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Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions and currently under consideration by the Committee

Negative effects of terrorism on the enjoyment of human rights

Joint written statement* submitted by International Commission of Jurists (Special 1957), Amnesty International (Special 1964), Article 19 – International Centre Against Censorship, The Roster 1991, and Rights Watch (UK) non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2020]

* Issued as received, in the language(s) of submission only.



Forthcoming Advisory Committee report on “effects of terrorism”

30 January 2020

The International Commission of Jurists, Amnesty International, ARTICLE 19, and Rights Watch (UK) respectfully urge the Advisory Committee, in responding to the request in resolution 34/8 of 23 March 2017 “to conduct a study and prepare a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms”, to take into account the context within the Human Rights Council, the overall UN architecture, and broader patterns of human rights violations and abuses in the context of countering terrorism including in relation to the human rights of victims of terrorism.¹ We urge the Committee to seek to avoid its work and report being instrumentalized as part of this broader context.

Our organizations have grown increasingly alarmed with the agenda being pursued by Egypt and certain other States, initially through the series of resolutions on “effects of terrorism” culminating in resolution 34/8, and then in the context of Egypt’s co-lead with Mexico on the merged resolutions on “terrorism and human rights” at the Human Rights Council and General Assembly.²

Specifically, we are concerned that Egypt and certain other States seek to distract, distort and dilute the extremely limited resources and time of the Human Rights Council in general, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in particular, away from the current appropriate focus on the direct and acute human rights issues in relation to terrorism and counter-terrorism. The Council and Special Rapporteur currently focus on ensuring and assisting States meet their obligations to prevent and address human rights violations and abuses perpetrated in the context of countering terrorism, including to implement the human rights of victims of terrorism. Egypt and others seek to shift or dilute this focus by emphasizing questions of a broader macro-economic character and reframing frequently non-transparent and arbitrary counter-terrorism measures as necessarily promoting human rights.

Such efforts are reflected in the text of resolution 34/8 that seeks to direct the Committee’s attention specifically (although not exclusively) to “diverting foreign direct investment, reducing capital inflows, destroying infrastructure, limiting foreign trade, disturbing financial markets, negatively affecting certain economic sectors and impeding economic growth.” Such potential impacts of terrorism can and are already the subject of study by governments and other United Nations organs; but their relationship to specific questions of human rights protection are, by comparison to violations and abuses committed in countering terrorism including the human rights of victims of terrorism, at best indirect and far more general.

In particular, it is difficult to see for such general impacts, how a human-rights-based analysis would produce useful and appropriate specific recommendations distinct from those already recognized in relation to human rights and counter-terrorism measures, including the human rights of victims of terrorism. To prevent and respond to these challenges, States must fulfil their long-standing obligations to counter terrorism in a manner fully consistent with human rights, including the human rights of victims of terrorism. Elaborating findings on State’s implementation of these obligations, and making detailed recommendations in this regard, has already been the mainstay of the work of the Special Rapporteur and other UN human rights mechanisms for many, many years, operating with extremely limited human and financial resources. UN counter-terrorism bodies such as the Counter-Terrorism Committee Executive Directorate and UN Office on Counter-Terrorism already promote and produce a

¹ The current draft of the report was not yet available at the time of writing.

² E.g. <https://www.icj.org/ngos-urge-rejection-of-proposed-new-un-resolution-on-terrorism-and-human-rights/>; <https://www.icj.org/un-egyptian-involvement-threatens-un-human-rights-role-on-counter-terrorism-say-nine-human-rights-ngos/>; <https://www.icj.org/wp-content/uploads/2019/10/UN-Advocacy-OpenLetter-TerrorismHumanRights-2019.pdf>; <https://www.icj.org/hrc40-srcthr-final/>. See also <https://www.justsecurity.org/66777/keeping-human-rights-and-counter-terrorism-in-focus-at-the-un/>.

huge quantity of technical guidance on measures for countering terrorism from the point of view of their effectiveness in preventing and responding to terrorism.

Diverting further precious resources and time of the UN human rights mechanisms, and particularly the Special Rapporteur, to consideration of more general macro-economic challenges and more generally promoting implementation of counter-terrorism measures, especially in the current highly restricted financial context for the UN overall, and the human rights mechanisms in particular, can only divert resources and time away from much needed continued and detailed consideration of preventing and responding to human rights violations and abuses committed while countering terrorism, including the human rights of victims of terrorism. There remains a huge amount of work to be done in these core areas, both within the United Nations and in relation to State's actual practices.

The request to the Advisory Committee, and the context into which the response of the Advisory Committee will eventually be delivered, is part of this broader strategy by Egypt and certain other States, which has also resulted in the loss of essential detailed language in Human Rights Council resolutions on States' human rights obligations and consensus-based commitments.³

While Egypt has frequently invoked the situation of victims of terrorism to justify its approach, Egypt has in reality emphasized the broader macro-economic issues and has not been satisfied with consensus-based approaches to continuing and enhancing already-ongoing work on human rights of victims of terrorism in Geneva and New York. The Special Rapporteur has herself expressed concern that the initiative has a history of "instrumentalising the victims of terrorism in order to bolster the need for greater counter-terrorism measures and thus weaken the international system as a whole."⁴

This initiative must further be understood in the context of continuing abuses of counterterrorism measures committed by certain States in their domestic spheres, including Egypt in particular, as repeatedly and extensively recognized by various mechanisms of the Human Rights Council, and further documented by civil society and other reliable sources.⁵

Concerns include detention and mistreatment of human rights defenders accused of "terrorism" solely for the exercise of their rights to peaceful protest and freedom of expression; frequent abuse of counterterrorism charges and measures against human rights defenders, lawyers, journalists, peaceful protestors and political opponents, free media, including online, civil society, and others; mass and otherwise unfair trials; and abuse of counterterrorism laws to engage in reprisals for cooperation with the UN.

So-called exceptional measures - such as the use of indefinite detention and internment without charge or trial, special courts, and extended jurisdiction of military tribunals - have often been announced as temporary but have become permanent in law or in practice. At times, some States have resorted to extrajudicial executions, including by targeted killings, under the pretense of countering terrorism.

All the while, far too many States, while invoking the suffering of victims of terrorism to justify repressive and human-rights-violating measures in the name of countering terrorism, have abjectly failed actually to recognize and implement the human rights of victims of terrorism.

Efforts to redirect the attention of UN human rights mechanisms to macro-economic questions, including effects on governmental interests and budgets, must in this context be

³ See <https://www.icj.org/wp-content/uploads/2019/10/UN-Advocacy-OpenLetter-TerrorismHumanRights-2019.pdf>.

⁴ <https://undocs.org/A/HRC/40/52>, para 29.

⁵ E.g. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25164&LangID=E>; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25217&LangID=E>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25323&LangID=E>; <https://www.amnesty.org/en/latest/news/2019/11/egypt-state-security-prosecution-operating-as-a-sinister-tool-of-repression/>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25419&LangID=E>. See also numerous Special Procedures communications, available at <https://spcommreports.ohchr.org/>.

understood as part of an effort to redirect the mechanisms' attention away from precisely the range of grave and systematic violations and abuses of specific human rights outlined above.

These concerns are deepened by the fact that in the immense and complicated overall UN counter-terrorism architecture, the Special Rapporteur is the only independent mechanism with the specific mandate to ensure human rights in the context of countering terrorism, including upholding the human rights of victims of terrorism. Diluting the mandate, or creating additional mandates, would only undermine this essential and under-resourced role.

We condemn attacks targeting civilians and recognize that all States have an obligation to take effective measures against such acts. At the same time, we emphasize that ensuring full respect for human rights when countering terrorism, including fulfilling the human rights of victims of terrorism, are not only legal obligations that must be respected in their own right, but are recognized by the long-standing UN Global Counter-Terrorism Strategy as both one of its four fundamental pillars, and "essential to all components of the Strategy".

We therefore urge the Advisory Committee in developing its report on the effects of terrorism as requested by resolution 34/8:

- To recommend that the Human Rights Council maintain its focus on the promotion and protection of human rights while countering terrorism, including the human rights of victims of terrorism, and does not dilute, distort or distract from that focus by introducing new work, mandates or mechanisms with a focus on broader macro-economic questions, such as diverting foreign direct investment, reducing capital inflows, destroying infrastructure, limiting foreign trade, disturbing financial markets, and negatively affecting certain economic sectors and impeding economic growth.
- To affirm that the existing and longstanding normative framework is already sufficient to address such general macroeconomic and similar potential impacts from a human rights perspective, i.e. States should be following existing recommendations for preventing and responding to human rights violations and abuses in the context of countering terrorism, including existing recommendations of the Special Rapporteur's mandate, Human Rights Council and General Assembly resolutions, and other UN bodies in relation to human rights of victims of terrorism.⁶

⁶ See compilation at <https://www.icj.org/victimsofterrorism2019/>.