

**Statement by Ms. Fionnuala Ní Aoláin**

**SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM**

43rd session of the Human Rights Council

4 March 2020



Geneva

*Honourable Chair, Excellencies, Distinguished delegates, Ladies and Gentlemen,*

It is a privilege to be here for my annual interactive dialogue with you on issues relating to my mandate as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The focus of my annual report is the human rights consequences and effects of programs, polices, law and practice related to the prevention and countering of violent extremism globally, regionally and nationally. I am also pleased to present the report of my country visit to Kazakhstan in May 2019 and to highlight aspects of the mandate’s work during the past year.

The mandate has had a busy and productive year. I have prioritized deepening the institutional relationships of the mandate with other global entities engaged in counter-terrorism regulation, within and outside the UN system. The mandate has closely engaged with the Financial Action Task Force (FATF) and was invited to address and participate in the Global Counter-Terrorism Forum Meeting during high-level week in New York. Another productive working level visit was conducted to the European Union in January 2020. I remain deeply engaged with the Global Counter-Terrorism Coordination Compact and affirm the strong working relationships of the mandate with Under-Secretary General Voronkov, the Office of Counter-Terrorism and the UN Counter-Terrorism Executive Directorate (CTED) led by ASG Coninsx. As a deeply engaged participant in the work of the Global Compact I underscore the ongoing challenges to the mandate in the limited resources available to Special Procedures, compounded by the budget cuts to travel, and the lack of any specific budget line support to the work of the mandate within the Global Counter-Terrorism Coordination Compact. It states the obvious that when Special Rapporteurs have to use research funds from their Universities to do their essential and required work as Special Rapporteurs, there is something profoundly amiss in the meaningful support of States to the work of human rights mainstreaming in the counter-terrorism sphere. Confirming its commitment to civil society engagement my mandate has supported two substantial NGO convenings in New York, to enable better engagement by civil society with the global counter-terrorism architecture. Victims of terrorism remain a central priority for the mandate and I was pleased to collaborate with the International Commission of Jurists in the production of a Compendium on the Human Rights of Victims of Terrorism, drawing together the legal instruments regulating the obligations of States to victims of terrorism under international law.

*Excellencies, Distinguished delegates*

As Special Rapporteur I have been pleased by the deepening of relationships with a number of States and I acknowledge positively the engagement of the French and Belgian governments during working visits this year engaging with government, academia and civil society. I was particularly pleased by the invitation of the Belgian Standing Intelligence Agency Review to join a review conference on legislation overseeing the intelligence sector and praise the openness and transparency of their human rights-based approach to intelligence oversight. I also positively acknowledge the important cooperation by Ireland and Turkey following communications concerning returnees and of the engagement by Cyprus with interventions by the mandate. The mandate notes the surge in individual communications and confirms the ongoing trend of the misuse of CT/PVE/CVE measures against HRDs and civil society actors. Such use is neither complaint with international law nor effective counter-terrorism. The mandate has issued a number of comprehensive reviews of national counter-terrorism legislation including for China, Egypt, Ethiopia and Tunisia encouraging States to bring national legislation into full compliance with international legal norms and providing positive advice and support to States to assist them in that endeavour. In terms of country visits, I would like to note that a number of requests are outstanding and I call on States to consider giving a positive response to the mandate to undertake such visits. In this context, I would like to thank the Maldives for their openness and confirming the first visit for the mandate in 2020. I also confirm my intention as invited in Resolution 42/18 to present my views on the legal basis and practice of the “effects of terrorism” to this body in Spring 2021.

*Excellencies, Distinguished delegates*

The protection of human rights in the context of countering terrorism continues to be a fraught and precarious exercise. I turn to reflect on some of those challenges now. My report on P/CVE report recognizes and acknowledges the global challenges of rising incidents and institutionalization of violent extremism and the costs borne by individuals and communities as a result. As the Secretary-General’s Plan of Action to Prevent Violent Extremism makes clear, there are significant threats that deserve our attention and require national, regional and global responses. From the emboldened marches and violence of neo-Nazi supporters to the fanatical, brutal violence of Islamic State in Iraq and the Levant (ISIL), violent extremist ideology is pervasive across the globe.

It is also clear however that, as with any complex matter that engages the production of collective and individual violence, the diagnosis may be simpler than the cure. Preventing and countering violent extremism as a discourse and practice does not emerge in a neutral universe. It arrives after almost two decades of post-11 September 2001 counter-terrorism regulation, into a well-defined global counter-terrorism architecture that has entrenched and consolidated since then. Based on an evaluation that spans polices at national, regional and global levels aimed at preventing and countering violent extremism I conclude that current approaches lack a consistent rule of law or human rights grounding. I am deeply concerned that many such programmes and practices are directly contributing to the violation of human rights at the national level. Above all, I am deeply concerned that such widespread and negative human rights practice may support the conditions conducive to terrorism and violent extremism rather than prevent them.

*Excellencies, Ladies and Gentlemen*

The report examines a number of important aspects of P/CVE policy. It is extraordinarily prescient to note that there is no globally agreed definition of “violent extremism”, or even “extremism”. What I have found in the survey of State practice is a profound lack of legal precision and clarity and a range of legitimate and protected acts under international (and national) law being treated as ‘extremist’ in practice. She is deeply worried about the lack of precise legal definitions of extremism and violent extremism in national legislation and the widespread abuses of human rights that that produces. I have found that in many countries, definitions of extremism extend to practice and rights directly and absolutely protected by international law. My report finds that derogable and non-derogable rights are experienced particularly by religious groups, minority groups and civil society actors – who are being targeted under the guise of countering ‘extremism’. I highlight a singular focus on Islamic extremism in programming and policy to the exclusion of other forms and manifestations of violent extremism particularly far-right violent extremism. I note the persistent lack of meaningful consultation with and participation of communities targeted by measures to prevent and counter violent extremism and the alienation and mistrust this produces in the communities we need to most to address the global challenge of extremist violence.

I make very clear in this report the glaring lack of robust scientific data underpinning many of the claims made by States and international institutions to advance the use of preventing and countering violent extremism. I am particularly troubled about the lack of any systematic and empirically grounded monitoring and evaluation of such programmes, including assessing their human rights impact. I make clear in this Report that these deficits are also found in programmes supported by UN entities. I underscore that all UN programming, technical-assistance and capacity building in this arena must be human rights compliant.

*Excellencies, Ladies and Gentlemen*

I want to make clear that poor, badly conceived and badly executed P/CVE policy and practice does not make us safer or more secure. I particularly single out admonish the simplistic deployment of policy aimed at preventing and countering violent extremism in complex conflict and fragile settings, where a broader spectrum of interconnected interventions is necessary to stem violent extremism.

I also pay particular attention to the use of P/CVE programming and practice that utilizes women and girls as their instruments of delivery or their subjects of attention. I highlight the commodification of women and girls to advance policy aimed at preventing and countering violent extremism, identifying multiple ethical concerns and cautions against the naive deployment of women at the frontlines of prevention in highly unstable, violent and conflicted settings. Women and girls may be less safe and less secure if P/CVE programmes are used in ethically suspect and highly instrumentalized ways. It is also the case that badly conceived and inept programmes and practice that stigmatize and marginalize communities and groups as ‘extremist’ do little to prevent and ameliorate the polarization and alienation that underpin the conditions conducive to violent extremism.

I urge pause and reconsideration of the reflexive turn to P/CVE. I counsel states that long-term solutions to the prevention of violent extremism require a partnership and human rights-based approach to be successful over the long-haul. Our toolbox to this end, needs to be substantially augmented and a critical eye is long overdue in assessing what is being advanced locally, nationally, regionally and globally.

Let me turn to the presentation of my country report. The Special Rapporteur’s visit to Kazakhstan was marked by cooperation, positive engagement and an openness that I commend. My Report particularly applauds the willingness of Kazakhstan to allow the Special Rapporteur access to over 500 women and children returnees (as well has former foreign fighter associated women and children) during my visit. Given the continuing humanitarian disaster unfolding before us in the Northern Syrian Arab Republic, the dire humanitarian situation in the camps, the extreme vulnerability of women and children the vast majority of whom are victims of terrorism, underscores the importance of the example set by Kazakhstan in this regard. The comprehensive approach evidenced to return including health provision, education and psychological counselling and a positive language of reintegration, especially for children, is an example that speaks volumes to the inaction of other countries whose nationals remain in the Northern Syrian Arab Republic and Iraq.

I also commended positive advances in the penal system in Kazakhstan and was encouraged by the progress made overall by the penitentiary system in Kazakhstan in recent decades in terms of the overall decrease in the prison population and development of alternative sanctions.

The report found a number of areas where I believe substantial strengthening and revision of the legal system is required. I found that significant aspects of the criminal law concerning terrorism and extremism are broad and vaguely defined, impinging directly on fundamental human rights protected by international law, including but not limited to the rights to expression, movement, family life, and freedom of religion and belief. I was seriously concerned about the use of the term “extremism” in national law and practice. I highlighted the use of article 174 of the Criminal Code and its application to the activities of civil society activists and religious minorities. I concluded that the broad formulation of the concepts of “extremism”, “inciting social or class hatred” and “religious hatred or enmity” in national law are used to unduly restrict freedoms of religion, expression, assembly and association. I also identified the need to address the application of sanctions and financial restrictions and listing under national law. The Special Rapporteur also offered concrete recommendations on how to ensure that PVE programmes and practice are human rights compliant. I conclude by affirming the spirit of positive dialogue with Kazakhstan on these issues and remain open to ongoing engagement and support.

*Excellencies, Ladies and Gentlemen*

I thank you for your time and continued support.