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***Statement by Ms. Fionnuala Ní Aoláin***

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

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

It is a privilege to be here for my fifth interactive dialogue on issues relating to my mandate as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. We meet in New York, just weeks after the 20th Anniversary of the life-changing and sorrowful events of September 11th 2001. Given the particular commitment of my mandate to the protection of the human rights of victims of terrorism, I acknowledge the deep reservoir of loss, hurt, and the lack of resolution and accountability for the events of that day for victims far and near. I recall Virgil’s phrase “No day shall erase you from the memory of time”, and know it is true for all who experienced loss on that day. May their memories be held as a blessing.

The events of that day led to profound changes in the practices and institutions that address counter-terrorism domestically, regionally, and internationally. The impact of those changes has been profound. They have led to severe and destructive consequences for the protection of human rights and the rule of law across the world which the mandate I hold has meticulously documented since 2005. This anniversary is, I suggest, a prescient time for us to reflect on the practice of global counter-terrorism, the counter-terrorism architecture that has consolidated and deepened in the past two decades and to ask painful and difficult questions about the effectiveness and costs of the business of counter-terrorism. It remains entirely unclear to many of us whether any of this ‘works’ both in the sense of its effectiveness, as well as in the counter-productive nature of the practices adopted with enthusiasm by States. This year above all others, as we see multiple institutional and normative anniversaries, tied with resolutions that ask for renewal of institutions and norms, demand that we take stock, assess with a critical eye what we have been doing, pause, and in context start again. The starting again demands understanding the causes conducive to terrorism, violence and conflict. It requires clarity on the reality that counter-terrorism as a practice will not solve these underlying challenges, and that a return to basics is necessary with the core goals of the UN Charter to the fore – the sovereign equality of states, peace, development, human rights and security. I will turn to these burning questions again below.

*Excellencies* and distinguished delegates

I acknowledge that this is a time of tremendous challenge, as States, communities and individuals continue to battle Covid-19 and its cost it has imposed on health, economies, education, and the rule of law. I note that my mandate has, with two leading non-governmental organizations ECNL and ICNL, developed and supported a Covid-19 tracker, as we assess and follow the impact of Covid-19 emergency measures on the protection of human rights. I particularly highlight the concerns about the repurposing of national security and counter-terrorism measures to a global health pandemic, noting the obvious point that the most vulnerable communities bearing the brunt of the pandemic’s wrath, are those communities often with the most marginal and difficult relationships with state security sectors. We do not serve either health or security well by securitizing the response to a health pandemic.

*Excellencies,* before I turn to the subject of my report, which addresses the human rights dimensions of technical assistance and capacity building in the counter-terrorism realm I turn to give you a brief update on the mandate’s work this past year. I presented the annual report of the mandate to the Human Rights Council in March addressing the gendered impact of counter-terrorism & P/CVE practices on women and girls. The report is comprehensive addressing the masculinity of counter-terrorism spaces, and the human rights costs of counter-terrorism regulation including sanctions, detention specifically arbitrary detention, administrative measures, and countering terrorism finance on women and girls. The report also addressed the specific gendered needs of women and girls that are victims of terrorism. As we move towards the 21st anniversary of the Women, Peace and Security agenda, I commend its recommendations to you as counter-terrorism increasingly encroaches on the lives of women and girls in conflict-affected contexts.

The human rights compliant repatriation and reintegration of women and children from conflict zones remains a critical priority for my mandate. I have issued multiple communications to States on the matter, including a comprehensive communication to 57 States with third-country nationals held in Hawl and Rawj camps in North-East Syria. I have issued numerous legal views on the legality and conditions of detention in these camps, noting the extra-territorial obligations of states as well as the obligation to repatriate. I note positive dialogue with Denmark, Finland, Kazakhstan, Uzbekistan and the Russian Federation and welcome recent returns to Germany and Denmark.

I have made a priority of providing ongoing technical assistance to States and have provided legislative analysis on counter-terrorism legislation to Brazil, Belarus, Burkina Faso, France, the Netherlands, Nicaragua, Saudi Arabia, Turkey and the United Arab Emirates. The mandate also provided open-source technical assistance to all States engaged in the 7th biannual Global Counter-Terrorism Strategy review. I commend the Government of Spain and the Sultanate of Oman for their critical leadership and for the positive inclusion of civil society in the review process.

I have continued my extensive engagement with civil society and non-governmental organizations (online) holding consultations in every region in 2021, including Latin America and the Caribbean, North America, Central and South-East Asia, the Middle East and North Africa, Europe and West and Central and East and Southern Africa.

I continue to engage in the Global Counter-Terrorism Coordination Compact and have positive relationships with the Office of Counter-Terrorism led by USG Voronkov, and UN CTED ASG Coninsx.

*Excellencies, Ladies and Gentlemen*

This is a challenging time for the protection of human rights. And it is a challenging time for human rights and rule of law compliant counter-terrorism. A range of country specific and regional situation underscore the cyclical and undulating quality of terrorism and counter-terrorism interfaces, and deep cynicism over the capacity to address entrenched situations violence in positive and transformative ways. In parallel, the rampant misuse of counter-terrorism laws and practices have functioned to discredit counter-terrorism as a discourse and a practice, as dissenters, human rights defenders, lawyers, academics, and humanitarians are defined as terrorists for engaging in acts protected by international law.

*Excellencies, Distinguished Delegates*

This report was written in the context of the extraordinary expansion of capacity-building and technical assistance in countering terrorism and countering or preventing violent extremism. I acknowledge that human rights and rule of law-compliant capacity-building and technical assistance play a valuable role in strengthening a “whole-of- society” approach to countering terrorism and can be a vital aspect of preventing the conditions conducive to the emergence of sustained violence in society. But, it is clear to any observer that the provision of counter-terrorism capacity-building and technical assistance comes in the context of unprecedented growth for counter-terrorism institutions, normative frameworks, programming, and funding over the past two decades. That growth has not been matched by human rights protections, rule of law capacity, nor has monitoring and oversight of the work been a priority for States. In this alone one could ask searching questions about value for money in ad hoc programming that lacks cohesive objectives and is often divorced from the priorities of those on the ground.

This report takes a broad and diverse approach to examining global (UN), regional (European Union, OAS, ASEAN, Shanghai Framework), and bilateral capacity-building and technical assistance. I highlight the increased role of certain United Nations entities in providing counter-terrorism capacity-building and technical assistance to States and the absence of comparable scaling in human rights due diligence. I urge UN entities engaged in counter-terrorism and P/CVE technical assistance and capacity building to ensure the full application of their due diligence obligation and ensure that the work they do is not enabling serious human rights violations under the imprimatur of countering terrorism.

Across the board I observe deep rule of law and human rights deficits in the provision of capacity-building and technical assistance in contexts where national definitions of terrorism and violent extremism are not compliant with international law, target the legitimate exercise of fundamental human rights and function to sustain and enable authoritarian modes of governance. When technical assistance is being provided for extremism in contexts where protected religious practice or speech is defined as extreme, then hard questions need to be asked about the legality of such assistance, and the complicity of such assistance in serious and sustained human rights violations.

*Excellencies, Distinguished delegates*

I identify an absolute dearth of ethically appropriate and scientifically rigorous monitoring and evaluation of capacity-building and technical assistance in the counter-terrorism arena, including by United Nations entities. I am particularly concerned about a sustained pattern of “one-off” and “train and equip” interventions, which are rarely integrated into a holistic approach to justice, security, governance, and development at the national level, leaving underlying structures and injustices untouched and festering. I am deeply worries about a service-oriented model of capacity building and technical assistance that simply fails to ask the essential questions about what precisely is being supported at national level and if it is rule of law and human rights compliant. This concerns is acute concerning the transfer of new technologies in the counter-terrorism context with a dearth of any legal protections or oversight.

*Excellencies, Distinguished delegates*

I stress the need for the alignment of counter-terrorism capacity-building and technical assistance with sustained efforts to increase rule of law effectiveness, sustainable development priorities, anti-corruption measures, accountable institutional structures and the alignment of such priorities with existing development goals and processes. I identify a pervasive failure to ensure that capacity-building and technical assistance is owned by a wide and diverse variety of stakeholders, including civil society at the national level. Governments often ask me “what works” in counter-terrorism? I consistently answer, “talk and listen to those who will be subject to the measures, that will give you some clear direction”. Civil society participation in and civilian oversight of the security sector is essential to prevent terrorism effectively and it is essentially missing in our current structures. I decry a supply-driven, consumer request model of counter-terrorism capacity-building and technical assistance whose rationales are often far removed from genuine engagement with the conditions conducive to terrorism and lie in regime survival, parasitic co-option of security resources and funds and self-interest from security sectors. I strongly caution United Nations entities engaged in counter-terrorism capacity-building and technical assistance that their due diligence obligations must be observed rigorously and that they cannot be complicit in strengthening systems of coercion and violence in the name of countering terrorism or preventing (violent) extremism. Counter-terrorism capacity-building and technical assistance practices are in dire need of transparency, accountability, and overhaul to be both effective and human rights compliant.

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I make many concrete recommendations to States, Regional Organizations and International entities including the United Nations. The reflect the remarks I have just made, they are concrete and practical, and I am clear that the results to enable and support both security and human rights will be manifest were they to be taken on board.

*Excellencies, Distinguished Delegates*

Thank you for your time. I look forward to answering your questions.