

## **Input of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the UN Office of Counter-Terrorism on implementation of the Global Counter-Terrorism Strategy**

**16 December 2019**

### **I. Mandate and Role of the Special Rapporteur**

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT & HR) is an independent expert appointed by the UN Human Rights Council. The mandate holder has been invited to gather, request, receive and exchange information on alleged violations of human rights and fundamental freedoms while countering and preventing terrorism and violent extremism, and to report regularly to the Human Rights Council and General Assembly about *inter alia* identified good policies and practices, as well as existing and emerging challenges and present recommendations on ways and means to overcome them.

The current mandate holder Fionnuala Ní Aoláin (Ireland) was appointed by the Human Rights Council and began her mandate on 1 August 2017. The SRCT & HR is mandated by HRC resolution 15/15, which was extended by the latest HRC in March 2019 resolution 40/16 for a further period of three years:

- a) To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters;
- b) To gather, request, receive and exchange information and communications from and with all relevant sources, including Governments, the individuals concerned and their families, representatives and organizations, including through country visits, with the consent of the State concerned, on alleged violations of human rights and fundamental freedoms while countering terrorism;
- c) To integrate a gender perspective throughout the work of his/her mandate;
- d) To identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms;
- e) To work in close coordination with other relevant bodies and mechanisms of the United Nations, and in particular with other special procedures of the Council, in order to strengthen the work for the promotion and protection of human rights and fundamental freedoms while avoiding unnecessary duplication of efforts;
- f) To develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, with, *inter alia*, the Counter-Terrorism Committee of the Security Council, including its Executive Directorate, the Counter-

Terrorism Implementation Task Force, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and treaty bodies, as well as non-governmental organizations and other regional or sub-regional international institutions, while respecting the scope of his/her mandate and fully respecting the respective mandates of the above-mentioned bodies and with a view to avoiding duplication of effort;

g) To report regularly to the Council and to the General Assembly

## **Working methods**

In the discharge of the mandate, the SRCT & HR:

- Transmits urgent appeals and letters of allegation to Member States on alleged violations of human rights and fundamental freedoms while countering terrorism
- Undertakes fact-finding country visits.
- Submits annual reports to the Human Rights Council and General Assembly.
- Engages fully in the work of the Global Counter-Terrorism Co-ordination Compact

## **II. Key Conclusions in Respect of Assessment of the progress made in the implementation of the UN Global Counter-Terrorism Strategy and resolution 72/284**

While the Global Counter-Terrorism Strategy affirms that that human rights and rule of law are the fundamental basis of the fight against terrorism, the implementation of the 4<sup>th</sup> pillar suffers from profound structural and policy weaknesses. There is also an evidenced lack of political will to implement the pillar's requirements and logic in full. There is a distinct need to develop new and innovative pathways for the implementation of the 4<sup>th</sup> pillar, premised on the fundamental idea that security without rights is meaningless, and that rights inherently protect and advance security. In short, a new language and political will is necessary to reimagine the integration of rights and security for the 21<sup>st</sup> century. In parallel to the evident lacunae in implementing Pillar IV there is a congruent need to ensure that human rights are concretely addressed across all four pillars of the Strategy. This means strengthening the language of human rights in the governing General Assembly Resolution, augmenting human rights expertise and capacity within the Coordination Compact to support human rights, providing funding for the implementation of human rights supported projects and mandating oversight and benchmarking of counter-terrorism work through a human rights framework. As the work of the Coordination Compact expands there is a necessary and proportionate need to augment human rights capacity within the Compact and to meaningfully support the woefully resource constrained human rights focused entities such as the OHCHR and the mandate of the Special Rapporteur to carry out their work.

### **III. Suggestions for the future implementation of the Strategy by the United Nations system, including in relation to new and emerging challenges; and**

The strengthening of Pillar IV of the Strategy and mainstreaming of human rights across all the other pillars is essential to the revitalized efforts of the UN under the Global Compact. To ensure a balanced implementation of the Strategy and to make human rights and the rule of law the fundamental basis for the fight against terrorism, the UN system should:

- A) Establish an independent, adequately funded and sufficiently empowered human rights oversight office within the Global Coordination Compact (for example, an Independent Reviewer office) utilizing best practice models of independent reviewers of terrorism at national level. The goal would be to have a full-time, fully staffed and adequately supported independent entity capable of consistently advancing compliance with and oversight of international law and human rights obligations in the counter-terrorism and countering violent extremism arenas by UN entities, as well as an entity that is empowered to give cross-cutting guidance to States on counter-terrorism law and policy with human rights implications;
- B) Strengthen existing human rights language by making clear and concrete obligations to the protection and promotion of human rights across all four pillars;
- C) Strengthen human rights capacity to address terrorism, counter-terrorism, and human rights issues across relevant UN entities, particularly in OHCHR and OCT to enable systematic human rights assessment of all UN projects at time of conceptualization, staffing, implementation and review;
- D) Establish a transparent, effective and well-resourced civil society liaison/focal point office within the Office of Counter-Terrorism in a reasonable time-frame;
- E) Ensure consistent application of the human rights due diligence policy (HRDDP) requirements in the delivery of counter-terrorism capacity building by UN entities. To ensure this is occurring in practice, the Special Rapporteur supports the view that the Global Coordination Compact Working Group on human rights and rule of law should be strengthened and adequately resourced to allow it to assess this aspect of human rights compliance in the UN's counter-terrorism work.
- F) The Global Compact Working Group on resource mobilization and monitoring and evaluation is newly established and shows a clear commitment to robust monitoring and evaluation. In the human rights domain, more will be needed to address existing and well-documented lacunae in the implementation of the 4<sup>th</sup> pillar. Concretely this means that the WG must:
  - i. work to ensure a more balanced implementation of the Strategy, specifically finding innovative ways to ensure more funding and projects dedicated to Pillar IV, and

- ii. give consideration to ‘special measures’ in the short/medium term to increase the number of substantive human rights focused funding and projects in the counter-terrorism and countering violent extremism conducive to terrorism arenas, and
  - iii. include human rights as a core criterion for evaluation of all UN projects, including by leveraging the extensive existing country-specific and thematic analysis and outputs of the UN system, such as the reports and recommendations of the Human Rights Treaty Bodies, Special Procedures, OHCHR field presences, and the Universal Periodic Review.
- G) Find innovative ways to better engage the expertise of the UN Human Rights system as a whole into the Compact, including greater engagement with relevant Special Procedure Mandates (Torture, Expression, Religious Freedom and Belief) and Working Groups (Disappearances and Arbitrary Detention).

#### **IV. Updates on the respective activities of the Global Compact entities in promoting the implementation of the four pillars of the Strategy since January 2018.**

The discharge of the Special Rapporteur’s mandate contributes in a cross-cutting way to all four pillars of the Global Counter-Terrorism Strategy. As human rights protections and obligations constitute a cross-cutting necessity to ensure successful delivery of all four dimensions of the Global Strategy, the independent expert’s advice to States and UN entities on the promotion and protection of human rights constitutes an essential knowledge-based approach to preventing and countering terrorism. Counter-terrorism effectiveness is intrinsically tied to the protection and promotion of human rights.

The Special Rapporteur’s mandate is structured to engage with Governments and support them in their efforts to counter-terrorism by observing human rights and fundamental freedoms. This is best achieved through transmitting communications on individual cases inviting the Governments to engage in the dialogue in relation to the concerns expressed by the SRCT and country-visits conducted by the mandate holder, enabling long and sustained relationships of support and capacity building to be advanced. A list of communications from the mandate to States can be found here [www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx](http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx):

Country visits by the Special Rapporteur between 2016-2019 include Sri Lanka (2017), Tunisia (2017) and Saudi Arabia (2017), France, (2017) Belgium (2017) and Kazakhstan (2018). From 30 January to 3 February 2017, SRCT & HR carried out an official visit to **Tunisia** to assess progress achieved by the country in the promotion and protection of human

rights and fundamental freedoms while countering terrorism, including the implementation of a new 2015 Organic Law on the fight against terrorism and money laundering, and the new 2016 National strategy against extremism and counter terrorism. The Report welcoming the country's efforts in preventing violent extremism and countering terrorism, the expert stressed that the fight should be grounded in human rights to serve as a model for the region and beyond. The SRCT & HR called on Tunisia to ensure a judicial review of all executive orders placing people under house arrest following the declaration of the State of Emergency, which would allow proper balance between security concerns and rule of law. The Report on this visit is found here: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/52/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.1)

From 30 April to 4 May 2017, SRCT & HR undertook an official visit to **Saudi Arabia** to gather first-hand information on initiatives in the area of counterterrorism and assess how they affect the promotion and protection of human rights. Despite many positive developments, SRCT was concerned about the unacceptably broad definition of terrorism and the misuse of Saudi Arabia's 2014 counter-terrorism law and other national security provisions against human rights defenders, writers, bloggers, journalists and other peaceful critics. The Report on this visit is found here: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/52/Add.2](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.2)

From 10 to 14 July 2017, SRCT & HR undertook an official visit to **Sri Lanka** to assess how its initiatives in the area of counter-terrorism comply with human rights and fundamental freedoms, as well as to seek to provide assistance in the discussion of the country's counter-terrorism policy and legal framework. The Report concluding that Sri Lanka continues to use torture against people detained on national security grounds, and its progress on human rights, reforms and justice remain woefully slow. The Report on this visit is found here: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/52/Add.3](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.3)

From 24 to 31 May 2018 the SRCT & HR conducted an official visit to **Belgium**. She commended the measured, intentional and deliberative approach shown by the Government in responding to the terrorist threat. She affirmed that Belgium has much good practice to share, and its commitment to human rights is an essential dimension of its leadership in addressing terrorism. The Report concluded that there was significant work to be done to ensure the full protection and rights of victims of terrorism under national law, and significant gaps in relation to the development of human rights based PVE approaches particularly in prisons. The Report on this visit can be found here: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/52/Add.5](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.5)

From 14 to 23 May 2018 the SRCT & HR conducted a visit to **France**. The SRCT & HR commended France for its strong role in integrating human rights and international humanitarian law in global counter-terrorism practice and acknowledged its sustained regional and international leadership in the global challenge of countering terrorism. The SRCT & HR mandate was particularly positive on the approach of France to the protection of victims of terrorism. The Report observed significant concerns about the continued use of de facto emergency laws, the implications in non-discrimination and equality terms for certain groups of citizens in the application of administrative legal powers, and the effects of certain counter-terrorism laws on fundamental rights including freedom of expression. The Report on this visit can be found here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/133/99/PDF/G1913399.pdf?OpenElement>

From 9-17 May 2019 the SRCT & HR conducted a visit to **Kazakhstan**. The SRCT & HR commended Kazakhstan for its positive and effect role in returning women and children from conflict zones in Syria. The [Preliminary Report](#) on the visit expressed concerned about the misuse of counter-terrorism and extremism laws on a multitude of rights including expression, assembly, privacy and freedom of religion and belief. The SRCT & HR also noted concerned about fair trial and ill-treatment in custody. The Preliminary Report on this visit can be found here: [www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx](http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx)

### **The mandate has issued the following thematic reports (2017 – 2019):**

The Special Rapporteur's broader thematic reports provided the means to remind, clarify and advise upon the legal obligations of states, as the methods and means of counter-terrorism and prevention of violent extremism regulation try to keep pace with the changing technological, territorial, and behavioural patterns of terrorist actors and organizations. The Special Rapporteur's two most recent thematic report concerns the misuse of counter-terrorism law and practice against civil society, civic space and human rights defenders (A/HRC/40/52) and the use of 'soft law' and 'new institutions' in the counter-terrorism arena with a commensurate lack of attention to human rights (A/74/335).

#### ***GA reports:***

- [A/74/335](#) (2019) - role of "soft law" and new institutions in the creation, enforcement, oversight and regulation of counter- terrorism measures.
- [A/73/361](#) (2018) - The report broadly addresses the effects of thematic Security Council resolutions concerning terrorism on the promotion and protection of human rights since the events of 11 September 2001.
- [A/72/495](#) (2017) - on identified four substantive areas of interest falling with the mandate's focus in the years ahead: (1) the proliferation of permanent states of emergency and the normalization of exceptional national security powers within

ordinary legal systems; (2) the need for greater clarity in respect of the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law, and international criminal law) as well as the relationship of human rights to the emergence of standalone international security regimes regulating terrorism and counter-terrorism; (3) the advancement of greater normative attention to the gendered dimensions of terrorism and counter-terrorism; and (4) advancing the rights and protection of civil society in the fight against terrorism.

### ***HRC reports:***

- A/HRC/40/52 (2019) – HRC Report on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders.
- [A/HRC/37/52](#) (2018) – HRC Report on the human rights challenge of states of emergency in the context of countering terrorism. The Report underscores the need for consistent oversight of both formal and *de facto* emergencies premised on terrorism or violent extremism with due attention to the legal requirements of necessity, proportionality, and non-discrimination.
- [A/HRC/34/61](#) (2017) – HRC Report on recent developments and thematic updates concerning victims of terrorism; Al-Qaida and Islamic State in Iraq and the Levant sanctions regime; accountability of public officials for gross or systematic human rights violations committed in the course of State-sanctioned counter-terrorism initiatives; use of remotely piloted aircraft in extraterritorial lethal counter-terrorism operations; mass digital surveillance for counter-terrorism purposes; international response to human rights violations committed by Islamic State in Iraq and the Levant; and reform of the United Nations institutional architecture for addressing issues related to human rights and counter-terrorism

The Special Rapporteur has also engaged with the regional and international organizations whose roles are critical to a universal and consistent approach to the protection and promotion of human rights and fundamental freedoms while countering terrorism. The SRCT & HR as an entity within the Global Coordination Compact has a particular obligation to remind and support UN entities to observe best practices in the advice, guidance and legal regulation they provide to frame state responses to terrorism in a human rights compliant ways. All UN entities are equally required to be cognizant of the human rights obligations and due diligence (A/67/775–S/2013/110) to apply to the counter-terrorism work supported by and through global, regional, and national level actors.

**Selection of expert meetings** in which the mandate has contributed that pertain to coordination and cohesion.

On 28 July 2017, the Special Rapporteur attended the Expert Consultation on Ensuring Human Rights Compliance of API (Geneva) Output: Internal Guidance Document on Ensuring Compliance of Advance Passenger Information (API) Legislation with International Human Rights Standards (2017).

On 13-14 November 2017, SRCT & HR mandate conducted a training for Kyrgyzstan's human rights lawyers and CSO activists on human rights protection in the context of C/PVE (Bishkek).

On 15-17 November 2017, SRCT & HR mandate participated at the regional consultations of establishing of Regional Platform for Ombudsman institutions in Central Asia with the focus on the role of NHRIs in protecting and promoting human rights within the context of countering and preventing violent extremism (Almaty). Output: Way Forward- Joint Statement on the regional cooperation platform of NHRIs in Central Asia & cooperation on PVE/CVE issues

On 11 January 2018: the SRCT & HR met with the United Kingdom's Prevent Team with a focus on addressing the protection and promoting of human rights in the context of preventing terrorism.

On 5 – 6 February 2018; SRCT & HR mandate contributed to the discussion of the role of parliamentarians in implementing UN resolutions on countering terrorism and violent extremism at the High-Level Advisory Group on Countering Terrorism and Violent Extremism organized by Inter-Parliamentary Union in Geneva.

On 14 – 15 March 2018; the SRCT & HR mandate contributed to the 35th Annual Seminar on International Humanitarian Law for Legal Advisors and Other Diplomats Accredited at the United Nations on the topic of “Detention and Contemporary Armed Conflict Issues: legal, humanitarian and policy considerations”.

On October 26-31 2018; the SRCT & HR contributed to a regional forum on Foreign Fighters held in Doha, Qatar. She addressed human rights complaint ways to ensure the responsible return of Foreign Fighters and their families to countries of origin.

On Feb 26 2019; the SRCT & HR attended the World Congress on the Death Penalty (Belgium) to address human rights issues arising from the use of the death penalty in the context of counter-terrorism.

On Feb 27-28 2019; the SRCT & HR conducted a working level visit to the European Union addressing a range of issues of mutual interest in the overlap of human rights and counter-terrorism including but not limited to human rights complaint content regulation of the internet.



On July 11-12; the SRCT & HR mandate participated in the High-Level Regional conference on terrorism in Nairobi, Kenya.

On 16 September 2019; the SRCT & HR mandate met with the World Bank's Financial Market Integrity Group to exchange views and best practices.

On 19 November 2019; the SRCT & HR met with UNESCO to exchange views on the human rights complaint approaches to the prevention of violent extremism conducive to terrorism.

On 20 November 2019; the SRCT & HR met with the Financial Action Task Force to exchange views and best practices.

## V. Conclusion

The Special Rapporteur views her engagement with enhanced co-ordination efforts within the UN counter-terrorism architecture as an important aspect of its work. The SRCT & HR participates actively in all the Global Compact Working Groups and has submitted one project proposal (with UNODC) to the Multi-Year Appeal.

The mandate has a particular responsibility to remind States and other entities of the intrinsic importance to be given to the protection and promotion of human rights while countering terrorism. While Human Rights constitutes an independent pillar of the global counter-terrorism strategy as well as a cross-cutting imperative in the other pillars of the strategy the objective of mainstreaming human rights protection throughout the United Nations counter-terrorism architecture is a long way from being fulfilled. While the SRCT mandate can contribute to advancing human rights within the UN CT architecture and via bi-lateral state engagement, each previous mandate holder and the present office holder has stated clearly that the capacity to do so effectively or adequately is nearly impossible for a stand-alone entity operating with limited OHCHR staff, on a part-time basis, with few resources and with severely limited operational authority (A/HRC/34/61). This seventh review of the Global Counter-Terrorism strategy provides an important moment to address the prominence and support given to pillar IV in the work of the relevant United Nations entities, and to ensure that the commitments made to human rights protection under pillars I and IV are fully translated in the practice of the architecture as a whole, and benchmarked for delivery and functionality. These challenges have been captured by Special Rapporteur Emmerson in his 2017 Report to the Human Rights Council:

... [t]he absence of a systematic and substantial human rights element in the Security Council's implementation machinery and the relative weight placed on human rights as against counter-terrorism and security policy are issues that raise real

concern ... When all the threads are drawn together, there is simply insufficient emphasis on human rights protection in the United Nations counter-terrorism acquis (A/HRC/34/61 at para. 63).

The commitment to reform of the architecture is evidenced by the creation of the Counter-Terrorism Office under the leadership of USG Voronkov and its consolidation provides a genuine opportunity to redress some of these inherited imbalances and to address both mainstreaming and institutional human rights discrepancies. The Special Rapporteur looks forward to continuing her productive engagement and would wholeheartedly support endeavors to ensure the full implementation of the pillar IV. This approach would simultaneously address states' legal obligations to protect human rights under international law, and in parallel enable the conditions and contexts which advance sustainable security for all, undercutting the conditions that produce and sustain terrorist violence across the globe.

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