

UNIVERSITY OF MINNESOTA



THE ROLE OF MEASURES TO
ADDRESS TERRORISM AND
VIOLENT EXTREMISM ON

CLOSING CIVIC SPACE

Report prepared under the aegis of the
Mandate of the United Nations Special
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Countering Terrorism (2018)

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THE ROLE OF MEASURES TO ADDRESS TERRORISM AND VIOLENT EXTREMISM ON CLOSING CIVIC SPACE

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I. INTRODUCTION

Increasingly since 2001, civil society¹ space has been shrinking. Civil society as a whole is stigmatised, sometimes discriminated against, its actors are subjected to smear campaigns, defamation, physical harassment, spuriously charged and sentenced under various laws, its peaceful actions are criminalised. Its members are simply unable to carry out their work, either because they are detained, tried, or threatened or they are subject to various restrictions on their ability to express themselves, to meet, or to operate. The shrinking space for civil society has become a structural global challenge.

According to CIVICUS, civic space is closed, repressed or obstructed in 111 countries across the world, and only four per cent of the global population live in areas where civic space is open.² This trend has been accelerating in the past few years, with the International Center for Not-for-Profit Law recording the adoption of 64 restrictive laws on civil society from 2015-2016 alone.³ According to Front Line Defenders, at least 321 HRDs were killed in 2018 only.⁴ Other key violations that contribute to the closing of civic space include detentions and arrests, legal action, intimidation, threats, smear campaigns and verbal abuse, physical attacks, excessive use of force, censorship, and the adoption of restrictive legislation.⁵

Framed by this broad context, between 2001 and 2018, at least 140 governments have adopted counter-terrorism legislation.⁶ To address new or perceived threats, or simply to comply with new international requirements, many governments have adopted multiple legislative and administrative measures to counter terrorism. According to Human Rights Watch, at least 47 countries have passed laws relating to foreign terrorist fighters since 2013—the largest wave of counterterrorism measures since the immediate aftermath of the September 11, 2001 attacks.⁷

The clear link between the assault on civil society and the security framework can be seen in the following trends and figures. Since its inception, 66 per cent of all relevant communications⁸ sent by the mandate of the Special Rapporteur related to the use of counter-terrorism, preventing and countering violent extremism (PCVE) or broadly defined security-related measures on civil society.

¹ Defined by the UN Secretary General's Panel of Eminent Persons on United Nations-Civil Society Relations as "associations of citizens (outside their families, friends and businesses) entered into voluntarily to advance their interests, ideas and ideologies. The term does not include profit-making activity (the private sector) or governing (the public sector). Of particular relevance to the United Nations are mass organizations (such as organizations of peasants, women or retired people), trade unions, professional associations, social movements, indigenous people's organizations, religious and spiritual organizations, academe and public benefit non-governmental organizations.", A/58/817.

² Civicus, "People Power Under Attack", (November 2018).

³ International Center for Not-for-Profit Law Global Trends in NGO Law, "Survey of Trends Affecting Civic Space: 2015-16", vol. 7, Iss. 4 (September 2016).

⁴ Front Line Defenders, "Global Analysis 2018" (January 2019).

⁵ Ibid. See also Civicus, "People Power Under Attack", 27 November 2018.

⁶ CSIS, "Counterterrorism Measures and Civil society: Changing the Will, Finding the Way" (March 2018); CSIS/iCON, "Aligning Security with Civic Space: Database of Legislation on the Definition of Terrorism", updated February 2018.

⁷ Letta Tayler, "Overreach: How New Global Counterterrorism Measures Jeopardize Rights", Human Rights Watch (2017).

⁸ This percentage excludes communications relating legal technical advice on draft or adopted legislation or standards, as well as standard communications sent about the repatriation and trial of FTFs, on the follow up to the joint Global Study, and institutional communications to the UN. It should also be noted that these figures reflect only the cases that have been submitted directly to the Special Rapporteur. Methodologically these numbers likely reflect substantial under-reporting.

For the last two years, the number is slightly higher, at 68 percent. This is an extraordinarily high figure, which underscores the abuse and misuse of counter-terrorism measures against civil society and human rights defenders over a decade and a half. This robust empirical finding measured from 2005-2018 affirms that targeting civil society is not a random or incidental aspect of counter-terrorism law and practice. It suggests the hard-wiring of misuse into the use of counter-terrorism measures by states around the globe. This upward trend tallies with the findings of Mapping Media Freedom that the misuse of security legislation to silence government critics is growing, with 67 of the 269 cases it dealt with in a four-year period happening in 2018, and only 10 in 2014.⁹ Front Line Defenders documented that of the cases it dealt with in 2018; 58 percent of the HRDs charged were charged under security legislation.¹⁰ The mandate of the Special Rapporteur, for its part, finds that over 67 percent of all communications concerning civil society in 2018 related to alleged proceedings under counter terrorism or other broad security-related charges. Such a finding demands fundamental review of the use (and misuse) of counter-terrorism law and practice around the globe, and the implementation of robust oversight and accountability for the attendant human rights violations.

It is no coincidence that the proliferation of security measures to counter-terrorism and PCVE, on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously.¹¹ Indeed, in a fallacious shift, the one often squeezes the space available for the other. In the current context, the ramping up of security space leading to the narrowing of civic space can be almost directly traced back to the international security-focused dynamic that commenced in 2001. This is the point where the international matrixes, established to regulate broad security issues, including counter-terrorism and PCVE, not only secured that all States were required to adopt legislative and other security measures, but have contributed to emboldening States into adopting stringent measures against terrorism, disregarding their long-established human rights obligations, and striking at the heart of civic space.

The determination with which the international community took draconian measures in the immediate post-9/11 context and the blanket approach to legislating in the complex area of counter-terrorism, leaving no room for a determination of the necessity and proportionality of the measures, revealed a global consensus on a zero-risk imperative to preventing and countering terrorism. Despite the advice given to the Security Council by the late Secretary-General Kofi Annan to the Security Council to ensure their counter-terrorism measures “do not unduly curtail human rights, or give others a pretext to do so”,¹² the Council’s binding legislative resolutions¹³ have persistently lacked a comprehensive definition of terrorism and of violent extremism and a comprehensive assessment of the human rights impact of the required measures. In addition, the post-2001 context has seen the emergence of new entities that are a part of the global counter-terrorism architecture, whose oversight and relationship to traditional regulatory bodies remain opaque and under-regulated. In this respect, the obscure -

⁹ Mapping Media Freedom, “Targeting the Messenger: Journalists ensnared by national security legislation 2014-2018”, Special Report (January 2019).

¹⁰ This includes charges under national / state security / sedition: 17%; cybercrimes: 1%; defamation/ insulting state / damaging national unity: 17%; Spreading fake news / rumours / propaganda: 14%; Terrorism / membership or support of terrorist org: 9%. See also Front Line Defenders, “Global Analysis 2018” (January 2019).

¹¹ In resolution 68/181, the UN General Assembly noted that “in some instances, national security and counter-terrorism legislation and other measures have been used to target human rights defenders, including women human rights defenders, or have hindered their work and endangered their safety in a manner contrary to international law”.

¹² First open debate of the Security Council on counter terrorism (January 2002).

¹³ In particular resolutions 1373 (2001), 2178 (2014) and 2396 (2016). See A/73/453.

but influential Financial Action Task Force (FATF) has “proved to be a useful tool for a number of States as a means of reducing civil society space and suppressing political opposition”¹⁴ and has caused “incalculable damage to civil society.”¹⁵

For civil society, the international primacy of security over human rights translated itself into polarising political rhetoric of “with us or with the terrorists”, which soon led to the targeting of members of civil society who called into question the legitimacy of these measures and called for government accountability. Civil society has been perceived suspiciously either because of their presence and work with and within disenfranchised communities, or because it was seen as questioning government action.¹⁶ The loose international frameworks, which required national implementation, provided the means to governments to secure their own power by silencing the voices that called into question their legitimacy or the well-founded nature of their political, social, economic, cultural, as well as human rights policies and decisions. With the phenomena that are being addressed either undefined or vaguely defined, institutionalised security matrixes have allowed States to qualify threats to themselves as terrorism, violent extremism, extremism, or even more broadly threats to national security. By March 2002, seventeen Special Rapporteurs and Independent Experts of the Commission on Human Rights and the former High Commissioner for Human Rights had expressed their concern over the targeting of human rights defenders, migrants, asylum seekers and refugees, religious and ethnic minorities, political activists and the media and the suppression or restriction of a number of rights, including to the rights to privacy, freedom of thought, freedom of expression and peaceful assembly.¹⁷ The first Special Rapporteur on human rights and counter-terrorism stated that “for a while, the global consensus about the imperative of combatting terrorism was so compelling that authoritarian governments could get away with their repressive practices simply by renaming political opponents as terrorists”¹⁸.

Increasingly, any form of expression that articulates a view contrary to the official position of the state, addresses human rights violations or opines on ways to do things better in accordance with international human rights obligations, constitutes a form of terrorist activity,¹⁹ violent extremism, or a very broad “threat to national security”, which often encompasses both terrorism and extremism. Some States now routinely abuse security legislation as a shortcut for cracking down on civil society, arresting and detaining its peaceful representatives, accusing them under spurious charges, and placing them under the exceptional procedural regimes that are often linked to these qualifications. No region of the world is immune from this trend. In some regions, the instrumentalisation of counter-terrorism, PCVE and national security is brutal, with members of civil society arrested and detained on spurious grounds, with some States even using counter-terrorism laws to silence LGBTI rights defenders,²⁰ and others investigating individuals involved in peaceful protests against climate change as a form of terrorism²¹ or branded as “eco-terrorists”.²² Journalists have also been particularly targeted by counter-terrorism and other broad security legislation.²³

¹⁴ Special Rapporteur on human rights and counter terrorism A/70/371, para. 24.

¹⁵ Lauren Mooney, “Counter-Terrorism Measures and Civil Society: Changing the will, finding the way”, CSIS (March 2018), p. 5.

¹⁶ Manfred Nowak and Anne Charbord, “Key trends in the fight against terrorism”, in *Using Human Rights to Counter Terrorism*, (Elgar Studies in Human Rights, 2018), pp. 20-21.

¹⁷ Introductory statement by Mary Robinson, UN High Commissioner for Human Rights, Commission on Human Rights, 58th Session (20 March 2002).

¹⁸ Martin Scheinin and Mathias Vermeulen, “Unilateral Exceptions to International Law: Systematic Analysis and Critique of Doctrines that seek to Deny or Reduce the Applicability of Human Rights Norms in the Fight Against Terrorism”, European University Institute Working Papers, Law (Paper delivered under the DETECTER project (August 2010), p. 2.

¹⁹ Fionnuala Ni Aolain, “Counterterrorism and crackdown on civil society”, *Just Security* (5 January 2018).

²⁰ CSIS, “Counterterrorism measures and civil society, Changing the will, finding the way” (March 2018), p.6; See also mandate communication TUR 12-2018 (note that all mandate communications infra will be referred to by country abbreviation, number and year of issuance).

²¹ Adam Federman, “Revealed: FBI kept files on peaceful climate change protesters”, *the Guardian* (13 December 2018).

²² Justine Calma and Paola Rosa-Aquino, “The term ‘eco-terrorist’ is back and it’s killing climate activists”, *Grist* (2 January 2019).

²³ Mapping Media Freedom, “Targeting the Messenger: Journalists ensnared by national security legislation 2014-2018”, (January 2019).

Firmly rooted in the primacy of security and the counter-terrorism imperative, empowered by the continuum of aspersion on civil society, and absent any significant pushback at national or international levels, ever more measures to silence and even choke civil society have been taken, including blanket laws, administrative measures, inclusion on various lists with undefined effects and exclusionary measures at all levels. It is essential to grasp what the overall picture points to: the serious impact of the cumulative sustained effect of these measures to counter terrorism and violent extremism or to protect national security, across these categories, from the global to the local, individually, and collectively, which have both been enabled and allowed to proliferate by a global security framework, and how these work in tandem to undermine civil society and civic space.

Even though States often justify measures against civil society through broad invocations of countering terrorism, PCVE, or national security, it is now clear that targeting civil society actors is wholly inconsistent with meaningfully attending to these genuine threats. Recent research shows that there is no evidence that legal restrictions on civil society reduces the number of terrorist attacks within a country.²⁴ Civil society restrictions do not work to make a country safe from terrorist attacks; the security rhetoric does not achieve the expected outcomes. In turn, this means that such measures could fail wholesale at any proportionality and necessity test, despite the justification given by many governments individually, or through fora such as FATF. Importantly, in a context where priority was given to security to the detriment of human rights, meaningful reflection on this finding by all segments of society could have tilted the balance towards human rights protection rather than security.

On the contrary, targeting civil society actors is wholly inconsistent with meaningfully attending to genuine terrorist threats.²⁵ The key role played by a vibrant and active civil society was recognised during the UN High-Level Conference on Counter-Terrorism in June 2018. During this Conference the UN Secretary-General stated that “civil society is central to (...) our broader counter-terrorism strategies”;²⁶ the Representative of Finland stated that “civil society and religious communities play a significant role in preventing violent extremism and countering terrorism”;²⁷ the Representative for Fiji said that “successful implementation of [the Global Counter-Terrorism Strategy] will no doubt require popular support, which can only be built and sustained with the support and cooperation of civil society”;²⁸ while the Representative of Canada affirmed that in its experience “a civilian-led approach, engaging civil society and communities is the most effective way to prevent violent extremism”.²⁹

²⁴ Jeong-Woo Koo and Amanda Murdie, “Liberty or Security: Do Civil Society Restrictions Limit Terrorism?”, CSIS Blog Post – The International Consortium on Closing Civic Space (4 June 2018).

²⁵ Fionnuala Ni Aolain, “Counterterrorism and crackdown on civil society”, Just Security (5 January 2018).

²⁶ UN Secretary General, “Uniting the World Against Terrorism: Op-Ed on the United Nations High-Level Conference on Counter-Terrorism (June 2018), <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/26june-sgoped-counterterrorism-EN.pdf>

²⁷ Opening remarks by H.E. Kai Sauer (Finland), UN High Level Conference of Heads of Counter-Terrorism Agencies of Member States (28 June 2018), <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Finland-opening-statement.pdf>

²⁸ Statement of Mr. Osea Cawaru (Fiji), UN High Level Conference of Heads of Counter-Terrorism Agencies of Member States (29 June 2018), <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S4-Fiji.pdf>.

²⁹ Statement of Ms. Ritu Banerjee (Canada), UN High Level Conference of Heads of Counter-Terrorism Agencies of Member States (29 June 2018), <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S3-Canada.pdf>.

Beyond the political rhetoric, and despite the vast amount of research that still needs to be carried out to understand what may lead an individual to resort to unacceptable violent action, recent studies³⁰ show just how critical civil society is in both channelling discontent and allowing for constructive engagement with States. Civil society is also essential in directly undermining the factors that lead an individual to be drawn to terrorism and violent extremism, the conditions conducive to terrorism as identified by the UN Global Counter-Terrorism Strategy,³¹ and in the United Nations' new agenda on preventing and countering violent extremism.³² It is now recognised that key factors linked to governance, neglect of and marginalisation across political, economic and social spheres by the State which leaves space for the exploitation of narratives that speak to the grievances of communities living in neglected circumstances, can lead to severe vulnerability to terrorism and violent extremism.³³ Through their presence in areas where the state is unable or unwilling to govern, civil society often plays the role of an intermediary through its credibility and access to remote communities, and can meaningfully generate peace and development. This includes but is not limited to the implementation of the Sustainable Development Agenda 2030 which can directly address the sources of grievances identified as factors leading to terrorist and extremist violence. As recruitment in certain regions is very localised, with its invaluable knowledge of the local drivers of extremism and local trends, civil society can help fill a government gap. Civil society can provide alternative narratives, and develop locally-driven initiatives that respond to the very specific needs of marginalised communities. More broadly, effective avenues for civic participation contribute to societal cohesion and give minorities and those at the margins of society a way to make their voices heard.³⁴ For their part, humanitarian actors provide desperately needed assistance in areas where terrorist and violent extremist groups are active, as well as in areas where conflict is looming and where there is a heightened possibility of enrolment by violent groups.

Further, as it is now clear that government action, including security sector conduct in countering terrorism, is a prominent accelerator of recruitment.³⁵ By requesting States to be more transparent and by promoting effective accountability where human rights violations have been committed by both State and non-State actors, civil society plays a critical role in restoring the confidence in national and international efforts undertaken to counter terrorism. Civil society builds the essential yet fragile trust between individuals, communities and the authorities in countering terrorism. In other contexts, by giving a voice to the disenfranchised, minorities, marginalised or other groups that suffer from discrimination, and to those whose civil, political, economic or social rights have been violated, civil society can meaningfully assist in channelling the grievances and desperation that can be exploited by terrorist and violent extremist groups, provide peaceful alternatives and overall improve relationships between the State and its citizens.

³⁰ UNDP, "Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment" (2017).

³¹ These include, but are not limited to "prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance". General Assembly resolution 60/288, Annex, Pillar I.

³² Security Council resolution 2178 (2014); UN Secretary-General's Plan of Action to prevent violent extremism, A/70/674. See also UN Security Council Presidential Statement on 'Countering terrorist narratives' (11 May 2016), which emphasizes the role of civil society in countering the narratives of terrorist groups and incitement to commit terrorist acts.

³³ UNICRI, "If Victims Become Perpetrators" (June 2018).

³⁴ A/HRC/32/20, para. 6.

³⁵ NDP, "Journey to Extremism in Africa" (2018); Institute for Economics and Peace, "2017 Global Terrorism Index" (November 2017), p. 3.

The cost of stifling civil society to prevent any perceived threat of terrorism far outweighs its benefits. Any effective counter-terrorism or national security strategy needs to strengthen, not weaken, civil society. Engagement and interaction with civil society allows States to better address the causes and manifestations of terrorism. There is growing evidence that the instrumentalisation of counter-terrorism and PCVE agendas have led to a lack of trust in State authorities. In contrast, civil society can be seen as an impartial actor, present in areas and within communities that may be hard to reach for governments. Further, societies with strong civil society elements are clearly better placed in terms of prevention and resilience to terrorism and violent extremism. Human rights violations, impunity and lack of respect for democratic values have been identified as factors that contribute to heightened terrorist and extremist violence. A strong, resilient and vibrant civil society is both a sign of an open and inclusive society, as well as a buffer against repressive State practices and impunity. Restricting civil society's ability to operate is thus short-sighted, ineffective and futile and can thus be in itself a contributing factor to violence. The imperative of effectively countering terrorism and violent extremism implies on the contrary that civil society must be protected and valued as an essential part of long-term, well thought-through strategies that address the various aspects of terrorist and extremist violence.

By focusing on how counter-terrorism, PCVE and broad measures to address threats to national security have impacted civil society, with an examination of how mechanisms and matrixes involved have worked in combination to create a result that is far greater than the sum of its various elements taken separately, this report builds on the two previous reports presented by the Special Rapporteur. The report first examines the role played by the international framework (II) in allowing restrictive measures to develop and proliferate at the national level (III), before looking at the specific impact of the combined measures on civil society (IV). It will then focus on the lack of accountability mechanisms to adequately address the cumulative effect of the security framework used to restrict civic space (V), and present a set of conclusions and recommendations (VI).

1. THE SECURITY COUNCIL

The Special Rapporteur has previously focused on the role of the Security Council in the development of the post-9/11 international counter-terrorism framework and its impact on human rights (A/73/453). The human rights consequences of both the regulatory requirements contained in Security Council resolutions 1373, 1624, 2170, 2178, and 2396, as well as of the overall approach of the resolutions on human rights are far-reaching and can have severe consequences for civil society. This section will focus on how the lack of involvement and consultation of civil society in its development have paved the way for the disproportionately detrimental effect of the measures on civil society.

A PROCEDURAL ASPECT

As already noted by the Special Rapporteur, Security Council resolutions that regulate counter-terrorism and PCVE are all characterised by a lack of engagement with civil society actors in the determination of legal, political, social and cultural effects of the resolutions (A/73/453). Security Council resolution 2178 (2014) is the first to refer to civil society in its operative part.³⁶ This resolution encourages States to engage with non-government actors in developing strategies to counter violent extremist narratives and address the conditions conducive to the spread of violent extremism, by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society. Security Council resolution 2396 underscores the role that civil organisations can play in the health, education, social and welfare sectors in the context of rehabilitation and reintegration of foreign terrorist fighters and their families, as they may have relevant knowledge of, and access to, engagement with local communities to be able to confront the challenges of recruitment and radicalisation to violence, and encourages States to engage with them proactively in this context.

The Special Rapporteur cautions against an approach that allows civil society to be co-opted into international and national State-led security agendas, that promotes very limited engagement with civil society on specific issues, and that allows key constituencies, including women, to be instrumentalised and empowered solely in furtherance of a broader security agenda. In the view of the Special Rapporteur, this approach is the result of the lack of consultation with and input from civil society actors in the development of the resolutions, and a reveals a complete disregard for the serious negative impact that this approach can have in various contexts, where civil society is already under threat, or operating in difficult environments. Instead, the Council should promote civil society's key role as a force for change and remind States of their obligations to respect and protect it.

³⁶ Resolution 1624 referred to the important role of inter alia civil society in efforts to enhance dialogue and broaden understanding, and in promoting tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism.

B KEY HUMAN RIGHTS ISSUES

The immense human rights gaps left by the resolutions very clearly reflect the absence of any human rights analysis in terms of the proportionality, the necessity, the legality and the non-discriminatory impact of the measures. It is also concerning that despite the hindsight gained since the adoption of resolution 1373 that clearly shows how the human rights deficiencies in Security Council resolutions have a ripple effect throughout all members States, the Security Council continues to adopt legislative resolutions that are increasingly far reaching, particularly as – unlike resolution 1373, which replicated a pre-existing albeit non-binding international agreement – the subsequent resolutions have no other legal basis in international law than the resolutions themselves.³⁷ This process is still carried out without consultation with and input from civil society actors or any specific human rights guidance on the implementation of the resolutions. The closing down of civic space echoes the insufficient consideration given to human rights and the lack of civil society involvement, inclusion and access at the Security Council.

- LACK OF DEFINITIONS OF TERRORISM AND OF VIOLENT EXTREMISM

The Security Council's requirement for States to adopt a number of measures in relation to "acts of terrorism", a prohibited conduct that it has continuously failed to define, and that is not connected to any internationally agreed definition or description, is an issue that has been honed in on by this mandate from its inception,³⁸ as it is at the core of some of the most egregious human rights violations, and central to the challenges faced today by civil society. Similarly, references made by the Security Council to "terrorists" as a category of individuals separated from the criminal acts³⁹, or to "terrorism in all its forms and manifestations" as one of the most serious threats to international peace and security without further qualification⁴⁰ have opened the door to repressive national measures against the lawful non-violent activities of civil society. The absence of any comprehensive definition of "violent extremism" in resolution 2178 and the impossibility of connecting the term to any specific definition also allows States to adopt highly intrusive, disproportionate and discriminatory measures notably to limit freedom of expression. In particular, the term "extremism" is a poorly defined concept that has already been used to target civil society and human rights defenders.⁴¹ In themselves, the very broad provisions of Security Council resolutions that refer to "terrorism" and "violent extremism" give unfettered discretion and do not provide sufficient guidance to States charged with their implementation to enable States to determine with certainty the conduct that falls within the resolutions' scope and thus fail to comply with the principle of legality.

³⁷ Martin Scheinin, "A Comment on Security Council Resolution 2178 as a 'Form' of Global Governance", *Just Security* (6 October 2014).

³⁸ E/CN.4/2006/98; A/HRC/16/51; A/73/453.

³⁹ Inter alia in resolution 2170 (2014).

⁴⁰ Resolution 2178.

⁴¹ A/HRC/16/53/Add.1, paras. 99-106; Human Rights Committee, General Comment No.34 (2011), para. 46; Article 19, "UN HRC: resolution on violent extremism undermines clarity" (8 October 2015).

- **TERRORISM SANCTIONS AND THE CRIMINALISATION OF VARIOUS FORMS OF SUPPORT TO TERRORISM**

While targeted sanctions can be a useful means to address terrorism financing, they can also severely hamper the work of humanitarian and other civil society organisations or be used to maliciously target them. The Special Rapporteur has already noted how abusive designations have been made easier by the broadened criteria introduced by resolution 1617 under the targeted terrorism sanction regime administered by the Security Council itself.⁴² Although the UN's Al-Qaeda Sanctions Committee has never listed an individual solely on the basis of the provision of medical or humanitarian assistance, it is worrying that the Committee has referenced medical activities as part of the basis for listing two individuals and two entities.⁴³ Under national and regional terrorism sanctions lists requested by resolution 1373, the lack of definition of terrorism also allows arbitrary or malicious designations of any individual or group, including civil society organisations, under the legitimising umbrella of the Security Council. The inclusion of direct references to human rights and humanitarian law obligations in the resolutions that address terrorism sanctions would help mitigate the regulatory differences between these resolutions and other counter-terrorism resolutions.

Similarly, the Security Council very loosely defines 'support' to terrorism. The broadness of resolution 1373⁴⁴ allows the criminalisation of any forms of support, including material support, to terrorism, however defined, while other resolutions condemn "any engagement in indirect trade", exposing those who distribute essential aid to be sanctioned should the aid be sold by recipients at a later stage, and prohibits the payment of ransoms "regardless of how and by whom the ransom is paid", which can expose desperate family members to serious risks of criminalisation under national legislation.⁴⁵

- **THE ABSENCE OF EXEMPTION CLAUSES FOR CIVIL SOCIETY ACTORS**

In both its legislative and its sanctions legs, the Security Council disallows almost entirely any form of loose support to terrorism or to terrorist groups. While the UN administered sanctions regime does provide for humanitarian exemptions, the national and regional regimes set up under resolution 1373 are not required to provide for humanitarian exemptions, thereby leaving it up to individual States whether to include them in their own national regimes.⁴⁶ Notably the General Assembly has recently urged States to ensure that counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors.⁴⁷

This absence is extremely problematic at all times, but it bears reminding that where humanitarian law is applicable, it may lead to the criminalisation of acts that are protected under international humanitarian law, notably those linked to the provision of impartial medical care and other critical aid to populations. Humanitarian exemptions play an important role in protecting civil society actors that operate in challenging environments where terrorist groups are active from sanctions regimes and counter-terrorism measures.⁴⁸ Where the Security Council has directly granted humanitarian exemptions in such a complex context, they helped avert a famine in a territory held by a terrorist group.⁴⁹

⁴² A/73/453, para. 19. The human rights challenges of the UN-administered regime have already been examined by this mandate. See: A/65/258, A/67/396, A/HRC/34/61.

⁴³ Alice Debarre, "Safeguarding Medical Care and Humanitarian Action in the UN Counterterrorism Framework", IPI (September 2018).

⁴⁴ UNSC resolution 1373, para. 1(d).

⁴⁵ UNSC resolution 2170, para. 14.

⁴⁶ A/70/371, para. 32.

⁴⁷ A/RES/72/284, para. 79.

⁴⁸ Norwegian Refugee Council, "Principles under pressure" (2018).

⁴⁹ UNSC resolution 1916 (2010).

The Special Rapporteur fully supports the recommendation made by the Special Rapporteur on summary executions that the Security Council should unambiguously exempt humanitarian actions from their counter-terrorism measures at every opportunity and at every level, and expressly clarify that humanitarian protection and assistance must never be conceptualised as support for terrorism and suppressed or criminalised on that basis.⁵⁰ The Special Rapporteur further recommends that adequate remedies at all levels be available and accessible to all civil society actors that are impacted by sanctions, not solely humanitarian actors, as many other actors play important roles in mitigating conflict and providing essential services to populations and communities in need.

- MEASURES THAT LIMIT THE MOVEMENT OF 'FOREIGN TERRORIST FIGHTERS' AND 'TERRORISTS'

Resolutions 2170, 2178, and 2396 require States to prosecute “as serious criminal offences” the travel, recruitment and financing of “foreign terrorist fighters”. This mandate has already widely addressed the gaping human rights shortcomings of some of these measures, notably the presumption of terrorist intent or of support to criminal terrorist activity of individuals travelling to certain areas of conflict, the lack of protection for minors and other vulnerable individuals, and the lack of protection against statelessness.⁵¹ Given the very high number of individuals that can be caught in the resolutions’ broad net, there is a very clear concern that some States will abuse the systems set up in furtherance of these resolutions to target ‘undesirable’ individuals, including members of civil society. In turn, this will subject them to the numerous impingements that these resolutions allow on the rights of freedom of expression and association, freedom of movement, respect for the right to privacy and family life, the protection against arbitrary deprivation of a nationality, the rights to freedom of religion and opinion, the right to non-discrimination and various due process rights, including the presumption of innocence.. It will also, through the various provisions on sharing of information across borders, internationalise their ‘undesirability’.

One particularly worrying development is the breadth of the scope of application of some of the measures in resolutions 2178 and particularly 2396, which in fact can cover a number of individuals much greater than ‘foreign terrorist fighters’ through the application of disjunctive standards. In several instances, resolution 2396 loosely categorizes individuals as ‘terrorists’, and ‘foreign terrorist fighters’, giving great leeway to implementing States to include a number of individuals in the application of the measures, even those against whom there may be only a mere suspicion.⁵² The Special Rapporteur welcomes the Addendum to the Madrid Guidelines agreed in December 2018, including the specificity and breath of human rights language and advice contained in this important document, but challenges remain.

⁵⁰ A/73/314, para. 52. Exemptions exist in some jurisdictions, but can be very limited. See A/70/371 and A/73/314, para. 51.

⁵¹ A/HRC/29/51; A/73/453.

⁵² UNSC resolution 2396, para. 5. See also on the risks: Harsha Panduranga, “Trump Administration’s Watchlist Data Overstates Terror Threat”, Just Security (23 January 2018).

Measures that involve the sharing of information not only of alleged foreign terrorist fighters but also of their families by definition catch in the net of the resolution's provisions a much broader category of individuals than those even merely alleged of being involved in acts of terrorism or of travelling to certain conflict zones.⁵³ Similarly, the requirement to provide Advance Passenger Information and Passenger Name Records covers a very large number of people and can lead to the discriminatory profiling of passengers.⁵⁴

Provisions on the very broad types of government agencies that should 'routinely' have access to information about 'suspected terrorists, including foreign terrorist fighters' (intelligence, law enforcement, counterterrorism and military entities);⁵⁵ provisions about the development of watch lists or databases of "known or suspected terrorist, including foreign terrorist fighters" to be used by a range of agencies (law enforcement, border security, customs, military and intelligence agencies) to 'screen travellers to conduct risk assessments and investigations';⁵⁶ and provisions on the use of biometric data to "responsibly and properly identify terrorists, including foreign terrorist fighters" may allow for the use of such measures across a more extended range of law-enforcement activities globally,⁵⁷ and pose serious issues of purpose specification.

The increasing regulation of the "pre- and post- criminal space" can have a very serious human rights impact. Apart from reminding States that measures need to be consistent with their human rights obligations, little thought and no guidance was given to how this could be done in practice. The use of such administrative measures, often unbeknownst to the individual, poses obvious challenges to due process rights, including relating to the presumption of innocence, as well as risks to the physical integrity of individuals on these lists, and may infringe privacy-related rights, the rights to freedom of movement, association and expression; fair trial, family life, equality and non-discrimination.

- USE OF THE INTERNET FOR TERRORIST PURPOSES

In addition to Security Council resolution 1624 (2005) which asked States to take measures to outlaw incitement to terrorism, resolutions 2178 (2014) and 2396 (2017) expressed concern over the increased use by terrorists and their supporters of communications technology for the purpose of recruiting and inciting others to commit terrorist acts, including through the Internet, and underlined the need for Member States to act cooperatively to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law. Measures to counter violent extremism online may touch upon a number of human rights, including the right to freedom of opinion and expression, the right to privacy, the right to an effective remedy, due process and the right to a fair trial, even the right to a family life and health-related rights. It can also have a serious impact on the right to freedom of religion, as noted by the Special Rapporteur on freedom of religion, who reported that since 2012, accusations of online blasphemy have risen, and new threats and patterns of violence have emerged. Individuals using the Internet to disseminate views considered blasphemous are increasingly facing arrest and prosecution. The arrests are often capricious, creating an atmosphere of fear in which Internet users are unsure of the boundaries within which their rights can be exercised. The securitisation of online activity has provided a wide margin of operation for national authorities without proper scrutiny.⁵⁸

⁵³ UNSC resolution 2396, para. 5.

⁵⁴ UNSC resolutions 2178 para. 9 and 2396 paras. 11 and 12.

⁵⁵ Resolution 2396, para. 5.

⁵⁶ Resolution 2396 para. 13.

⁵⁷ UNSC resolution paras. 15 and 16.

⁵⁸ A/73/362, para. 49.

Electronic modes of expression are a critical means for civil society to exercise their freedom of opinion and expression. In repressive societies, where rights to associate and to demonstrate are limited, the Internet may be the last space available for civil society to communicate. In other contexts, it can provide a platform for persons and groups that are excluded or marginalized from participating in debates about important social, political, ethnic and religious issues, such as women and members of minorities, and play a critical role for civil society to share their views and exchange information locally and internationally. Restrictions on such platforms – blocking, filtering or removing content - can affect civil society, journalists, human rights defenders and others, disproportionately.⁵⁹

Enjoyment of the rights to privacy and to freedom of opinion and expression are closely interrelated. Undue interference with the right to privacy can limit the free development and exchange of ideas,⁶⁰ while the monitoring of individuals' online activities – or its mere possibility – can have a chilling effect on freedom of expression. Civil society may refrain from exchanging information or confidential information online, for fear of attracting government interest. Measures that specifically address dissemination of incitement to terrorism or hatred online can apply to those who generate content or those who simply disseminate by sharing or reposting. This can have a particularly negative impact on journalists and human rights defenders who, because of their documentation and dissemination of human rights violations committed by governments, may fear being accused of 'spreading terrorist propaganda' via social media.

2. THE GENERAL ASSEMBLY AND THE HUMAN RIGHTS COUNCIL

The United Nation's Global Counter-Terrorism Strategy, which was unanimously adopted in September 2006, was the General Assembly's answer to the Security Council's unsparing security approach to counter-terrorism. By stating that human rights are 'the fundamental basis of the fight against terrorism' and 'essential to all components of the Strategy', the Strategy places human rights at its centre, as the thread that runs through its entirety. The Strategy also reaffirms the inextricable links between human rights and security, and places respect for the rule of law and human rights at the core of national and international counter-terrorism efforts. By encouraging "non-governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement the Strategy", it is the first UN counter-terrorism document to refer to civil society.⁶¹ Unfortunately, the inclusion of the clause "as appropriate" left it to States to determine if and how they wished to engage with civil society and revealed a lack of consensus about the role to be given to civil society in the implementation of the Strategy. This is a debate that has been persistent throughout its subsequent reviews, with a number of countries objecting to stronger language relating to civil society engagement.

⁵⁹ Civil society as well as privacy and technology experts have also highlighted the application of human rights to communications surveillance, through the development of a set of international principles (the "Necessary and Proportionate Principles") which include: legality, legitimate aim, necessity, adequacy, proportionality, competent judicial authority, due process, user notification, transparency, public oversight, integrity of communications and systems, safeguards for international cooperation, safeguards against illegitimate access and right to effective remedy. International Principles on the Application of Human Rights to Communications Surveillance (2014), available online at <https://necessaryandproportionate.org/principles>.

⁶⁰ A/HRC/23/40, para. 24.

⁶¹ See para. 3 (e) of the GCTS. See also OP 8 of Pillar I of the Plan of Action, through which States undertake to "strive to promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation".

In its latest incarnation, the resolution still encourages interaction with member States and the UN system in efforts to enhance the implementation of the Strategy “as appropriate”, and encourages the Counter-Terrorism Implementation Task Force to enhance engagement with civil society “in accordance with their mandates, as appropriate, and to support its role in the implementation of the Strategy”.⁶² NGOs rightly noted that “at a time when civic space is being essentially eroded around the world under the pretext of countering terrorism, we are deeply disappointed that the review does not recognise the essential role that civil society plays in guarding against abusive counter-terrorism practices and responding to and preventing the conditions conducive to terrorism. Fundamental rights underpinning the work of civil society must be protected. States can and should do better, and make sure the UN does too.”⁶³

One of the most concerning developments of the last couple of years is the adoption of resolutions, in the General Assembly and the Human Rights Council,⁶⁴ on the effects of terrorism on human rights. These resolutions not only function to instrumentalise victims of terrorism by bolstering claims for more stringent counter-terrorism measures without sufficient human rights content thereby weakening the international system as a whole, they also weaken freedom of expression and the online media.⁶⁵ Bearing in mind that victims’ groups are civil society entities, crackdowns on civil society and civic space also affect these groups. It is thus of even greater concern that the General Assembly has merged this new series of resolutions with the resolutions on the “protection of human rights and fundamental freedoms while countering terrorism,” in new a “Terrorism and human rights” resolution, which even places terrorism first and human rights second in its ordering nomenclature.⁶⁶ Importantly, through this process, some of the key human rights issues that had sometimes been gained through great negotiating pains during the drafting process of the “Protection of human rights” resolutions have been lost. It is therefore somewhat comforting that the new, ‘streamlined,’ resolution retains the three main aspects relating to civil society of the last “Protection of human rights and fundamental freedoms while countering terrorism resolution”,⁶⁷ namely that States must safeguard the work of civil society by ensuring that counter-terrorism laws and measures comply with human rights, particularly the rights to freedom of expression, peaceful assembly and association; that the active participation of civil society can strengthen the protection of human rights while countering terrorism and help assess the impact of terrorism on the enjoyment of all human rights,⁶⁸ and that measures to counter-terrorism, PCVE, and preserve national security do not hinder the work and safety of these organisations in international law.⁶⁹ The new resolution also encourages civil society “to take measures, as appropriate, to promote a culture of peace, justice and human development, ethnic, national and religious tolerance, and respect for all religions, religious values, beliefs and cultures, and to effectively address the conditions conducive to the spread of terrorism and that make individuals and groups more vulnerable to the effects of terrorism and to recruitment by terrorists”.⁷⁰ Given the range of measures that can impact civil society actors, the General Assembly should urgently address the deficits that have followed from the merger. It remains critically important to safeguard the independence and capacity of the Special Rapporteur’s role in the protection and promotion of human rights through any renewal resolutions, given the pressures to produce merger resolutions across the human rights and counter-terrorism arena.

⁶² A/RES/72/284.

⁶³ Press Release, “Global Group of NGOs Deplore Lack of Attention to Human Rights in Latest Review of UN’s Global Counterterrorism Strategy by UN Member States” (11 July 2018).

⁶⁴ A/RES/72/246; A/HRC/31/L.13.

⁶⁵ Article 19, “UNHRC 31: Egypt-led “terrorism” resolution is a danger to human rights” (31 March 2016).

⁶⁶ A/C.3/73/L.43/Rev.1.

⁶⁷ A/RES/72/180.

⁶⁸ A/C.3/73/L.43/Rev.1, para. 12.

⁶⁹ A/C.3/73/L.43/Rev.1 para. 28. This was also included in HRC resolutions, see e.g. A/HRC/RES/35/34, para. 15.

⁷⁰ A/C.3/73/L.43/Rev.1, para. 26.

3. ROLE OF NEW GLOBAL OUTSOURCE ENTITIES

In contradistinction to the UN counter-terrorism framework, which despite its numerous flaws is an inclusive regulatory structure that includes all UN Member States and operates within the UN legal structure based on the UN Charter, a number of largely opaque and inaccessible outsource entities that often lack global legitimacy have emerged and proliferated in the field of counter-terrorism norm development. As these entities – initially – respond to the particular counter-terrorism interests of a group of States, they also include a narrower set of perspectives and inputs. They are largely characterised by the development of ‘soft law’ regulations, standards and practices, often uninformed by human rights law, and without input from civil society. It is through a process of “exportation/integration” to other structures and through national implementation that they have enabled global regulation that might not have emerged had formal law-making processes been fully complied with, either within the UN counter-terrorism architecture, or at regional or national levels. This process, which contains none of the structural and substantive entry points to policy formulation that generally characterize ‘soft’ law making in the UN context, raises fundamental concerns about transparency, fairness, sovereignty and oversight. Enabled by the prevailing security context, these matrixes contribute to blurring the lines between hard and soft law at national level, between institutional UN bodies and external ad-hoc institutions, between formal and informal law-making and between binding and non-binding rules of international law. The proliferation of these bodies contribute to an increasing number of international norms – which import language from one another – and an increased fragmentation of the global regulation on counter-terrorism in under-appreciated ways.

For example, the mandate of Financial Action Task Force was extended to include the prevention of terrorism financing in the six weeks that followed the 9/11 attacks, without any consultation of national parliaments or civil society. Its Recommendation 8,⁷¹ which aims to protect NPOs from terrorist financing abuse, was premised on an alleged high vulnerability that civil society organisations had to terrorism financing.⁷² Some of the measures States were asked to take could seriously limit the ability of NPOs to operate (obligation to register, to maintain information on the purpose and objectives of NPOs’ activities, to issue detailed annual statements and to maintain records of all transactions) while dissuasive sanctions such as the freezing of accounts, removal of trustees, fines, de-certification, de-licensing and de-registration, were envisaged.⁷³ Despite the obvious risks of such a measure and its lack of reference to human rights, there was no consultation with civil society on its rights-related impact. Lending “a veneer of legitimacy to States that have adopted legislation without due respect for their international human rights obligations,”⁷⁴ FATF allowed many States to turn soft law to hard law by implementing the provisions of Recommendation 8 through wholesale measures that strictly regulate all civil society, in violation of the principles of proportionality and necessity, regardless of actual activities, evidence of collusion in terrorism financing, and risk of collusion, which have been widely disputed and its significance minimized, including by the Special Rapporteur’s mandate.⁷⁵

⁷¹ See www.fatf-gavi.org. FATF has issued 40 non-binding Recommendations, complemented by Interpretative Notes, Best Practices, and a Handbook for Countries and Assessors, which have been endorsed by 180 countries and have been incorporated into UN Security Council resolutions and the Global Counter-Terrorism Strategy. Implementation is done at national level through legally binding measures, and monitored through a system of Mutual Evaluations. Non-compliance can be very damaging for a country’s financial and business sector.

⁷² Initial Interpretative Note to Recommendation 8: it had been “demonstrated that terrorists and terrorist organizations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and terrorist activity.” See also: FATF, “Risk of Terrorist Abuse in Non-Profit Organisations” (2014), p. 5, and paras. 91-124.

⁷³ See Interpretative Note to Recommendation 8 point 5(b)(vii) (www.fatf-gavi.org).

⁷⁴ A/70/371, para. 26.

⁷⁵ For a full review, see A/70/371, paras. 22-24.

The initial version of Recommendation 8 was modified in 2016, to limit the wholesale approach to regulation and ensure greater compliance with human rights, following a process in which civil society was heavily involved.⁷⁶ While these are welcome developments, broad and generic invocations of human rights law after a number of laws have already been adopted in many countries, may not be able to undo - at least in the short term - the damage that has already been done. The idea that the charity sector remains vulnerable is still widespread, as revealed by the absence of clear messaging from the international community and its leaders,⁷⁷ and the latest review of the Global Counter-Terrorism Strategy, which recognises “the need for Member States to prevent the abuse of non-governmental, non-profit and charitable organisations by and for terrorists”,⁷⁸ a concerning case of permeation of norms which not only perpetuates negative impressions of civil society, but also imports this concept to the United Nations.

Similarly, the GCTF is an informal regulatory body established by 29 States plus the EU. By bringing together experts and practitioners and developing tools and strategies, it has the overarching mission of reducing the vulnerability of people worldwide to terrorism by preventing, combatting and prosecuting terrorist acts and countering incitement and recruitment to terrorism. It deals with numerous issues that have an immediate relationship with human rights, as well as clear and distinct human rights implications: for example, its CVE chapter includes building the capacity of civil society organisations, criminal justice and the rule of law, and foreign terrorist fighters.⁷⁹ While the GCTF notes its support to the UN Global Counter Terrorism Strategy, which has a strong human rights component, it remains, however, that it has no structural commitment to human rights protections.⁸⁰ Occasional and generic references to human rights in GCTF documents do not assuage these profound concerns, particularly as the full relationship to and interaction of these new counter-terrorism soft norms and policies with other bodies of legal norms, specifically international human rights and international humanitarian law, is under-explored. The GCTF also lacks in visibility and accessibility for a wide range of actors, including civil society, that should be meaningfully consulted on these topics. This is compounded by the lack of oversight and accountability for the human rights impact of the norms developed, transposed and used.

⁷⁶ Including an open letter to FATF signed by 123 groups from 46 countries (see Letter, “Global NPO Coalition on FATF calls for revision of the FATF Recommendation 8” (15 January 2016), http://fatfplatform.org/wpcontent/uploads/2016/01/Global_NPO_Coalition_on_FATF_evision_R8_letter_15012016-002.pdf), and a formal dialogue with the NPO sector, started in 2013. For more details, see Ben Hayes, “Study: The Impact of international counter-terrorism on civil society organisations: Understanding the role of the Financial Action Task Force” (April 2017).

⁷⁷ Tom Keatinge and Florence Keen, “Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs”, Chatham House (April 2017). Speech by President Macron at the Conference “No Money for Terror” (2018), <http://www.elysee.fr/declarations/article/translated-transcript-of-the-no-money-for-terror-address-by-the-president-of-the-french-republic/>.

⁷⁸ A/RES/72/284, para. 26.

⁷⁹ Global Counterterrorism Forum, <https://www.thegctf.org>

⁸⁰ The GCTF identifies supporting the worldwide implementation of the GCTS as its main mission, which includes Pillar 4 of the Global Strategy, although in practice is it unclear how this occurs.

III. TYPOLOGY OF NATIONAL MEASURES AND TRENDS AS THEY IMPACT CIVIL SOCIETY

The global security pandemic has translated into various measures that States have taken to curb civic space. This section addresses some of the key measures that the Mandate of the Special Rapporteur has encountered. At the outset, it is critical to note that these measures cannot be seen in topical, temporal or geographical vacuums. This is, first, because the question of the lack of definition of the phenomena that are being addressed is central to the global closing of civic space and underpins most of the subsequent challenges at national level. Second, there is a clear interaction between the various types of measures that are being taken to close civic space. For example, campaigns to discredit civil society can precede the adoption or arbitrary application of legislation with stigmatisation acting as its justification while the prosecution of members of civil society can be a precursor to the adoption of very broad surveillance measures of civil society. Third, in addition to a top-down approach to regulation, there is also a lateral or horizontal approach, in which States are inspired by, or simply copy, legislation and measures that ‘work’ in other States to restrict civic space.

A SECURITY LEGISLATION

- OVERLY BROAD AND VAGUE DEFINITIONS

One of the defining trends following national implementation of the Security Council counter-terrorism framework is the global emergence of overly broad and vague definitions of terrorism, some of which have become entrenched with the passage of time, while others continue to make their way into more recent legislation.⁸¹ As foreseen, these not only carried the potential for unintended human rights abuses, but have also very clearly been deliberately misused to target a wide variety of groups, persons and activities.⁸² Definitions that lack precision enable authorities to apply them arbitrarily or discriminatorily, through an extension of the proscribed conduct. Overly broad definitions can simply criminalise otherwise peaceful activities in the pursuance of the legitimate exercise of fundamental freedoms, such as freedom of expression. In both cases, such legislation is used to target, inter alia, civil society, human rights defenders, journalists, minority groups, labour activists, indigenous peoples, and members of the political opposition.⁸³

In some States, legislation to curb violent extremism, extremism, ‘extremist activity’, or even ‘extremification’ are emerging.⁸⁴ As the core concept of extremism is context-dependent, which means that its definition can easily be challenged and manipulated,⁸⁵ and conceptually weaker than the term terrorism that has an identifiable core,⁸⁶ such laws are likely to criminalize legitimate expression, including controversial viewpoints and information of legitimate public interest,⁸⁷ and restrict freedom of religion or belief.⁸⁸

⁸¹ Recent examples include: HND 8-2016; GTM 3-2018; LKA 3-2016.

⁸² Special Rapporteur on human rights and counter-terrorism, A/HRC/16/51, para. 26.

⁸³ See e.g. PAK 4-2016, CHL 2-2018, PHL 5-2018, PAK 11-2016; SAU 12-2017; TUR 3-2018.

⁸⁴ RUS 19-2018; RUS 15-2018; CHN 21-2018, TUR 12-2018.

⁸⁵ Peter R. Neumann, “Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region”, ICSR (28 September 2017).

⁸⁶ See A/70/371. See also the UN draft comprehensive convention against international terrorism (<http://digitallibrary.un.org/record/422477>); the Sectoral terrorism conventions (<http://www.un.org/en/counterterrorism/legal-instruments.shtml>); the good practice definition of the SR (A/HRC/16/51), Security Council resolution 1566 (2005).

⁸⁷ CCPR/CO/79/RUS, paras. 20-21.

⁸⁸ A/HRC/28/66/Add.1, paras. 49 and 67-69; A/HRC/22/51, para. 53, A/HRC/16/53/Add.1, para. 100; E/CN.4/2005/61/Add.1, para. 152.

Criminal prosecutions and sentences against individuals who expressed views deemed to contain a terrorist or extremist element and administrative sanctions against thousands of individuals, bloggers and media outlets for using materials that the authorities consider to be extremist have multiplied,⁸⁹ as well as administrative blocking orders against websites containing material alleged by the government to be extremist.⁹⁰

- LEGISLATION THAT CRIMINALISES THE LEGITIMATE EXERCISE OF FUNDAMENTAL FREEDOMS

National legislative counter-terrorism and other security frameworks increasingly include provisions that restrict rights that are key to civil society: freedom of expression and opinion, freedom of association, freedom of assembly and freedom of religion.⁹¹ The Human Rights Council has stressed “the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression.”⁹² The Special Rapporteur on freedom of expression has stated that States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”⁹³ The potential for adverse impact on civil society of such measures is exacerbated when applied to online-based forms of expression, whether social media posts, pictures, articles, blogs or videos. As noted by the Special Rapporteur on freedom of expression and opinion, “[o]ne of the gravest and most concerning tools against reporting involves the use of counter-terrorism laws to restrict and penalize reporters. The reliance on counter-terrorism serves as a catch-all to throttle the flow of information and justify the detention of journalists, bloggers and others working in the media,”⁹⁴ as well as a number of civil society actors.

While incitement to terrorism is prohibited under international law,⁹⁵ many laws criminalise acts which often lack in precision and clarity and do not amount to incitement because they lack the element of intent and/or of danger that it will lead to the actual commission of violence, such as the ‘glorification’,⁹⁶ ‘apologie’,⁹⁷ ‘advocacy’, ‘praising’, or ‘encouragement’ of, and ‘propaganda’ for, terrorism.⁹⁸

⁸⁹ CoE, “Misuse of anti-terror legislation threatens freedom of expression” The Commissioner’s Human Rights Comments (6 December 2018).

⁹⁰ Article 19, “Civil society to European Court: Russia website blocking of “extremist” material violates freedom of expression” (6 February 2018).

⁹¹ Recent mandate communications on this issue include GBR 7-2018; AUS 2-2018.

⁹² A/HRC/RES/7/36.

⁹³ A/71/373, para. 18.

⁹⁴ A/71/373, para. 36.

⁹⁵ Security Council resolution 1624 (2005). See also its model definition, A/HRC/16/51, Practice 8.

⁹⁶ In Spain, article 578 of the criminal code is used to stifle political activists, journalists, bloggers and artists. A July 2016 ruling by the National Court confirms that intention is irrelevant to the establishment of criminal liability for glorification of terrorism. Amnesty International, “Tweet... if you dare” (March 2018). See also OHCHR, “Two legal reform projects undermine the rights of assembly and expression in Spain” (23 February 2015).

⁹⁷ Le Monde, “1847 délits d’apologie et de provocation au terrorisme enregistrés en 2016” (19 January 2017). Special Rapporteur Report on Visit to France, concerning apologie, para. 25. See also Nadim Houry, “France’s Creeping Terrorism Laws Restricting Free Speech”, Just Security (30 May 2018).

⁹⁸ Human Rights Watch, “Turkey: Academics on Trial for Signing Petition: ‘Terrorist Propaganda’ used to stifle free speech” (5 December 2017). See also Communication TUR 13-2018.

The common element to these offences is that liability is based on the content of the speech, rather than the speaker's intention or the actual impact of the speech.⁹⁹ In line with the recommendations of human rights mechanisms and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,¹⁰⁰ the threshold for these inchoate crimes would require the reasonable probability that the expression in question would succeed in inciting a terrorist act, thus establishing a degree of causal link or actual risk of the proscribed result occurring.¹⁰¹

In this respect, the Special Rapporteur is very concerned about the EU Commission Proposal for a Regulation on preventing the dissemination of terrorist content online.¹⁰² The definition contained in Article 2(5) of the Proposal, which builds on the crime of 'public provocation to commit a terrorist offence' contained in the EU Directive on combating terrorism (which was already considered as violating the principles of legality and of proportionality,¹⁰³) omits the element of intent altogether. The Proposal also broadens the scope of expression that would be considered "terrorist" by including 'encouraging the contribution, participation or support to terrorism or a terrorist group'. The definition as it stands could encompass legitimate forms of expression, such as reporting conducted by journalists and human rights organizations on the activities of terrorist groups and on counter-terrorism measures taken by authorities. This is a very serious and disappointing regulatory development.

In some States, the verbal criticism of the State, the government or its authorities is considered as an act of terrorism. This includes the criminalization of broad acts such as 'compromising the reputation of the State', 'hostility against the homeland', 'contempt of public bodies and public servants', 'slandering the [Republic], or distorting the guidelines of the party and policies of the government, or circulating false rumours causing disorder detrimental to, or for the purpose of weakening the state' and 'issuing statements that could harm the unity or stability of the State', which can all very seriously impact on freedom of expression. This mandate has already noted that vague definitions are used to stifle dissent and public advocacy by peaceful critics, human rights activists and members of minority groups, and that arrests, detentions and convictions are meant to send a message to citizens and human rights defenders that they will be prosecuted if they engage in these broadly defined activities.¹⁰⁴

⁹⁹ A/HRC/31/65, para. 39. Note also that the Human Rights Committee has highlighted that offences of "praising", "glorifying" or "justifying" terrorism must be clearly defined to ensure that they do not lead to unnecessary or disproportionate interferences with freedom of expression. General comment No. 34, para. 46.

¹⁰⁰ A/HRC/22/17/Add.4.

¹⁰¹ Rabat Plan of Action, UN Doc. A/HRC/22/17/Add.4, para. 29. Note that the former Special Rapporteur on counter-terrorism and human rights also stressed that the crime of incitement required an "an objective danger of a terrorist offence being committed". A/HRC/16/51, Practice 8, para. 30.

¹⁰² Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. The negotiating position was agreed on 8 December 2018.

¹⁰³ See Amnesty International, the European Network Against Racism (ENAR), European Digital Rights (EDRI), the Fundamental Rights European Experts (FREE) Group, Human Rights Watch, the International Commission of Jurists (ICJ), and the Open Society Foundations (OSF), 'EU Counterterrorism Directive Seriously Flawed' (30 November 2016), <https://www.hrw.org/news/2016/11/30/eu-counterterrorism-directive-seriously-flawed>.

¹⁰⁴ A/HRC/40/XX/Add.2, <https://www.ohchr.org/Documents/Issues/Terrorism/SR/A.HRC.40.%20XX.Add.2SaudiArabiaMission.pdf>, paras. 27 and 28.

A number of States have seen the emergence of counter-terrorism and other security legislation that prevents reporting on or publicly discussing acts of terrorism. This includes for example the prohibition of publishing material 'likely to promote terrorism', 'false' or 'untrue' information 'terrorist propaganda', on 'forged terrorist incidents', or on 'terrorist activities that might lead to imitation'. This also includes the prohibition of reporting on terrorism acts or on the authorities' response to terrorist acts if this contradicts official statements and, more broadly, publishing or news that affects 'national security, political and social stability'.¹⁰⁵ Such measures not only seriously limit transparency and accountability of government officials and security forces for human rights violations in the course of countering terrorism, but can have a particularly negative impact on journalists and human rights defenders, who can be accused of spreading terrorist propaganda through their reporting, documenting and disseminating of information about acts of terrorism and government responses to them. Similarly, the criminalization of watching online 'terrorist' or 'extremist' content without a terrorist intent being required can have a serious impact on civil society, notably investigative journalists, academic researchers and human rights advocates.¹⁰⁶

Laws that criminalise having 'contacts' or 'corresponding' with groups that are hostile to the State, or to 'hold sit-ins, protests or meetings that could harm the unity or stability of the State' directly limit freedom of association and assembly. Other examples that can have a very serious chilling effect on civil society are laws that allow the police to enter the offices of a foreign NGO and search them when there are suspicions that activities are in breach of security, ethnic unity, national and social interests.¹⁰⁷ Definitions of terrorism that include damage to property, including public property, also seriously affect the right to freedom of assembly, since in the absence of other qualifications, they can be used against individuals engaging in social movements, where damage to property is unwittingly incurred.¹⁰⁸

B LEGISLATION THAT STRICTLY REGULATES THE EXISTENCE OF CIVIL SOCIETY

Often in the name of transparency, and to respond to the requirements of FATF Recommendation 8, many States have adopted legislation that creates a complex legal environment that has the effect of limiting, restricting and controlling civil society. Such laws typically include obligations to register, as well as burdensome, complicated, invasive procedures and regulations, provisions that threaten deregistration or even criminal prosecution.¹⁰⁹ These measures are often taken administratively, and any ex-post judicial recourse can be very difficult to challenge. In addition to using up much needed resources by increasing the administrative burden, these laws can destabilise and intimidate civil society actors and instil fear of action, especially among human rights organisations, which are particularly targeted.¹¹⁰

¹⁰⁵ See UN Press Release, "Egypt: UN experts condemn 'systematic targeting' of human rights defenders", 28 September 2018; Special Rapporteur on freedom of expression and opinion A/71/373 para. 14 and A/HRC/29/50, case No. KEN 7/2014, and Grace Favrel, "Kenya's Security Law Act: freedom of expression and media freedom", Open Democract 4 April 2015; Human Rights watch, "Pakistan: Withdraw repressive counterterrorism law", 3 July 2014; Human Rights Watch, "China: Disclose Details of Terrorism Convictions", 16 March 2017, Abhishek Pratap Singh, "China's first Anti-Terrorism Law: An analysis", 29 March 2016.

¹⁰⁶ Submission from the mandate of the Special Rapporteur on human rights and counter-terrorism to the House of Commons Public Bill Committee, on the Counter-Terrorism and Border Security Bill, OL GBR 7/2018 (17 July 2018).

¹⁰⁷ The China NGO Project, "Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China", paras. 5 and 41. See also OHCHR, "China: Newly adopted Foreign NGO law should be repealed, UN Experts urge" (3 May 2016).

¹⁰⁸ See the July 2018 counter-terrorism legislation in Nicaragua, which widens the definition of terrorism to include those accused of damaging property, and has allegedly resulted in the arrest of many protesters. Front Line Defenders, "Global Analysis 2018" (January 2019), p. 7.

¹⁰⁹ For an overview, see Ben Hayes, Counter-Terrorism, 'Policy Laundering and the FATF: Legalising Surveillance, Regulating Civil Society', Transnational Institute/Statewatch (2012).

¹¹⁰ SR on freedom of assembly, A/HRC/38/34, paras. 28 and 29.

Critical to the existence, effectiveness and independence of an organization is the question of access to resources, which is recognised in international law.¹¹¹ In recent years, laws that have restricted access to foreign funding have spread, severely restricting the existence of NGOs that are often wholly dependent on foreign funding, predominantly impacting human rights and women's organisations. These include laws that outright prohibit receiving foreign funding, laws that require organisations to obtain advance approval, laws that place burdensome procedural requirements, laws that require that the funds transfer through a centralised government-held fund and laws that ban foreign-funded NGOs from engaging in human rights activities. Some laws link NGOs that receive foreign funding to 'foreign agents' and their objectives to 'foreign' or 'western' imports; such legislation also has the effect of stigmatising and marginalising these NGOs and delegitimising their work.¹¹²

The Special Rapporteur on freedom of religion has noted that some governments use security reasons to formally ban religious or belief groups and render membership in these groups a criminal offence. The criteria for this do not always appear to be clear or closely connected to proof of the group's engagement in or material support for violence or its incitement.¹¹³

C MEASURES THAT LIMIT VARIOUS FORMS OF SUPPORT TO "TERRORISM"

Mirroring the effects of the Security Council's counter-terrorism framework on the prohibition of support to terrorism, there is an emerging and expanding complex web of interwoven international and national, public and private, regulations and requirements placing immense pressure on civil society actors that are operating in, but not limited to, areas where terrorist groups are active.¹¹⁴ By qualifying a wide range of acts as impermissible 'support to terrorism', counter-terrorism measures found in laws that apply extra-territorially as well as in various donor agreements nefariously restrict access to populations in areas controlled by non-State armed groups and limit support to groups and individuals designated as terrorist. This can result in the harassment, arrest, and prosecution of humanitarian, human rights, and other civil society actors.

Such support-limiting measures typically impact life-saving humanitarian activities, including food and medical assistance.¹¹⁵ In this regard, the UN Secretary-General noted that States must not impede efforts by humanitarian organizations to engage armed groups in order to seek improved protection for civilians – even those groups that are proscribed in some national legislation.¹¹⁶ He recommended that measures to guarantee the ability of medical personnel to treat patients in all circumstances, without incurring any form of harassment, sanctions, or punishment, be adopted.¹¹⁷

¹¹¹ A/HRC/23/39, paras. 8-18; General Assembly resolution 53/144, annex, Article 13.

¹¹² A/HRC/23/39, para. 20. See also Communications RUS 2-2018 and RUS 15-2018.

¹¹³ A/73/362, para. 20.

¹¹⁴ Special Rapporteur on human rights and counter-terrorism, A/70/371, paras. 31-44.

¹¹⁵ Alice Debarre, "Safeguarding medical care and humanitarian action in the UN counterterrorism framework", IPI September 2018. Note also that a CTED document relating to Foreign Terrorist Fighters states that "many Member States find it difficult to determine how to respond to the potential threat posed by specific categories of travellers, including (...) providers of medical services and other humanitarian needs", CTC Madrid Guiding Principles: A Practical Tool for Member States on Stemming the Flow of Foreign Terrorist Fighters" (October 2016), p.18

¹¹⁶ S/2009/277, para. 45.

¹¹⁷ Recommendation 3.1 in UN Security Council, Letter of 18 August 2016, from the Secretary-General addressed to the President of the Security Council", S/2016/722, Annex, para. 10. See also A/72/284, Review of the Global Counter-terrorism strategy (26 June 2018), para. 79. Note that the General assembly has also reminded states of this fundamental obligation in 2016, by '[urging] States to ensure, in accordance with their obligations under international law and national regulations, and whenever international humanitarian law is applicable, that counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors as foreseen by international humanitarian law" A/RES/70/291, para.22.

Unfortunately, in May 2018, he noted that counter-terrorism measures, including lengthy administrative processes and legislation criminalizing certain activities necessary for the conduct of humanitarian operations, continued to have an impact on humanitarian action.¹¹⁸ It is important to note that material support provisions may also impact the work of civil society actors involved in supporting respect for international norms, including human rights representation and advocacy, training, conflict resolution, fact-finding and evidence gathering for the purposes of prosecution, promoting the right to development, or assistance to migrants.¹¹⁹

D INDISCRIMINATE LEGISLATION THAT CHOKES CIVIL SOCIETY

Emboldened by the countering terrorism security context, empowered by the continuing development of the global counter-terrorism framework, legitimised and unrestrained by bodies in charge of monitoring the framework's implementation, States have, in the last few years, adopted ever more unhinged laws that directly or indirectly choke and suppress civil society. Not necessarily addressing a direct threat of terrorism, such legislation typically addresses the need to protect national security, including through the use of emergency powers.

Many States have adopted laws that loosely invoke national security, national interest or public order as all-encompassing categories that often include any act criminalized solely through the subjective lens of the impact that it may have, such as 'affecting national security, political and social stability', 'dangerous to the political, economic or social system', 'undermining peace, independence, sovereignty, unity and prosperity of the country', not 'upholding the interests' of the country, and 'opposing the people's administration'.¹²⁰ Many of the activities of civil society organisations, human rights defenders, journalists, bloggers and political opponents will fall under such laws whose main objective is to provide sufficient latitude to criminalise legitimate expressions of opinions and thoughts.

In some States, the use of emergency powers has been accompanied by a severe crackdown on civil society. In Turkey, following the declaration of a State of Emergency, it was reported that, in 2017 alone, 300 journalists had been arrested and detained on alleged grounds that their publications contained apologist sentiments about terrorism and other similar "verbal act offences", or for "membership" in armed organisations and "assisting a terrorist group".¹²¹ The climate of fear and judicial harassment, which has compelled many media and human rights organisations to self-censor, was also highlighted, with the permanent closure of 1,719 human rights and humanitarian organisations, lawyers associations, foundations and NGOs, many of which were operating in the South East. Many human rights lawyers and defenders continue to be arrested and detained on the vague and imprecise charge of "membership of an armed terrorist organization", repeatedly used to target critics of the Government's policies as well as human rights defenders, particularly since the imposition of the state of emergency, or based on actions such as downloading data or protection software, publishing opinions disagreeing with the Government's anti-terrorism policies, organizing demonstrations or providing legal representation for other activists.

¹¹⁸ Report of the Secretary-General on the protection of civilians in armed conflict, S/2018/462, para. 22.

¹¹⁹ Aron Demeter, "A test case for Oran's 'illiberal democracy'", Amnesty International (14 March 2018). See also Communication TUR 4/2018.

¹²⁰ UN Experts say constitutional in Cambodia impinge on democracy, 20 February 2018; Briefing paper on Laos prepared by FIDH and the Loa movement for Human rights (LMHR), 2 September 2016, CCPR/C/LAO/CO/1, para. 33; Amnesty International, "prisoners of conscience in Vietnam", 4 April 2018.

¹²¹ TUR 14-2018.

Further, the government announced the liquidation of 166 media outlets, including publishing houses, newspapers and magazines, news agencies, TV stations and radios, accompanied by the confiscation of their assets, and the reported blocking of 100,000 websites.¹²² The measures have also impacted academics and lawyers.¹²³ Similarly, as the Special Rapporteur noted during her visit to France, that exceptional measures resulting from both the state of emergency and the counter terrorism law weigh heavily on some minority communities, and that the genuine and protected right of persons to freely practice their culture and religion is being constrained by counter-terrorism law and practice. Measures that disproportionately impact minority communities also have a disproportionate impact on the civil society actors within these communities.

E INCREASED USE OF ADMINISTRATIVE MEASURES LARGELY DEVOID OF JUDICIAL OVERSIGHT AND REMEDIES

Administrative measures are increasingly used by States to address various terrorism and security threats. For example, many laws adopted in the wake of Security Council resolution 2178 to curb the threat posed by foreign terrorist fighters include executive travel bans and revocation of citizenship. Combined with the lack of definition of terrorism, States have reportedly been able to ban from travel humanitarian workers, medical staff, peaceful activists, human rights defenders, members of political parties, youth activists, people associated with NGOs and academics often without providing reasons and with no judicial recourse.¹²⁴

Administrative measures are also used to block specific Internet content or websites outside of any judicial process.¹²⁵ For example, specialized executive units such as Internet referral units flag contents for removal to Internet and social media companies, often based on the companies' terms of service. Such opaque procedures can allow governments to define content for removal very broadly, and can be used to arbitrarily request removals to silence criticism and legitimate political expression. The Special Rapporteur recalls that no website or information dissemination system should be prohibited from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.¹²⁶ Measures that allow executive authorities to even indirectly block websites, in the absence of any initial judicial control or ex-post facto judicial recourse, allow governments to bypass their own obligations under human rights law, pose a serious risk to freedom of expression and opinion, and can disproportionately impact civil society actors.

¹²² OHCHR, "Report on the impact of the state of emergency on human rights in turkey, including an update on the South-East January- December 2017" (March 2018), paras. 91, 92, 94 and 95. See also OHCHR, "Turkey: UN experts call for dropping of terror charges against leading human rights defenders" (13 November 2017), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22390&LangID=E>. See also communication TUR 2-2018.

¹²³ TUR 14-2018, TUR 13-2017.

¹²⁴ Amnesty International, "Pakistan: Release Pashtun human rights defender immediately and unconditionally" (12 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/pakistan-release-pashtun-human-rights-defender-immediately-and-unconditionally>. See also Human Rights Watch, "'Foreign Terrorist Fighter'" Laws: Human Rights Rollbacks Under UN Security Council Resolution 2178" (2016), <https://www.hrw.org/news/2015/11/01/egypt-scores-barred-traveling#>; <https://www.hrw.org/news/2015/07/10/tunisia-arbitrary-travel-restrictions#>.

¹²⁵ EGY 13-2017.

¹²⁶ Human Rights Committee, General Comment 34, CCPR/C/GC/34, para. 43.

F DEVOLUTION OF REGULATION AND/OR IMPLEMENTATION TO PRIVATE ACTORS

In the Special Rapporteur's view, one of the most concerning evolving developments is the increased use of measures that subcontract regulation and implementation to private actors that have had, until recently, very little to do with countering terrorism or violent extremism. Such actors find themselves obliged to play a frontline role in the implementation of often vague and ambiguous counter-terrorism and other security legislation or regulation, under the threat of disproportionate sanctions and very short timeframes. These delegation processes can seriously impact fundamental rights and freedoms necessary for the existence of civil society for two main reasons. First, the complexity of the processes involved lack in judicial oversight and transparency, and remedies, where they exist, are difficult to access and onerous. Second, because such devolved powers, resulting from overly broad, vague or ambiguous legislation and the judicial threat, will almost inevitably lead companies to over-regulate.

ICT companies hosting third-party content, which have been facing mounting pressure from governments to pro-actively monitor and police content generated or disseminated by users relating to terrorism, have been particularly affected by legislation that requires take down of "terrorism-related" content through threats of criminal litigation or civil liability. The threats involved and the lack of guidance given to companies often lead to over-regulation, as shown by the overly broad and imprecise definition of terrorism enacted by Facebook, which equates all non-state groups that use violence in pursuit of any goals or ends to terrorist entities. To have this definition as the basis for regulating access to and the use of Facebook's platform may lead to discriminatory implementation, over-censoring, and arbitrary denial of access to and use of Facebook's services, which is particularly worrying in light of the number of governments seeking to qualify dissent and opposition as terrorism. Also concerning is the lack of clarity regarding the methods by which Facebook determines whether a person belongs to a particular group and the absence of any independent processes of review, oversight and monitoring of Facebook's actions.¹²⁷

Financial institutions have similarly been severely burdened by measures that address access to banking services for the purpose of countering the financing of terrorism.¹²⁸ In many countries, governments have turned to financial institutions for the implementation of the new standards, which has drastically increased the levels of regulatory compliance for financial institutions.. Breaches of such standards can be very costly for financial institutions and lead to punitive action, including fines and exclusion from the financial system.¹²⁹ Many risk-averse banks have therefore implemented protocols that shield them from any risk of liability under counter-terrorism legislation.¹³⁰ Such over-regulation has translated into refusal to deal with civil society actors that operate in or with "high-risk" environments or actors,¹³¹ limiting access to financial services, refusal to open or arbitrary closure of bank accounts, inordinate delays or termination of transactions, as well as onerous administrative requirements.¹³²

¹²⁷ OHCHR, "UN human rights expert says Facebook's 'terrorism' definition is too broad" (3 September 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23494&LangID=E>.

¹²⁸ A/70/371, paras. 42-44.

¹²⁹ See for example the consequences of the application of the 'principle of precaution' to financial institutions: CODSSY, "Defense d'aider? Comment les institutions financieres francaises entravent l'action humanitaire en Syrie" (April 2018).

¹³⁰ Humanitarian Policy Group, "UK Humanitarian Aid in the Age of Counter Terrorism: Perceptions and Reality", ODI (2015), p. 13.

¹³¹ See Martin Arnold and Sam Fleming, "Regulation: bank counts the risks and rewards", Financial Times (14 November 2014), <http://www.ft.com/cms/s/0/9df378a2-66bb-11e4-91ab-00144feabdc0.html#axzz3J2G48VEu>.

¹³² A/HRC/23/39/Add.1, para. 84; see also Tom Keatinge and Florence Keen, "Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs", Chatham House (April 2017); Charity and Security Network, "Financial Access for US Nonprofits" (February 2017), p.5.

In some countries, domestic banks have preemptively severed links with NGOs to avoid global banking isolation,¹³³ while in others, remittance providers have closed all service provider accounts.¹³⁴ NGOs have reported a “widening of the compliance net” as the area of risk perceived by banks expands beyond a specific conflict-affected or sanctioned area.¹³⁵ Often, reasons are not provided¹³⁶ and the entire process is drowned in opacity, which makes any recourse for an affected NGO very difficult. Importantly, as financial institutions have few incentives to balance the risk posed by low-profit clients against their own private interests in doing so, the burden is fully on the civil society organisations to shoulder increased costs resulting from greater administrative tasks and delayed payments, or to re-orient their operations altogether.¹³⁷ State-led solutions, such as licence regimes allowing NGOs to conduct activities that would otherwise be precluded by sanctions are a time consuming, costly process that does not necessarily address the potentially fast-changing needs of the population, and may unintentionally wave a flag to the bank that the activities may be problematic.¹³⁸

The processes that involve delegations of regulatory powers in the complex field of terrorism – where national legal requirements are in themselves overly broad and vague – should, in the view of the Special Rapporteur, not be left to private actors which may not have the ability and resources to construe human-rights based rules that fully comply with the rule of law and that provide sufficient accountability mechanisms should allegations of human rights violations emerge. Further, the threat of harsh penalties and governmental demands under which such regulations are adopted and the primary economic motivations of the actors are in themselves not conducive to an approach that is respectful of the principles of proportionality, necessity and non-discrimination.

G OVERLAPPING, CUMULATIVE AND SUSTAINED FORMS OF HARASSMENT

Civil society actors from all walks of life – academics, prominent human rights defenders, such as Ms. Amal Fathy, a member of the Egyptian Commission for rights and freedoms,¹³⁹ Mr. Cemil Tekeli, professor of law at Medeniyet University in Istanbul and a member of the International Jurists Union,¹⁴⁰ Mr. Taner Kilic, Chair of Amnesty International Turkey,¹⁴¹ Mr. Saeed Baloch, General Secretary of the Pakistan Fisherfold Forum and member of the Human Rights Commission of Pakistan,¹⁴² as well as individuals working for national and international NGOs, bloggers, writers, lawyers, translators, doctors, artists, film directors, such as Mr. Oleg Sentsov,¹⁴³ representatives of indigenous and minority groups, trade union activists, refugees as well as entire groups, such as women and LGBTI activists, religious and indigenous groups, even individuals from entire countries,¹⁴⁴ are increasingly subjected to a range of overlapping harassment measures broadly linked to countering terrorism and protecting national security. Importantly, a number of allegations dealt with by the mandate point to the layered, overlapping and sustained nature of the measures taken to target members and groups of civil society. It is clear that the ensuing exponential cumulative impact aims to discredit civil society as a whole.

¹³³ IMF, “Recent Trends in Correspondent Banking Relationships – Further Considerations” (2017), p. 16.

¹³⁴ Jamila Trindle, “Bank Crackdown Threatens Remittances to Somalia”, *Foreign Policy* (30 January 2015); Center for Global Development, “Unintended Consequences of Anti-Money Laundering Policies for Poor Countries: A CGD Working Group Report” (2015), p. 4.

¹³⁵ Tom Keatinge and Florence Keen, “Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs”, Chatham House (April 2017).

¹³⁶ Victoria Metcalfe-Hough, Tom Keatinge and Sara Pantuliano, “UK humanitarian aid in the age of counter-terrorism: perceptions and reality”, HPG Working Paper (March 2015).

¹³⁷ Emanuela-Chiara Gillard, “Recommendations for Reducing Tensions in the Interplay Between Sanctions, Counterterrorism Measures and Humanitarian Action”, Chatham House (August 2017); Tom Keatinge and Florence Keen, “Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs”, Chatham House (April 2017).

¹³⁸ Tom Keatinge and Florence Keen, “Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs”, Chatham House (April 2017). See also A/73/314, para. 44.

¹³⁹ EGY 14-2018

¹⁴⁰ ISR 5-2018

¹⁴¹ TUR 1-2018.

¹⁴² PAK 4-2016.

¹⁴³ RUS 16-2018.

¹⁴⁴ USA 2-2017.

- MEDIA CAMPAIGNS

As part of a concerted effort to silence civil society, legislative restrictions have sometimes been reinforced by governmental smear campaigns, through state-controlled media or through statements by public officials, including heads of state,¹⁴⁵ whose objective is to delegitimise civil society and tarnish their reputations, by loosely characterising them as ‘terrorists’, or implying that they are ‘threats to national security’ or ‘enemies of the State’, even by lobbying other States or through international fora.¹⁴⁶ Such methods, by fostering intolerance and hostility, increase the vulnerability of all civil society actors and contribute to the perception that civil society is a legitimate target for abuse by State and non-State actors.¹⁴⁷

- PHYSICAL HARASSMENT

A wide range of civil society actors are increasingly subjected to serious violations of non-derogable rights. An important number of communications received by the mandate allege the use of torture,¹⁴⁸ arbitrary detention,¹⁴⁹ sometimes followed by illegal deportation,¹⁵⁰ incommunicado and secret detention,¹⁵¹ as well as enforced disappearances,¹⁵² including by secret services operating on foreign soil.¹⁵³ Some extremely serious measures, such as mass detention, impact entire religious and minority groups, thereby affecting members of civil society as well.¹⁵⁴

- JUDICIAL HARASSMENT

Used in combination with other measures, there is a very worrying and increasing use of spurious criminal proceedings under security legislation against civil society.¹⁵⁵ In many cases, it appears that charges under security legislation are pressed solely for the purpose of impressing the importance of the alleged violations committed, as well as to legitimise other measures taken against civil society actors, such as house raids, arrests, often lengthy detention, and travel bans.

When a State decides to apply counter-terrorism or security legislation that overtly or covertly includes the use of emergency powers, this has very significant procedural consequences for an individual including in the arrest, investigation and trial phases of the process. Indeed, such legislation often carries with it an increased use of executive, administrative powers all while limiting judicial authorisation, or review, including decisions made on the basis of secret information that the individual is not, or not fully, privy to. It also often contains weaker procedural safeguards, longer periods of detention, broader investigative and evidentiary powers for security and law-enforcement agencies, limitations on bail, limitations on due process rights, including reversal of the burden of proof, little or no access to counsel, the admission of confessions as evidence in a court, closed proceedings and longer sentences. These weaker procedural and fair trial guarantees have extremely serious consequences where the death penalty can be applied,¹⁵⁶ and in countries where the judiciary lacks independence and impartiality. Many States have also introduced greater surveillance of communications, and given investigatory powers to their intelligence agencies or to the military, which are often coupled with broad immunity clauses and little to no oversight.

¹⁴⁵ Communication PHIL 4-2018.

¹⁴⁶ Human Rights Watch, “Eradicating ideological viruses” (9 September 2018).

¹⁴⁷ A/HRC/13/22, para. 27.

¹⁴⁸ RUS 16-2018. See also A/HRC/WGAD/2017/46.

¹⁴⁹ RUS 15-2018; RUS 22-2018; RUS 17-2018, A/HRC/WGAD/2018/29.

¹⁵⁰ GAB 2-2018.

¹⁵¹ A/HRC/WGAD/2018/11, A/HRC/WGAD/2017/83, ARE 1-2018; CHN 15-2018.

¹⁵² ISR 5-2018.

¹⁵³ TUR 6-2018, KSV 1-2018 and KSV 2-2018.

¹⁵⁴ CHN 21-2018.

¹⁵⁵ Communications include: ARE 1-2018, DNK 2-2018, EGY 14-2018, NIC 4-2018, NIC 5-2018, IND 21 2018, TUR 7-2018, TUR 11-2017, RUS 14-2018, RUS 15-2018, RUS 16-2018, RUS 17-2018, RUS 19-2018, RUS 22-2018, SAU 11-2018, SAU 14-2018, TUR 13-2017, TUR 1-2018, TUR 3-2018, TUR 4-2018, TUR 7 2018, TUR 14-2018.

¹⁵⁶ Amnesty International, “Egypt: Death sentences and heavy prison terms handed down in disgraceful mass trial” (8 September 2018).

The recent landmark European Court of Human Rights Demirtas case addressed the issue of individuals being judicially harassed for the purpose of silencing them. Faced with a serving member of parliament who had been held in prolonged pre-trial detention on suspicion of having committed several offences, some of which were terrorism-related, the court noted that “national laws were increasingly being used to silence dissenting voices” and that “the tense political climate during recent years has created an environment capable of influencing certain decisions by the national courts, especially during the state of emergency”. The Court concluded that the applicant’s lengthy detention “pursued the predominantly ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society. The Court found, for the first time, a violation of Article 18 of the ECHR in conjunction with Article 5, which hones down on the use of spurious criminal proceedings to silence certain individuals.¹⁵⁷

- PERSECUTION OF GROUPS

Importantly, a number of allegations dealt with by the mandate refers to the systematic persecution and repression of certain religious and ethnic minorities, including Ahmadis, Dalits, Uyghurs and Kazakhs, the Church of Scientology and Jehovah’s Witnesses, through undue restrictions to their rights to freedom of religion or belief, freedom of expression and peaceful assembly, including the dissolution or closure of their societies, organisations and entities, the criminalization of their activities, restriction on certain practices, systematic harassment of clerics, leaders, representatives and members, restrictions on the right to practice a religion and peaceful assembly, together with the discriminatory imposition of various administrative measures (denaturalization, travels bans).¹⁵⁸ The Special Rapporteur on freedom of religion has noted that some Governments use security reasons to formally ban religious or belief groups and render membership in these groups a criminal offence, while the criteria for this do not always appear to be clear, or closely connected to proof of the group’s engagement in or material support for violence or its incitement.¹⁵⁹

Indigenous groups such as the Mapuche have also been targeted, and in one case, the UN Special Rapporteur on the Rights of indigenous peoples, Ms. Victoria Tauli Corpuz, was defined as a terrorist in a Government petition.¹⁶⁰ Such tactics have also been used against women activists and human rights defenders. Combined with undue arrests and detention,¹⁶¹ judicial harassment, smear and intimidation campaigns, women have been subjected to death threats, personal and directed attacks by government officials, which in some cases have led to physical attacks on prominent women human rights defenders and their properties.¹⁶² Human rights defenders have been targeted as reprisals for speaking to the Human Rights Council and in other international settings about the human rights situation in the country.¹⁶³ For example, it was alleged that the repeated arrests of Ms. Radhya Al-Mutawakel, President of the Mwatana Organisation for Human Rights and first Yemeni woman to present a briefing at the UN Security Council in 2017, were a reprisal for her cooperation with UN human rights mechanisms.¹⁶⁴

¹⁵⁷ ECtHR, Demirtas v. Turkey, (20 November 2018), App. 14305/17, paras. 169, 264, 271, 273.

¹⁵⁸ Communications BHR 5-2016, PAK 11-2016, RUS 19-2018; RUS 22-2018; SAU 14-2018, CHN 21-2018.

¹⁵⁹ A/73/362, para. 20.

¹⁶⁰ CHL 2-2018, CHL 3-2018, PHL 5-2018.

¹⁶¹ SAU 11-2018.

¹⁶² NIC 4-2018.

¹⁶³ IC 5-2018; PHL 5-2018.

¹⁶⁴ SAU 8-2018 and YEM 4-2018.

IV. KEY EFFECTS ON CIVIL SOCIETY

The very serious impact of the combined measures to counter terrorism, prevent and counter violent extremism, and more broadly address threats to national security have complex, manifold and often under-examined negative impacts on civil society actors and on civic space. This section will focus on the indirect ways in which civic space has been restricted through the use of counter-terrorism and other security legislation and PCVE measures, which can have extensive cumulative effects.

A CHILLING EFFECT

Civic space is very directly affected when overly broad definitions of terrorism and counter-terrorism are used to arrest, detain and prosecute peaceful members of civil society organisations. Similarly, the closure of civil society organisations, the impossibility to obtain registration or access funding, and an overload of bureaucratic requests, all limit civic space. Significantly, the State does not need to apply security legislation directly for its serious impact to be felt. The mere existence of these measures, and their use against some civil society actors is sufficient to not only silence the ones that are directly targeted through the application of harsh legislation with severe limitation on due process rights, but also to send a message to all civil society actors that they are at risk should they continue their activities. For example, this mandate found that the very broad definition of terrorism in Saudi Arabia was routinely used to stifle dissent and used as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups. The arrests, detentions and convictions not only revealed serious flaws in the Saudi counter-terrorism acquis, but were also meant to send a message to citizens and HRDs that they will be prosecuted if they engage in these broadly defined activities.¹⁶⁵

Similarly, the risks of criminal prosecutions resulting from unclear, complex and overreaching material support provisions and terrorism sanctions have had a debilitating and unsettling effect on humanitarian, human rights, development and advocacy civil society organisations around the world.¹⁶⁶ Indeed, even though there have been relatively few legal cases involving civil society actors for acts of support to terrorism¹⁶⁷, the chilling effect for actors working in proximity to terrorist groups has been evident.¹⁶⁸ Operationally, many have had to redesign their programmes to avoid contact with any terrorist group, re-orient their operations to areas where there are fewer risks of prosecution, and refuse to take funding from certain donors, altogether. The result is a weakened civil space infrastructure and limited engagement in sites of most need.¹⁶⁹ Others have had to devote significant resources to comply with increased reporting and other administrative requirements, hire extra staff and invest in training and legal advice. Women's organisations, which tend to be smaller and more informal, have been significantly more affected by these increased administrative requirements.¹⁷⁰

The availability of mass surveillance powers for counter-terrorism purposes, openly or not, may, directly or indirectly, also seriously impact the ability of human rights defenders to carry out their work.¹⁷¹

¹⁶⁵ A/HRC/40/XX/Add.2, <https://www.ohchr.org/Documents/Issues/Terrorism/SR/A.HRC.40.%20XX.Add.2SaudiArabiaMission.pdf>, paras. 27 and 28. See also Communication SAU 12-2017.

¹⁶⁶ A/70/371, para. 31.

¹⁶⁷ A/70/371, para. 36; A/73/314, paras. 36-39; The Guardian, "Inquiry clears World Vision Gaza of diverting funds to Hamas" (21 March 2017); NRC, "Principles under pressure" (2018).

¹⁶⁸ HCPR Working Paper (2011), op.cit., pp. 18-21; Kate Mackintosh and Patrick Duplat, "Study of the impact of donor counter-terrorism measures on principled humanitarian action" (July 2013), pp. 40-42.

¹⁶⁹ See Kate Mackintosh and Patrick Duplat, op.cit. pp. 72 and 84.

¹⁷⁰ Jayne Huckerby, "Tightening the purse strings.: What Countering Terrorism Financing Costs Gender Equality and Security" (March 2017).

¹⁷¹ CitizenLab, "Hide and seek: Tracking NSO Group's Pegasus Spyware to operations in 45 countries" (18 September 2018).

B STIGMATISATION

The stigmatisation of civil society is a defining factor of the closing down of civic space as a result of the security climate that has prevailed since 2001. The multifaceted ways in which links between civil society and terrorism and other national security threats have been made, directly and indirectly, have created a context in which civil society is viewed with suspicion, untrusted and discredited. The legitimacy of the need to counter-terrorism has, through the operation of loose international matrixes and overly inclusive definitions, enabled governments to re-brand civil society as “terrorists”, “violent extremists”, “threats to national security”, “enemies of the states”, and “foreign agents”, with de facto collusion by those bodies responsible for the existence of these frameworks. This is critical to civil society’s ability to operate and its actors to live in safety.

The processes involved include judicial harassment under broadly-worded counter-terrorism and other security legislation, smear campaigns, as well as more subtle linkages, such as those between lawyers representing individuals accused of acts of terrorism, and doctors equally providing medical assistance to members of terrorist groups. A key feature of the frameworks that have been established is that they allow the ‘internationalisation’ of a State’s enmity vis-a-vis civil society actors. States can very effectively place members of civil society on various international terrorism-related lists, thus allowing the arbitrary targeting and marginalisation to proliferate globally.

Effective negative labelling sends a clear signal that civil society actors are legitimate targets for attacks, and in turn legitimises the adoption of even more restrictive measures. This increases their insecurity, and the likelihood that they be subject to human rights violations, including ill-treatment. When civil society actors have been negatively labelled, the stigmatisation can extend into the ability to find work and housing and affect other socio-economic rights. Family members can also be caught up and face similar stigma. In some cases, they will themselves be subject to spurious arrests, detention and surveillance. Once the derogatory language is used, the stigma is hard to lose, even when mistakenly applied.

C FINANCIAL MARGINALISATION

Where financial institutions’ counter-terrorism regulations have impacted civil society organisations, including humanitarian organisations¹⁷² operating in difficult and dangerous conditions, this has raised the physical risk to staff and offices, because larger amounts of cash were transported and used to enable the maintenance of ongoing operations.¹⁷³ Where financial services were refused or delayed, NGOs have had to scale down, or close altogether.¹⁷⁴ Where bank accounts are refused or closed, the reputation cost for the NGO can be severe, as it often was wrongly implied that the organisation failed to comply with terrorism financing regulations. The effect of these measures trickles down, impacting NGOs’ in-country partner organisations with delayed funds and unpaid salaries, as well as their beneficiaries in need of assistance. The Special Rapporteur is particularly conscious of the arbitrary and discriminatory aspect of these practices. Almost all of the examples that she has come across confirm that they disproportionately impact Muslim charities, or charities working in Muslim-majority areas or States.¹⁷⁵

¹⁷² A/HRC/27/L.2: “Concerned that unilateral coercive measures have, in some instances, prevented humanitarian organizations from making financial transfers to States where they work”.

¹⁷³ Special Rapporteur on human rights and counter-terrorism, A/70/371, para. 42.

¹⁷⁴ Tom Keatinge and Florence Keen, “Humanitarian Action and Non-State Armed Groups – The Impact of Banking Restrictions on UK NGOs”, Chatham House (April 2017).

¹⁷⁵ A/HRC/6/17, para. 42; A/73/314, para. 40. See also Ben Hayes, ‘The international impact of counter-terrorism on civil society organisations’, Brot für die Welt (April 2017); Niki MayYoung, ‘Banking sector nerves blocking international relief, says Islamic Relief FD’, Civilsociety (8 November 2012), www.civilsociety.co.uk/finance/news/content/13757/banking_sector_nerves_blocking_international_relief_says_islamic_relief_finance_director; Mandhai, ‘HSBC bank cuts off services to Muslim charity’, Al-Jazeera (4 January 2016), www.aljazeera.com/news/2016/01/hsbc-bank-cuts-services-islamic-relief-charity-160104152429151.html; Victoria Metcalfe-Hough, Tom Keatinge and Sara Pantuliano, “UK humanitarian aid in the age of counter-terrorism: perceptions and reality”, HPG Working Paper (March 2015), p.7; Rob Barry and Rachel Louise Ensign, ‘Cautious Banks Hinder Charity Financing’, Wall Street Journal (30 March 2016), www.wsj.com/articles/cautious-banks-hinder-charity-financing-1459349551.

D CO-OPTATION INTO DISCRIMINATORY GOVERNMENT AGENDAS

The new international focus on violent extremism means that PCVE programmes, policies and activities have become a donor priority. Many humanitarian, human rights and development organisations have been forced to increase the focus of their programmes and activities on PCVE. There is therefore a risk that civil society is co-opted into a top-down PCVE agenda,¹⁷⁶ and that programmes are co-opted for political or security objectives.¹⁷⁷

This approach is particularly problematic when PCVE initiatives target groups considered as “at risk”, which - in the absence of a granular analysis taking into account the specific situation of an individual in a community - is often based on broad and discriminatory criteria such as race, ethnicity and religion. Selective and politically-driven government PCVE funding seriously impacts the independence of civil organisations. It can both marginalise grass-root organisations that do not represent government views, while at the same time limit access to the critical knowledge that the communities have about violent extremism that can lead to terrorism.¹⁷⁸ This co-optation can make organisations a target for the communities they are assisting, particularly where funding is accompanied by some form of monitoring of behaviour that can be seen as an extension of a government’s intelligence and security programmes.¹⁷⁹ With significant spending targeted at women, this can have a particularly insidious gender impact and affect women’s safety. Where PCVE efforts are tied too closely to the security services, they are simply seen as another vehicle for the State to implement the security aspects of its counter-terrorism strategy.¹⁸⁰ These opaque dynamics undermine the credibility of the NGO sector as a whole, and can break the fragile trust between the public, the government and civil society.¹⁸¹

Re-orientation on PCVE has also meant that other areas of work, such as peace, governance, accountability, reform, human rights, and community cohesion work, including with armed groups and those who support them, have been put to the side.¹⁸² Despite their critical importance, NGOs may only manage to obtain international support for PCVE programmes and activities. In turn, this can seriously undermine a long-term peace and human rights agenda. The shift in donor priorities has been felt particularly acutely by small women’s organisations dependent on external funding, which may have seen their resources entirely diverted to PCVE efforts.

¹⁷⁶ Larry Attree, Jordan Street and Luca Venchiarutti, “United Nations peace operations in complex environments”, Saferworld (September 2018), p. 14

¹⁷⁷ Norwegian Refugee Council, “Principles under Pressure” (2018).

¹⁷⁸ Arun Kundnani and Ben Hayes, “The globalization of Countering Violent Extremism policies: Undermining human rights, instrumentalising civil society”, Transnational Institute (February 2018), p. 12.

¹⁷⁹ For Iraq and Nigeria, see Norwegian Refugee Council, “Principles under Pressure” (2018). Roman Stubbs, et al., “As their Minneapolis community deals with fear and paranoia, two Somali teens turn to basketball”, The Washington Post (24 July 2018).

¹⁸⁰ A/HRC/31/75, para. 47.

¹⁸¹ Arun Kundnani and Ben Hayes, “The globalization of Countering Violent Extremism policies: Undermining human rights, instrumentalising civil society”, Transnational Institute (February 2018), p. 12.

¹⁸² Larry Attree, Jordan Street and Luca Venchiarutti, “United Nations peace operations in complex environments”, Saferworld (September 2018), p. 14-15.

E SECURITIZATION

A second series of concerns are related to a risk of securitisation or instrumentalisation of work in the field of development, education, good governance, democracy, or the promotion of human rights that the PCVE agenda aims to address, which are closely tied to the broad and comprehensive agenda set out in the 2006 Global Counter Terrorism Strategy.¹⁸³ An approach to PCVE which favours “breaking down the silos between the peace and security, sustainable development, human rights and humanitarian actors” at all levels¹⁸⁴ risk further drawing humanitarian actors into a security-driven political agenda.¹⁸⁵ The securitisation of aid since 2001, with military cooperation and development becoming increasingly intertwined, the increased conflation of humanitarian and political agendas, notably where terrorism sanctions exist,¹⁸⁶ reporting requirements that involve humanitarian actors,¹⁸⁷ as well as the increasing pressure for UN peace operations to engage more in counter-terrorism and PCVE, all have very serious under-examined consequences for humanitarian actors.

When policies, at any level, securitise human rights, development and humanitarian efforts, the risk of backlash, alienation and insecurity against civil society and HRDs increases. These risks are particularly acute for women’s organisations. It is highly problematic that the need to empower women as a mitigating factor to the spread of violent extremism¹⁸⁸ has been linked to the use of chapter VII powers by the Security Council. This can deeply compromise the role of women’s organisations and women leaders associated with the programmes,¹⁸⁹ and increase the risk of bartering women’s rights.¹⁹⁰ Depending on the social and cultural climate in which women’s rights are promoted, the dangers that accompany women’s rights programming being seen as a Western agenda are amplified if the programming also includes (or is perceived to include) a counter-terrorism or PCVE nexus. The growing visibility of women’s engagement risks exposing women’s rights defenders to reprisals from violent extremist groups. There is clearly a need to reflect more broadly on how counter-terrorism measures and PCVE measures can undermine civil society’s perceived neutrality by creating a perception that they have been co-opted into state-led security agendas, in turn limiting their ability to operate in certain areas, with certain governments or groups, and how this can put their security at risk.¹⁹¹

F EXCLUSION

It is now clear that those States that have repressive policies against civil society at the national level are aiming to spread these policies more broadly, actively working to silence criticism and opposition in international fora, including at the UN. It is hardly surprising that some States are actively working to manage, deny and limit civil society access to UN counter-terrorism bodies, agencies, processes and meetings. This trend is well-illustrated by the July 2018 UN High-Level Conference on Counter-Terrorism.

¹⁸³ These include but are not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance. See UN General Assembly, Pillar I of the UN Global Counter-Terrorism Strategy and Plan of Action, A/60/288. See also Plan of Action to Prevent Violent Extremism, A/70/674.

¹⁸⁴ UN Secretary-General, Remarks at General Assembly Presentation of the Plan of Action to Prevent Violent Extremism, 15 January 2016.

¹⁸⁵ Norwegian Refugee Council, “Principles under Pressure” (2018).

¹⁸⁶ UN Security Council resolution 1844.

¹⁸⁷ UN Security Council resolution 1916

¹⁸⁸ See e.g. UN Security Council resolution 2178.

¹⁸⁹ UN Women, Global Study on the implementation of UN Security Council resolution 1325, p. 222.

¹⁹⁰ Special Rapporteur on human rights and counter terrorism, A/HRC/31/65.

¹⁹¹ Geneva Academy, “Rules of Engagement: Protecting Civilians through Dialogue with Non-State Actors” (2011), pp 15-16; Kate Mackintosh and Patrick Duplat, *op.cit.* p.81; Harvard Program on Humanitarian Policy and Conflict Research, “Humanitarian action under scrutiny: criminalising humanitarian engagement, HPCR Working Paper, p. 32; Burniske with Modirzadeh, and Lewis, ‘Counter-Terrorism Laws and Regulations: What aid agencies need to know’, Humanitarian Practice Network at ODI Number 79 (November 2014), p.3; Ashley Jackson and Abdi Aynte, “Talking to the other side”, HPG Working Paper (2013), p.6.

After initially being denied any access, civil society was allowed to attend only some of the segments of the two-day conference. This brought a number of States to highlight the key role played by civil society in the context of counter-terrorism and in the field of PCVE, and to recall the role of the UN in this regard.¹⁹²

Worryingly, some States are also deploying accusations of terrorism sympathies as a fast track reason to exclude certain members of civil society by closing applications or forcing withdrawal of accreditation to the UN to silence them. In September 2015, in his opening statement to the Human Rights Council, the UN High Commissioner for Human Rights mentioned that some Member States had sought to prevent civil society actors from working with the United Nations human rights mechanisms, including the Council: “Session after session, they attempt to bar from accreditation — based on spurious allegations of terrorist or criminal activity — groups that strive to expose problems and propose remedies”.¹⁹³ It is concerning that the working methods of the ECOSOC Committee on Non-Governmental Organisations remain largely opaque, and that the Committee often seems to acquiesce to Member States’ requests on rejection, deferral or withdrawal of accreditation for NGOs, while its decisions are simply rubber stamped by ECOSOC.¹⁹⁴

In 2017, Alkarama Foundation had its application for accreditation closed by ECOSOC following allegations that the NGO and one of its founders had “alleged ties to terrorism”, fueling concerns that it “may constitute an act of reprisal for their work and engagement with UN mechanisms in the field of human rights”.¹⁹⁵ In 2018, China sought the withdrawal of ECOSOC accreditation from the Society of Threatened Peoples (STP) allegedly on the basis that it had enabled Uyghur representative Dolsun Isa, accused by China of financing terrorism, to participate in the 2018 Permanent Forum on Indigenous Issues.¹⁹⁶ Following the withdrawal of its request, China noted it would ‘closely monitor STP’s activities in the UN including in the Human Rights Council’ to ensure it ‘refrain[s] from appointing any terrorist as its representative’.¹⁹⁷ Such statements are made to send a very clear warning to all members of civil society. At its January 2018 meeting, the United States indicated that an applicant organization was on a list of NGOs suspected of links to terrorism, based on classified information. Such allegations, without needing to bring evidence forward or provide the opportunity for the civil society organization to defend its case, provide ample opportunities for States to prevent NGOs it does not like from engaging at UN level. Similarly, Turkey has been using the fact that it had deregistered organisations at the national level during the state of emergency as a means to challenge the accreditation of the same NGOs at UN level.¹⁹⁸ OHCHR reported that the state of emergency led to considerable limitations of the civic space: the Government permanently closed 1,719 human rights, humanitarian, lawyers’ associations and other NGOs.¹⁹⁹

¹⁹² The representative of Canada stated that “the UN [was] pivotal in these efforts, facilitating civil society’s role as a force multiplier on PVE, bringing the voices on the ground in affected communities to [its] discussions. Canada is therefore deeply dismayed that civil society has been excluded from Segments of [the] Conference. It undermines the credibility of this inaugural meeting, and is a lost opportunity for genuine dialogue with all key actors, including experienced civil society partners on the frontlines of PVE interventions.”

<https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S3-Canada.pdf>.

¹⁹³ Opening Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the 30th session of the Human Rights Council, 14 September 2015.

¹⁹⁴ ISHR, “The backlash against civil society access and participation at the UN: Intimidation, restrictions and reprisals: 10 case studies” (2018).

¹⁹⁵ Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. See OL OTH 29/2017 (4 January 2018), <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-OTH-29-2017.pdf>.

¹⁹⁶ A/HRC/36/31, para. 29.

¹⁹⁷ ISHR, “NGO Committee: Accusations of terrorism remain unretracted,” (5 June 2018). See also Communication CHN 13-2018.

¹⁹⁸ ISHR, “Turkey: NGO Committee aids state seeking to silence NGOs” (8 February 2017).

¹⁹⁹ OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January-December 2017” (March 2018), para. 13.

All of these practices allow for the permeation at international level of unchecked overly-broad national counter-terrorism and emergency measures while permitting the instrumentalisation of international procedures for States' own interests. It is clear that the existence of a vibrant civil society at the national level is critical to its ability to meaningfully participate and engage at the UN level. It is also clear that civil society participation at the UN is a right.²⁰⁰ The shrinking of civic space at the national level should not be transferred to the quintessential space where NGOs have a right to be present at the international level through the use of vague counter-terrorism or national security allegations, without question or justification. The Committee must ensure that procedures relating to civil society access to UN processes, bodies and conferences, including rules relating to participation, accreditation and withdrawal of accreditation are apolitical, non-discriminatory, expeditious, and governed by the principles of fair and due process, proportionality and transparency. This should apply also to alleged association with terrorist acts and terrorist groups, as well as with the application of other national emergency measures. Further, States should refrain from acts of intimidation, reprisals, and open or covert threats associated with civil society participation in UN spaces and procedures.

²⁰⁰ Article 17 of the Declaration on Human Rights Defenders, A/RES/53/144.

Despite the fact that measures adopted at all levels – from the global to the local - seriously impact civil society in a number of ways, there appears to be a complete lack of accountability for the global violations that are occurring, and very few mechanisms that can call out State abuse and remedy the deep lacunae that have been enabled by the creation of these complex and intricate matrixes that fail to provide basic human rights guarantees to the individuals to whom they ultimately apply. Indeed, the remedies for the international measures that can be seen as laying the ground – and, in the case of Security Council resolutions even empowering States by providing them with a cloak of legitimacy – for the grave attempts to choke civil society are as weak as the violations are serious.

Altogether, judicial scrutiny of the counter-terrorism measures that impact civil society mandated by the Security Council or required under soft(er) structures is scant. Several reasons may be put forward: domestic or regional courts may be reluctant to take on this role given the source of the mandate; civil society actors that are impacted may not have the necessary resources to shoulder judicial involvement; and many measures may not easily be subject to judicial oversight, such as terms of service agreements or donor contracts. Critically, any episodic individual decision or decentralised response would fail to grasp the global nature of the issue and the collective nature of the violations, and would miss the sheer scale and breadth of the global impact on civil society that is a result of the way in which these measures were developed.

The United Nations itself has been proven unable to address the abuses in the implementation of the Security Council's counter-terrorism related legislative prerogatives. The UN human rights machinery, while involved at all levels in the monitoring of State responses to counter-terrorism as it impacts civil society, has been unable to stop the unraveling of the international human rights framework and address these matrixes. Indeed, not all States are a party to the range of human rights treaties that are key to the protection of the rights of civil society and, importantly, neither Treaty Bodies nor Special Procedures have the resources to adequately counter the manifold attacks on civil society.

The CTC, set up to monitor States' implementation of the provisions of resolution 1373, could have played an important early-mitigating role that may have diminished the impact of the rolling out of the counter-terrorism matrixes at national level on civil society. Yet, despite the very broad provisions of resolution 1373 and the inherent risk of human rights abuses that it carried, the suggestion by former UN High Commissioner for Human Rights Mary Robinson in early 2002 that a formal dialogue be initiated between the CTC and the now defunct Commission on Human Rights,²⁰¹ the position of the CTC, as expressed by its Chairman January 2002, was that "monitoring performance [of the implementation of resolution 1373] against other international conventions, including human rights law, is outside the scope of the [CTC]'s mandate".²⁰² This position was made even clearer in March 2004, during a briefing of the Human Rights Committee by a CTC legal expert,²⁰³ who reiterated the position of the CTC that it would not trespass onto the areas of competence of other parts of the UN system, and suggested that OHCHR, other UN human rights bodies, and national judicial authorities take responsibility for human rights concerns.

²⁰¹ Introductory statement by Mary Robinson, UN High Commissioner for Human Rights, Commission on Human Rights, 58th Session (20 March 2002).

²⁰² Sir Jeremy Greenstock, briefing to the Security Council (18 January 2002), S/PV.4453.

²⁰³ UN Press Release, "Human Rights Committee Briefed on the Work of Counter-Terrorism Committee" (27 March 2003) HR/CT/630.

Through Security Council resolutions 1456 (2003), which for the first time included a generic and broad human rights clause, and resolution 1624, the CTC's human rights focus increased. This is a development strongly supported by the Special Rapporteur's mandate. The CTC was briefed by UN High Commissioners and several UN Special Procedures. Enhanced with human rights staff, the CTC's Executive Directorate (CTED) was tasked with liaising with OHCHR and other human rights organisations in matters related to counter-terrorism.²⁰⁴ In doing so, it adopted Conclusions for Policy Guidance regarding human rights (which includes liaising with human rights organizations²⁰⁵) and undertook other forms of engagements on human rights, including with civil society actors, most recently a roundtable discussion organised by OMCT on the impact of counter-terrorism measures on civil society, in which the Special Rapporteur on human rights defenders and the Special Rapporteur on freedom of expression participated.

Despite these developments, studies (including those undertaken by this mandate) of the way in which the CTC took account of the human rights implications of the counter-terrorism measures adopted by States until 2010 reveal, at best, a clear lack of sensitivity for the human rights impact of national measures;²⁰⁶ at worst disregard for the potential human rights consequences of counter-terrorism measures. Key areas of concern, which were in turn critical to civil society and immensely relevant to the current situation, were the questions posed by the CTC to States regarding their monitoring of the activities of NGOs without mention of the rights to freedom of association and expression, as well as the Committee's failure to curtail politically-inspired, over-inclusive national definitions of terrorism.²⁰⁷ These studies also show that – at least in the written interaction until 2010 – State responses to human rights questions were often limited to one-line answers that the State was respecting its human rights obligations, reinforcing the perception that human rights law was both symbolic and decorative, and that protection of civil society played no significant role, even in the context of countering terrorism. For its part, the CTC neither questioned this information, nor asked for follow-up information as far as the mandate is aware, even in the wake of specific instances of possible over-inclusive applications following terrorist attacks, or specific allegations of human rights violations pointing to disingenuous responses provided by the State.²⁰⁸

It is striking that despite the CTC's greater human rights commitment on paper, there has been a correlative increase in opacity. Country reports were publicly posted on its website until 2006 but have since become confidential. Security Council resolutions that seemingly increase transparency, such as resolution 2395 which "directs CTED" to make a number of documents available (excluding their reports) throughout the UN "except when requested by the assessed State to keep information confidential" and to share its findings outside the UN, including with civil society, "as appropriate and in consultation with the CTC"²⁰⁹, place caveats that plainly mean that transparency remains discretionary.

It is thus difficult to determine whether human rights are now meaningfully taken into consideration. What is clear is that the CTC's early lack of attention to, and oversight of, the human rights impact of States' counter-terrorism measures in the early stages, combined with the CTC's failure to follow-up, has meant that these measures continue to be in force today, with an even increased (perceived) legitimacy, as they have not been questioned by a subsidiary body of the Security Council. Governments have thus been able to get away with their repressive counter-terrorism measures disguised as effective counter-terrorism, with civil society bearing their brunt, as the statistics underpinning this report affirm.

²⁰⁴ CTC report (19 February 2004), S/2004/124.

²⁰⁵ S/AC.40/2006/PG.2

²⁰⁶ Special Rapporteur on human rights and counter-terrorism, A/65/258, para. 44.

²⁰⁷ Special Rapporteur on human rights and counter-terrorism, A/65/258, para. 44.

²⁰⁸ See the examples provided in Human Right Watch, "Hear no Evil, see no Evil" (10 August 2004).

²⁰⁹ UNSC resolution 2395 (2017), para. 13.

Given the very serious human rights violations that are taking place in the name of the implementation of the Security Council resolutions, the absence of facts on both what States are reporting to the CTC and on how the CTC engages with them increases speculation about the candour of what States are reporting to the CTC, and perpetuates the impression that the Security Council condones these repressive practices. This simultaneously diminishes the legitimacy of the CTC's monitoring and increases government impunity.

As a Security Council subsidiary body and an initial point of contact for States, the CTC must engage more proactively with governments and increase its responsibility for the way in which States use Security Council resolutions to violate human rights at the national level. Additional transparency in the CTC's work is needed to narrow the information gap that currently exists between human rights bodies and counter-terrorism bodies, so that governments that over-report or overstate the effectiveness of their counter-terrorism legislation can be held accountable for the misuse of counter-terrorism legislation against civil society. The Special Rapporteur underscores that the CTC should not agree to any visit that does not include the human rights aspects of the integration of the relevant Security Council resolutions, or where the delegation cannot bring a human rights expert or meet with civil society. The CTC also needs to engage transparently and officially with UN human rights mechanisms both on the substance of the reports as well as in advance of any country visit. Proximity to the UN human rights machinery, which has built strong relationships and works closely with civil society actors at all levels, would contribute to allowing meaningful integration of civil society's insight.

Turning to accountability mechanisms within other outsource entities, such as FATF, which in themselves may not be directly bound by human rights obligations. It is worth stressing that the corollary to any increase in international regulating powers from a body composed of States that do have human rights obligations necessarily entails a corresponding responsibility that its regulations and its monitoring show true commitment to human rights. This is why it is critical to ensure that the States that are admitted to FATF show a genuine law-based commitment to human rights and the rule of law,²¹⁰ and a meaningful dedication to protecting civil society. After years of not addressing the impact of its Recommendation 8 on human rights²¹¹ despite it being largely established that FATF, its monitoring bodies, and some States have put pressure on others to implement non-human rights compliant legislation,²¹² the September 2018 FATF Mutual evaluation of Saudi Arabia may signal an evolution in its practice and be considered as a good monitoring example. After referring to this mandate's finding that Saudi Arabia's definition of terrorism is overly broad, the report notes, as a consequence, that "it is possible that the authorities pursue cases of financing of acts that would not be included in universal counter-terrorism instruments, and as such divert attention and resources to specious cases from more important cases of terrorism financing".²¹³ Although it did not lead to a negative rating by the monitoring body, this approach, which cross-references UN human rights documents and enhances cooperation between international human rights and other mechanisms that can benefit from human rights expertise when evaluating counter-terrorism legislation, is a very welcome development.

²¹⁰ Fionnuala Ni Aolain and Sen. Bob Graham, "U.S. Should Condition Saudi Membership in Elite Financial Club on Progress Prosecuting Terrorists and Observing the Rule of Law", *Just Security* (13 October 2018).

²¹¹ Special Rapporteur on human rights and counter terrorism, A/70/371, para. 26.

²¹² Ben Hayes, 'The Impact of international counter-terrorism on civil society organisations: Understanding the role of the Financial Action Task Force', *Brot für die Welt, Analysis* 68 (April 2017), Ch. 3.

²¹³ MENA FATF, Kingdom of Saudi Arabia: Mutual Evaluation report (September 2018), para. 232.

In sum, the international community has been unable to create a system in which the checks and balances exist to address the interconnection of the security-led counter-terrorism framework across different political and legal spaces as it impacts on human rights in general and on civil society in particular. The number of bodies producing norms, their lack of institutional commitment to human rights protection, the absence of formal mechanisms requiring them to meaningfully consult institutional experts, state and non-state actors in the development of the norms, the opacity of the institutions themselves, and the norm-making process which often does not require any formal consultation or sovereign commitment at national level, have all contributed to the creation of complex, multiple and overlapping legal and policy regimes. The resulting overarching transnational framework is largely opaque, unaccountable and inaccessible, and lacks in legitimacy. Ensuring effective oversight of such a framework is challenging, even though some of the monitoring bodies have introduced a modicum of human rights to alleviate some gross concerns.

UN counter-terrorism actors, which have traditionally had limited engagement with civil society in what they perceive as traditional state-focused activities, must engage more proactively with civil society on counter-terrorism and PCVE issues. Given the enhanced role of the Security Council in the field of counter-terrorism and PCVE, the Security Council should consider directly tapping into to the grassroots knowledge and analysis of civil society actors in innovative ways. Furthering the Council's analysis and expertise and strengthening partnerships with a cross-representation of local and international independent civil society actors working on security and PCVE issues could enhance the legitimacy and quality of the Security Council's engagement. Both the CTC and CTED should meet formally, transparently and regularly with a diverse and independent civil society, on various thematic issues as well as during in-country assessments. Similarly, the CTC should consider regular briefings by civil society actors on counter-terrorism and PCVE thematic items and on geographic agenda items using the Aria formula, where a better understanding of the local dynamics could assist in preventing undermining efforts done at local level.²¹⁴ If the Security Council can meet regularly with civil society representatives in the Aria formula there can be no objective reason why the Counter-Terrorism Committee cannot. Missions of the Security Council should also be encouraged to meet with civil society actors to inform their discussions on security and PCVE issues before, during and after missions,²¹⁵ while UN Security Council Peace Operations should also report on their relationships and engagement with local civil society actors on these issues. In addition, the Special Rapporteur should be invited on a regular basis to brief the CTC and CTED.

The envisaged creation of a Civil Society Unit within the Office of Counter-Terrorism is an important institutionalisation of the commitment to enhance engagement by the CTITF (newly named Global Counter-Terrorism Coordination Compact entities) included in the 6th review of the GCTS. Civil society representation within the Unit should be inclusive, legitimate, diverse and independent. The process for inclusion needs to be robust and transparent. It is also critical that civil society is not instrumentalised to legitimise and advance the work of the UN Office for Countering Terrorism, but that civil society has a meaningful capacity to offer views on policy development, critique and assess policy and strategy as it is being carried forward. Meaningful inclusion of civil society going ahead necessarily includes that the value for civil society and the inwards benefits of integrating the knowledge and expertise that civil society brings are fully recognised. This includes its unique capacities in terms of broadening the human rights engagement of UNOCT, deepening the expert information available to OCT, and providing on the ground data and experiences that will enable OCT to produce policy and practice which is relevant, timely and trustworthy.

²¹⁴ Aria Formula meetings should be used to enhance the Council's contact with civil society and NGOs. See Note of the Security Council President (S/2017/507), para. 98.

²¹⁵ S/2017/507, para. 123.

VI. CONCLUSIONS AND RECOMMENDATIONS

As revealed by the percentages of communications sent by the Special Rapporteur's mandate, broad invocations of the need to counter terrorism, PCVE and protect national security have been abused by a number of States to close civic space and target civil society activists and Human Rights Defenders. The contemporary imperative to counter terrorism was set in motion through global matrixes that have taken a blanket approach to regulation, without any consultation or engagement with civil society in the development of the rules. The failure to engage civil society has meant the loss of an expert human rights analysis of the impact of these measures on civil society and the rule of law. In a climate in which security in many arenas appears to take precedence over human rights, and absent any significant pushback from the bodies charged with overseeing the implementation of the measures, governments were emboldened into adopting measures that seriously curbed the existence and functioning of civil society while disregarding their well-established human rights obligations.

The lack of comprehensive definitions of the phenomena that are being addressed at the international level has been essential to enabling governments to qualify a broad range of individuals that articulate and defend views and opinions that differ from state positions as 'terrorists', 'violent extremists' or 'threats to national security'. In turn, States have taken multiple measures to limit civic space, and civil society has faced multifaceted threats. Civil society actors and human rights defenders have been subjected to overlapping, sustained and layered forms of harassment. The extensive cumulative impact on civil society, which has translated into an overarching chilling effect on its activities, as well as its stigmatisation, exclusion, marginalisation, co-optation into discriminatory agenda and the securitisation of its action, cannot be evaluated or remedied in a vacuum. There is a clear absence of oversight mechanisms that can address the interconnectedness of the security framework across various political and legal spaces, grasp its overall impact on civil society, and provide accountability and remedies for the numerous violations of the rights of civil society.

Restricting civic space and targeting civil society actors, including human rights defenders and activists, humanitarian actors, academics, journalists, bloggers, lawyers, artists, members and representatives of minority and indigenous groups, women activists, religious leaders, and trade unionists, and subjecting them to sustained and overlapping forms of physical and judicial harassment and smear campaigns to silence them, discredit and delegitimise their work, is unreservedly inconsistent with genuinely and effectively countering the threat of terrorism and violent extremism. It is also undisputedly counterproductive as civil society plays an essential role in preventing and countering terrorism and violent extremism. Civil society's existence and vibrancy is itself a manifestation of a robust democracy that shows resilience to threats of terrorism and violent extremism.

The Special Rapporteur makes the following recommendations:

1. Given its critical role in the development of the international counter-terrorism framework, the United Nations, particularly the Security Council, the CTC, CTED, UNOCT and the CTITF, as well as the General Assembly and the Human Rights Council, must genuinely, proactively, meaningfully and constructively engage with a cross-representation of local and international diverse and independent civil society actors on issues related to counter-terrorism and PCVE. International institutions and entities cannot exhort States to include civil society when they fail to do so meaningfully themselves. In particular:
 - a. The input of civil society must be actively sought in the development of thematic and country-specific Security Council resolutions on counter-terrorism and PCVE to offer views on policy development and assess strategy and to inform on possible adverse impacts of the envisaged measures on civil society.
 - b. To further the UN's analysis and expertise as well as the quality and legitimacy of its engagement on counter-terrorism and PCVE, the CTC and CTED should meet formally and regularly with representative and diverse civil society actors both on substantive and country issues. The consistent inclusion of women's rights organizations and victim-focused organizations is strongly supported by the mandate.
 - c. The Counter-Terrorism Committee is strongly encouraged to undertake regular briefings by civil society on thematic items and on geographic agenda items, in the Aria formula used by the Security Council for other security-related inputs by civil society.
 - d. Given the close working relationship between civil society and UN human rights mechanisms, formal and transparent cooperation between UN counter-terrorism bodies and UN human rights mechanisms on substantive thematic and country issues must be enhanced. The Special Rapporteur on human rights and counter terrorism and other Special Procedures mandate holders should be invited on a regular basis to brief the CTC and CTED.
 - e. The Special Rapporteur recommends that the General Assembly convene an open debate on the fourth Pillar of the UN Global Counter-Terrorism Strategy once a year, in which civil society is fully and meaningfully included.
 - f. Representation within the envisaged UNOCT civil society unit must be inclusive, legitimate, diverse and independent and the Unit must be given a meaningful capacity to offer views on policy and strategy, deepen the information and data available to, and share experiences with UNOCT. States are encouraged to support this important initiative by the OCT. Best practices from the Human Rights Council and the Human Rights Committee must be adapted to this new space.

- g. The UN, in all of its components, must lead the way in ensuring that it remains a safe, secure and inclusive space for civil society. Care must be had that international procedures, including those for accreditation of civil society at the UN, are not instrumentalised by unchecked overly broad national counter-terrorism and emergency measures, and by the spurious use of terrorism claims as a basis to undermine participation by civil society in UN fora.
 - h. The Security Council should unambiguously exempt humanitarian action from its counter-terrorism measures and expressly clarify that humanitarian protection and assistance must never be conceptualised as support to terrorism and suppressed and criminalised on that basis.
 - i. UN counter-terrorism bodies must take greater responsibility and be more accountable for the human rights implications of the international counter-terrorism framework. As an initial point of contacts for States implementing UN Security Council resolutions, the CTC and CTED must engage more proactively with governments on the way in which national implementing measures may be in breach of international human rights law, particularly on measures that can impact on civil society, including the definition of terrorism and the criminalisation of legitimate expression and opinion. The CTC and CTED must refuse any visit where human rights issues are off the agenda, where it cannot bring a human rights expert, or where it cannot meet with local civil society actors. Increased transparency is critical to ensure that governments can be adequately held accountable for human rights violations presented as effective counter-terrorism measures.
 - j. The establishment of specialised counter-terrorism entities such as FATF and GCTF by states should be subject to the same form and depth of human rights compliance and oversight requirements as global and regional bodies established by treaty to regulate peace and security globally. The OCT and CTITF should ensure, prior to any formal cooperation with outsource entities, that they fully comply with human rights norms and standards, including the UN due diligence policy.
2. States must ensure that their measures to address the threats of terrorism and violent extremism and to protect national security do not negatively impact on civil society. In particular:
- a. States are encouraged to establish independent mechanisms to review and oversee the exercise of emergency powers, terrorism legislation, administrative measures related to terrorism, and legislation addressing violent extremism. The mandates of such independent mechanisms should specifically include the effects of such legal measures on the functioning and capacity of civil society.
 - b. Definitions of terrorism and of violent extremism in national laws must not be overly-broad and vague. They must be precise and sufficiently clear to avoid including members of civil society, or non-violent acts carried out in the exercise of fundamental freedoms. The protection of national security must be narrowly construed. Emergency measures must be strictly limited, and not be used to crackdown on civil society actors and stifle freedom of expression

- c. Legitimate expression of opinions or thought must never be criminalised. Non-violent forms of dissent, criticism of the State and of government action, are at the core of freedom of expression. Reporting on, documenting or publishing information about terrorist acts or counter-terrorism measures, are an essential aspect of transparency and accountability. The key role of the internet, particularly within repressive societies or for marginalised groups, must be recognised and protected.
- d. Damage to property, in the absence of other qualifications, must not be construed as acts of terrorism.
- e. Measures that aim to regulate the existence and control and limit the funding of civil society must comply with the requirements of proportionality, necessity and non-discrimination. The failure to comply with administrative requirements must never be criminalised.
- f. To ensure that regulatory measures relating to terrorism financing and removal of “terrorist content” comply with the principles of legality, proportionality, necessity and non-discrimination, and are subject to adequate oversight and accountability mechanisms, they should not be left to private actors.
- g. Humanitarian actors should be protected from any forms of harassment, sanctions or punishment resulting from measures to counter terrorism or violent extremism. Humanitarian action must be clearly exempt from measures that criminalise various forms of support to terrorism. States should consider broadening these exemptions to all civil society actors involved in supporting respect for international norms, including human rights representation and advocacy, training, conflict resolution, fact-finding and evidence gathering for the purposes of future prosecutions under international law, promoting the right to development and assistance to migrants.
- h. Judicial access and remedies must be available to all civil society actors impacted by terrorism sanctions regimes.

3. All national and institutional actors involved in countering terrorism and PCVE:

- a. Must be conscious of the serious indirect impact that overlapping, sustained and cumulative measures have on civil society, notably in creating a chilling effect that will affect all actors even without direct targeting. Particular care must also be had to avoid the stigmatisation, marginalisation, co-optation, and exclusion of civil society, as well as securitisation of its work.
- b. Are encouraged to pay greater attention to the impact of the increased regulation of the ‘pre-’ and ‘post-’ criminal space and its effects on civil society actors, notably through the development and use of various lists of broad categories of vaguely-defined individuals such as “terrorists” and “foreign terrorist fighters” that are shared between jurisdictions.

4. Civil society must find creative ways to raise awareness to the global crisis it faces as a result of the global security framework. In particular:
 - a. It must sustain and deepen its engagement with the global counter-terrorism architecture, including UN agencies and bodies that are traditionally seen as dealing with security-related issues, as well as with new outsource entities, such as FATF and the GCTF.
 - b. It must look at innovative ways to find entry points at the national level for oversight and accountability purposes.
 - c. It should continue to report on, analyse, and raise awareness to the impact of these measures in a systematic and open manner.