

Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, thanks the Advisory Committee for sharing a copy of its draft report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, with a particular focus on economic, social and cultural rights prepared further to Human Rights Council resolution 34/8. The Special Rapporteur notes that she has provided detailed feedback on the previous draft circulated by the Committee.

She notes some positive augmentation from a legal and analytical perspective in this revised version of the report. However, she would point out a number of ongoing structural and legal challenges that are reflected in the current draft.

- 1) The Special Rapporteur notes that there are a number of inconsistencies still manifested in the report e.g. parts of the report (particularly in the section on definitions) are internally contradictory, without a coherent or consistent view being expressed. If there are majority and minority reviews in the Committee, these should be clearly delineated.
- 2) Recalling the more detailed commentary provided earlier, the Special Rapporteur notes that the report continues to describe the context and challenge of terrorism in highly broad and imprecise terms, which are not fully legally grounded. She underscores the desirability of ensuring that the report is accurately legally substantiated in all its aspects.
- 3) The Special Rapporteur recalls her views to date on the broader context of “effects of terrorism” as reflected in paragraph 29 of her 2019 Human Rights Council report A/HRC/40/52.
- 4) The Special Rapporteur cautions that the report would still benefit from being grounded and well-founded in its empirical basis. She reminds the Advisory Committee that her previous submission identified numerous examples of claims and assertions lacking empirical foundation or which were disputed in

the literature/state practice. She notes that a number of these examples survive in this revised draft.

- 5) The Special Rapporteur points out that the text is still littered with multiple legal inaccuracies. She has pointed out these inaccuracies in previous comments. She believes it would be regrettable for the Advisory Committee to produce a report which does not accurately reflect settled legal matters in international law.
- 6) The Special Rapporteur would encourage the Committee to review the report with an eye to the use of inflammatory or provocative terminology. Such terminology detracts from a sober discussion of a legal report produced by a body of independent experts which is intended to provide a neutral legal basis for State discussion and analysis.
- 7) The Special Rapporteur underscores that the core of the analysis on “effects of terrorism” entirely lacks any substantive legal analysis. The indirect basis for the report appears to be the view that non-state actors are the bearers of human rights treaty obligations, which she respectfully submits is not a consensus view of States. Alternatively, the implication of the analysis on “impacts” of terrorism is that the State is the primary victim under human rights law, a position which is simply untenable in the accepted framework of international human rights law. To this end, the Special Rapporteur notes the fundamental weakness of the report, in that it lacks a thorough, substantiated and detailed legal analysis which requires serious remedy in any further revisions.
- 8) The Special Rapporteur notes that through Human Rights Council resolution 42/18, she has been invited to reflect on the ‘effects of terrorism’. She affirms that she plans to do so substantively and provide a substantive legal analysis on this matter.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism reiterates her readiness to provide further assistance in the preparation of the report and is available to engage with the Advisory Committee during its upcoming sessions.
