the Republic of Uzbekistan), 244 (Mass Riots), and 244¹ (Production, storage, distribution or demonstration of materials containing a threat to public safety and public order), among others. It is not clear why the legal drafters have chosen to create an umbrella term to address behaviours that already constitute criminal offences and are as such already prohibited. This also creates a confusing legal situation where several sets of rules that are overlapping to a certain extent are applicable to the same conduct, which may give rise to questions as to the certainty and foreseeability of the legislation³⁰ (see also Sub-Section 3 *infra*).
21. As will be elaborated in the following sections, it is questionable whether specific legislation on countering so-called “*extremism*” should be retained at all, given the inherent difficulty of providing a normative definition of the term “*extremism*”, the serious human rights concerns arising from vague and overbroad definitions or provisions, the far-reaching powers conferred to the public authorities to counter “*extremism*” and the substantial overlap of such legislation with other provisions, especially criminal legislation. **It is therefore recommended to reconsider whether the Law should be retained at all. If it is nevertheless, the legal drafters should substantially revise its definitions and other substantive provisions to ensure that it exclusively addresses “violent extremism” and fully complies with international human rights standards and OSCE commitments, while safeguarding legitimate activities, especially the exercise of human rights and fundamental freedoms and activities of human rights and humanitarian organizations.**
22. Finally, a recurring feature of the Law is its failure to recognize or to satisfy the strict legal requirements that must be in place to justify restricting rights in compliance with international human rights standards (see par 17 *supra*). The onus should always be on the authorities to justify the specific restrictive measure(s) based on a threat to national security that is not merely abstract or hypothetical,³¹ showing that it is necessary and proportionate based on a specific risk assessment of the individual case and context.

3. Definition of So-called “Extremism” and “Extremist Activities”

23. While it is welcomed that the Anti-Extremism Law, compared to prior drafts, seeks to specify the particular activities that are prohibited, the definitions contained in Article 3, in their present form, remain, in part, still vaguely formulated which could lead to different interpretations and potential arbitrary application of the Law.
24. “Extremism” is defined as the “*expression of extreme forms of actions, focused on destabilizing social and political situation, violent change in the constitutional order in Uzbekistan, violent seizure of power and usurping its authority, inciting national, racial, ethnic or religious hatred*”. What is encompassed by the reference to “*extreme forms of actions, focused on destabilizing social and political situation*” is not clear and

³⁰ See, for the purpose of comparison, ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), par 34.

³¹ See e.g., *op. cit.* footnote 6, page 57 (2018 ODIHR *Guidelines on “Foreign Terrorist Fighters”*).

may be interpreted in various manners, while not necessarily implying some violent acts.

25. Moreover, the definition somewhat overlaps with Article 156 of the Criminal Code, which condemns the “*Incitement of National, Racial, Ethnic, or Religious Enmity*”. At the same time, it is worth emphasizing that such forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (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.³² Other cases should be addressed under civil legislation.
26. Article 3 further defines what is meant by “*extremist activities*” by providing a broad list of the kind of behaviours that fall under such wording, covering anything from actual terrorist activities (fourth indent) to incitement to hatred (fifth indent) to the “*production, storage, dissemination or demonstration of materials containing threat to public order and security*” or displaying “*attributes or symbols of extremist organizations*” (sixth indent), as well as “*public calls*” for such actions. Such vague and overly broad definition is not sufficiently clear and foreseeable to comply with the principle of legality, which requires that legislation be accessible, clear and foreseeable, in order for individuals to know which behaviours or activities are permissible, and which are not, and regulate their conduct accordingly, while avoiding discretionary interpretation or arbitrary application of the law by the authorities.³³ This shows, as set out before, the inherent difficulty of providing a clear and strictly circumscribed legal definition of the term “*extremism*”/“*extremist*” (see pars 12-16 *supra*), which in turn may lead to intrusive, disproportionate and discriminatory measures, as noted by the UN Special Rapporteur on counter-terrorism.³⁴
27. As regards the “*public call*” for such actions, it is reiterated that freedom of expression protects all forms of ideas, information or opinions, even “deeply offensive” speech.³⁵ As set out before, the possibility to peacefully pursue a political, or any other, agenda – even where different from the objectives of the government and considered to be “*extreme*” – must be protected.³⁶ While the right to freedom of expression may in limited cases be restricted,³⁷ simply holding or peacefully expressing views that are considered radical or “*extreme*” under any definition should never be criminalized, unless such views are associated with violence or criminal activity³⁸ and meet the three cumulative requirements referred to in par 18 *supra* (intent to incite imminent violence, likelihood of such violence, direct and immediate connection to such violence).³⁹ It is also important for the legal drafters to include **defences or exceptions, for instance when the statements were intended as part of a good faith discussion or public**

³² See the references cited in *op. cit.* footnote 26.

³³ See *op. cit.* footnote 6, par 25 (2011 CCPR General Comment no. 34); Council of Europe, Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, 18 March 2016, pages 25-26.

³⁴ UN Special Rapporteur on counter-terrorism, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, par 19.

³⁵ See *op. cit.* footnote 6, pars 11 and 38 (2011 CCPR General Comment No. 34).

³⁶ *Op. cit.* footnote 8, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism).

³⁷ See e.g., Article 20 ICCPR, article 4 CERD, Article 3(c) Convention on the Prevention and Punishment of the Crime of Genocide, Security Council resolution 1624(2005).

³⁸ *Op. cit.* footnote 8, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism See also *op. cit.* footnote 6, page 42 (2014 ODIHR’s Guidebook on Preventing Terrorism and Countering VERLT).

³⁹ See the references cited in *op. cit.* footnote 26.

debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.⁴⁰

28. Pursuant to Article 6 of the Anti-Extremism Law, “*extremist activities in any of its manifestations*” are prohibited on the territory of Uzbekistan. Article 6 further bans the use of names containing designations identical or similar to the name of “*extremist organizations*” when creating legal entities. Read together with Articles 17 to 19 of the Law, any individual, legal entities and regional, international or foreign organizations “*committing extremist activities*” may be prosecuted (see also Sub-Section 9 *infra*). If the conducts set out in Article 6 of the Law are intended to trigger criminal liability, then its wording would appear to be overbroad and too imprecise to satisfy the conditions enshrined in Article 15 of the ICCPR, in particular those specifying that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*).⁴¹ This principle implies that criminal offences and the relevant penalties must be clearly defined by law, meaning that an individual, either by himself/herself or with the assistance of a legal counsel, should know from the wording of the relevant provision which acts and omissions will make him/her criminally liable and what penalty he or she will face as a consequence. Moreover, Article 6 should not be used to ban the use of certain “names” considered to be remotely related to one of many organizations considered “*extremist*”, in order to impede the establishment of legal entities or associations that would pursue objectives or conduct activities that are not always congruent with the position of the government or the opinions and beliefs of the majority or run precisely counter to them.⁴² This risks creating a chilling effect on the exercise of freedom of association and expression, and could stifle debate on contentious issues. **Unless there is a precise list of terrorist organizations that have been banned by judicial bodies according to due process (or alternatively a reference to the list of “terrorist organizations” designated by international or regional organizations, which should also be subject to domestic judicial review respecting due process guarantees, given the existing procedural and due process deficiencies in the UN and other listing processes noted by the UN Special Rapporteur on counter-terrorism⁴³), the prohibition of the mere use of a name for the purpose of creating legal entities should be reconsidered.**
29. **As set out above, ODIHR’s main concerns regarding the Law relate to broader, and inherent, problems in the use of the term “extremism” as a legal concept and its legal implications.** Overall, while the definition of “*extremist activities*” in Article 3 of the Anti-Extremism Law lists different types of conduct with some forms of connection to violence, terrorism and other criminal conducts, the overall focus on “*extremism*” rather than “*violent extremism*” in the Law and the terminology used may still lead to impermissible human rights limitations. To the extent that the Law is retained and use the term “*extremism*”, **any related definition (“extremist activities”**,

⁴⁰ 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.

⁴¹ See e.g., as a reference, ECtHR, [Kokkinakis v. Greece](#) (Application no. 14307/88, judgment of 25 May 1993), par 52.

⁴² See e.g., ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015), par 182. For instance, these could include imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by, for example, asserting a minority consciousness, protecting the human rights of certain minorities, calling for regional autonomy, or even requesting secession of part of the country’s territory. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Report to the UN Human Rights Council](#) (*Threats to the rights to freedom of peaceful assembly and of association for groups most at risk*), UN Doc. A/HRC/26/29, 14 April 2014, par 64.

⁴³ UN Special Rapporteur on counter-terrorism, [Compliance by the United Nations with international human rights law while countering terrorism](#), UN Doc. A/65/258 (2010), pars 55-58; and [Ten areas of best practices in countering terrorism](#), UN Doc. A/HRC/16/51 (2010), Annex Practice 9.

“extremist materials”, “financing extremism”, “extremist”, “extremist group”, “extremist organization” etc.) should be amended to be more specific in its scope so as to only cover violent extremism”, and hence clarify that prohibited behaviours necessarily require some form of violence as an essential element. Furthermore, Article 3 and other provisions of the Law should be reviewed carefully and adjusted to ensure consistency with the principle of legality. This is all the more important given the recommendations and observations made by international human rights monitoring mechanisms,⁴⁴ which point to persistent problems, in particular, with so-called “religious extremism” charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrest, detention, torture and other ill-treatment in the Republic of Uzbekistan.⁴⁵

4. Main Principles and Dimensions of Government Policy in the Area of Countering So-called “Extremism”

30. The lawmakers are commended for stating the prevalence of international law in Articles 2 and 20 of the Anti-Extremism Law and to expressly refer to the priority of rights, freedoms and legal interests of a person as one of the main principles of countering so-called “extremism” (Article 4). However, it is questionable whether such a statement will in practice ensure the prevalence of international *human rights* standards, given that the Law in itself fails to comply with the principle of legal certainty (see Sub-Section 3 *supra*) and several of its provisions have the potential to encroach on human rights and fundamental freedoms, especially the rights to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and freedom of peaceful assembly.
31. It is worth reiterating that human rights and security should not be conceptualised in an inverse relation to each other – i.e. in order to increase security one must reduce human rights. This assumption has been consistently challenged at the international level, by repeatedly stressing and demonstrating that human rights and security are complementary, rather than competing goals,⁴⁶ which is also the very essence of the OSCE’s comprehensive concept of security. 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.⁴⁷ This risk is particularly acute as broadly defined laws to counter violent extremism, which confer excessive discretionary power on decision-makers, may have a discriminatory impact, result in the creation of “suspect communities” and therefore have deleterious effect on relations

⁴⁴ See United Nations General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018).

⁴⁵ See e.g., UN Special Rapporteur on freedom of religion or belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, pars 98 and 101; UN General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018); and CCPR, [Concluding Observations on Uzbekistan](#), CCPR/C/UZB/CO/4 (17 August 2015), pars 17 and 22.

⁴⁶ See e.g., UN Human Rights Council, [Report on Best Practices and Lessons Learned on How Protecting and Promoting Human Rights Contribute to Preventing and Countering Violent Extremism](#), A/HRC/33/29, 21 July 2016, par 2; UN General Assembly Resolution 60/288 ([The United Nations Global Counter-Terrorism Strategy](#)), A/RES/60/288, 20 September 2006, Preamble; and e.g., the Preamble to [UN Security Council Resolution 2178 \(2014\)](#). See also Human Rights Council, [Resolution](#), 2 October 2015, A/HRC.RES/30/15, Preamble, which states: “while there can be no excuse or justification for violent extremism, abuses and violations of human rights may be among the elements that contribute to creating an environment in which people, especially youth, are vulnerable to radicalization that leads to violent extremism and recruitment by violent extremists and terrorists”. See also [OSCE Bucharest Plan of Action for Combating Terrorism, Annex to OSCE Ministerial Council Decision MC\(9\)DEC/1](#).

⁴⁷ *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).

between these communities and state institutions, thus fuelling rather than reducing terrorism and violent extremism.⁴⁸ Accordingly, **a key means of preventing so-called “extremism” should be to respect, protect and facilitate human rights and fundamental freedoms, which should be more prominently reflected in the Law.**

32. Article 4 of the Law states the main principles guiding the countering of “extremism”, i.e., “*legitimacy, priority of the rights, freedoms and legitimate interests of an individual; transparency; [and] inevitability of punishment [неотвратимость ответственности]*”. First, as mentioned in par 30 *supra*, it is questionable whether such a statement of broad principles will lead to actual results in practice since the content of the Law itself generally fails to comply with such principles and to provide mechanisms to ensure transparency. Moreover, Articles 4 and 5 refer to the “*inevitability of punishment of extremist activity*”, which seems to run counter to the aim of prevention of “*extremism*” mentioned in Article 7 of the Law. Furthermore, the fact that the punishment is “*inevitable*” would somewhat seem to leave no discretion to the judge/court to decide potential alternative, not necessarily criminal, sanctions and thus has the potential to impinge upon international standards on judicial independence,⁴⁹ all the more since this also applies to actions or behaviours not necessarily linked with violence. **It is therefore recommended that the reference to “inevitability of punishment” be deleted from Articles 4 and 5.**
33. Article 5 of the Anti-Extremism Law outlines the goals of the Law, which refers among others to “*[n]urturing public non-tolerance to extremism*”, a terminology also used in Articles 7 and 8. It is somewhat paradoxical and potentially counter-productive to urge intolerance of intolerance. This provision may also be misconstrued, and arguably run counter to the state’s positive obligations to prevent non-state actors from violating the rights of other individuals. The legal drafters could consider different wording such as **the promotion of alternatives to narratives of terrorist or violent extremist groups**, as recommended at the international level as a means to prevent and counter VERLT.⁵⁰

5. Preventive Measures

34. It is welcome that Articles 5 and 7 of the Anti-Extremism Law refer to the importance of preventive measures. Article 5 also mentions the need of “*eliminating the causes and conditions, conducive for emergence of its manifestations*”, which mirrors the terminology used in international documents, which is positive.⁵¹ At the same time, much depends on how such provisions will be implemented in practice.
35. Article 7 of the Law (Measures for Prevention of Extremism) lists a number of measures for the so-called “*prevention of extremism*”, such as “*enhancing the legal consciousness and legal culture of the population, nurturing the attitude of non-*

⁴⁸ See e.g., P. Hillyard, *Suspect Community: People’s Experiences of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993). P. A. Thomas, “*Emergency and Anti-Terrorist Powers 9/11: USA and UK*” (2003) 26 *Fordham Int’l LJ* 1193; Christina Pantazis and Simon Pemberton, “*From the “Old” to the “New” Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation*” (2009) 49(5) *British Journal of Criminology*, page 646.

⁴⁹ See e.g., 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 6, page 39 (2018 ODIHR Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters”).

⁵⁰ 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 58.

⁵¹ The language used in the Law resonates with language employed, e.g., in *Security Council resolution 2178 (2014)* or the UN Secretary General’s “*Plan of Action to Prevent Violent Extremism*” (2015).

tolerance to extremism in the society”, “official warning”, “issuing a notice of impermissibility”, prohibition of “*extremist materials*”, or “*suspending the activities of a legal entity*”, all of which are further detailed in Articles 8 to 14 of the Law. However, greater emphasis seems to be placed on repressive and punitive responses/approaches than on preventive and rehabilitative ones, whereas prevention and resolving conflicts should be the first line of defence against terrorism and preventing and countering VERLT.⁵² Moreover, given their potential to infringe on human rights and fundamental freedoms, it must be reiterated that such measures must be consistent with the rights to freedom of thought, conscience and religion (Article 18 ICCPR), freedom of opinion and expression (Article 19 ICCPR), the right to private and family life (Article 17 ICCPR) and other rights. Accordingly, and as stated above, any restrictions must meet the limitations test and be accompanied by sufficient safeguards including, in particular, the principle of proportionality. It is recommended **to reconsider the content of Article 7 by removing measures which are not preventive in nature, supplementing the provision and the Law by other types of preventive measures which have proven to be effective at the international level** (see par 38 *infra*). In any case, **the Law should ensure that repressive measures, if applicable, should only be used as a last resort and when proportional to the threat, and only if preventive measures are not effective.**

36. Article 8 further specifies what is meant by “*enhancing the legal consciousness and legal culture of the population, nurturing the attitude of non-tolerance to extremism in the society*”, which primarily refers to awareness-raising, education and development of literature. As mentioned in par 31 *supra*, a key means of preventing so-called “*extremism*” should be **to respect, protect and facilitate human rights and fundamental freedoms, and the development of the rule of law, and this could be better reflected in Article 8.**
37. Especially, the crucial question of equality and non-discrimination is generally missing from the Law. Although on their face not discriminatory, the provisions of the Law could readily be used as a basis to discriminate⁵³ on grounds of nationality, religion or belief, ethnic or social origin or other personal characteristic or status. The experience of preventing and countering VERLT in many states have raised fundamental equality issues, which deserve explicit safeguarding in the legislation.⁵⁴ **It is thus recommended to explicitly refer to the promotion of equality and non-discrimination in this provision.**
38. Furthermore, by addressing education, upbringing, educational programs and legal culture, Article 8 may also jeopardize the right to education, as well as free expression and the rights of the child, so far as the content of the education curricula and public debate, is exclusively or excessively controlled by the state in the guise of “*countering extremism*”. The emphasis on developing narratives to “*counter extremism*”, implied by Article 8, should take into account ODIHR recommendations in other contexts on “*alternative narratives by credible messengers*” and community empowerment to

⁵² See Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, 20 April 2018, <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/840>.

⁵³ i.e., provide a differential treatment of certain persons or groups in practice without objective or reasonable justification or without pursuing a legitimate aim that is recognized by international standards, or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.

⁵⁴ See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report on the follow-up mission to the United Kingdom of Great Britain and Northern Ireland*, A/HRC/35/28/Add.1, 8 June 2017, par 8, describing “*crude racial, ideological, cultural and religious profiling, with concomitant effects on the right to freedom of association of some groups*”.

effectively prevent and counter VERLT, which requires open, pluralistic and free debate and meaningful participation of civil society and community groups in all their diversity.⁵⁵ As it is, the Anti-Extremism Law does not contain some elements, which have proven to be effective when addressing the conditions conducive to violent extremism (e.g., **creating economic, educational and employment opportunities; developing community policing approaches; partnering with civil society; engaging and empowering women, youth, communities and representatives from minorities or vulnerable groups in policy-making and implementation, etc.**).⁵⁶ **Rehabilitation and reintegration** are also not reflected in Article 7 or elsewhere in the Law, whereas 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.⁵⁷ While preventive measures are generally provided at the policy or programmatic level, the legislation may be supplemented by **further elaborating the type of possible preventive measures, such as rehabilitation, reintegration, etc., while ensuring that they are in compliance with international human rights standards.**

39. Finally, Article 8 also refers to “*strengthening cultural traditions, spiritual, moral and patriotic upbringing*”. Such a wording is vague and too broad in scope, and should not be used as a ground for limiting human rights and freedoms, especially of persons belonging to national, ethnic, religious or linguistic minorities.⁵⁸ Moreover, this terminology may not be conducive to ensuring that persons belonging to national or other minorities have effective access to expressive opportunities and information resources, and/or to facilitating the production and dissemination of content by and for national minorities, including in their own languages, contrary to what is recommended at the international level.⁵⁹ In light of the foregoing, and to dispel any misconception, **it is recommended to remove from the Law such a vague and broad wording, which may provide a ground for limiting human rights and fundamental freedoms. On the contrary, the Law could expressly refer to the facilitation of the right of**

⁵⁵ For example, see *op. cit.* footnote 6, pages 55-59 (2018 ODIHR [Guidelines on “Foreign Terrorist Fighters”](#)); and OSCE, [Guidebook on the Role of Civil Society in Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Focus on South-Eastern Europe](#) (2019).

⁵⁶ For instance, creating economic, educational and employment opportunities, promoting equality and non-discrimination, developing community policing approaches, partnering with civil society, engaging and empowering women, youth, communities and representatives from minorities or vulnerable groups in policy-making and implementation, etc. See OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism](#), MC.DOC/4/15, 4 December 2015; *op. cit.* footnote 6 (2018 ODIHR [Guidelines on “Foreign Terrorist Fighters”](#)); OSCE, [Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism Good Practices for Law Enforcement](#) (2019); OSCE, [The Role of Civil Society in Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Guidebook for South-Eastern Europe](#) (2018), Sub-Section 5.2; ODIHR, [Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014); ODIHR, [Final Report on Women and Terrorist Radicalization](#) (2013).

⁵⁷ This is for example reflected in [UNSC Resolution 2178 \(2014\)](#), the [Plan of Action to Prevent Violent Extremism by the UN Secretary General \(2015\)](#) 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 ODIHR, [Guidelines for Addressing Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#) (2018), page 29.

⁵⁸ Article 27 of the ICCPR, “*persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*”. As noted in UN Human Rights Committee’s General Comment No. 34, limitations to freedom of expression must be based on principles not deriving exclusively from a single tradition, and hence must be understood in the light of universality of human rights and the principle of non-discrimination; see *op. cit.* footnote 6, par 26 (2011 CCPR General Comment no. 34). OSCE participating States have also committed that persons belonging to national minorities should “*have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will*”⁵⁸ and have underlined their attachment to “*the protection and promotion of [their] cultural and spiritual heritage, in all its richness and diversity*”; see CSCE/ODCE, [Charter of Paris for a New Europe](#), 21 November 1990, page 11.

⁵⁹ OSCE High Commissioner on National Minorities, [Tallinn Guidelines on National Minorities and the Media in the Digital Age](#) (2019), par 7.

persons belonging to national minorities to enjoy and develop their cultural, linguistic or religious identity, as a means to preventing VERLT.⁶⁰

6. Warning and Notice of Impermissibility of “Extremist Activities”

40. Article 9 of the Anti-Extremism Law specifies the conditions for the government body in charge of countering “*extremism*” to issue an official warning to officials and individuals “*manifesting extremism*”, while Article 10 of the Law outlines the procedure of issuing a similar notice to legal entities. The circumstances for issuing warnings are generally unclear, especially the *meaning* of formulations such as “[p]ending the availability of adequate and pre-fact-checked information” and “*signs of extremist activities*”.
41. Moreover, it is uncertain what the consequences of an official warning under Article 9 of the Anti-Extremism Law are. The provision contemplates the issuance of warnings for conduct where the evidentiary and other requirements for prosecution of a criminal offence may not necessarily be met. This could be used to circumvent the standards and safeguards that should be applicable in criminal proceedings, and as such may raise concerns as to the compatibility of such provision with human rights. More generally, a “*warning*” or “*notice of impermissibility*” in Articles 9 or 10 is likely to have a chilling effect on the population and civil society and impact on a range of human rights, especially freedom of expression and information, freedom of thought, conscience and religion or belief, freedom of association and peaceful assembly.
42. Further, if read together with Article 15 of the Anti-Extremism Law, Articles 9 and 10 appears to give broad discretionary power to several authorities (including the State Security Service, the Office of the Prosecutor General, the Ministry of Internal Affairs and the Ministry of Justice), to issue official warnings to individuals or notices to legal entities to end “*impermissible extremist activities*”. In case of “*disagreement*” with the official warning or notice, the individual or legal entity is entitled to challenge it before “*the higher official of the respective government body mandated for countering extremism or to the court*”. Unless an error of translation, the Law seems to present administrative review as an alternative to a judicial appeal. **It should be made clear that the Law guarantees a right to appeal to court.** Moreover, it is not clear what are the grounds for admissibility and for contesting such a warning/notice nor the procedure, which may not guarantee in practice proper judicial safeguards and appropriate legal avenues to challenge the lawfulness of those warnings or notices. Consequently, **the Law should be made more specific as to the procedures available in order to guarantee the effective enjoyment of the right to appeal the warning/notice issued before an independent and impartial tribunal**, as enshrined in Articles 14 of the ICCPR.⁶¹ Especially, **the right to access – and meaningfully challenge – the information on which the warning and notice is based is essential and should be reflected in the Law.**
43. Article 10 of the Anti-Extremism Law provides that if the deadline for redress set in the notice is not complied with, and if “*new facts have been discovered within one year after issuing the notice, indicating the signs of extremism, then the operation of the*

⁶⁰ ODIHR-Venice Commission-OSCE Mission to Georgia-HCNM, *Joint Opinion on the Draft Amendments to the Constitution of the Republic of Georgia* (2005), par 86.

⁶¹ See Venice Commission, *Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation*, CDL-AD(2012)016-e, 15-16 June 2012, par 61.

legal entity shall be suspended up to 6 months based on the order of the prosecutor or another official of the government body, mandated for countering extremism or shall be prohibited by the court ruling of the Supreme Court of Uzbekistan.” This means that a six-month suspension of the legal entity may be decided without the intervention of a court, simply upon the order of the prosecutor or of the above-mentioned government bodies. Moreover, this provision could also potentially be abused, for instance against associations or media outlets, in situations where a prosecutor would submit a first warning, which would not be appealed by the said organization or if the organization chooses to correct the said problem, which may then lead to the suspension or banning of the said organization if the Prosecutor submits another warning within 6-month time. As stated in the Joint ODIHR-Venice Commission [Guidelines on Freedom of Association](#), “[s]anctions amounting to the effective suspension of activities, [...] are of an exceptional nature [and] should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles” and should ultimately “be imposed or reviewed by a judicial authority”.⁶² Moreover, the suspension or banning of the media outlet is particularly problematic from a human rights perspective.⁶³ **The Law should be amended to provide that the suspension should only be imposed or reviewed by a court and only for activities that constitute criminal offences, which are themselves compliant with international standards.**

44. As regards the prohibition or ban of the legal entity, it is worth emphasizing that 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,⁶⁴ such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used as a tool to punish or stifle its establishment and operations⁶⁵ or address minor infringements.⁶⁶ It is worth emphasizing that given the essential role political parties play in systems of democratic governance and in realization of the right to participation in political life, the conditions for prohibition should be even more stringent, applying only in particularly extreme cases, such as when a political party’s objectives or activities entailed a tangible and immediate threat to democracy.⁶⁷ In any case, given the vague notion of “*extremist activities*”, the ground for banning a legal entity fails to satisfy the requirement of legality of restrictions.
45. Furthermore, the wording of Article 10 of the Law seems to leave no discretion to the Supreme Court but to pronounce the ban since it states that “*the legal entity [...] shall be prohibited by the court ruling of the Supreme Court of Uzbekistan*”. In principle, all restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.⁶⁸ Moreover, the court should be able to review the circumstances of the case and evidence and not be bound to automatically pronounce the ban simply because of the re-occurrence of new facts of so-called “*extremism*”. Unless an error of translation, this otherwise would seem to run counter to the principle

⁶² *Op. cit.* footnote 42, pars 239 and 255 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

⁶³ See e.g., International Mandate-Holders on Freedom of Expression, [2003 Joint Declaration on the Regulation of the Media](#), Sub-Section on the Regulation of the Media, 4th paragraph. See also, for the purpose of comparison, ECtHR, [The Observer and Guardian v. the United Kingdom](#) (Application no. 13585/88, judgment of 26 November 1991).

⁶⁴ *Op. cit.* footnote 42, pars 35, 114 and 234 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association). See also ODIHR-Venice Commission, [2010 Guidelines on Political Party Regulation](#), par 51.

⁶⁵ *ibid.* par 252 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

⁶⁶ *ibid.* pars 35 and 114 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

⁶⁷ *ibid.* pars 249-250 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

⁶⁸ *ibid.* par 35 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

of the independence of the judiciary. The ban of the organization should occur following a public hearing providing the possibility for the organization or individual concerned to be aware of and challenge the evidence brought against it or him/her.⁶⁹ This does not seem to be clearly provided for in the Law. Accordingly, **the Law should be amended in order to ensure that the prohibition should only be imposed for activities that constitute criminal offences, which are themselves compliant with international standards, while ensuring that the Supreme Court will promptly review both facts and laws and not automatically pronounce the prohibition while respecting all due process guarantees, as enshrined in Articles 14 of the ICCPR.**⁷⁰

7. “Extremist” Materials

46. Articles 7 and 11 of the Anti-Extremism Law deal with the prohibition of import, production, storage, dissemination and demonstration of “*extremist materials*”. In particular, par 3 of Article 11 states that “[e]xtremist materials, attributes and symbols of extremist organizations must be destroyed or deleted according to the stipulated procedures. In case it is impossible to destroy or delete extremist materials, attributes and symbols of extremist organizations placed in the media or telecommunications networks including Internet, access thereto shall be restricted.”
47. First, it is worth noting that these provisions somewhat overlap with Article 244¹ of the Criminal Code which prohibits the production, storage, distribution or display of materials containing a threat to public safety and public order, and as such may give rise to questions as to whether the interferences are reasonably foreseeable, as noted in par 20 *supra*. Moreover, this provision does not expressly require that the individual has the necessary mental intention, such as an intention to disseminate or to use material to incite violence, nor that there be a direct connection between the possession of the said material and the commission of any criminal act.
48. Read together with Articles 17 and 21 of the Anti-Extremism Law, violation of the said provisions will trigger prosecution (see also Sub-Section 9 *infra*), though it is not clear which types of sanctions or liability is contemplated by the Law. If criminal liability is envisaged, then the necessary mental intention **should be made clear and should be specifically spelt out. Moreover, the intention to contribute to e.g., acts of terrorism or other criminal acts, which are themselves defined in compliance with international standards, should also be specifically required for import, production, storage and dissemination to qualify as prohibited acts. Nor does the Law specify some exceptions for legitimate justifications for possession of such materials, for example by academics, artists, journalists or lawyers,**⁷¹ or when the dissemination is 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.⁷² **The Law should be amended and supplemented accordingly.**
49. Second, Article 11 requires the destruction of such materials or restriction to access to the media and relevant telecommunications networks, including the Internet, when

⁶⁹ See Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, par 61.

⁷⁰ *ibid.* par 61.

⁷¹ See e.g., 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), par 92.

⁷² 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.

destruction or deletion is not possible. In this context, it must be underlined that the right of use and access to the Internet is considered to be an integral part of the right to freedom of expression and information protected by Article 19 of the ICCPR and par 9.1 of the OSCE Copenhagen Document.⁷³ Hence, denying individuals the right to access the Internet or communication networks is an extreme measure that can be justified only as a last resort, and based on a court decision.⁷⁴ In any case, security measures should be temporary in nature, narrowly defined to meet a clearly set-out legitimate purpose and prescribed by law; these measures should not be used to target dissent and critical speech.⁷⁵ It may solely be restricted by the state, in line with international human rights standards, where the Internet is abused to violate another person’s rights or where it poses a serious risk to the public order (for example, through the incitement to violence against others; the promotion of national, racial or religious hatred that incite imminent violence as defined in par 18 *supra*; or the intentional communication and direct incitement to the commission of a terrorist act).⁷⁶ In that respect, it is worth referring to the [ODIHR Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan](#) (31 October 2019), which provides some useful guidance and recommendations concerning the criteria and conditions for content removal. As noted in the Comments, the restriction of Internet access and other telecommunications networks and media should only be possible when the conduct constitutes a criminal offence in national law, which should itself be in compliance with international human rights standards, and only if imposed by judicial bodies, following appropriate court procedures respecting minimum due process guarantees.⁷⁷ **Article 11 should be amended accordingly.**

50. While Article 11 (2) refers to the procedures for recognizing material as “*extremist*”, and Article 11 (4) mentions prosecution as a consequence of non-compliance with government demands to restrict access to “*extremist material*” in telecommunication networks and the Internet, Article 11 does not clearly identify the extent of media networks’ or internet providers’ obligations in relation to “*extremist materials*” disseminated through their networks. In this respect, it must be pointed out that the UN Human Rights Committee has considered that any restriction on the operation of information dissemination systems, including that of internet service providers, is not legitimate unless it satisfies the test for restrictions on freedom of expression under international law.⁷⁸ The UN Special Rapporteur on the promotion and protection of the

⁷³ See also the International Special Rapporteurs/Representatives on Freedom of Expression, [2011 Joint Declaration on Freedom of Expression and the Internet](#), 1 June 2011, par 6 (a), which states that “[g]iving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the [...] right to assembly and association”.

⁷⁴ *ibid.* par 6 (c).

⁷⁵ See the [OSCE Study “Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States”](#) (2010) by the OSCE Representative on Freedom of the Media.

⁷⁶ See Article 20 par 2 of the ICCPR which states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”; and Article 4 (a) of the ICERD which provides that “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” shall be considered offences punishable by law. See e.g., the definition of “incitement to terrorism” provided by the UN Special Rapporteur on counter-terrorism, *op. cit.* footnote 43, par 32 (2010 UN Special Rapporteur’s Report on Best Practices in Countering Terrorism), which reads as follows: “it is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed”.

⁷⁷ See Recommendation E of the [ODIHR Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan](#).

⁷⁸ See *op. cit.* footnote 6, par 43 (2011 CCPR General Comment No. 34).

right to freedom of opinion and expression also noted how important it is for States to be transparent about the use and scope of communications surveillance techniques and powers, particularly when dealing with internet service providers.⁷⁹ Article 11 of the Law should therefore not be interpreted as a requirement for network providers to conduct constant monitoring of all communications over the providers’ network, or to detect such illegal conduct, as this would constitute an unreasonable and costly burden for them.⁸⁰ In principle, no general obligation to monitor or seek facts or circumstances indicating illegal activity should be imposed on service providers.⁸¹ The Law should only provide for an obligation for subsequent action or control, once they are aware of the illegal nature of the content, as recognized by a judicial body. **The Law should clearly and narrowly define the specific obligations imposed on internet service providers and telecommunication networks while providing for appropriate safeguards and ensuring that there is no requirement for network providers to conduct constant monitoring of all communications over the providers’ network, or to detect such illegal conduct.**

51. Finally, the Anti-Extremism Law should include references to appropriate due process guarantees as well as effective and accessible remedies to appeal such decisions before a higher court. This is particularly important with a view to potential prosecution of telecommunications and Internet service providers for non-compliance with demands of government authorities concerning restricting access to such materials referred to in the last paragraph of Article 11. **The provisions should be supplemented accordingly.**

8. Financing of “Extremism”

52. Article 12 of the Anti-Extremism Law prohibits “*extremist financing*”. However, the prohibited actions go beyond financing. Pursuant to Article 3, the Anti-Extremism Law defines “*financing extremism*” as “*the activities, focused on enabling the existence and functioning, of an extremist organization, departure of persons abroad or movement across the territory of Uzbekistan to engage in extremist activities, directly or indirectly providing or raising any funds, resources, and other services for extremist organizations or persons, facilitating or participating in extremist activities*”. The current formulation covers broad concepts including forms of facilitation or provision of various resources and services, both directly and indirectly, as well as mere participation in (already broadly defined) “*extremist activities*”. Such a broad wording potentially gives enforcement authorities broad latitude in determining which organizations, individuals, and activities are covered by the provision.⁸² The provision is silent as to the *wilful* provision or collection of funds or other resources with the intention of or *in the knowledge* that they will be used, in full or in part, to carry out “violent extremism”. This expands further the reach of the malleable notion of “*extremism*” and potentially brings within its reach a vast range of individuals supportive of political causes and

⁷⁹ See UN Special Rapporteur on freedom of expression, *2013 Report on States’ surveillance of communications* (17 April 2013), pars 91-92; see also ODIHR, *Opinion on the Draft Law of Ukraine on Combating Cybercrime*, 22 August 2014, par 58.

⁸⁰ This seems to be mirroring certain of the obligations provided under Article 13 of the *EU Framework Directive 2009/140/EC of 25 November 2009*, available at, that includes an obligation for EU member States to ensure the integrity and security of public communications networks and publicly available communications services as well as the continuity of such services.

⁸¹ See e.g., as a reference, the Council of Europe’s Committee of Ministers, *Declaration on freedom of communication on the Internet*, 28 May 2003, Principle 6. See also 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.

⁸² 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, regarding the term “participation”.

ideas deemed “*extreme*”. Consequently, **Article 12 should be more clearly and strictly circumscribed.**

53. Given that the suspension of financial transaction and freezing of funds or other property constitutes a severe interference with the full range of economic, social as well as civil and political rights of the individual or legal entity concerned, including the right to privacy, it is essential that such measures are subject to sufficient and effective safeguards. The current Law raises a number of questions in this regard.
54. First and foremost, the current wording is unclear as to who will make the determination about someone’s involvement in “*extremist activity*” for the purpose of requiring the organizations handling transactions involving money or other property “*to immediately and without prior notice suspend the transaction*”. Indeed, it is not clear whether this measure will apply only with regard to individuals convicted for “*violent extremism*”-related offences and to organizations designated as (violent) “*extremist organizations*” based on a court ruling in accordance with Article 14 of the Anti-Extremism Law or potentially also to other individuals/legal entities. **The Law should only be applicable to the former and should be amended to that effect.**
55. Article 12 suggests that all organizations handling money shall be monitored and controlled. However, the right to privacy must be respected, except in so far as there is a reasonable basis to believe that interference is necessary, and then subject to the principle of proportionality and other safeguards. **The Law should be supplemented in that respect, while also clarifying what will happen to information gathered and the protection of the data.**
56. Furthermore, Article 12 does not appear to include/foresee effective oversight by an independent judicial tribunal or court, given that, according to paragraph 2 of the Article, the procedure for suspending transactions/freezing of assets and resuming transaction/granting access to frozen funds shall be specified by the Department for Combatting Economics Crime under the office of the Prosecutor General. The provision should **include clear and specific references to due process and outline the procedure whereby an individual or a legal entity can promptly challenge the freezing of funds or other property or the suspending of transactions before an independent and impartial tribunal.**

9. Prosecution of Violations of the Anti-Extremism Law

57. Article 21 of the Anti-Extremism Law provides that “[p]ersons guilty of offending the legislation on countering extremism, shall be prosecuted according to the established procedures”. Given the range of conducts falling within the scope of “extremism”, it is not clear which types of sanctions or liability is contemplated by the Law. In this context, it is worth noting that Article 118 of the Constitution of the Republic of Uzbekistan on the Prosecutor’s Office⁸³ reveals that the prosecution service is still construed, first and foremost, as an organ of general “supervision”. While such a “supervisory” prosecution model is prevalent among a number of post-Soviet states,⁸⁴ international and regional organizations have noted that these systems often lead to

⁸³ Available at <<http://www.lex.uz/acts/20596#39963>>, which reads that “[t]he Office of the Prosecutor General and the subordinate prosecutors of the Republic of Uzbekistan shall exercise control over the precise and uniform implementation of the laws on the territory of the Republic of Uzbekistan”.

⁸⁴ See e.g., ODIHR, [Opinion on Key Legal Acts Regulating the Prosecution Service of the Kyrgyz Republic](#), 18 October 2013, par 13.

over-powerful and largely unaccountable prosecution services, which threaten the separation of powers and the rights and freedoms of individuals,⁸⁵ as also recently noted by the UN Special Rapporteur on the independence of judges and lawyers in relation to Uzbekistan.⁸⁶ Though going beyond the scope of this legal review, it is worth reiterating the general recommendation to remove the **general supervisory powers from the prosecution service to confine its powers to the field of criminal prosecution.**⁸⁷ This would not only align the service with international standards and good practices, but would also help increase its efficiency.⁸⁸

58. Moreover, the wording of Article 21 whereby persons violating the Law “*shall be prosecuted according to the established procedures*” appears to offer little discretion to determine depending on the circumstances and evidence whether further action should be undertaken, although the relevant legislation may be clearer in this respect. More generally, the Law makes a number of references to “*procedures established by legislation*” (see Articles 11, 13 and 16) or to “*other actions in accordance with legislation*” (see Articles 7, 8, 15 and 20), which is extremely vague. **The drafters should specify the specific laws that are applicable or clearly detail the circumstances in which such powers may be used, to what end, and subject to what procedures and safeguards, especially relating to accountability mechanism and access to remedies.** Finally, the failure to mention the sanctions foreseen for “*extremist*” acts is problematic given the need to respect the principle of legal certainty and foreseeability and as appropriate and relevant, to provide for proportionate sanctions.

10. International Co-operation

59. Article 5 of the Anti-Extremism Law refers to “*international co-operation*” as a main principle guiding government policy when countering “*extremism*”. Enhancing co-operation is generally a positive aspect of state policy in the sphere of preventing and countering terrorism and VERLT, providing however that the other state(s) themselves comply with international human rights standards. It is also worth emphasizing that in the context of international co-operation, a number of considerations also apply. Especially, **the authorities must respect the principle of non-refoulement** (i.e., that they do not return non-nationals convicted of so-called “*extremism*” 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),⁸⁹ which should be provided in the Law or cross-referenced as appropriate.
60. Moreover, in circumstances where expulsion procedures are involved, there need to be adequate substantive and procedural safeguards (see Article 13 of the ICCPR) to avoid potential violations of the human rights of non-nationals. Unless prevented by

⁸⁵ See e.g., ODIHR, Venice Commission and DGI, [Joint Opinion on the Draft Law on the Prosecution Service of Moldova](#), 23 March 2015, par 42; and *ibid.* par 13 (2013 ODIHR Opinion on Key Legal Acts Regulating the Prosecution Service of the Kyrgyz Republic).

⁸⁶ See UN Special Rapporteur on the independence of judges and lawyers, [Preliminary Observations on the Official Visit to Uzbekistan](#) (9 October 2019).

⁸⁷ See *ibid.* and similar recommendations made in e.g., *op. cit.* footnote 85, pars 22 and 40-44 (2015 ODIHR-Venice Commission-DG I Joint Opinion on the Draft Law on the Prosecution Service of Moldova); and *op. cit.* footnote 84, par 15 (2013 ODIHR Opinion on Key Legal Acts Regulating the Prosecution Service of the Kyrgyz Republic).

⁸⁸ *ibid.* par 15 (2013 ODIHR Opinion on Key Legal Acts Regulating the Prosecution Service of the Kyrgyz Republic).

⁸⁹ See Article 2 (1) of the ICCPR; Article 3 of the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Republic of Uzbekistan acceded on 28 September 1995; UN human Rights Committee, [General Comment no. 36 on Article 6 of the ICCPR](#) (3 September 2019), par 31.

compelling national security concerns, these include the opportunity (i) to submit reasons against the expulsion; (ii) to have the case reviewed by the authority competent to determine whether or not the expulsion should proceed (or the person or persons designated by the competent authority to conduct such a review); and (iii) to be represented in such a review. **These substantive and procedural safeguards are particularly relevant and, should they not be cross-referenced in other specific legislation, should be reflected in the Law and especially its Article 19** which introduces a “*prohibition of stay of the foreign citizens and persons without citizenship*” who represent organizations deemed by Uzbek courts as “*extremist*”, which practically means potential expulsion or deportation to another state.

61. Article 20 calls government bodies for international collaboration, including sharing of relevant information that may include sensitive personal data, with countries, which may not necessarily have sufficient mechanisms to protect personal data and privacy according to international standards.⁹⁰ It is also worth noting that Uzbekistan is a party to the Shanghai Convention, which in its Article 6 (1) declares a commitment to exchange information related to terrorist threats among the state parties.⁹¹ The UN Special Rapporteur on counter-terrorism noted that “*the principle of sharing assumes that all states value privacy equally; do not misuse information to target individuals outside of the rule of law; and that information practices including integrity, anonymity, destruction as appropriate are rule of law based... [which is] not the case in practice*”.⁹² **The law or other legislation should provide for substantive and procedural safeguards, in line with international standards,** to prevent undue access, use and transfer/sharing by the national authorities of any personal data.⁹³ Therefore, it may be particularly advisable **to add to Article 20 of the Law a condition that information will only be transferred if the data will be handled in a secure and lawful way and will not be misused for actions involving human rights violations in the receiving state.**

11. Other Comments

62. One additional omission in the Law relates to the rights of children who may be directly or indirectly affected by many of the broad-reaching provisions contained in the Law. There is a need for special consideration of how each of the measures may impact on children.⁹⁴ The “*best interest of the child*” is the governing principle as set down in the Convention on the Rights of the Child (CRC)⁹⁵ ratified by Uzbekistan. This has implications for issues arising across the legislation, either in terms of potential impact of

⁹⁰ 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.

⁹¹ Parties to the convention are also Kazakhstan, Kyrgyzstan, Tajikistan, Russia and China. See [Shanghai Convention on Combating Terrorism, Separatism and Extremism](#), 15 June 2001.

⁹² See e.g., Fionnuala Ní Aoláin, “[The UN Security Council, Global Watch Lists, Biometrics and the threat to the rule of law](#)”, Just Security, 17 January 2018 [accessed: 11 August 2019].

⁹³ 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.

⁹⁴ See *op. cit.* footnote 6, Sub-Section 3.8 (2018 ODIHR [Guidelines on “Foreign Terrorist Fighters”](#)).

⁹⁵ The *Convention on the Rights of the Child*, was adopted by General Assembly resolution 44/25 of 20 November 1989. The Republic of Uzbekistan acceded to the CRC on 29 June 1994.

imposing restrictions on their parents, other family members or guardians or directly on them (regarding their potential responsibility, juvenile justice due process if the said behaviours are criminalized and criminal response is appropriate, and penalties tailored to age and personal circumstances, alternatives to detention, the obligation to protect children seeking to return to the state, etc.).⁹⁶

12. Final Remarks

63. ODIHR is unaware of whether the legal drafters prepared a proper impact assessment of the draft Anti-Extremism Law at the time of its adoption. VERLT is a complex phenomenon and various factors may lead to it, no single factor being necessary or sufficient to account for terrorist radicalization.⁹⁷ While there is no consistent set of factors driving terrorist radicalization, some have been identified as being particularly pertinent. Conditions conducive to terrorism recognized at the level of the UN and of the OSCE include “*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*”.⁹⁸ In order for the legislation in this area to be more effective, **an in-depth regulatory impact assessment should be prepared, which should contain a proper problem analysis, using evidence-based techniques to identify the best efficient and effective regulatory option** (including the “no regulation” option).⁹⁹ In that respect, due consideration should be given to **potential factors linked to the respect for and protection of human rights, the rule of law and democracy**.
64. The Law makes reference to various public bodies for the purpose of implementing it. At the same time, courts and prosecution bodies will also be involved while the legislation will also impact religious and civil society organizations, other legal entities and individuals as well as mass media institutions and public telecommunication networks. As such, all these stakeholders should be involved in discussions pertaining to potential future amendments to the Law. Any new proposal in this sphere should be developed and adopted through a broad, inclusive and participatory process also involving the general public, civil society organizations,¹⁰⁰ religious and belief communities, in a timely fashion, in public discussions on any proposal.¹⁰¹ This means that the **public, including women and men, youth, representatives of persons belonging to minorities and a wide array of associations representative of various views, even those that are critical of the government/state, should be consulted in the conceptualization and implementation of the Law and potential amendments**.¹⁰²

[END OF TEXT]

⁹⁶ See *op. cit.* footnote 6, Sub-Section 3.8 (2018 ODIHR *Guidelines on “Foreign Terrorist Fighters”*).

⁹⁷ See *op. cit.* footnote 6, pages 35-39 (2014 OSCE Guidebook on Preventing and Countering VERLT).

⁹⁸ *ibid.*, page 36; UN General Assembly, “*The United Nations Global Counter-Terrorism Strategy*”, Doc. A/ RES/60/288, 2006; OSCE Ministerial Council, “*Ministerial Statement on Supporting the United Nations Global Counter Terrorism Strategy*”, Madrid, 30 November 2007.

⁹⁹ See e.g., ODIHR, *Report on the Assessment of the Legislative Process in the Republic of Armenia* (October 2014), pars 47-48.

¹⁰⁰ OSCE participating States have committed to the aim of “*strengthening modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions*” (Moscow 1991, para. 43.1).

¹⁰¹ OSCE Ministerial Council, *Decision 3/13. Freedom of Thought, Conscience, Religion or Belief*, Kyiv 2013.

¹⁰² See par 18.1 of the *OSCE Document of the Moscow Meeting* (1991) which states 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 Vienna Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (April 2015).

ANNEX:

LAW ON COUNTERING EXTREMISM OF UZBEKISTAN

Passed by the Legislative Chamber on June 12, 2018

Approved by the Senate on June 28, 2018

Chapter 1. General Provisions

Article 1. The Goal

The goal of this Law shall be regulating affairs in the area of countering extremism.

Article 2. Legislation on Countering Extremism

Legislation on countering extremism shall consist of this Law and other legislative acts.

In case an international treaty of Uzbekistan contains provisions differing from those stipulated by the legislation on countering extremism of Uzbekistan, then, the provisions of the international treaty shall be applied.

Article 3. Main Definitions

This Law shall utilize the following main definitions:

Extremism – expression of extreme forms of actions, focused on destabilizing social and political situation, violent change in the constitutional order in Uzbekistan, violent seizure of power and usurping its authority, inciting national, racial, ethnic or religious hatred;

Extremist activities (extremism) – activities for planning, organization, preparing or committing actions, focused on:

- violent change of the foundation of the constitutional system, territorial integrity and sovereignty of Uzbekistan;
- seizing or usurping government powers;
- creating or joining illegal armed groups;
- engaging in terrorist activity;
- inciting racial, national, ethnic or religious enmity involving violence or call for violence;
- production, storage and dissemination or demonstration of materials containing threat to public order and security as well as production, storage and dissemination or demonstration attributes or symbols of extremist organizations;
- undertaking mass disorder motivated by political, ideological, racial, national, ethnic or religious hatred or enmity towards any social group;
- publicly calling for the actions listed in the Paragraphs 2-10 of this Article

Financing extremism – the activities, focused on enabling the existence and functioning, of an extremist organization, departure of persons abroad or movement across the territory of

Uzbekistan to engage in extremist activities, directly or indirectly providing or raising any funds, resources, and other services for extremist organizations or persons, facilitating or participating in extremist activities;

Extremist – person involved in the execution of extremist activities as well as traveling abroad or across territory of Uzbekistan for participation in extremist activities;

Extremist group – two or more persons, who are undertaking extremist activities or attempting to do so based on prior collusion;

Extremist material – document or any other information in any form intended for dissemination, which publicly calls for extremist activities or substantiating or justifying the need for these activities;

Extremist organization – an organization, against which an effective court order to terminate or prohibit its activities due to its extremist activities was issued based on the legally stipulated grounds.

Article 4. Main Principles of Countering Extremism

Main principles of countering extremism shall be as follows:

- legitimacy
- priority of the rights, freedoms and legitimate interests of an individual;
- transparency;
- inevitability of punishment;

Article 5. Main Dimensions of Government Policy in the Area of Countering Extremism

Main dimensions of government policy in the area of countering extremism shall be:

- implementation of the measures for prevention of extremism, inter alia, enhancing legal consciousness and legal awareness of the population, nurturing public non-tolerance to extremism; eliminating the causes and conditions, conducive for emergence of its manifestations;
- timely detection and suppression of the offences in the area of extremism, elimination of the consequences as well as enabling the principle of inevitability of punishment;
- international cooperation in the area of countering extremism.

Article 6. Prohibition of Extremist Activities on the Territory of Uzbekistan

Following shall be prohibited on the territory of Uzbekistan:

extremist activities in any of its manifestations;

upon creating legal entities, use of the names, containing designations identical or similar to the name of extremist organizations to the extent of mixing.

Chapter 2. Measures for Countering Extremism

Article 7. Measures for Prevention of Extremism

Measures for prevention extremism shall be:

- enhancing legal consciousness and legal culture of population, nurturing the attitude of non-tolerance to extremism in the society;
- official warning on impermissibility of committing extremist activities;
- issuing a notice of impermissibility of committing extremist activities by the legal entity;
- prohibition of imports, publication, production, storage, dissemination and demonstration of extremist materials;
- prevention of extremist financing;
- suspending the activities of a legal entity;
- recognition of an organization as an extremist organization;

Measures for prevention of extremism may include other actions in accordance with legislation.

Article 8. Enhancing legal consciousness and legal culture of population, nurturing the attitude of non-tolerance to extremism in the society

Measures to enhance legal consciousness and legal culture of population, nurturing the attitude of non-tolerance to extremism in the society shall be:

- conducting awareness raising efforts;
- organization of legal education and upbringing;
- developing textbooks and scientific literature on the issues of countering extremism;
- strengthening cultural traditions, spiritual, moral, and patriotic upbringing;
- organizing and holding scientific events with practical orientation;
- improving educational programs incorporating the main dimensions of government policy in the area of countering extremism;
- measures to enhance legal consciousness and legal culture of population, nurturing the attitude of non-tolerance to extremism in the society may include other actions in accordance with legislation.

Article 9. Official Warning of Impermissibility of Committing Extremist Activities

Pending the availability of adequate and pre-fact-checked information about the illegal actions with the signs of extremist activities and in absence of the grounds for prosecution, an official of the government body in charge of the activities for countering extremism shall issue an official warning in writing to the officials and as individuals manifesting extremism about impermissibility of these activities indicating the specific grounds for issuing thereof.

In case of disagreement with the official warning, the person to whom it is addressed, shall be entitled to appeal it to the higher official of the respective government body mandated for countering extremism or to the court.

Article 10. Notice of Impermissibility of Committing Extremist Activities by the Legal Entity

In case of a legal offence by a legal entity, manifesting the signs of extremism in its activities, prosecutor or another official of the government body engaged in countering extremism, shall issue a notice to its official about impermissibility of the aforementioned violations, setting

the deadlines for redress. If these offences are not redressed in the mandated deadlines and if new facts have been discovered within one year after issuing the notice, indicating the signs of extremism, then the operation of the legal entity shall be suspended up to 6 months based on the order of the prosecutor or another official of the government body, mandated for countering extremism or shall be prohibited by the ruling of the Supreme Court of Uzbekistan.

In case of disagreement with the notice on impermissibility of committing of extremist activities the person to whom it is addressed, shall be entitled to appeal it before the higher government body mandated for combating extremism, its official or the court.

Article 11. Prohibition of imports, production, storage, dissemination and demonstration of extremist materials

Imports, production, storage, dissemination and demonstration of extremist materials, attributes and symbols of extremist organizations as well as their dissemination and demonstration on the media or telecommunications networks including Internet shall be prohibited on the territory of Uzbekistan.

The materials imported, published, produced, stored, disseminated, and demonstrated on the territory of Uzbekistan, inter alia, in the media or telecommunications networks as well as on the Internet shall be recognized as extremist following the procedures mandated by legislation.

Extremist materials, attributes and symbols of extremist organizations must be destroyed or deleted according to the stipulated procedures. In case it is impossible to destroy or delete extremist materials, attributes and symbols of extremist organizations placed in the media or telecommunications networks including Internet, access thereto shall be restricted.

Non-compliance by the person -provider of the services to access telecommunications networks and Internet with the demands of the government body mandated with countering extremism about restricting access to extremist materials shall be prosecuted in the procedures established by the legislation.

Article 12. Prohibition of Extremist Financing

Extremist financing shall be prohibited on the territory of Uzbekistan.

For the purposes of preventing extremist financing, transactions involving funds or other property shall be subject to control as well as internal control and due diligence by the organizations handling transactions involving money or other property.

Organizations handling transactions involving money or other property must immediately and without prior notice suspend the transaction, except for transactions for depositing the funds incoming to the account of a legal entity or individual, and (or) freeze the funds or other property of the persons involved in extremist activities.

The procedure for suspending the transactions, freezing funds or other property, resuming operations of the persons, granting access to frozen funds and other assets of the persons involved in extremist activities shall be specified by the Department for Combating Economics Crimes under the Prosecutor General’s office under of Uzbekistan pending agreement of stakeholder ministries, state committees and agencies ведомствами.

Article 13. Suspension of the activities of a legal entity

Activities of a legal entity shall be suspended by court order in case of its implication in extremist activities at the request of the government body engaged in countering extremism.

The court ruling on suspension of the activities of a legal entity may be appealed according to the established procedures.

Suspension of the activities of political parties shall be in line with the procedures established by the legislation.

The list of legal entities, whose activities were suspended due to their implication in extremist activities shall be uploaded to the official websites of the Ministry of Justice and the Supreme Court of Uzbekistan.

Article 14. Recognition of an Organization as an Extremist Organization

In Uzbekistan recognition of an organization as an extremist organization shall be done by court.

An organization shall be considered as an extremist organization, even if one of its structural units (department, branch and representative office) are involved in extremist activities.

The request to declare an organization as an extremist organization shall be submitted to the Supreme Court by the Prosecutor General of Uzbekistan.

The list of legal entities against which the court decision has taken effect to recognize them as extremist organizations and prohibit their activities on the territory of Uzbekistan shall be published on the official websites of the Ministry of Justice and the Supreme Court of Uzbekistan.

Chapter 3. Entities for Countering Extremist Activities

Article 15. Government Bodies Mandated to Undertake Activities on Countering Extremism

Government bodies, undertaking activities for countering extremism, shall be as follows:

State Security Service of Uzbekistan;

Prosecutor General’s office of Uzbekistan;

Ministry of Internal Affairs of Uzbekistan;

Ministry of Justice of Uzbekistan;

State Customs Committee of Uzbekistan;

Department for Combating Economic Crimes under the Prosecutor General’s office of Uzbekistan.

State Security Service of Uzbekistan shall coordinate the activities of the government bodies and other entities undertaking and involved in counter-extremism efforts.

The government bodies indicated in this Article shall make their counter-extremism efforts within their powers granted by legislation.

Article 16. Involvement of Other Government Authorities and Other Entities in the Activities on Countering Extremism

Government bodies, not indicated in Article 15 of this Law, other organizations and citizens, shall, within their mandate and powers, and in line with procedures established by legislation, participate in the activities for countering extremism.

Chapter 4. Prosecution for Involvement in Extremist Activity

Article 17. Prosecution of Individuals (Natural persons) for Committing Extremist Activities

Citizens of Uzbekistan, foreign citizens and persons without citizenship shall be prosecuted for committing extremist activity according to the law.

In case of voluntary rejection of involvement in extremist activity, reporting it to the respective government body and actively facilitating prevention of grave consequences and realization of extremist goals, a person shall be exempted from prosecution according to legislation.

Article 18. Prosecution of Legal Entities for Committing Extremist Activities

Legal entities shall be liquidated for committing extremist activities and their activities shall be prohibited.

The organization shall be liquidated based on the court ruling.

Upon liquidation of the organization recognized as an extremist organization, its property shall be confiscated and become government property.

Article 19. Prosecuting the Regional, International or Foreign Organizations for Committing Extremist Activities

Should a court in Uzbekistan declare a regional, international or foreign organization (its department, branch, representative office) registered outside the borders of Uzbekistan as an extremist organization, the activities of this organization (its department, branch, representative office) on the territory of Uzbekistan shall be prohibited, and it (its department, branch, representative office) shall be liquidated, while the property it (its department, branch, representative office) owns on the territory of Uzbekistan, shall be confiscated and become government property.

Prohibition of the activities of a regional, international or foreign organization (its department, branch, representative office) shall lead to:

- termination of its accreditation according to the established procedures;
- prohibition of stay of the foreign citizens and persons without citizenship on the territory of Uzbekistan as representatives of this organization;
- prohibition of any financial, economic, and other activities on the territory of Uzbekistan;
- prohibition of publication of any materials on behalf of this organization in the media on the territory of Uzbekistan;

- prohibition of dissemination of the materials of the prohibited organization as well as information products containing its materials on the territory of Uzbekistan;
- prohibition of holding mass events as well as participation in mass events by the representatives of the prohibited organization.

The Ministry of Foreign Affairs of Uzbekistan, from the date of receiving the copy of the Supreme Court ruling declaring the regional, international or foreign organization (its department, branch, representative office) as an extremist organization, prohibition of its activities on the territory of Uzbekistan, and termination of the activities of the department, branch, representative office of this organization on the territory of Uzbekistan, shall inform the respective foreign state about this through diplomatic channels according to the established procedures indicating the reasons for the prohibition and implications of the prohibition.

Chapter 5. Final Provisions

Article 20. International cooperation of Uzbekistan in the area of Countering Extremism

International cooperation in the area of countering extremism shall be done in accordance with legislation and international treaties of Uzbekistan.

Government bodies, undertaking activities on countering extremism, have the right to send requests to the competent bodies of foreign states for required information and respond to their requests and collaborate in other ways according to the established procedures.

Article 21. Prosecution of Violation of the Legislation on Countering Extremism

Persons, guilty of offending the legislation on countering extremism, shall be prosecuted according to the established procedures.

Article 22. Enabling Implementation, Communication, and Explanation of the Essence and Significance of this Law

The government bodies, undertaking and participating in the activities on countering extremism shall ensure implementation of this Law and communicate it to the implementors and explain its essence and significance to the population.

Article 23. Bringing the Legislation into Conformity with this Law

The Cabinet of Ministers of Uzbekistan shall:

- ensure conformity of the government decisions with this Law;
- ensure review of regulations/policies by the government bodies and abolish those conflicting with this Law.

Article 24. Entry into Effect of this Law

This Law shall take effect from the date of its official publication.

ODIHR Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan

The President of Uzbekistan

Sh. Mirziyoyev

Tashkent

July 30, 2018

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