

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

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights while countering terrorism, pursuant to Human Rights Council resolution 31/3.

Respect for the protection and observance human rights in the context of the challenges posed by terrorism is a fundamental aspect of the mandate of the Special Rapporteur. Terrorism poses a grave challenge for the rule of law, human rights and the full and effective enforcement of rights in democracies wanting to take meaningful and comprehensive measures to address the menace of terrorist acts. France is a leading democracy with a deep and abiding commitment to the rule of law and the value of human rights. French leadership in demonstrating how the management of terrorist threats can be undertaken without imperiling the rule of law and exhibiting a sustained commitment to the protection of human rights has important national, regional and international dimensions.

In this regard, I would like to draw your Government's attention to the draft law "to Strengthen Internal Security and the Fight Against Terrorism" (or in French: *Projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme*). The text was approved by the Senate on 18 July 2017, and is pending before the National Assembly for adoption on 25 September. I apologize that I have to write this letter in English, but time and resources constraints leave me with no alternative this time around.

I note that the text of the draft bill includes a number of security measures, which will incorporate into ordinary law several restrictions on civil liberties currently in place under France's state of emergency, which was proclaimed in 2015. I underscore that both regional and international human rights bodies affirm that the means open to the state to regulate terrorism by law are limited (*Klass and Others v. Germany*, 1978 para 49). Even as states engage in counter-terrorism, a necessary task when faced with serious threats to the nation, the methods and means of response must be legal, necessary and proportional and in the European human rights treaty context, subject to democratic control.

Recognizing the grave challenges that France has faced in recent years, the Special Rapporteur articulates her concern that particular aspects of this Bill may be problematic with regard to human rights compliance. Moreover, as the proposed legislation builds upon a raft of parliamentary acts enacted since 1986 expanding the anti-terrorism capacity of the state, there is a piling up of emergency provisions which, in composite, may serve to effectively limit the enjoyment and protection of human rights. I note that some aspects of the Bill have extended elements of the legislation on the state of

emergency beyond that for which derogation and notification were served to the Council of Europe in November 2015, February 2016, July 2016, December 2016 and July 2017. Specifically, according to the information received, the bill:

- provides vague definitions of terrorism and threats to national security exacerbating concerns that the powers may be used in an arbitrary manner.
- ends the state of emergency formally on November 1, after almost two years, but replaces it immediately with a number of measures that write exceptional, emergency practices into normal criminal and administrative law. This normalisation of emergency powers has grave consequences for the integrity of rights protection in France, both within and beyond the context of counter-terrorism.
- grants increased powers to prefects in almost every French department (as opposed for example to judicial officers appointed by law) to designate public spaces as security zones, limiting who could enter and leave them; to limit the movement of people considered a national security threat; to close places of worship; and to search private property.
- limits the judicial overview of the exercise of the increased prefect's powers, as well as the right of appeal for executive orders limiting where a person has to live and for closing places of worship.
- changes surveillance legislation, border controls and processes for the retention of passenger data, and includes a new requirement for financial reporting by any organization carrying out counter-radicalization projects as a public function.
- introduces restrictions called "individualized administrative control and surveillance measures", which will require a person to remain within a geographic boundary, to report periodically to a police station, to accept an electronic surveillance bracelet, and to report any changes of residence.

While I do not wish to prejudge the accuracy of the information at hand about the draft bill, I express my deep concern about its far-reaching scope and its potential adverse impact on the enjoyment of the right to liberty and security, the right to access to court, freedom of movement, freedom of peaceful assembly and association, freedom of expression and freedom of religion or belief. Your Excellency's Government's derogation from certain obligations under the European Convention on Human Rights (listed above) and the International Covenant on Civil and Political Rights (November 2015, February 2016, July 2016, December 2016 and July 2017) does not give a carte blanche to ignore all requirements under these conventions. Any measure derogating from or limiting human rights obligations must meet strict criteria set out in international human rights law. More particularly, there is consistent jurisprudence from the European Court of Human Rights that affirms the need to use such powers in a proportional and

necessary way. Human rights law and practice is clear that exceptional powers are not meant to be made permanent, and doing so places a grave burden on the full enjoyment of human rights by all citizens equally, and may undermine the very spirit of the rule of law.

This bill deals with the creation of a specific legal framework for the prevention and fight against terrorism. There is no doubt that in face of the terrorist attacks committed in France since 2015, the French authorities wish to take measures to better prevent this type of events. In this context, it should be borne in mind that France's history and commitment to human rights underscores an understanding that long-term prevention of terrorism and extremism is profoundly dependent on the effective and fair enforcement of human rights. The prevention of terrorism is inextricably linked to the protection of human rights.

In this context, I am particularly concerned about the notably vague wording of the above-mentioned provisions. In particular, giving non-judicial officers, specifically prefects and police officers, broad discretion and broadening the scope for control practices, may have intruding and discriminatory repercussions for residents of France, in particular for citizens of Muslim confession.

Furthermore, I am concerned about the impact of these measures on the enjoyment of the fundamental rights and freedoms, especially by minorities, because there are insufficient judicial safeguards or mechanisms in place to effectively control the exercise of executive powers in this bill. I am concerned that the aforementioned provisions may offer law enforcement officials overbroad discretion for the use of their powers, without providing the necessary guarantees of prior independent authorization and judicial review.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any further information or comments in relation to the concerns above.
2. Please provide details about the measures taken by your Excellency's Government to ensure the compatibility of the draft law "to Strengthen Internal Security and the Fight Against Terrorism" with the international norms and standards provided for in the treaties ratified by France, particularly with regard to the right of non-discrimination, the right to liberty and security, right to access to court, freedom of movement, freedom of peaceful assembly and association, freedom of expression and freedom of religion or belief.
3. Please provide details about the measures taken by your Excellency's Government to ensure that the provisions of the draft law do not contribute to the normalization of exceptional and intrusive practices, which are

allowed under international law only in case of emergency, provided that the proper procedure for derogation is followed.

4. Please inform me if it is planned to establish mechanisms for monitoring and transparency on prefects and police practices that effectively guarantee the fight against discrimination and abuses of police powers.

Pending your reply, I ask your Excellency's Government to take all necessary measures to ensure that the provisions of the draft law and their implementation comply with international standards and human rights.

Also, please note that I may consider to publicly express my concerns as, in my view, the information upon which these concerns are based appears to me sufficiently reliable to indicate a matter warranting immediate and undivided attention. A public statement would indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights while countering
terrorism