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

17 December 2021

Dear Mr. Voronkov,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 40/16.

I would like to refer to your letter of 1 November 2021 (ref: OCT/2021/01160) inviting United Nations Global Counter-Terrorism Coordination Compact entities to provide your Office with written contributions on a respective assessment of the rise in terrorist attacks on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief, in anticipation of the Secretary General's report on operative paragraph 36 of the recent UN Global Counter-Terrorism Strategy Review. In this regard, I am honoured to transmit my input which was elaborated jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolutions 43/36 and 40/10, respectively.

I look forward to continuing the positive dialogue with you and your Office.

Please accept the assurances of my highest consideration.

A handwritten signature in cursive script, which reads "Fionnuala Ní Aoláin".

Fionnuala Ní Aoláin

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

Mr. Vladimir Voronkov
Under-Secretary-General
United Nations Office of Counter-Terrorism

Joint input of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on freedom of religion or belief

We are honoured to provide written input on a respective assessment of the rise in terrorist attacks on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief, in anticipation of the Secretary General's report on operative paragraph 36 of the recent UN Global Counter-Terrorism Strategy Review. Specifically, we will comment on:

- (i) The nature and degree of this threat within the global terrorist landscape;
- (ii) The motivations, objectives and organization of individuals and groups that perpetrate such attacks;
- (iii) The specific challenges that arise in addressing the threat posed by these groups, if any; and
- (iv) Good practices and lessons learnt to build effective counter- narratives, capacities and strategies to tackle this threat.

This joint submission draws from the Special Rapporteurs' reporting and ongoing work on these issues, including, among others, the report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism to the Human Rights Council on the human rights impact of policies and practices aimed at preventing and countering violent extremism (A/HRC/43/46); the reports of the Special Rapporteur on contemporary forms of racism on combatting racial discrimination, xenophobia and related intolerance in a counter-terrorism context (A/72/287) and the threat posed by nationalist populism to the fundamental human rights principles of non-discrimination and equality (A/73/305); and the report of the Special Rapporteur on freedom of religion or belief on the relationship between freedom of religion or belief and national security (A/73/362).

1. The nature and degree of this threat within the global terrorist landscape

We recognize the indisputable global challenges posed by terrorist and violent extremist attacks, including those perpetrated on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief. In particular, we note that there is robust evidence from multiple sources that the fastest accelerating terrorism threat globally stems from far right-wing violent extremism. In this regard, we refer to the ongoing work of the Special Rapporteur on contemporary forms of racism, whose mandate has been reporting on these issues since 2012, addressing the manifestation in many parts of the world of various extremist political parties, movements, ideologies and groups of a racist or xenophobic character, including neo-Nazis and skinhead groups, and examining the implementation of discriminatory measures and policies at the local or national levels triggered by this trend. In addition, we refer to the work of the Special Rapporteur on freedom of religion or belief, cautioning against the securitisation and instrumentalisation of religion or belief and inviting all stakeholders, including Governments, civil society as well as faith-based actors, to step up efforts in strengthening societal resilience against

violent extremism.¹ We also refer to the March 2021 joint statement issued by our mandates for the commemoration of the 10th anniversary of the UN Human Rights Council’s resolution 16/18 on combatting intolerance. In this statement, we expressed our concern about the new wave of stigma, racism, xenophobia and hate that has been amplified by digitalization and social networks, and aggravated in the context of the pandemic, targeting minorities and those seen as ‘others’ with impunity.²

As a preliminary caveat, however, we caution against exceptionalizing the present threat and phenomenon when strategizing countering terrorism and violent extremism interventions. 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 ideologically motivated violent extremism as a motif, a discourse, and a set of policies and interventions does not emerge in a neutral universe. Rather, the foregoing trends must be understood as part of a global and internationalized phenomenon. We refer in particular to the observation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that “[t]he prevention and countering of violent extremism is playing an increasingly visible role in the consolidation of a globalized security regime post-11 September 2001” and as such, it is essential “to engage in a contextual way the broader production of such policy and practice with the wider landscape of counterterrorism regulation, recognizing what feminist political scientists call nested institutionalism. Although policy aimed at preventing and countering violent extremism may appear as entirely new, it is not.”³

Despite its newfound political salience in counter-terrorism discourse, violence motivated by racial, ethnic, national, or religious hatred is not a novel phenomenon. Terrorist attacks motivated by xenophobia, racism and related intolerance should be considered within the larger societal context of racist or religious intolerance and violence and the promotion of doctrines of racial superiority or hatred. Indeed, we note that terrorism and violent extremism on the basis of xenophobia, racism and other forms of intolerance are frequently motivated by political ideologies of racial or religious superiority, supremacy, or “purity”⁴--ideologies which are cultivated within societal contexts of exclusion and intolerance on the grounds of race, colour, religion and national or ethnic origin. In other words, the causes and consequences of racist violence cannot be disentangled from the existing transnational phenomena of systemic racism and systemic racial and religious violence.

We caution that the multilateral counter-terrorism architecture has not always been a neutral force in this respect. Our mandates have consistently pointed out that counter-terrorism policies and practices have had deeply discriminatory effects on the basis of race, religion, and national origin. Hyper-securitization has been used to justify violence, exclusion, and discrimination against certain groups. In some circumstances, counter-terrorism discourses and policies have contributed to the recent political ascendance of nationalist, far-right, and racial supremacist groups around the world.⁵

¹ A/73/362, paras 56 to 58

² <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26937&LangID=E>

³ A/HRC/43/46, paras. 3-5.

⁴ A/HRC/38/52, para. 43.

⁵ A/HRC/38/52, paras. 55-59.

We warn against reflexively using the frames of “terrorism” or “extremism” to organize the international response to violence motivated by racism, xenophobia, or related intolerance. As explained in more detail below, the lack of definitional clarity regarding these terms means that applying counter-terrorism frames to the international issue of racist violence can be both under- and over-inclusive, punishing behaviours which should not be criminalized while simultaneously failing to consider forms of racist violence or hate speech which are prohibited under international human rights law. We emphasize that States’ obligations to prevent and remedy racist violence and racist hate speech exist independently of the globalized security regime. States and other entities seeking to counter terrorist attacks and other violence on the basis of xenophobia, racism and other intolerance should turn first to the detailed international legal framework on equality and non-discrimination, which outlines legal obligations and programmes that go beyond criminalization and securitization to address systemic causes of racist hatred and violence.

In lieu of using the nebulous terms “extremism” and “terrorism” to conceptualize the threat of racist violence, we urge States and other actors to ground their policy and practice in international human rights law. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR) impose strong limitations on the propagation of racist and xenophobic expression and outlaw advocacy of national, racial, or religious prejudice that amounts to incitement to discrimination, hostility or violence. They also articulate the universal right to life and the right to remedy, which must be guaranteed to all without discrimination. Vitally, these provisions are the subject of detailed, transparent, and constantly evolving legal guidance from international experts and human rights bodies.

2. The motivations, objectives and organization of individuals and groups that perpetrate such attacks

As noted above, we acknowledge the rising threat from racially, ethnically, ideologically, and religiously motivated right-wing and supremacist groups that resort to terrorist tactics, especially against minority groups, and much of our work has been tracking these trends. Our work has shown that certain groups are especially targeted by ideologically motivated violence. These include Jews, Muslims, people of African descent, Roma, Slavic peoples, and migrants, refugees, and asylum seekers.⁶ We can offer countless examples of mass-casualty events which were inspired by ideologies of racism, xenophobia and intolerance. Anders Breivik, who perpetrated xenophobic killings of 77 in Norway in 2011, published an anti-Muslim manifesto on his Twitter and Facebook profiles. Dylann Roof, a white nationalist who was charged with killing nine Black people in a South Carolina church in the United States in June 2015, published online a racist manifesto weeks before his attack, along with photographs of himself with weapons and white supremacist related emblems.⁷ In recent years, terrorist attacks and killings perpetrated in the name of “racial purity” and superiority have occurred, including the white supremacist, Islamophobic attack in Christchurch, New Zealand in 2019, and the anti-Semitic attack in Pittsburgh, United States in 2018, as well as attacks against a synagogue in Poway, California, United States; an attack in El Paso, United States; and attacks at a synagogue in Halle Germany and in Hanau, Germany, among many others. With respect to violent, extremist conduct motivated by racial, ethnic, and religious intolerance, a significant challenge is that in many of the countries where the threat is the

⁶ A/73/312, para. 3.

⁷ A/73/312, para. 11.

greatest, the targeted groups are also groups that governments typically neglect or treat with implicit or explicit animosity. In other words, the victims are regularly groups that are politically or socially marginalized, and thus neglected by state authorities, including public safety authorities. It is often the case that even where extremist conduct is perpetrated by non-state actors, it is often encouraged or tolerated, if not incited, by governments that endorse ideologies of racial or religious supremacy, or who choose to ignore the threat such ideologies can pose to minority groups.

However, we underscore that the existence of such ideological motivations does not justify the implementation of criminal or regulatory measures on that basis alone. In this regard, we reiterate the position, framing, and directives from the Office of the Secretary-General, which recognize that although certain trends and types of violence can be observed, the “international community needs to recommit to tackling terrorism *in all its forms and manifestations, irrespective of its motivations.*” The principles espoused by work on countering terrorism and preventing violent extremism have included the foundational international law principle of non-discrimination in that the terminology is not specific or limited to particular groups or communities. We underscore that despite differing motivations, the rising threat posed by racially, ethnically, religiously, or ideologically motivated groups that resort to terrorist tactics should not be exoticized or taken to form a new discourse on terrorism and violent extremism.

We note the importance of States engaging with the broader conditions conducive to violent extremism and terrorism, including weak governance, human rights violations, poor rule of law and corruption. Only sustained engagement with the complexity of those conditions will fruitfully address the threat. As noted above, terrorist attacks motivated by xenophobia, racism and related intolerance cannot be meaningfully extracted from the socioenvironmental factors which normalize violence and ideologies of racial supremacy. Racial violence can take many forms. It can include individual attacks on victims, incitement to violence by organizations which espouse doctrines of racial superiority, and systemic violence enacted through States’ political, policing or national security policies. Using “extremism” as the sole organizing frame for countering racist violence ignores how doctrines of racial supremacy are spread through normalized political and cultural discourses and are entrenched through government policies.⁸

In this regard, we recall that international human rights law offers a sophisticated and nuanced framework for challenging the promotion of doctrines of racial superiority, the incitement of racist violence, the promulgation of racist hate speech and the entrenchment of systemic racism. This framework focuses on combating doctrines of racial superiority and ensuring that State policies and programmes protect the right to life and the security of the person, as well as other relevant human rights, without discrimination. Most relevantly, this framework entails, *inter alia*, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights (ICCPR), the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Rabat Plan), the Durban Declaration and Programme of Action, and the Camden Principles on Freedom of Expression and Equality.

3. The specific challenges that arise in addressing the threat posed by these groups, if any.

⁸ See A/73/305.

A foundational challenge in addressing the threat of racially, ethnically, religiously, or ideologically motivated violent extremism is definitional. Due to the continued absence of an internationally agreed-upon definition of terrorism, vague and imprecise definitions at the national level have proliferated. As observed by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the definition of terrorism and related offences must be “accessible, formulated with precision, non-discriminatory and non-retroactive” in order to be in accordance with international law, including international human rights law.⁹ The Special Rapporteur has offered a model definition of terrorism taking account of State international law obligations.¹⁰

We warn that the category of “extremist” crimes is particularly vague and problematic. Absent the qualification of violent extremism conducive to terrorism, “extremism” remains broad and overly vague and may encroach on human rights in profound and far-reaching ways. Indeed, we affirm the view of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that the term “extremism” has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty and thus per se incompatible with the exercise of certain fundamental human rights.¹¹

Such definitional issues also risk opening the door to agenda-hijacking, whereby a narrow emphasis on “racist extremism” distracts attention from the wider structural realities that produce racial and religious inequality, exclusion, and violence. We wish to emphasize that countering racist or xenophobic terrorism cannot be pursued without reference to the international human rights law framework, which protects racial and religious groups from discrimination and violence.

Expert mechanisms have elucidated a sophisticated set of recommendations, guidelines, and best practices to combat the rise in terrorist attacks on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief, while remaining in compliance with other international obligations, including under international human rights law. For example, the Committee on the Elimination of Racial Discrimination (CERD) has offered concrete guidance for States and other entities on combating racist hate speech, including General Recommendation No. 35, which clearly defines “racist hate speech” as a term and lays out a number of factors that should inform the practice of Member States. Significantly, the CERD recalls that the proscription of racist hate speech and the flourishing of freedom of expression are complementary and do not represent a “zero-sum game.”¹² Further, in the Rabat Plan of Action, the Office of the United Nations High Commissioner for Human Rights (OHCHR) suggests a high threshold for restrictions on freedom of expression. The Plan of Action outlines a six-part threshold test which is largely consistent with the approach of the CERD. It takes into account the context, speaker, intent, and content, as well as the likelihood to cause harm and the extent of that harm. The Rabat Plan of Action also recommends that domestic legal frameworks on incitement to hatred expressly reference article 20(2) of the ICCPR and include robust definitions of key terms, such as hatred,

⁹ A/HRC/43/46, para. 27, (citing International Covenant on Civil and Political Rights, art. 15, General Assembly resolution 63/185, para. 18, and E/CN.4/2006/98, para. 49).

¹⁰ A/HRC/16/51.

¹¹ See A/HRC/43/46, para 14.

¹² See also the Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.

discrimination, violence and hostility, as defined by the Camden Principles on Freedom of Expression and Equality.

We are deeply concerned that a “human rights lite” approach to countering racist and religious terrorism promises to disproportionately harm the very groups our collective efforts aim to protect. We emphasize that there is growing documentation of direct and indirect downstream harms stemming directly and indirectly from policies and programmes seeking to prevent or counter racially, ethnically, religiously, or ideologically motivated violent extremism. Indeed, measures intended to prevent such motivated violent acts—including those with explicit non-discrimination safeguard provisions—have in practice resulted in the discriminate targeting of certain groups and communities, particularly based on religious groups, as thoroughly examined by the Special Rapporteur on freedom of religion and belief.¹³ While we recognize that calls to tackle the recent trends of ideologically motivated extremism may be timely, we emphasize that any counter-terrorism intervention must be human rights and rule of law-compliant, or otherwise risks redoubling harmful interventions against minority groups, particular religious groups and other non-majority opinion holders. The Special Rapporteur on contemporary forms of racism has condemned “attempts by public and private actors to co-opt the language of equality and non-discrimination as a means of stifling legitimate expression.” Similarly, she has condemned “attempts by public and private actors to use the language of freedom of expression or association as a means of, or cover for, violating the rights of others to equality and non-discrimination.”¹⁴

Crucially, preventing and countering racially, ethnically, religiously, or ideologically motivated violent extremism measures must never be used to stifle peaceful political dissidence, criticism, or non-violent protest or serve as a basis for prosecuting individuals engaged in non-violent expression and advocacy. Further, the absolute right to freedom of religious belief must be respected at all times and religious practice must be protected and never be criminalized.

An additional challenge in addressing the threat of racially, ethnically, religiously, or ideologically motivated violent extremism is the failure of most states to take action against the mainstreaming of intolerance and discourses of racial, ethnic or religious superiority in public discourse, including by political leaders. Where political leaders and the media cultivate rhetoric that ostracizes groups on the basis of race, ethnicity, national origin or religion, they naturalize the status of these groups as outsiders to the nation and make them more vulnerable to attack. Article 7 of ICERD requires states to “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination[,]” and Article 2 requires them “to discourage anything which tends to strengthen racial division[.]” It is incumbent on governments to refrain from stoking intolerance, and instead to foster public discourse rooted in principles of equality.

4. Good practices and lessons learnt to build effective counter-narratives, capacities and strategies to tackle this threat.

¹³ A/73/362; Sahar F. Aziz, “Losing the ‘War of Ideas’: a critique of countering violent extremism programmes,” *Texas International Law Journal*, vol. 52, No. 2; and Faiza Patel and Meghan Koushik, “Countering violent extremism,” Brennan Center for Justice, 2017.

¹⁴ A/73/305, para. 55.

Not only is it in the obligation of Member States to implement counter-terrorism measures in accordance with international law, including the well-settled requirements of legality, proportionality, necessity, and non-discrimination under international human rights law, but it is in their interest. In practice, implementing counter-terrorism and preventing or countering violent extremism measures on the basis of ideological motivations without true commitments to human rights and rule of law will prove counter-productive and unsustainable, as they will simply exacerbate the very conditions conducive to violent extremism in the first place.

The following recommendations for implementing a human rights and rule of law-compliant response draw from the extensive collective experience of our mandates.

1. Any intervention, whether hard or soft security interventions, must be based on and proportionate to evidence-based, context-specific threat assessments. Such risk assessments, as well as strategic planning and implementation of interventions thereof, must involve extensive engagement with a diverse range of civil society organizations, NGO partners, and local stakeholders, including faith-based actors.¹⁵ Full documentation of and reflection on the lived experiences and empirical evidence around interventions at the community and civil society levels must be the core component of any intervention. The affected communities, including those most targeted by racially or religiously motivated violence, should be consulted at all stages of policy conception, development, and implementation.
2. Close preservation to the principles of equality and non-discrimination should be fundamental to any response, including as a measure to curb the exceptionalization and further securitization of the phenomenon. Any measures, including key messaging and counter-narratives, must explicitly recognize that violent extremism is not exclusive to any region, nationality, or system of belief and must be tailored with enough specificity to ensure that they are well understood, fit-for-purpose, and not subject to misuse or discriminate application.
3. When developing and implementing programmes and policies, including capacity-building and technical assistance efforts, multilateral and regional bodies should engage with UN human rights mechanisms, including the UN human rights treaty bodies such as but not limited to the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, the independent special procedures of the Human Rights Council, and OHCHR, in meaningful and sustained ways.
4. States that regulate extremism in their domestic counter-terrorism and national security laws, policy, programmes or practice should repeal such provisions, which have no purchase in international law and the requirements of legality, necessity, proportionality, and non-discrimination. Furthermore, efforts to counter intolerance, hate speech and violence on any ground should conform with the guarantees of international human rights law, including the right to life, the obligation to prevent the incitement of racial hatred or

¹⁵ See UN Guidance Note on the Protection and Promotion of Civic Space; Human Rights Committee, General Comment No. 25 (1996) on participation in public affairs and the right to vote, para. 5; OHCHR Guidelines on the implementation of the right to participate in public affairs.

discrimination, the freedom of opinion and expression, and should include concrete measures for adequate remedies or reparations for victims.

5. States should establish rigorous, systematic, and independent monitoring and evaluation mechanisms for policies and programmes aimed at preventing and countering racially, ethnically, religiously, or ideologically motivated violent extremism, in order to serve as key tools in measuring effectiveness and enhancing transparency and accountability. Such mechanisms should undergo regular and independent review.
6. States should consult General Recommendation No. 35 of the Committee on the Elimination of Racial Discrimination on combating racist hate speech, which offers a detailed analysis for conforming the prohibition of racist hate speech with due regard to other international human rights principles, particularly the rights to freedom of opinion and expression. States are also reminded of the prohibition on incitement to racial or religious hatred found in article 20 of the International Covenant on Civil and Political Rights. States are encouraged to consult the Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence and the Camden Principles on Freedom of Expression and Equality, which lay out a high threshold for protecting freedom of expression while preventing the promulgation of racist hate speech. The approaches offered by the Rabat Plan of Action and General Recommendation No. 35 are largely consistent, and both documents offer concrete analytical tools for balancing the relevant human rights obligations.
7. States and international bodies are also encouraged to invest in wide-ranging human rights education and other tolerance-building mechanisms, as well as measures designed to eradicate racial and religious discrimination. We recommend that States consult the Durban Declaration and Programme of Action, which recognizes that human rights education is a key to changing attitudes and behaviour based on racism, racial discrimination, xenophobia, and related intolerance and to promoting tolerance and respect for diversity in societies and friendship among all nations and racial or religious groups. In addition, the Durban Declaration and Programme of Action also offers a concrete and comprehensive plan for tackling racial and religious discrimination as it manifests in diverse societies. We underline that changing material conditions on the ground is key to undermining the societal foundations of racist violence, hate speech and doctrines of racial supremacy.
