

Oral Statement by the International Commission of Jurists

Concerns regarding the draft Advisory Committee report on “Effects of terrorism”

24th Session of the Human Rights Council Advisory Committee

17 February 2020

The International Commission of Jurists (ICJ) appreciates the efforts of the Advisory Committee and welcomes the opportunity to engage in this discussion of the draft report on the negative effects of terrorism on human rights.

In the joint written statement by ICJ and other NGOs, we urged the Advisory Committee to take account of the sensitive context into which this report will be delivered.¹ We urged the Committee not to allow its work to be instrumentalized by States that seek to distract, distort and dilute the extremely limited resources and time of the Human Rights Council and the Special Rapporteur away from its current focus on the direct and most acute human rights issues. It is essential that the Council maintains its longstanding and appropriate focus on prevention and response to human rights violations resulting from counter-terrorism measures, and promoting and ensuring the human rights of victims of terrorism.

Any report for the Human Rights Council on “negative effects of terrorism” should therefore, in the view of the ICJ, maintain an exclusive focus on promoting a human-rights based approach to victims of terrorism, consolidating the extensive work already done in this regard by successive Special Rapporteurs and other UN and regional entities, as collected in the compilation published by the ICJ last year.² It must not enable the diversion of precious attention and resources to more diffuse questions of impacts of a macro-economic or similar character, in respect of which a human rights based approach has little to add in terms of concrete recommendations or guidance to States. The latter point is, the ICJ would suggest, illustrated by the recommendations included in the draft report for “prevention of terrorist acts, through exchange of intelligence information and exchange of expertise, and capacity building”; these mainly reiterate a few particular elements, without clearly discernible criteria for selection, from the huge volume of technical guidance on counter-terrorism measures, already issued from various UN counter-terrorism bodies and the extensive work of the Special Rapporteur, without adding anything substantively new in terms of human rights analysis or guidance.

¹ Joint written statement by International Commission of Jurists, Amnesty International, ARTICLE 19, and Rights Watch (UK), UN Doc A/HRC/AC/24/NGO/1
https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session24/A_HRC_AC-24_NGO_1.pdf

² *Human Rights of Victims of Terrorism: a compilation of international sources* (ICJ, 2019), available at: <https://www.icj.org/victimsofterrorism2019/>. See also <https://www.icj.org/icj-highlights-rights-of-victims-of-terrorism-to-un-delegations/> (4 December 2019).

The ICJ endorses and shares the many concerns and criticisms set out in the written comments of the Special Rapporteur.³ Many parts of the draft lack sufficiently rigorous legal and policy analysis, and overall the report does not focus on the most acute relevant human rights issues.

The ICJ is concerned among other things by a lack of legal or policy analysis of the apparent assumption of the Advisory Committee that various international human rights instruments, developed in relation to States, necessarily are of direct legal application to non-State armed groups.⁴ The ICJ is also particularly concerned that references to states of emergency and derogation in draft paragraphs 38, 95, 96 and elsewhere, fail to analyze adequately the threshold for and restrictions on any derogations under international law, and do not clearly condemn the kinds of abuses and violations that occur in this context.

The report seems to ignore some key already-established recommendations, guidance and processes on victims of terrorism, including for instance General Assembly resolution 73/305 on “Enhancement of international cooperation to assist victims of terrorism” from June 2019, adopted by consensus and certainly among the most significant developments in this area during the last ten years.

We fear that sending the report to the Council in its current form would have precisely the damaging consequences of which the ICJ and others have warned in our written submission.

We urge the Advisory Committee to substantially revise and refocus the report to include a clear recommendation to the Council that the exclusive focus of the Council’s work should remain on the most acute issues from a human rights perspective: violations in countering terrorism and a human-rights based approach to victims of terrorism, along the lines already established by successive holders of the Special Rapporteur mandate. We urge you to recommend against the Council entering into more diffuse macroeconomic issues 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. We urge you to avoid making recommendations that simply repeat already-existing obligations or commitments to counter terrorism under various UN or other instruments. We urge you to affirm that the existing and longstanding normative and institutional framework on counter-terrorism and human rights is already sufficient to address relevant impacts of terrorism from a human rights perspective.

Thank you.

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³ Available at: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Research-papers-and-Inputs.aspx>

⁴ On why this is a sensitive issue for civil society and many States, see among other sources: ICJ oral statement on the report on victims of terrorism, <https://www.icj.org/wpcontent/uploads/2012/11/ICJ-HRC20-statement-victims-of-terrorism.pdf>; Amnesty International public response to the report on victims of terrorism <https://www.amnesty.org/download/Documents/24000/ior400122012en.pdf> (footnote 7); Amnesty International Written Statement on the report on victims of terrorism, UN Doc A/HRC/20/NGO/103 (19 June 2012); and the Special Rapporteur’s Report UN Doc E/CN.4/2006/98 (28 December 2005) paras 68-70.