

**Brief of Amicus Curiae submitted by the International Bar
Association's Human Rights Institute in
Case Number 313 (13 April 2026)
before the Supreme Court of Cambodia**

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I. Introduction

1. The International Bar Association’s Human Rights Institute (hereafter ‘IBAHRI’), requests acceptance by the Honourable Supreme Court of Cambodia as *amicus curiae* to submit an *amicus curiae* brief to assist in the determination of the appeal in Case Number 313 (13 April 2026) of the Supreme Court.
2. The International Bar Association, established in 1947, is the world’s leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 170 countries. The International Bar Association is an ECOSOC accredited institution.
3. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. Pursuant to its aims to promote, protect and enforce human rights under a just rule of law, and for the worldwide adoption and implementation of standards and instruments relating to human rights accepted and enacted by the community of nations, the IBAHRI also provides Secretariat to the High Level Panel of Legal Experts on Media Freedom.
4. The Director of the IBAHRI is Baroness Helena Kennedy of the Shaws, King’s Counsel, a distinguished British Jurist and life peer in the UK House of Lords. The IBAHRI’s Co-Chairs are Mark Stephens CBE, former President of the Commonwealth Lawyers Association, and Hina Jilani, human rights lawyer, Advocate before the Supreme Court of Pakistan and member of the High Level Panel of Legal Experts on Media Freedom.

II. Application to submit an *amicus curiae* brief

5. The IBAHRI respectfully requests that it is granted leave to make its humble submissions regarding the case and its relevance to Cambodia’s obligations under international human rights law, as *amicus curiae*. The IBAHRI understands that there is no established procedure in this Honourable Court for the submission of *amicus curiae* briefs, and in lieu of the establishment of this procedure, humbly submits its expert opinion limited to technical issues of international human rights law. Such submissions are particularly relevant in light of Article 31 of the Constitution of the Kingdom of Cambodia, which recognises and requires respect for internationally protected human rights and international conventions accepted by Cambodia. As an expert on international human rights law, the IBAHRI respectfully seeks to file this *amicus curiae* brief and assist the Court in determining the circumstances under which restrictions or interferences with the right to freedom of expression can be justified under international human rights law.

6. Despite this respected Court not having a specific procedure for the admission of *amicus curiae* briefs, as the IBAHRI understands that such a request has not yet arisen, it is noted that *amicus curiae* briefs were permitted to the Extraordinary Chambers in the Courts of Cambodia ('ECCC') under Internal Rule 33. It is further noted that *amicus curiae* briefs form an integral part of many states' legal systems, including before the highest court. For example, the Philippines permits *amicus curiae* briefs under Rule 138, section 36, of the Rules of Court, and the Constitutional Court of the Republic of Korea has frequently permitted *amicus curiae* briefs.¹ It is further noted that *amicus curiae* are a common feature across common law, civil law, and international law systems, and have increasingly been adopted in new jurisdictions.² The increase in their use reflects their assistive value to courts in regard to issues of legal interpretation and relevant factual considerations.³

7. It is submitted that there is no prejudice to either party by the filing of this *amicus curiae* brief; it does not comment on the facts of the case or any allegations but relates only to the legal issue of interferences with the right to freedom of expression under international human rights law. This reflects the role of an *amicus curiae* (friend of the court), which is to provide an external perspective, independent of the parties to a case.⁴ This is equivalent to acting as a third-party intervener in a case and does not represent an application to be a party to the case itself.⁵

8. The interest of IBAHRI in the case before this Honourable Court stems from the fundamental questions it raises in relation to media freedom nationally and internationally. It is noted that the topics engaged in this case are of critical importance globally, with the potential to inform wider legal practice relating to issues of media freedom and freedom of expression.

9. We wish to inform this Court that IBAHRI has also submitted legal arguments as *amicus curiae* in various other fora related to international law and protections for press freedom and now wishes to assist the Honourable Court in its decision in this case. IBAHRI has been appointed as *amicus curiae* in domestic courts including the Supreme Court of the Philippines, the Federal Supreme Court of Brazil, the Federal Court of Malaysia and the

¹ See for example Amnesty International's *amicus curiae* in case file number 2023Du36800 (<https://www.amnesty.org/en/wp-content/uploads/2024/02/ASA2576342024ENGLISH.pdf>) and Office of the United Nations High Commissioner for Human Rights (OHCHR) Working Group on discrimination against women and girls' *amicus curiae* in case file number 2017Hun-Ba127(<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ConstitutionalCourtRepublicKorea.pdf>).

² Shai Farber, 'The Amicus Curiae Phenomenon: Theory, Causes and the Significance of Third Party Interventions' (2020) 29:1 Transnational Law & Contemporary Problems.

³ Shai Farber, 'The Amicus Curiae Phenomenon: Theory, Causes and the Significance of Third Party Interventions' (2020) 29:1 Transnational Law & Contemporary Problems, 52 – 60.

⁴ UNESCO, 'UNESCO Guide for Amicus Curiae Interventions in Freedom of Expression Cases' (2021) CI-2021-FEJ/G-1, page 1.

⁵ UNESCO, 'UNESCO Guide for Amicus Curiae Interventions in Freedom of Expression Cases' (2021) CI-2021-FEJ/G-1, page 1.

High Court of the Federation of St Christopher and Nevis, and has submitted *amicus curiae* briefs before the Inter-American Court of Human Rights and the European Court of Human Rights.

10. Based on this extensive experience, IBAHRI respectfully submits that it is well-placed to assist this Honourable Court in its assessment of the legal issues that relate to this matter. By submitting this brief, IBAHRI humbly requests the Court to consider the submissions made in its assessment of the present case.
11. The IBAHRI has no relationship with, and has had no direct contact with, any party to these proceedings that would affect its independence or impartiality in making the present submissions. IBAHRI has not acted for, advised, represented, or otherwise assisted any party in relation to the matters before this Honourable Court. Its interest in these proceedings arises solely from its mandate and expertise in international human rights law.
12. By way of this *amicus curiae* brief, the IBAHRI will draw on this expertise to assist the Court by explaining the international legal standards relevant to this case. It will expand on:
 - a) The right to freedom of expression (Section A);
 - b) When restrictions of freedom of expression on the basis of national security are acceptable (Section B); and
 - c) The imposition of criminal sanctions on journalists (Section C).

III. International legal standards

A. The right to freedom of expression

13. The right to freedom of expression is enshrined in the International Covenant on Civil and Political Rights (ICCPR), which Cambodia ratified on 26 May 1992.⁶ Article 2(2) ICCPR obliges that States Parties to the ICCPR ensure that their domestic laws guarantee the rights enshrined therein.⁷
14. The 1993 Constitution of the Kingdom of Cambodia incorporates the right to freedom of expression under Article 41, which states that:

⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); UN Treaty Body Database – Ratification Status for Cambodia:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=29&Lang=en.

⁷ Article 2(2) ICCPR.

‘Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security.

The regime of the media shall be determined by law.’

15. In Cambodia, the Law on the Press 1995 is the primary legislation for regulating the press.⁸ Article 1 states that it guarantees freedom of the press and freedom of publication in accordance with Articles 31 and 41 of the Constitution. Article 20 of the Law on the Press 1995 guarantees that no one will be arrested or subject to criminal charges for exercising freedom of expression.
16. Article 19 ICCPR stipulates that everyone has the right to freedom of opinion and expression, including the right to seek, receive and impart information and ideas of all kinds. General Comment 34 expands on this right, explaining that ‘free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential’.⁹
17. This right is subject to restrictions in the circumstances outlined in Article 19(3) ICCPR. It is also restricted under Article 20, which states that propaganda for war, and expression of national, racial or religious hatred constituting incitement to discrimination shall be prohibited by law. The UN Special Rapporteur on Freedom of Expression has highlighted that these limitations were designed to protect individuals against direct violations of their rights and are not intended to ‘suppress the expression of critical views, controversial opinions or politically incorrect statements’.¹⁰
18. Every type of expression is protected under international law. This includes, *inter alia*, political discourse, discussion of human rights and journalism.¹¹ Equally, the protections encompass all forms of expression and all methods of dissemination. Such protection extends to books, newspapers, banners, posters, and all electronic and internet-based expression.¹²
19. The right to freedom of expression is also enshrined in regional human rights instruments, including under Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and Peoples’ Rights.

⁸ Office of the United Nations High Commissioner for Human Rights, ‘State of Press Freedom in Cambodia’ (August 2022), pages 8-9.

⁹ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 13.

¹⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo (28 February 2008) A/HRC/7/14, para. 85.

¹¹ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 11.

¹² UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 12.

20. As a Member of the Association of Southeast Asian Nations ('ASEAN'), Cambodia has agreed to act in accordance with the Principles established in the ASEAN Charter. This includes a commitment to respect fundamental freedoms, promote and protect human rights, and promote social justice.¹³ Cambodia's obligation to protect human rights is similarly enshrined in the ASEAN Human Rights Declaration, which is binding on ASEAN members by virtue of Article 2(1) of the ASEAN Charter.¹⁴ The ASEAN Human Rights Declaration affirms all the civil and political rights contained in the Universal Declaration on Human Rights ('UDHR'), which includes the right to freedom of expression as established by Article 19 UDHR.¹⁵ Article 23 of the ASEAN Human Rights Declaration also affirms that every person has the right to freedom of opinion and expression.
21. International and regional human rights instruments and courts have repeatedly underscored the critical importance of freedom of expression and freedom of opinion. The UN Human Rights Committee ('HRC') stressed that these 'constitute the foundation stone for every free and democratic society'.¹⁶ Similarly, the European Court of Human Rights ('ECtHR') has stated that freedom of expression 'constitutes one of the essential foundations of a democratic society', and the Inter-American Court of Human Rights ('IACtHR') has noted that '[f]reedom of expression is a cornerstone upon which the very existence of a democratic society sits'.¹⁷
22. A free press is essential to safeguard these rights. The HRC has observed the central role of the media in the promotion of freedom of expression:
- 'A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights... The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.'*¹⁸

¹³ Charter of the Association of Southeast Asian Nations (signed 20 November 2007, entered into force December 2008), Article 2(2)(i).

¹⁴ Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012.

¹⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)).

¹⁶ UN Human Rights Committee General Comment 34, U.N. Doc. CCPR/C/GC/34, para. 1.

¹⁷ *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24, para. 49 and Inter-American Court of Human Rights, 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A N° 5 (1985), para. 70.

¹⁸ UN Human Rights Committee General Comment 34, U.N. Doc. CCPR/C/GC/34, para. 13.

23. The jurisprudence of regional human rights courts has affirmed the significance of media freedom and the need for enhanced protection of journalists.¹⁹ The ECtHR has formally incorporated this into its jurisprudence by defining journalists as having the ‘vital’ role of ‘watchdog’ in a democratic society, which means that the safeguards afforded to the press are of ‘particular importance’.²⁰ Other regional human rights courts have similarly recognised that a free and independent media is essential to fulfil society’s right to know, as well as journalists’ right to seek, receive and impart information.²¹
24. In its 2017 resolution on the safety of journalists and the issue of impunity, the UN General Assembly condemned the use of measures that violate international human rights law intentionally to prevent or disrupt access to, or the dissemination of, information online and offline.²² It noted that this undermines journalists’ work in informing the public, causing ‘irreparable harm to efforts at building inclusive and peaceful knowledge societies and democracies’.²³
25. In times of crisis and armed conflict, the ability of journalists to inform the public of matters of importance to national security is essential. In these contexts, the protection of journalists’ freedom of expression is of additional significance. The UN has recognised this, urging states to ensure that journalists can work independently and without undue interference during armed conflict situations.²⁴ Council of Europe guidelines also note this, highlighting that access to information can assist in resolving crises and exposing abuses, and that states should not restrict public access to information in times of crisis beyond the permitted limits.²⁵ Given the important role played by journalists during conflict, states should permit media professionals to access crisis areas.²⁶
26. As noted above (see paragraph 17), under international law, the right to freedom of expression is not absolute: it can be subject to restrictions in certain circumstances where specific criteria are fulfilled. Firstly, the restriction must be prescribed by law. Secondly, the restriction must be necessary and proportionate. And finally, the restriction must

¹⁹ Inter-American Court of Human Rights, Compulsory Membership in An Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A No. 5, para. 34.

²⁰ *Goodwin v. the United Kingdom*, no. 17488/90, 27 March 1996, para. 39.

²¹ See for example: *Herrera-Ulloa v. Costa Rica*, Judgment (IACtHR, 2 July 2004), Series C No. 107, para. 119 and *The Sunday Times v. the United Kingdom* (no. 2), 26 November 1991, Series A no. 217, para. 50.

²² UN General Assembly, Resolution 72/175 on the safety of journalists and the issue of impunity, (adopted 19 December 2017), U.N. Doc. A/RES/72/175, para. 12.

²³ UN General Assembly, Resolution 72/175 on the safety of journalists and the issue of impunity, (adopted 19 December 2017), U.N. Doc. A/RES/72/175, para. 12.

²⁴ UN Security Council, Resolution 2222 (2015) (adopted 27 May 2015) U.N. Doc. S/RES/2222 (2015), para.14.

²⁵ Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies), paras. 17-18.

²⁶ Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies), para. 8.

pursue a legitimate aim. This is referred to as the ‘three-part test’.

27. Within these boundaries, restrictions on freedom of expression must be narrowly construed. Importantly, limitations on freedom of expression were designed to protect individuals against violations of their rights, not to protect belief systems from criticism.²⁷ The permissible limitations outlined in Article 19(3) ICCPR ‘are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements’.²⁸

i. Prescribed by law

28. It is paramount that any restriction on the right to freedom of expression has a basis in domestic law. To be considered a ‘law’ for these purposes, it must be formulated ‘with sufficient precision to enable an individual to regulate his or her conduct accordingly’ and be accessible to the public.²⁹ Vague legislation that give states considerable discretionary powers risk arbitrary decision-making and is incompatible with international human rights law.³⁰
29. In order to meet this requirement, legislation must be sufficiently precise to enable concerned persons to foresee the consequences of a given action, although it is not necessary for these to be foreseeable with absolute certainty.³¹
30. It is always imperative that constraints on freedom of expression are prescribed by law, but it is yet more important that wording is clear and precise in the context of legislation governing criminal matters.³² This reflects the severity of the interference represented by criminal sanctions. The IACtHR has asserted that, where states restrict speech under the criminal law, ‘it is necessary to use strict and unequivocal terms, clearly restricting any punishable behaviours, giving meaning to the principle of criminal legality’.³³

²⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo (28 February 2008) A/HRC/7/14, para. 85.

²⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo (28 February 2008) A/HRC/7/14, para. 85.

²⁹ UN Human Rights Committee General Comment 34, U.N. Doc. CCPR/C/GC/34, para. 25.

³⁰ UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (13 April 2021) A/HRC/47/25, para. 40.

³¹ See: *Sanchez v. France* [GC], no. 45581/15, 15 May 2023, para. 125 and ACtHPR, *Umuhoza v. Rwanda* (App. no. 003/ 2014), 24 November 2017, para. 136.

³² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 15; African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), Article 7; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) (ECHR), Article 7; American Convention on Human Rights ‘Pact of San Jose’ (adopted 22 November 1969, entered into force 18 July 1978), Article 9. See also, *inter alia*: IACtHR, *Moya Chacón and another v. Costa Rica* (Series C No. 451), 23 May 2022, para. 72.

³³ IACtHR, *Usón Ramírez v. Venezuela* (Series C, No. 207), 20 November 2009, para. 55.

31. The UN Working Group on Arbitrary Detention ('WGAD') has repeatedly found that imprecise and overly broad legal provisions where penalties might be imposed on individuals who have merely exercised their rights are inconsistent with the ICCPR and the UDHR.³⁴ It has remarked in particular that broad criminal law provisions such as 'taking advantage of democratic freedoms and rights to abuse the interests of the State' are intrinsically inconsistent with the rights contained in the UDHR and the ICCPR.³⁵
32. It is further observed that, in its Opinion No. 3/2019 concerning the detention of two journalists, the WGAD found that Article 445 of the Cambodian 2009 Criminal Code is 'so vague as to be inconsistent with international human rights law'.³⁶ In another case relating to the Cambodian 2009 Criminal Code, the WGAD expressed concerns about Article 443, noting that the notion of 'fomenting hostilities or acts of aggression' was too vague and imprecise.³⁷ Therefore, any prosecution of individuals on the basis of legislation with this wording does not meet the required standards of legality and constitutes a violation of international human rights law.

ii. Pursuance of a legitimate aim

33. Secondly, any restriction on freedom of expression must be enacted in pursuance of one of the legitimate aims specified in Articles 19(3)(a) and (b) ICCPR. The prescribed legitimate aims are: for the respect of the rights or reputations of others, and for the protection of national security or of public order or of public health or morals. It is not permitted for states to justify restrictions on freedom of expression under any other grounds.
34. Although these legitimate aims are specified under international human rights law, assertions thereof must still be subject to due scrutiny by courts.³⁸ States must identify a specific and individualised threat, not merely a general one.³⁹

iii. Necessary and proportionate

35. Thirdly, any limitation on freedom of expression must be strictly necessary and proportionate to achieve the stated legitimate aim.⁴⁰ These two issues are closely

³⁴ See for example: WGAD, *Kem Sokha v. Cambodia* (Opinion no. 9/2018), 19 April 2018; WGAD, *Francis Xavier Dang Xuan Dieu and others v. Viet Nam* (Opinion no. 26/2013), 29 August 2013; WGAD, *Le Cong Dinh and others v. Viet Nam* (Opinion no. 27/2012), 29 August 2012.

³⁵ WGAD, *Francis Xavier Dang Xuan Dieu and others v. Viet Nam* (Opinion no. 26/2013), 29 August 2013, para. 64.

³⁶ WGAD, *Chhin v. Cambodia* (Opinion no. 3/2019), 24 April 2019, para. 49.

³⁷ WGAD, *Kem Sokha v. Cambodia* (Opinion no. 9/2018), 19 April 2018, para. 44.

³⁸ Amal Clooney, 'Chapter 1: Introduction' in Amal Clooney and David Neuberger (eds.), *Freedom of Speech in International Law* (Oxford University Press, 2024), page 48.

³⁹ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 35.

⁴⁰ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 22.

intertwined: analysis of necessity includes an assessment of proportionality.

36. The UN Special Rapporteur on Freedom of Expression has affirmed this, noting that key necessity considerations include the directness of the causal relationship between the speech and the harm, as well as the severity and immediacy of the harm.⁴¹ Regional human rights courts have further clarified assessments of necessity. For example, both the ECtHR and IACtHR have found that it is not enough for a restriction merely to be useful, reasonable or timely: to be considered necessary, a restriction must be essential to achieve a legitimate purpose.⁴²
37. As well as an assessment of the strict necessity of a restrictive measure, the measure must be proportionate. It is well-established that proportionality includes a requirement that restrictive measures are appropriate to achieve their intended protective function and proportionate to the interest protected.⁴³ Not only this, but to be proportionate, a chosen measure should be the ‘least intrusive instrument among those which might achieve their protective function’.⁴⁴ In cases concerning the press, the interest of a democratic society in ensuring and maintaining a free press will be ascribed particular importance when courts engage in a proportionality assessment of a particular restrictive measure.⁴⁵
38. These principles are applicable at domestic level in any case that concerns issues regarding restrictions on freedom of expression. **It is vital that, where freedom of expression is engaged in a case, domestic courts assess explicitly the legality, legitimate aim, and proportionality of any restrictive measure.** It must be recalled that restrictions under Article 19(3) must be interpreted restrictively, and due consideration should be given to the potential impact on freedom of expression, especially where the media is concerned.

B. National security justifications must be clearly defined and interpreted narrowly

39. Any restrictions on freedom of expression on the grounds of national security must adhere to these requirements of legality, necessity, and proportionality. Using this interpretative framework, human rights courts and soft law instruments have provided detailed guidance on the issue of national security as a justification for interferences with the right to freedom of expression. This includes frequent consideration of this issue in the specific context of media freedom.

⁴¹ UNHRC ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (13 April 2021) UN Doc A/HRC/47/25, para. 41.

⁴² See for example: *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, Series A no. 30, para. 59 and IACtHR, *Herrera-Ulloa v. Costa Rica*, 2 July 2004 (Series C No. 107), para. 122.

⁴³ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 34.

⁴⁴ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 34.

⁴⁵ *Goodwin v. the United Kingdom [GC]*, no.17488/90, 27 March 1996, para. 40.

40. Although ‘national security’ is one of the prescribed ‘legitimate aims’ under Article 19(3) ICCPR, the mere assertion of national security as a justification for restricting freedom of expression is insufficient to prevent a violation of these rights. National security laws must still conform to the strict requirements of legality, necessity and proportionality.⁴⁶ Moreover, the UN General Assembly has urged states to ensure that measures preserving national security interests comply with obligations under international law and do not arbitrarily hinder the work of journalists, including through arbitrary arrest or detention.⁴⁷
41. It is essential that laws limiting speech on national security grounds are formulated in the clearest possible terms. Courts have noted how national security laws frequently fail to define clearly terms such as ‘glorification’ or ‘propaganda of terrorism’.⁴⁸ The HRC has advised that legislation concerning official secrets laws should conform to the ‘strict’ requirements of Article 19 and contain categories of classified information that are narrowly defined.⁴⁹ A 2007 resolution by the Parliamentary Assembly for the Council of Europe necessitates that legislation providing the basis for criminal prosecution for divulgence of apparently ‘secret’ information must contain a list specifying the forms of confidential information which can lead to sanctions.⁵⁰
42. The Global Principles on National Security and the Right to Information (the ‘Tshwane Principles’), which provide guidance on ensuring the widest possible public access to information while protecting legitimate national security interests, reinforce this.⁵¹ Principle 3(a) requires that laws restricting the right to information on national security grounds are:

‘accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to understand what information may be withheld, what should be disclosed, and what actions concerning the information are subject to sanction’.

43. Moreover, Principle 46(b)(i) stipulates that criminal penalties should only apply to ‘narrow categories of information that are clearly set out in legislation’. It suggests further that these categories should be similar to the following in regard to their specificity and impact on national security:

‘technological data about nuclear weapons; intelligence sources, codes and methods; diplomatic codes; identities of covert agents; and intellectual property in which the

⁴⁶ UNHRC ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (20 April 2022) UN Doc A/HRC/50/29, para. 56.

⁴⁷ UN General Assembly, Resolution 45/18 on the safety of journalists (adopted 6 October 2020), para. 10(e).

⁴⁸ UNHRC ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (20 April 2022) UN Doc A/HRC/50/29, para. 56.

⁴⁹ HRC, Concluding Observations: Japan (2014) UN Doc. CCPR/ C/ JPN/ CO/ 6, para. 23.

⁵⁰ Parliamentary Assembly of the COE Resolution 1551 on the Fair trial issues in criminal cases concerning espionage or divulging state secrets, 19 April 2007, para. 10.2.

⁵¹ The Global Principles on National Security and the Right to Information (the ‘Tshwane Principles’) (12 June 2013).

*government has an ownership interest and knowledge of which could harm national security.*⁵²

44. In sum, where legislation limits speech on national security grounds, it must clearly categorise the forms of speech that it restricts. These categories of speech must be defined narrowly and with clarity. Broad assertions of harm to national interests or disclosure of secret information do not meet the legality standards, and the imposition of restrictions under such legislation will violate international human rights law.
45. As well as the requirement that national security justifications are outlined precisely in legislation, it is also essential that, when states rely on this legislation, they identify clearly the connection between restrictive measures and the alleged national security threat. A state must be able to demonstrate specifically and in an individualised way the precise nature of the threat.⁵³ Furthermore, there must be a ‘direct and immediate’ link between the form of expression restricted and the apparent threat.⁵⁴
46. Therefore, a state must be able to document and explain clearly the interests of national security that warrant an infringement on freedom of expression.⁵⁵ This means that it is insufficient to claim that a particular form of expression might harm national security interest; it must be possible to explain how and why this is the case. Where criminal sanctions have been justified on the grounds of national security concerns, the WGAD has stated that vague and general references to national security are insufficient to convince it that restrictions by way of deprivation of liberty are necessary.⁵⁶
47. Even where a state has identified an explicit national security concern, it must be able to demonstrate that the chosen measure is essential. Although the protection of national security in principle constitutes a legitimate aim, this should be applied with restraint and interpreted restrictively so that it only applies where it is necessary to suppress the release of particular information.⁵⁷
48. In addition, there is a high threshold for justifying sanctions on freedom of speech on national security grounds, which requires evidence of imminent or actual harm. Specifically, the WGAD has established that such sanctions will be justified only where individuals have acted in a violent manner or incited violence through their activities.⁵⁸ This goes to the issue of necessity and proportionality: where journalistic reporting – including during wartime when there might be heightened security concerns – has not involved or incited violence, the arrest of a journalist on national security grounds for

⁵² The Tshwane Principles, Principle 46(b)(i).

⁵³ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 35.

⁵⁴ UN Human Rights Committee General Comment 34, U.N Doc. CCPR/C/GC/34, para. 35.

⁵⁵ WGAD, *Gulmira Imin v. China* (Opinion no. 29/2012), 29 August 2012, para. 29.

⁵⁶ WGAD, *Gulmira Imin v. China* (Opinion no. 29/2012), 29 August 2012, para. 29.

⁵⁷ *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, para. 54.

⁵⁸ WGAD, *Chhin v. Cambodia* (Opinion no. 3/2019), 24 April 2019, para. 46.

legitimate reporting will be neither necessary nor proportionate.⁵⁹ The ECtHR similarly requires that any speech that is restricted on national security grounds must be ‘capable of causing considerable damage’ to national security or a state institution before it can be penalised.⁶⁰

49. The nature of the information shared is relevant to an assessment of whether it was in fact capable of causing substantial damage to national security interests. In the context of the divulgence of apparently secret information relating to military operations, the ECtHR has identified that, where this information is outdated, it is unlikely to cause significant damage to national security.⁶¹ In *Gîrleanu v. Romania*, information disclosed by a journalist about Romanian military operations in Afghanistan was obsolete and no longer classified, which contributed decisively to the court finding that it was disproportionate to convict a journalist of ‘sharing secret information’.⁶² The ECtHR also emphasised the domestic court’s finding that the information was unlikely to endanger national security, but would only harm the interests of the Romanian state and its armed forces.⁶³ This demonstrates the high standard of harm in the context of national security.
50. In *Dolma Kyab v. China*, the WGAD found that no harm flowed from a publication that included information regarding the number and location of military installations.⁶⁴ Even though the publications included information that, among other things, pertained to the state military, this constituted a peaceful exercise of the right of freedom of expression.⁶⁵ The WGAD noted that this could only be regarded as reprehensible if the individual concerned had resorted to non-peaceful means.⁶⁶ Again, this underscores that the disclosure of information that relates to the military is insufficient in and of itself to justify restrictions on free speech.
51. This is mirrored by the Tshwane Principles, which highlight that a state must be capable of identifying a real risk of significant harm to a legitimate national security interest before prosecuting a public official for leaks of national security information.⁶⁷ The 2019 Declaration of Principles of Freedom of Expression and Access to Information in Africa notes that speech can only be restricted on national security grounds where ‘there is a real risk of harm to a legitimate interest and ... a close causal link between the risk of harm and the expression’.⁶⁸

⁵⁹ WGAD, *Evan Gershkovich v. Russian Federation* (Opinion no. 11/2024), 20 March 2024, para. 66.

⁶⁰ ECtHR, *Hadjianastassiou v. Greece* (App. no. 12945/ 87), 16 December 1992, para. 45.

⁶¹ *Gîrleanu v. Romania*, no. 50376/09, 26 June 2018, para. 89.

⁶² *Gîrleanu v. Romania*, no. 50376/09, 26 June 2018, paras. 89 and 96-99.

⁶³ *Gîrleanu v. Romania*, no. 50376/09, 26 June 2018, para. 28.

⁶⁴ WGAD, *Dolma Kyab v. China* (Opinion no. 36/ 2007), 30 November 2007.

⁶⁵ WGAD, *Dolma Kyab v. China* (Opinion no. 36/ 2007), 30 November 2007, paras. 13 and 15.

⁶⁶ WGAD, *Dolma Kyab v. China* (Opinion no. 36/ 2007), 30 November 2007, para. 15.

⁶⁷ Open Society Justice Initiative, *Global Principles on National Security and the Right to Information (Tshwane Principles)* (2013), Principle 46(b)(ii).

⁶⁸ African Commission on Human and Peoples’ Rights, *Declaration on Principles of Freedom of Expression and Access to Information in Africa* (2019), Principle 22(5).

52. The need to demonstrate an extreme level of potential harm that is clearly linked to the form of expression is also evident in the jurisprudence of domestic courts:
- a. In *Kol Ha'am v. Minister of Interior*, the Israeli Supreme Court found that there must be a very high probability that the publication will cause harm to national security. This encompasses consideration of the publication itself and the circumstances surrounding it. It expressed that, where a state becomes aware that 'the publication makes it possible, amounting almost to a certainty, that serious harm will be caused', it is justified to restrict freedom of expression, provided the restriction remains proportionate to the legitimate aim sought.⁶⁹
 - b. In *Romesh Thappar v. The State Of Madras*, the Supreme Court of India found that threats to state security are those that constitute extreme acts of violence that could threaten to overthrow a state.⁷⁰
53. Context is equally significant for necessity and proportionality assessments where states have alleged that a form of expression has divulged 'secrets' or 'state secrets'. International bodies have found that states must have an objective basis for designating information as 'secret' or as damaging to national security.⁷¹ Crucially, where evidence of human rights violations is published, this cannot be considered a state secret.⁷² Not only this, but where expression concerns human rights violations, this falls squarely within the 'public interest', which makes it an area in which the scope for restrictions is yet more limited.⁷³ Equally, information about unlawful acts and practices is of particularly strong public interest, which means that there should be minimal restrictions on the publication of this information.⁷⁴
54. More generally, the Tshwane Principles emphasise that journalists, as well as others who do not work for the government, should not be prosecuted for receiving, possessing or disclosing classified information, or for other crimes based on their seeking or accessing classified information.⁷⁵
55. International jurisprudence also demonstrates that members of the state apparatus, such as government or military officials, should be held to a higher standard when it comes to the issue of sharing 'secret information'. In *Hadjianastassiou v. Greece*, the ECtHR outlined that information about a state's interest in a specific weapon and corresponding technical

⁶⁹ *Kol Ha'am Co Ltd v. Minister of the Interior* (1953) 7 IsrSC 871.

⁷⁰ *Romesh Thappar v State of Madras* [1950] SCR 594.

⁷¹ Amal Clooney and Alice Gardoll, 'Chapter 5: Speech Related to National Security: Espionage and Official Secrets Laws' in Amal Clooney and David Neuberger (eds.), *Freedom of Speech in International Law* (Oxford University Press, 2024), page 318.

⁷² See: WGAD, *Li Hai v. China* (Opinion no. 19/ 1999) 16 September 1999, para.12 and WGAD, *Grigorii Pasko v. Russian Federation* (Opinion No. 9/ 1999), 20 May 1999, paras. 5 and 7.

⁷³ See for example: ECtHR (GC), *Bédat v. Switzerland* (App. no. 56925/ 08), 29 March 2016, para. 49.

⁷⁴ ECtHR (GC), *Halet v. Luxembourg* (App. no. 21884/ 18), 14 February 2023, para. 141.

⁷⁵ Tshwane Principles, Principle 47.

information might indicate the state of progress of its manufacture, which could cause considerable damage to national security.⁷⁶ In addition, where this information was shared by an officer in the air force, it was necessary to consider the specific duties and responsibilities to which the applicant was subject by virtue of this role in the armed forces.⁷⁷ It is therefore less likely that an interference will be justified where ‘secret’ information is shared by a non-state official who is not subject to the same obligation of discretion.

56. Finally, it is submitted that public access to information concerning issues relating to national security is vital given the wide discretion that governments typically have in this context. It is well-established that the public interest in a particular publication is another factor that courts consider in the national security context. The ECtHR has highlighted that press freedom assumes even greater importance where ‘State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature’.⁷⁸ Convictions of journalists resulting from the publication of information that is deemed confidential or secret might discourage media actors from informing the public on matters of public interest.⁷⁹ The Inter-American Commission on Human Rights has similarly underscored the important role that the disclosure of state-held information plays in a democratic society because it enables civil society to influence the actions of a government to whom its interests are trusted.⁸⁰
57. Equally, in *New York Times Co. v. United States*, the US Supreme Court found that in certain cases the government cannot prevent newspapers from publishing classified information. This case concerned the publication of content relating to the United States’ decision-making during its war in Vietnam. In his concurring opinion, Justice Douglas observed that secrecy in government is undemocratic, as was the government’s attempt to keep relevant information about the Vietnam War out of public debate.⁸¹
58. **The IBAHRI therefore submits that the grounds of national security should only be invoked to restrict freedom of expression in circumstances where a state can identify a risk of specific, serious harm to national security linked to the expression, for which there is a high threshold.** Furthermore, it is crucial to recall the vital role of journalists in sharing issues of public interest, which includes information pertaining to conflict: penalising journalists for publishing information that is in the public interest could have a serious chilling effect on media freedom and is a violation of international law. Finally, it is evident that greater leniency should be afforded to those who are not acting in a professional capacity within the state apparatus: specific obligations of

⁷⁶ *Hadjianastassiou v. Greece*, 16 December 1992, Series A no. 252, para. 45.

⁷⁷ *Hadjianastassiou v. Greece*, 16 December 1992, Series A no. 252, paras. 46-47.

⁷⁸ *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, para. 110.

⁷⁹ *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, para. 110.

⁸⁰ See the Inter-American Commission on Human Rights’ submissions at paragraph 58 of IACtHR, *Claude Reyes et al. v. Chile*, 19 September 2006.

⁸¹ *New York Times Co. v. United States*, 403 U.S. 713 (1971), concurring opinion of Justice Douglas, para. 37.

discretion apply to these members, which do not apply to media professionals who discover allegedly secret information.

C. Criminal sentences should only be imposed on journalists in the most exceptional and extreme of circumstances

59. It follows from the principles of necessity and proportionality that criminal penalties for speech are only justified in the most serious and exceptional circumstances.⁸² The UN Special Rapporteur on Freedom of Expression has outlined that situations that would meet this threshold are: child pornography; incitement to terrorism; public incitement to genocide; and advocacy for national, racial, or religious hatred.⁸³ There is no scope for criminal penalties for expression that does not encompass one of these categories.⁸⁴ It is notable that the HRC has never found a term of imprisonment to be an appropriate restriction on speech.⁸⁵
60. In cases concerning freedom of the press, it is not the sentencing to a penalty but the fact of being convicted at all which is likely to deter journalists from contributing to public discussion.⁸⁶ Where journalists are arrested or prosecuted for alleged crimes, this not only intimidates and punishes those directly involved, but it also establishes a climate of fear that has a chilling effect on wider journalism and reporting.⁸⁷ It is for these reasons that criminal measures should only be imposed on journalists in very rare circumstances.
61. Calls for limits on the implementation of criminal proceedings for speech are a consistent feature at a regional level. Across regional human rights courts, there is a growing trend away from the use of criminal sanctions where freedom of speech is concerned, particularly where the speech relates to matters of public importance.⁸⁸ The Committee of Ministers of the Council of Europe has stressed that criminal sanctions should be limited to circumstances where other fundamental rights have been seriously impaired.⁸⁹ This echoes the jurisprudence of the ECtHR, which has noted the need for restraint in resorting

⁸² UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (13 April 2021) A/HRC/47/25, at 41. See also: ACtHPR, *Konaté v Burkina Faso* (App. no. 4/ 2013), 5 December 2014, para. 165.

⁸³ UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’, (10 August 2011), U.N. Doc. A/66/290, paras. 20-36.

⁸⁴ UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’, (10 August 2011), U.N. Doc. A/66/290.

⁸⁵ Amal Clooney, ‘Chapter 1: Introduction’ in Amal Clooney and David Neuberger (eds.), *Freedom of Speech in International Law* (Oxford University Press, 2024), page 53.

⁸⁶ *Dammann v. Switzerland*, no. 77551/01, 25 April 2006, para. 57.

⁸⁷ UNHRC ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (20 April 2022) UN Doc A/HRC/50/29, para. 53.

⁸⁸ See IACtHR, *Moya Chacón and another v. Costa Rica* (Series C No. 451), 23 May 2022, concurring opinion of Judge Rodrigo Mudrovitsch, paras. 25-43.

⁸⁹ CM/Rec(2016)4 - Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers’ Deputies), Principles II, para. 35.

to criminal proceedings in matters concerning freedom of expression.⁹⁰

62. The severity of criminal law sanctions is also reflected in the IACtHR’s jurisprudence, which has found that criminal law is ‘the most restrictive and severe means of imposing liability for illegal conduct’.⁹¹ It is this severity that means criminal sanctions are infrequently proportionate restrictions on legitimate freedom of expression. The WGAD has suggested that it is necessary to demonstrate violence to justify criminal penalties for freedom of expression.⁹² Thus, the peaceful exercise of an individual’s rights that does not incite violence, nor represent a clear, substantial threat to an identified national security risk (see section B) cannot justify criminal sanctions.⁹³
63. In addition, even in cases where journalists’ speech has encompassed one of the categories that could justify a criminal sanction, courts have found long custodial sentences to be disproportionate.
64. For example, in *Stomakhin v. Russia*, although the ECtHR accepted that the applicant’s comments in publications amounted to glorification of terrorism and promotion of violence, it still found a violation of Article 10 due to the disproportionate penalty. The applicant’s publications included statements such as the following, which he published in the context of the Second Chechen War between the Russian Federation and Chechen separatists:

‘Let dozens of Chechen snipers take up their positions in the hills and the city ruins and hundreds and thousands of aggressors perish from their holy bullets! No mercy! Death to the Russian invaders!’⁹⁴

65. In these circumstances, the ECtHR found that an interference with the applicant’s right to freedom of expression was justified, but concluded that a prison sentence of five years combined with a ban on journalistic activities for three years was an ‘extremely harsh measure’.⁹⁵ In respect of the prison sentence, it noted that the circumstances of the case did not justify the sentence, especially since the applicant had no criminal record and had never been convicted of a similar offence.⁹⁶ It also found that references to the applicant’s ‘social danger’, whilst potentially relevant, did not warrant the ‘exceptional severity’ of

⁹⁰ See, for example: *Bédat v. Switzerland* [GC], no. 56925/08, 29 March 2016, para. 81.

⁹¹ IACtHR, *Palamara- Iribarne v. Chile*, (Series C No. 135), 22 November 2025, para. 79.

⁹² See WGAD, *Le Cong Dinh and others v. Viet Nam* (Opinion no. 27/2012), 29 August 2012, para. 41; WGAD, *Francis Xavier Dang Xuan Dieu and others v. Viet Nam* (Opinion no. 26/2013), 29 August 2013, para. 66; WGAD, *Kem Sokha v. Cambodia* (Opinion no. 9/2018), 19 April 2018, para. 41; and WGAD, *Chhin v. Cambodia* (Opinion no. 3/2019), 24 April 2019, para. 46.

⁹³ WGAD, *Le Cong Dinh and others v. Viet Nam* (Opinion no. 27/2012), 29 August 2012, para. 41 and WGAD, *Chhin v. Cambodia* (Opinion no. 3/2019), 24 April 2019, para. 46.

⁹⁴ *Stomakhin v. Russia*, no. 52273/07, 9 May 2018, para. 11.

⁹⁵ *Stomakhin v. Russia*, no. 52273/07, 9 May 2018, para. 129.

⁹⁶ *Stomakhin v. Russia*, no. 52273/07, 9 May 2018, para. 130.

the penalty.⁹⁷

66. In a comparable case concerning speech that contained positive descriptions of terrorists and amounted to indirect incitement to terrorism, the ECtHR still found that an eighteen-month prison sentence, with ten months suspended, was disproportionate.⁹⁸ The government argued that this was moderate because the Penal Code provided for a sentence of up to seven years' imprisonment along with a fine of up to €100,000, but the court disagreed with this reasoning.⁹⁹ Therefore, even when states impose a sentence that is lower than the maximum, this does not necessarily equate to a proportionate measure.
67. Moreover, the ACtHPR found that a fifteen-year prison sentence was not proportionate or necessary as a response to comments that minimised and denied the Rwandan genocide.¹⁰⁰
68. Accordingly, even in cases where speech has amounted to incitement to violence or denial of genocide, years-long custodial sentences are disproportionate. This reflects the seriousness of terms of imprisonment and their strong deterrent effect on freedom of expression.
69. Significantly, neither of the two aforementioned cases concerned journalists. Where journalists' freedom of expression is concerned, the importance of media freedom will weigh heavily in the proportionality assessment.¹⁰¹ In *Gîrleanu v. Romania*, the ECtHR highlighted explicitly that the journalist had made the disclosure in the context of a journalistic investigation.¹⁰² This meant that the scope for the imposition of criminal sanctions was more limited than if the applicant had been a member of the military.¹⁰³ Therefore it is only in the most exceptional and egregious of circumstances that a custodial sentence might be a proportionate measure to impose on a journalist.
70. Critically, in *Hadjianastassiou v. Greece* (see paragraph 54) where a member of the armed forces intentionally disclosed secret, technical information regarding weapons development, this justified a criminal sentence, but a suspended term of five months' imprisonment was a proportionate measure.¹⁰⁴ Consequently, even where a custodial sentence is ordered, a state must still exercise exceptional restraint in the penalty imposed.

⁹⁷ *Stomakhin v. Russia*, no. 52273/07, 9 May 2018, para. 129.

⁹⁸ *Rouillan v. France*, no. 28000/19, 23 June 2022, paras. 66-77.

⁹⁹ *Rouillan v. France*, no. 28000/19, 23 June 2022, paras. 46 and 75.

¹⁰⁰ ACtHPR, *Umuhoza v. Rwanda* (App. no. 003/ 2014), 24 November 2017, para. 162.

¹⁰¹ *Goodwin v. the United Kingdom*, no. 17488/90, 27 March 1996, para. 40.

¹⁰² *Gîrleanu v. Romania*, no. 50376/09, 26 June 2018, para. 96.

¹⁰³ *Gîrleanu v. Romania*, no. 50376/09, 26 June 2018, para. 96.

¹⁰⁴ ECtHR, *Hadjianastassiou v. Greece* (App. no. 12945/ 87), 16 December 1992, paras. 13 and 47.

71. Equally, courts have found that a comparatively small criminal penalty or the imposition of a fine represents a disproportionate constraint on freedom of expression.¹⁰⁵ This is because of the potential chilling effect of such a measure.¹⁰⁶
72. Moreover, it is submitted that it is only in very limited circumstances that criminal sanctions meet the obligation on states to use the least intrusive measure available when restricting speech. Criminal measures should not be used where other methods are available; this indicates that interferences will usually be disproportionate where civil or disciplinary remedies could have been sought.¹⁰⁷ Where states can use an alternative, less punitive route to remedy the apparent issues posed by a certain form of expression, it is incumbent upon the state to adopt this measure instead.
73. **The IBAHRI therefore invites this Honourable Court to consider that states must display exceptional restraint when using criminal sanctions against freedom of speech in all circumstances, but especially where media freedom is concerned.** Criminal sanctions, and above all custodial sentences, are very rarely proportionate in cases concerning journalists' freedom of speech, particularly where it is not possible to demonstrate violence or significant infringements of other human rights. Even in the limited circumstances when a criminal sanction might be justified, states must impose the least intrusive possible measure to achieve the necessary end: years-long custodial sentences are highly unlikely to satisfy this.

IV. Conclusion

74. Freedom of expression is an essential pillar of a democratic society and integral to its proper, democratic functioning. A free press is inherent to this given its role in sharing information and ideas of public interest. It is vital that interferences with the right of journalists to freedom of expression are limited to prevent a chilling effect on media freedom.
75. The IBAHRI submits that it is imperative for states to adhere to the well-established international law principles of legality, legitimate aim, and proportionality when seeking to interfere with the right to freedom of expression. This is always required, but it is critically important that stringent standards are applied when interfering with the right of a journalist to publish news that is in the public interest, including in the context of conflict and crisis.
76. It is further submitted that restrictions on freedom of expression based on national security must be limited to those circumstances in which there is an objective and serious threat to a national security interest, which a state must define precisely and explain

¹⁰⁵ *Nikula v. Finland*, no. 31611/96, ECHR 2002-II, paras. 54 -55.

¹⁰⁶ *Nikula v. Finland*, no. 31611/96, ECHR 2002-II, para. 55.

¹⁰⁷ ECtHR, *Raichinov v. Bulgaria*, App. No. 47579/99 (2006), para. 50.

clearly. A state must be able to demonstrate a specific connection between the speech they are seeking to penalise and the alleged national security threat. Any such restrictions must be rooted in legislation which stipulates precisely the definition of the national security threat, and the forms of expression that might result in a penalty under it. Vague assertions that certain types of speech threaten national security or expose state secrets are not permitted under international human rights law.

77. Finally, and crucially, criminal sanctions for freedom of expression, especially the imposition of custodial sentences, should only be used rarely and in the most extreme of circumstances. Even where the legality, legitimacy and necessity tests are met, there are only limited scenarios in which criminal sanctions might be a proportionate measure. Where criminal sanctions might exceptionally be justified, these must still be proportionate to the actions and the legitimate interest protected – long custodial sentences are seldom an appropriate measure, particularly where a state could have imposed alternatives, such as a fine or a suspended sentence.