

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

November 2020

Mandate and role of the Special Rapporteur

The UN 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 mandate is the entity within the Global Counter-Terrorism Co-ordination Compact specifically charged with the oversight of the interface between counter-terrorism and human rights.

I. Key conclusions in respect of assessment of the progress made in the implementation of the UN Global Counter-Terrorism Strategy and resolution 72/284, relevant to this update

While the Global Counter-Terrorism Strategy affirms that that human rights and rule of law are the fundamental basis of the fight against terrorism,¹ **the implementation of the 4th pillar suffers from profound structural and policy weaknesses.** The Special Rapporteur underscores that this weakness has been specifically acknowledged in prior reports of the Secretary-General in highly specific and concrete ways. She was disappointed that the most recent report of the Secretary General (A/74/677) appeared to paper over this weakness, lacked a thorough review of substantive human rights deficits in the implementation of the Global Counter-Terrorism Strategy, and did not identify some glaring human rights deficits previously highlighted by UN entities (including the Special Rapporteur) in respect of GA resolution 72/284 and its sufficiently to meet the human rights deficits revealed in contemporary counter-terrorism regulation, including by UN entities. The Special Rapporteur highlights that the Secretary-General's update plays a particularly critical role in framing the challenges faced in concrete and realistic ways, thus creating the pathways for remedial solutions and better policy outcomes for States and individuals. Thus, the mandate presses for sufficient, detailed and accurate assessment of the operation of the 4th pillar in this update, diagnosis of what is needed to meaningfully mainstream human rights, acknowledgment of the limited human rights resources available to provide sufficient oversight, and reflect on what the costs of such

¹ A/RES/60/288 see e.g. Annex Para 3.

limitations and human rights absences mean for the effectiveness of counter-terrorism and the negative costs of human rights limitations and abuses for the prevention of terrorism.

The Special Rapporteur continues to underscore the evidenced lack of political will to implement the 4th pillar's requirements and logic in full. Moreover, the gaps and lack of human rights in conceptualization, framing, program establishment, and norm creation continue to grow, while pedantic references to human rights in the abstract grow in counter-terrorism law, policy and practice. There is a distinct need to develop new and innovative pathways for the implementation of the 4th 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 21st century. Recalling that the GCTS Review, the Secretary-General's report and the updated resolution will be issued almost twenty years following the events of 9/11, the time has never been riper for a substantive review of limitations and costs of counter-terrorism over the past two decades.

Moreover, given 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 **specific 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. It states the obvious that the entities primarily responsible for expert input and oversight of human rights in the Global Compact (OHCHR and the mandate of the Special Rapporteur) are woefully under-resourced and simply unable to keep up with the demands placed upon them by the system. As the work of the Coordination Compact expands there is a necessary and proportionate need to augment human rights capacity within the Compact. Perhaps most importantly there is a pressing need to meaningfully support the pitifully resource constrained human rights focused entities to carry out their work. It is worth recalling that the Special Rapporteur provides human rights inputs to every single aspect of the Compact's work. She does that without any budget, and without any dedicated resources from States or the United Nations system. The Special Rapporteur undertakes this independent and expert work because it is absolutely necessary given the human rights and human dignity stakes involved in the policies and practices being advanced. However, she notes that much of her input (and that of OHCHR) is not taken on board as a practical matter, and her mandate is not in a position to adequately assess and benchmark the human rights and rule of law deficits that follow from inadequate or limited integration of human rights into the outworking of the Global Counter Terrorism Strategy. This accentuates again the need for an adequately resourced, fully-staffed and full-time independent human rights oversight of the Global Counter-Terrorism Compact and the Strategy.

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

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. This is not merely a matter of "more" but also a practical and sustained commitment to ensure that **existing projects mainstream human rights and are benchmarked and review to assess their human rights impact**. 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. This include the protection of core non-derogable rights as well as the necessity to address the implications of new practices and new technologies on rights including but not limited to the fair trial, freedom of religion and belief, privacy, family life, expression including the right to information, assembly, political participation, education, health, and other rights that sustain the right to life;
- 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) **Collect better and consistent evidence on the misuse of counter-terrorism measures domestically.** Particular attention must be paid to national counter-terrorism legislation and its lack of consistency with international law. Abuse of counter-terrorism measures in violation of treaty and customary of international law obligations not only violates human rights but undermines the security of all, and undermines the global counter-terrorism strategy as a whole
- E) **Require that the 7th review of the Strategy include a human rights audit of counter-terrorism and countering violent extremism measures** supported, enabled or engaged by the Compact or UN Counter-Terrorism entities;
- F) **Ensure that the civil society liaison/focal point office within the Office of Counter-Terrorism operates in a transparent, effective way, and is adequately resourced** to engage and integrate the views of independent civil society into the policy and programming work of the Compact.
- G) **Address the human rights of women and girls, particularly their right to equality and non-discrimination as a core dimension of gendering counter-terrorism law and practice;**
- H) **Ensure consistent application of the human rights due diligence policy (HRDDP) requirements** in the delivery of counter-terrorism capacity building by UN entities.
- I) 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.

- J) 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 4th 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. **Specially engage the negative human rights impact of counter-terrorism law, policy, programming and practice**
 - iii. 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
 - iv. **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. These recommendations form the basis of meaningful, regular and sustained human rights practice by compact entities.
- K) **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 Procedures mandates (torture, freedom of expression, freedom of religion or belief) and Working Groups (disappearances and arbitrary detention) and Treaty Body mechanisms (cf. Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child, CEDAW Committee).

The Special Rapporteur also flags a compelling concern that may follow from the securitization of a range of policy and practice arenas of the United Nations, through their pivot into the Global Counter-Terrorism Coordination Compact. She underscores that the Compact plays an important but distinct and narrow role in addressing one of a range of responsibilities for the United Nations. There are grave dangers for the integrity and balance of the United Nations as a whole when areas of work including education, child protection, refugee protection, migration, development and humanitarian engagement become security-led or security infused. She thus cautions about overreach of the Compact and affirms the need for entities involved in the Compact to retain their independent and separate priorities in their working methods, norm application, and institutional roles.

III. Updates Summary of the Special Rapporteur’s work since December 2019

The Special Rapporteur submitted two thematic reports to the Human Rights Council and the General Assembly:

General Assembly: A/75/337

Advancing human rights through the positive interface of international human rights law and international humanitarian law in the context of counter-terrorism

[EFS](#)
[ACR](#)

Human Rights Council: A/HRC/43/46

HRC report on the human rights impact of policies and practices aimed at preventing and countering violent extremism – Fionnuala Ní Aoláin – (2020)

[EFR](#)
[SCA](#)

Comprehensive Reviews of National Counter-Terrorism Legislation:

- **Nicaragua**
13 November 2020 - Comments on the Law on the Regulation of Foreign Agents and the Special Law on Cybercrime, recently approved by the National Assembly (Comentarios sobre la Ley de Regulación de Agentes Extranjeros y la Ley Especial de Ciberdelitos, aprobadas recientemente por la Asamblea Nacional. - [OL NIC 3/2020](#))
- **United Arab Emirates**
13 November 2020 - Comments and suggestions on the 2014 Law No. 7 On Combatting Terrorism Offences (Law 7) which abrogated Federal Decree-Law no. 1/2004. - [OL ARE 6/2020](#)
- **France**
12 November 2020 - Comments and suggestions on the Draft Law No. 3452 on Global Security dated 20 October 2020 ("Commentaires et suggestions à propos de la proposition de loi n° 3452 relative à la sécurité globale datant du 20 octobre 2020"). - [OL FRA 4/2020](#)
- **European Union**
3 November 2020 – Comments on the new draft ‘Regulation on preventing the dissemination of Terrorism Content Online’, proposed by the Presidency of the Council of the EU. [OL OTH 73/2020](#)
- **Burkina Faso**
18 September 2020 – Comments on Law N°044-20191 (Commentaires à propos de la "Loi N°044-20191 qui modifie le Code pénal du Burkina Faso") - [OL BFA 2/2020](#)
- **China**
1 September 2020 – Comments on The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“National Security Law”) [OL CHN 17/2020](#)
Government’s reply – [30 October 2020](#)
- **Turkey**
26 August 2020 - Comments on the Anti-Terror Law No. 3713 (“Anti-Terror Law”) and the amendments made to this law and the Penal Code through Law No. 7145, adopted on 31 July 2018 – [OL TUR 13/2020](#)
Government’s reply – [22 October 2020](#)
- **Peru**
22 July 2020 – Comments on Decree Law No. 25475, which establishes the penalties for terrorist offences and the procedures for police investigation,

investigation and trial (Decreto Ley No. 25475 “Ley que establece la penalidad para los delitos de terrorismo y los procedimientos para la investigación, la instrucción y el juicio”, Proyecto de Ley 470/1/2019-PE, Proyecto de Ley 411/2018 y Proyecto de Ley 04852/2020-CR) – [OL PER 3/2020](#)

- **United Kingdom of Great Britain and Northern Ireland**
22 July 2020 – Comments on the ‘Counter Terrorism and Sentencing Bill’ - [OL GBR 7/2020](#)
Government reply - [12 October 2020](#)
- **The Philippines**
29 June 2020 – Comment on ‘The Anti-Terrorism Act of 2020’ - [OL PHL 4/2020](#)
Government reply - [27 August 2020](#)
- **France**
24 June 2020 – Comment on the draft law on security measures that may be ordered against perpetrators of terrorist offences amending Title XV of Book IV of the Code of Criminal Procedure (proposition de loi sur les « Mesures de sûreté pouvant être ordonnées à l’encontre des auteurs d’infractions terroristes » portant modification du titre XV du livre IV du code de procédure pénale) - [OL FRA 2/2020](#)
- **China**
19 June 2020 - Comments on the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region – [OL CHN 13/2020](#)
- **Switzerland**
26 May 2020 - Comments on the proposed Anti-Terrorism Police Measures Law (Commentaires à propos du projet de loi intitulé "Loi fédérale sur les mesures policières de lutte contre le terrorisme") - [OL CHE 1/2020](#)
Government reply – [2 July 2020](#)
- **India**
6 May 2020 – Comments to the Unlawful Activities Amendment Act 2019 and the 1967 Unlawful Activities Prevention Act - [OL IND 7/2020](#)
- **Kyrgyzstan**
6 May 2020- Comments on the proposed law of the Kyrgyz Republic on Countering Terrorism – [OL KGZ 3/2020](#)
Government reply – [16 June 2020](#)
- **China (Hong Kong)**
23 April 2020- Comments on the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“Anti-Terrorism Law”)1 and Crimes Ordinance, Cap. 200, Sections 9 and 10 (“Sedition Law”) – [OL CHN 7/2020](#)
Government’s replies: [23 July 2020](#); [23 July 2020](#); [23 July 2020](#); [23 July 2020](#); [23 July 2020](#)
- **Cambodia**
9 April 2020 - Draft Law on the Management of the Nation during the State of Emergency - [OL KHM 1/2020](#)
Government reply – [16 April 2020](#)
- **Egypt**
Amendments to the Terrorist Entities Law (Law 8 of 2015) and the Anti-

Terrorism Law, (Law 94 of 2015), approved by the Parliament's Legislative Committee on 10 February 2020; effect and application of The Right to Public Meetings, Processions and Peaceful Demonstrations Law No. 107/2013; the Law no.70/2017 on Associations and Other Foundations Working in the Field of Civil; and Law No. 149/2019 – [OL EGY 4/2020](#)
Government's reply – [8 April 2020](#)

Amicus Briefs:

- **European Court of Human Rights**

Date: **9 October 2020**

Case: **Mikolaj Pietrzak v. Poland and Dominika Bychawska-Siniarska et al. v. Poland, Application Nos. 72038/17 and 25237/18**

[Intervention as filed](#)

Date: **28 September 2020**

Case: **H.F. and M.F. v. France (Application no.24384/19)**

[Intervention as filed](#)

- **United Kingdom**

Date: **29 May 2020**

Special Immigration Appeals Commission

Case: **Shamima Begum**

[Intervention as filed](#)

Date: **26 October 2020**

Special Immigration Appeals Commission

Case: **Shamima Begum**

[Intervention as filed](#)

Country-Specific Engagement (selected):

The Special Rapporteur advanced sustained dialogue with States on the protection and promotion of human rights. She presented a report to the Human Rights Council in March 2020 on the productive visit that she undertook to Kazakhstan. She noted the positive leadership of Kazakhstan in ensuring the return of over 500 nationals, primarily women and children, from the north-east of the Syrian Arab Republic (see A/HRC/43/46/Add.1, paras. 60–61, for her recommendations). She accepted a country visit to Maldives and to Singapore, which are temporarily postponed owing to the coronavirus disease (COVID-19) pandemic. She conducted a working-level visit to the European Union in January 2020 and appreciates the ongoing dialogue with its institutions.

Selected events:

In February 2020, the mandate of the Special Rapporteur participated in the regional high-level conference on the theme “Foreign terrorist fighters: addressing current challenges”, held in Vienna. The Special Rapporteur participated as a speaker in Counter-Terrorism Week, which was held online from 6 to 10 July 2020. In July, the Special Rapporteur published a study on the human rights implications of the use of biometric

tools and data in the counter-terrorism arena,² and a multi-stakeholder consultation is planned. She produced draft principles on human rights-compliant watch listing to inform, inter alia, the Global Counterterrorism Forum joint initiative aimed at developing a watch-listing guidance manual. She will publish human rights guidance on proposals to adopt ‘battlefield’ evidence which have been published by UNCTED.

The Special Rapporteur continued her engagement with non-governmental organizations (NGOs), human rights defenders and civil society. Meetings were held in Belfast (United Kingdom), Brussels, Dublin, Geneva, Minneapolis (United States of America), New York, Paris and Washington, D.C. She prioritized meeting with NGOs remotely during the COVID-19 pandemic, including those in the Philippines and Turkey. She participated in the high-level meeting on global counter-terrorism and human rights, organized online by 11 NGOs on 11 June. She met regularly with victims of terrorism and their representative organizations and worked closely with women’s organizations that address the negative effects of counter-terrorism practices on women and girls. She also met regularly with humanitarian organizations and remained deeply concerned about the challenges that civil society actors face in their day-to-day work owing to the adverse and nefarious use of counter-terrorism and extremism laws. The Special Rapporteur issued multiple communications, including joint communications, on the use of legislation framed as national security and counter-terrorism against civil society actors, political dissenters, humanitarians and human rights defenders. The Special Rapporteur continues to highlight the sustained misuse of counter-terrorism law and practice at the national level by States.

Conclusion

The Special Rapporteur views her engagement with enhanced co-ordination efforts within the UN counter-terrorism architecture as an important aspect of the mandate’s work. The Special Rapporteur participates actively in all the Global Compact Working Groups. 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 Special Rapporteur’s mandate can contribute to advancing human rights within the UN counter-terrorism architecture and via bilateral 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 authority³. This addendum report to the 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:

² Krisztina Huszti-Orbán and Fionnuala Ní Aoláin, “Use of biometric data to identify terrorists: best practice or risky business?”, 2020 found here: <https://www.ohchr.org/Documents/Issues/Terrorism/Use-Biometric-Data-Report.pdf>

³ A/HRC/34/61

... [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 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.