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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

### **Promotion and protection of human rights and fundamental freedoms while countering terrorism**

#### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, submitted in accordance with Assembly resolution 70/148 and Human Rights Council resolutions 31/3.

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\* A/72/150.

\*\* The present report was submitted after the deadline since the newly appointed Special Rapporteur took office on 1 August 2017.

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

### *Summary*

The present report is the first annual report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. A brief introduction (sect. I) is followed by a description of the activities of the former and present Special Rapporteurs (sects. II and III). The Special Rapporteur shares several initial thoughts reflecting her priorities and interpretation of the mandate and how she intends to discharge it (sect. IV) and highlights conclusions and recommendations (sect. V). She identifies four substantive areas of interest falling with the mandate —the proliferation of permanent states of emergency and the normalization of exceptional national security powers within ordinary legal systems; the need for greater clarity in respect of the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law, and international criminal law) as well as the relationship of human rights to the emergence of standalone international security regimes regulating terrorism and counter-terrorism; the advancement of greater normative attention to the gendered dimensions of terrorism and counter-terrorism; and advancing the rights and protection of civil society in the fight against terrorism. In the first instance, the Special Rapporteur will pay particular attention to these issues, and will integrate them into the tools available to her in the discharge of her mandate, specifically in future country visits and cooperation with Governments and all pertinent actors, including relevant United Nations bodies.

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## **I. Introduction**

1. The present report is the first report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Assembly resolution 70/148 and Human Rights Council resolution 31/3. The report provides several initial thoughts of the Special Rapporteur reflecting on her interpretation of the mandate and how she intends to discharge it.

2. On 10 July 2017 Ms. Fionnuala Ní Aoláin was appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism by the Human Rights Council in its thirty fifth session and took office on 1 August 2017.

3. A Report on the work of former Special Rapporteur, Mr. Ben Emmerson, undertaken since the submission of his last report to the Human Rights Council (sect. II) is followed by a description of the activities of the Special Rapporteur (sect. III). In sect. IV, the Special Rapporteur presents a preliminary discussion of her areas of interest in respect of the discharge of her mandate and in section V offers some conclusions and recommendations.

## **II. Activities of the former Special Rapporteur**

4. The activities of the former Special Rapporteur since the issuance of his final report to the General Assembly (A/71/384) are set forth in his final report to the Human Rights Council (A/HRC/34/61).

5. In addition to the activities described in the report, the Special Rapporteur undertook three country visits: to Tunisia from 30 to 3 February 2017; to Saudi Arabia from 30 April to 4 May 2017; to Sri Lanka from 10 to 14 July 2017. He expresses his appreciation to all his interlocutors and officials for the cooperation they extended to him during the visits. Additional official country visits are currently being scheduled. Updated information about the former Special Rapporteur's visits and related requests is available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

## **III. Activities of the Special Rapporteur**

6. On 28th July 2017, the Special Rapporteur attended an expert consultation convened by the United Nations Office of counter-terrorism at Palais Wilson, Geneva. The expert consultation addressed the issue of Ensuring Human Rights Compliance of Advance Passenger Information Legislation. The Special Rapporteur provided technical advice on an internal guidance document circulated in advance of the meeting to ensure the compliance of the use, transfer and retention of API with international human rights standards. The expert consultation was also attended by the former mandate holder and the Special Rapporteur on the Right to Privacy.

7. The Special Rapporteur has identified the country visits that she wishes to pursue during the course of her mandate and has issued requests to twenty three States. Pursuant to paragraph 33 of Human Rights Council resolution 35/34, in her letters, the Special Rapporteur asked the Governments to give serious consideration to responding favourably to these requests to visit their countries. Countries to which request have been for a visit by the Special Rapporteur include: Australia, Belgium, Bangladesh, Bosnia and Herzegovina, China, Colombia, Egypt, France, Honduras, Indonesia, India, Jordan, Kazakhstan, Malaysia, Mali, Mexico, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Tajikistan, Turkey, United Arab Emirates, United States of America and Yemen. At the time of completion of this report Mexico, the United States, United Arab Emirates, Russian Federation, Philippines, Indonesia, and Malaysia responded by acknowledging receipt of the letter and informing the Special Rapporteur that the request for invitation is under consideration of their respective Governments. Belgium, France, Australia, Kazakhstan, Bosnia and Herzegovina, Tajikistan, and Qatar responded favourably. The response from Bangladesh, China, Colombia, Egypt, Honduras, India, Jordan, Mali, Nigeria, Pakistan, Turkey and Yemen is still being awaited.

8. The Special Rapporteur undertook a private (previously arranged) visit to the Military Commission Complex at Guantanamo Bay, Cuba, from 19 to 26 August 2017 in her professional positions as an academic commentator for Irish media and advancing ongoing research related to her academic work. Given her longstanding interest and expertise in military commissions and criminal process to try persons charged with crimes of terrorism she was pleased to have the opportunity to observe the 26<sup>th</sup> pre-trial hearing in the joined cases of several Guantanamo Bay detainees.

#### **IV. Preliminary outline areas of interest to the Special Rapporteur**

9. The Special Rapporteur pays tribute to the work of her predecessor Ben Emmerson. She will build upon his commitment to the rights of victims of terrorism, as well as advancing the promotion and protection of human rights violations while countering terrorism and preventing violent extremism.

10. The Special Rapporteur would like to highlight key areas of interest and concern as she takes up this mandate. She views these areas as interrelated and co-dependent. They include (A) the normalization of exceptional national security powers within ordinary legal systems; (B) greater clarity in respect of relevant legal relationships, specifically as between national and international national security norms and systems and international legal norms and systems (human rights, humanitarian law, and international criminal law); (C) greater clarity and transparency on the totality and cohesiveness of normative development related to counter-terrorism norms and practices within the United Nations architecture; (D) integrating and prioritizing normative attention to the gendered dimensions of terrorism and counter-terrorism in every aspect of the mandate; and (E) advancing the rights and protection of civil society and civil space to protect this integral component of society if targeted in the guise of the fight against terrorism. For these purposes, the Special Rapporteur will continue the mandate engagement in country visits and co-operation offering her expertise to Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, non-governmental organizations and

other regional and sub-regional international institutions, as well as victims of terrorism and their families, and victims of counter-terrorism.

#### **A. Normalization of National Security powers within Ordinary Legal Systems**

11. The Special Rapporteur emphasizes that during the period of her tenure, she will pay particular attention to the relationship between the use of exceptional national security and emergency powers, and their subsequent permanent absorption into national law and administrative practice. She will give close attention to situations of de facto emergency, complex emergency, and permanent emergency, which are premised on the use of national security and counter-terrorism legislation and administrative process under the domestic law of states.

12. The Special Rapporteur is concerned at the absorption of normally exceptional national security powers and counter-terrorism measures in the ordinary law of many States. In this context, the dividing line between exercise of exceptional national security powers and the ordinary criminal and civil processes of some States becomes hard to distinguish, and the protection of rights becomes increasingly fraught and difficult to deliver in practice. Challenges include temporal expansions of national security legislation and counter-terrorism measures beyond the timeframe that was used to legally justify their initial invocation and application. In such circumstances, we see the emergence of permanent states of emergency where ordinary legal regulation recedes and may be side lined by the deployment of expansive executive powers, extensions of the criminal law to new categories of crime, the primacy of military, security and intelligence institutions over police power within states, and sustained limitations on a broad range of rights from assembly to association. All of these institutional practices pose significant challenges to the effective protection of human rights. Moreover, extended use of national security powers can have particularly negatively affect the enjoyment of rights for vulnerable and minority groups.

13. International human rights law and practice has long recognized inter alia that in exceptional situations of war or emergency, States may derogate from certain rights. Human rights treaties also recognize the legitimate exercise of limitations on rights, including to protect public safety. However, derogations on rights are intended to be the exception, not the norm, as indicated by decades of human rights jurisprudence as well as by the views of states expressed on the function and requirements of derogation.<sup>1</sup>

14. Limitations on rights are not open-ended and not absolute; they must always be legitimate, proportionate and necessary and must never impair the essence of the right.

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<sup>1</sup> See e.g. *Lawless v. Ireland*, 1 Eur. Ct H.R. (ser. B) at 56 (1960-61); Report of the Human Rights Committee, UN GAOR Human Rights Comm., 36th Sess., Annex VII, General Comment 5/13, at 110, U.N. Doc. A/36/40 (1981); Human Rights Committee, General Comment No. 29, States of Emergency (Article 4) CCPR/C/21/Rev.1/Add. 11 (Aug. 31, 2001); The Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights (1884) reprinted in (1985) 7 Human Rights Quarterly 3; Inter-American Commission Report OAE/Ser. L/V/II.I/116. The Special Rapporteur also notes that the practice of derogation by states from their Human Rights treaty obligations also seems to be in abeyance. Increasingly, the use of ordinary legislation to advance national security powers and practice as well as an apparent unwillingness to invoke the derogation provision of human rights treaties has meant fewer derogations in practice despite extensive use of emergency and national provision powers by states post 9/11.

Human rights treaties require the states to remain cognizant of their legal obligation to return to regular legal order within a legally defined period of time. In general, and consistent with position of the United Nations Human Rights Committee as articulated in General Comment 29,<sup>2</sup> the Special Rapporteur reaffirms that if the same end can be achieved by regular legislation or administrative procedure, as opposed to exceptional legal norms, states should not resort to exceptional national security powers, derogate unnecessarily on the protections of rights and freedoms and defer to the capacity of the ordinary legal system to address the challenges at hand. Public posturing and the hastily adoption of new legislation or administrative measures to give the impression of protecting public safety should not be undertaken at the expense of the enjoyment of human rights.

15. Temporary arrangements have a peculiar tendency to become entrenched over time and thus normalised and made routine. Time-bound emergency legislation is often the subject of future extensions and renewals. The Special Rapporteur notes her concern at the practices whereby legislative or administrative acts that had originally been enacted as temporary emergency or counter-terrorism measures, have subsequently transformed into permanent legislation. Based on evidence in practice,<sup>3</sup> the Special Rapporteur recalls that the longer national security legislation - broadly understood - remains on the statute books, the greater the likelihood that extraordinary powers made available to government under this legislation will become part of the ordinary, normal legal system. The corresponding effect on the enjoyment of human rights is considerable and weakens the capacity of states to maintain effective human rights compliant anti-terrorism initiatives. The dangers of such pitfalls have been identified by the Global Counter-Terrorism Strategy which clearly places human rights at the centre of the fight against terrorism and emphasizes that measures taken to counter terrorism must comply with international human rights law.<sup>4</sup> Although developed and adopted by States, the Global strategy remains unfortunately largely ignored. Emergency regimes should not be normalised unless they are necessary and proportional to the threat faced.

16. The Special Rapporteur underscores that governmental conduct during a crisis creates a precedent for future exigencies as well as for “normalcy.” There is a grave danger that where national security powers are piled up, essentially in a constant state of ratcheting powers upwards, government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies rather than judging the needs of new challenges in light of a sober assessment of the capacity of ordinary legal process to cope. Much like the need to gradually increase the dosage of a heavily used medication in order to experience the same level of relief, so too with respect to national security powers: the perception may be that new, more radical powers are needed every time to fight impending crises. In turn, new extraordinary counter-terrorism measures confer an added degree of ex post

<sup>2</sup> See Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 1, “The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant”.

<sup>3</sup> “Study of the Implications for Human Rights of Recent Developments Concerning Situations Known as States of Siege or Emergency,” UN Commission on Human Rights 35th Sess., Agenda Item 10, at 8-9. UN Doc. E/CN.4/Sub.2/1982/15 (1982); Subrata Roy Chowdhury, *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights Norms in a State of Emergency* (London: Pinter. 1989).

<sup>4</sup> See General Assembly Resolution 60/288, para 3.

legitimacy and respectability, as well as a sense of normality, to previously used, less drastic emergency measures. What were deemed exceptional emergency actions in the past may now come to be regarded as normal, routine, and ordinary, in light of more recent and more dramatic counter-terrorism powers. In this context, it also proves highly challenging to adhere in practice to the insights of the Global Counter-Terrorism Strategy namely that, respect for all human rights for all and the rule of law is the basis of the fight against terrorism and essential to all components of the strategy.<sup>5</sup> It is also important to demonstrate in a persuasive manner that the results achieved in terms of public safety by the exceptional or emergency measures taken, at the expense of the erosion of fundamental rights and freedoms, could not have been achieved otherwise (i.e. by implementing existing legislation).

17. The Special Rapporteur will also pay particular attention to the use of emergency and counter-terrorism legislation for purposes other than those for which it was originally promulgated. The “getting used to” phenomenon for long-term counter-terrorism measures may also have a tranquilizing effect on the public’s critical approach toward emergency regimes. There are prescient challenges to maintaining a healthy and critical discourse in any society around the need for and use of counter-terrorism measures, and corresponding scepticism directed at those who raise concerns about the normalization of exceptional powers with marked effects on the vitality and capacity of civil society.

18. While recognizing the real and undulating pressures faced by states as a result of terrorist acts and by terrorist organizations, the Special Rapporteur affirms the primacy of respecting universal human rights norms in fighting terrorism and in addressing the conditions conducive to terrorism. The protection of human rights is essential to any sustained global strategy to prevent, protect and manage terrorism. The pressures on states to provide security are real, but long-term and sustained security will only follow when human rights have a central role in all aspects of the global fight against terrorism.

## **B. Clarity on the interplay of legal regimes in the counter-terrorism sphere**

19. The expansion of institutional and legal counter-terrorism frameworks, policies and practices following the events of 9/11 has been formidable. The normative developments were in part driven by the need to fill exposed lacunae in global counter-terrorism regulation. The United Nations Counter-Terrorism Committee was established by Security Council Resolution 1373 (2001) and bolstered by United Nations Security Council Resolution 1624 (2005). Noting the obvious, the CTC’s implementation capacity was enabled by the Counter-Terrorism Committee Executive Directorate (CTED).

20. In sequence, the Counter-Terrorism Implementation Task Force (CTITF) was established by the Secretary-General in 2005 and endorsed by the General Assembly via that United Nations Global Counter Terrorism Strategy, adopted by state consensus in 2006.<sup>6</sup> CTITF organized its important work through working groups and counter-

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<sup>5</sup> Ibid, annex, sect IV, chapeau.

<sup>6</sup> In the plan of action annexed to the strategy Member States resolved to take specific measures to counter-terrorism 1) to address the conditions conducive to the spread of terrorism Pillar 1 2) prevent and combat terrorism Pillar II, 3) to build



terrorism related project. Most recently the United Nations Office of Counter-Terrorism (OCT) was established through the adoption of General Assembly resolution 71/291 of 15 June 2017.<sup>7</sup> All of these bodies engage a myriad of indispensable regulatory roles.

21. In parallel, the Special Rapporteur underscores that over the past 16 years, a sizable norm creation function has consolidated from the parallel activities of these multiple bodies. The United Nations architecture has sought to respond to an ever-transforming terrorism landscape with sufficient regulatory capacity to address new challenges and threats. But, observers might concur that the pace of response has often out-paced the capacity for full consideration of the overall effects of sustained norm production on the protection and promotion of human rights. Equally the pace of norm creation in the counter-terrorism sphere creates real challenges relating to norm fragmentation and ineffectiveness.

22. The scale of norm creation is, in the Special Rapporteur's view, underappreciated. More particularly the Special Rapporteur voices her concern that insufficient attention has been paid to the specific and global compliance of wide-ranging counter-terrorism regulation across multiple and new spheres with human rights standards in the same period. The production of new counter-terrorism standards, rules and practices through Security Council Resolutions, General Assembly resolutions, guidance to states, task forces and technical assistance has created a sizable body of new norms that can be described as an international counter-terrorism regime, one whose full relationship to and interaction with other bodies of legal norms, specifically international human rights and international humanitarian law is under-explored, is in need of mapping and due consideration for implementation.

23. In parallel with expanded norm development within the United Nations, regional regulatory bodies have not stood still. By way of example, in 2005 the Council of Europe enacted the Convention on the Prevention of Terrorism complimented by the Guidelines of the Council of Ministers of the Council of Europe on Human Rights and the Fight Against Terrorism. The European Union enacted Directive 2017/541 of the European Parliament and the Council of 15 March 2017 on combatting terrorism.<sup>8</sup> Other regional systems have also substantively engaged in counter-terrorism norm production.<sup>9</sup> In short, we see an explosion of legal norms at various levels of legal capacity since 2001 at global, regional,<sup>10</sup> national and sub-

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States' capacity to prevent and combat terrorism and strengthen the role of the UN system in this regard (Pillar III) and 4) to ensure the respect for human rights for all and the rule of law as the fundamental basis for the right against terrorism (Pillar IV).

<sup>7</sup> (A/71/858) On the Capability of the United Nations to Assist Member States in implementing the United Nations Global Counter-Terrorism Strategy.

<sup>8</sup> Replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA ("Directive") was passed in response to increased instances of terror attacks in the territories of the Member States. Council Framework Decision 2002/475/JHA previously served as the primary legislation on the EU's counter-terrorism initiatives. The Directive calls upon Member States to criminalize certain acts that may be considered terrorist offenses if committed with the requisite intent, discussed below, and defines offenses related to terrorist activities. In addition, it reviews support mechanisms in place to assist victims of terrorism.

<sup>9</sup> By way of example, the Inter-American Convention Against Terrorism on June 2, 2002 AG/RES. 1840 (XXXII-O/02); the OAU Convention on the Prevention and Combating of Terrorism came in effect on December 6, 2002 and a further Protocol was adopted by the 3<sup>rd</sup> Ordinary session of the Union in July 2004.

<sup>10</sup> See e.g. The Southern Africa Community (SADC) Summit has developed a regional counter-terrorism strategy, the

national levels addressing counter-terrorism, countering violent extremism and more recently in preventing violence extremism.

24. The Special Rapporteur affirms the need for a better understanding of the relationship and intersections between these bodies of legal and administrative norms. Mapping intersecting and overlapping legal regimes in the counter-terrorism sphere is not an abstract exercise, but is necessary to understand the full scope of a state's legal obligations and commitments in the counter-terrorism arena identifying overlap, contradiction and inefficiencies.

25. However, more importantly for the Special Rapporteur is the need to thoroughly map the full terrain of counter-terrorism regulation so as to better engage and understand the full scope of a state's human rights obligations. In this universe of expanding norms, human rights protections run real risks of being marginalized or drowned out by the plethora of new international rules, regulations and obligations. Moreover, a lack of clarity concerning the precise legal relationships between different bodies of legal rules, including the application of *lex specialis*, differentiating between derogable and non-derogable rights in the application of these norms, as well as identifying whether and if any consideration has been given to existent state human rights obligations in the constructions of these norms.

26. The Special Rapporteur also notes her concern about the lack of clarity in complex situation of internal armed conflict, low-intensity conflict, and post-conflict settings, about the scope and application of human rights norms in the context of countering terrorism. While affirming that her role is uniquely focused on the protection of human rights in the context of counter-terrorism, the Special Rapporteur recognizes that situation of conflict pose particular normative challenges to the application of human rights, especially where states advance new interpretation or extensions in the application of international humanitarian law. The Special Rapporteur voices her concern that the complexity of the interface between newly developing counter-terrorism regimes allied with extended interpretation of international humanitarian law may in practice ouster the application of fundamental human rights treaty obligations. This is an area of state practice to which the Special Rapporteur will give close attention.

### **C. Mainstreaming gender in the discharge of the mandate**

27. The Special Rapporteur is deeply committed to fully integrating a sustained and meaningful gender analysis in all aspects of her mandate. Terrorism typically does not discriminate between women and men. The victims of terrorism and those who are harmed by terrorist acts or counter-terrorism policies and practices are equally gendered.

28. Nonetheless, until relatively recently women have been broadly invisible in terrorism and counter-terrorism discourses. The passage of United Nations Security Council Resolution 2242 has provided some remedy to that imbalance. That resolution explicitly highlights the role of women in countering violent extremism, and addresses

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communique from the SADC's 35th session in August 2015 explains that the "Summit approved the SADC Regional Counter Terrorism Strategy" (para. 18).

the impact of the rise of extremism on the lives of women and more broadly on women's security, mobility, education, economic activity and opportunities.<sup>11</sup> More broadly the Women, Peace and Security Agenda has sought to highlight the role and significance of conflict and security challenges to women, and has been broadly welcomed by states as an important intervention in the peace and security context.

29. However, it remains the case that when women come into view in terrorism and counter-terrorism policy, they typically do so as the wives, daughters, sisters and mothers of terrorist actors, or as the archetypal victims of senseless terrorist acts whose effects on the most vulnerable (women) underscores the unacceptability of terrorist targeting. Women have been marginal to the conversations in which definitions of security are agreed and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law. Women perpetrators of terrorist violence have been largely ignored, although acts of terrorist violence perpetrated by women are increasingly visible, including women as suicide bombers and women exercising leadership roles in terrorist organisations.<sup>12</sup> It is also critical to note that definitions of terror remain highly gendered, with deliberate acts of sexual violence when used by terrorist organisations as a method and means of terrorism going unrecognised by domestic legislation. This means in practice that these victims of terrorism are ignored, stigmatised and marginalised excluding them from the redress and support we recognise as vital for victims of terrorism.<sup>13</sup>

30. While resolution 2242 requested the CTC and the CTED to integrate gender as a cross-cutting issue throughout the activities within their mandate,<sup>14</sup> the integration of women into national security planning, priority, and execution remains highly patchy at national and international levels. However, these exclusions are already being

<sup>11</sup> Paragraphs 11, 12, 13 and 15. Specifically paragraph 13, notes the opportunities to engage women: "Urges Member States and the United Nations system to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism, including through countering incitement to commit terrorist acts, creating counter narratives and other appropriate interventions, and building their capacity to do so effectively, and further to address, including by the empowerment of women, youth, religious and cultural leaders, the conditions conducive to the spread of terrorism and violent extremism which can be conducive to terrorism, consistent with the United Nations Global Counter-Terrorism Strategy (A/RES/60/288)".

<sup>12</sup> E.g. regard to Boko Haram's use of female suicide bombers, see Combating Terrorism Centre's Exploding Stereotypes: The Unexpected Operational and Demographic Characteristics of Boko Haram's Suicide Bombers (2017). According to its findings: from April 11, 2011 to June 30, 2017, Boko Haram deployed 434 bombers to 247 different targets during 238 suicide-bombing attacks. At least 56% of these bombers were women, and at least 81 bombers were specifically identified as children or teenagers. In terms of global numbers recent academic studies e.g. Jessica Davis, Evolution of the Global Jihad: Female Suicide Bombers in Iraq 46 Studies in Conflict & Terrorism 279 (2013) reports that in the 256 records of attacks conducted by women between 1968-2912, 157 involved suicide attacks with detonation.

<sup>13</sup> The Security Council has expressly condemned the use of sexual violence, early and forced marriage, rape, sexual slavery and the increased use of girls as suicide bombers by organizations such as Boko Haram. See e.g. United Nations Security Council Resolution 2349 (2017). See also, Report of the Secretary-General on conflict related sexual violence (S/2017/249)(April 15, 2001)

<sup>14</sup> Specifically paragraph 11 calls for: "[t]he greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering-violent extremism which can be conducive to terrorism, requests the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their respective mandates, including within country-specific assessments and reports, recommendations made to Member States, facilitating technical assistance to Member States and briefings to the Council, encourages the Counter-Terrorism Committee and Counter-Terrorism Committee Executive Directorate to hold further consultations with women and women's organizations to help inform their work, and further encourages the Counter-Terrorism Implementation Task Force to take the same approach in activities within its mandate".

addressed including by the United Nations Secretary General's Plan of Action and the Working Group on Radicalization and Extremism which tackle the importance of gender particularly in the context of violent extremism, including women in counter-terrorism prevention, building women's civil society capacity so that they can act as barriers to violent extremism, and set aside funds to empower women as a place holder for broader economic, social, and political reforms in marginal communities that are at risk of producing terrorists.<sup>15</sup> Noting that sustained lack of integration, the Special Rapporteur will consistently address such matters during the course of her mandate, including during country visits.

31. However, the focus on women is only one aspect of integrating a gender perspective into the work of the mandate holder. In addition to a greater integrating of women's capacity and experience into the substantive work of counter-terrorism, a sustained focus on men is also needed to ensure that we fully engage with the gender dimensions of terrorism and counter-terrorism. A concentration on male actors has dominated national security conversations and as a result the "causes" of terrorism are often coded male with little reflection on the gendered contexts, practices and intersections that give profound insight into the conditions that produce and sustain terrorism. For example, we are increasingly aware in the CVE context that recruitment to terrorist organizations is premised on ideas of male identity and power, including unfettered access to women based on institutionalized gender inequality and women's subordination. To prevent violent extremism effectively there is no avoiding the masculinity tropes that attract men on the basis of a certain form of male identity and power.

32. The Special Rapporteur notes that men, maleness and masculinities as a category of analysis is missing in the ways terrorist acts, terrorist organizations, and anti-terrorism responses are understood. To fully integrate a gender perspective into the work of the mandate, attention to gender identity, practice and the gender order of terrorism and counter-terrorism will be a necessary part of the work of the Special Rapporteur. In this regard, the Special Rapporteur will build on the good practice already under way within the UN architecture advancing a more holistic understanding of the importance of gender in the CVE and PVE arenas with emphasis on why and how certain kinds of masculinity strongly correlate towards radicalization and the capacity for violent mobilization, and how best to address such understandings into programming and thinking about the prevention of terrorism.

#### **D. Protecting and Promoting Civic Space and Civil Society while Countering Terrorism**

33. Building on the work of her predecessor the Special Rapporteur underscores the value of a healthy, diverse and well-resourced civil society in any country, but particularly in countries facing the threat and reality of terrorism. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting

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<sup>15</sup> Noting the contrast between earlier work see e.g.. Counter-Terrorism Implementation Task Force, First Report of the Working Group on Radicalisation and Extremism that Leads to Terrorism: Inventory of State Programmes (2006) which did not directly address women and girls and more recent efforts by the CTIFT inter-agency working groups which include UN Women and gender expertise.

goals, but complementary and mutually reinforcing.<sup>16</sup> In advancing the promotion and protection of human rights in any society, civil society is a necessary and much needed infrastructure. It can pave the way for more effective prevention strategies, with regard to both the temptation to recourse to terrorist action and the attraction of radical or violent extremism. The Special Rapporteur affirms the value of civic space, public participation and critical engagement by civil society as an essential part of a human rights informed approach to counter-terrorism. The values of rights to association, assembly and expression are all key elements of the human rights treaty architecture, and have both intrinsic value but also promote the functionality of societies in which the dignity and equality of every human person is advanced. She notes her attentiveness to undue restrictions on civil society in the name of security and counter-terrorism. The Special Rapporteur will remain deeply engaged with both governments and civil society in the discharge of her mandate.

## V. Conclusions

34. **In concluding this preliminary first report, the Special Rapporteur recognizes that her mandate starts at a highly significant time with the instigation of urgent institutional reform and the initiatives of the Secretary-General to engage comprehensive reform of its counter-terrorism strategy and architecture.**

35. **As the previous mandate holder noted in his final report, the mandate of the Special Rapporteur is the only entity of the United Nations explicitly and exclusively dedicated to the protection and promotion of human rights while countering terrorism. The Commission on Human Rights established the mandate in resolution 2005/80. It was then assumed by the Human Rights Council, and was extended in 2016 by resolution 31/3 for a further three years. Given the breadth of the mandate and its responsibility to consider all human rights that might be affected by counter-terrorism measures, its sources and capacity are relatively meagre in institutional terms. The limitations of the mandate's institutional capacity have been set out in detail by her predecessor, and The Special Rapporteur will not revisit them here. However, the adoption, mainstreaming and resourcing of an integrated human rights infrastructure in countering terrorism is an urgent priority in this restructuring endeavor. In conclusion, the Special Rapporteur underscores that she looks forward to the work ahead, and in particular a sustained engagement in the institutional revisions that follow from a shared commitment to enhance the capacity of the United Nations to advance human rights as an integral component of collective and individual security.**

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<sup>16</sup> General Assembly resolution 60/288, annex.