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**Promotion and protection of all human rights, civil  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders\***

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

The Secretary-General has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ni Aoláin, submitted in accordance with General Assembly resolution 73/174 and Human Rights Council resolutions 31/3 and 37/27.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

*Summary*

This report addresses the human rights challenge of the use of counter-terrorism, countering extremism and preventing extremism measures and practices on the protection of human rights for civil society and human rights defenders. The report further tackles the global challenges of protecting civic space resulting from counter-terrorism law and practice. Since 2001 civil society space has been shrinking around the globe. 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, and its members are simply unable to carry out their work, either because they are detained, tried, or threatened or submitted to various restrictions on their ability to express themselves, to meet, or to operate. The shrinking space for civil society is indisputably linked to the expansion of security. The Report gives an empirically based assessment of the scale of misuse as well as identifying trends and patterns in state practice. Targeting civil society violates human rights and makes for inept and poorly executed counter-terrorism practice. It undermines the fundamental interests of all states and must be urgently addressed.

## I. Trends and Patterns in the Use of Counter-Terrorism Measures Against Civil Society Actors and Human Rights Defenders

1. Since 2001, civil society space has been shrinking around the globe. 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, and its members are simply unable to carry out their work, either because they are detained, tried, or threatened or submitted to various restrictions on their ability to express themselves, to meet, or to operate. The shrinking space for civil society is a structural global challenge.

2. 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.<sup>1</sup> This trend has accelerated in recent years, with the International Center for Not-for-Profit Law recording the adoption of 64 restrictive laws on civil society from 2015-2016 alone.<sup>2</sup> According to Front Line Defenders, at least 321 HRDs were killed in 2018.<sup>3</sup> Other key violations contributing to closing 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.<sup>4</sup>

3. Between 2001 and 2018, at least 140 governments adopted counter-terrorism legislation.<sup>5</sup> New and multiple legislative as well as administrative measures are defended by reference to new or perceived threats, or simply to comply with new international requirements. 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 9/11.<sup>6</sup>

4. The link between assaults on civil society and security frameworks can be seen in the following trends and figures. Since its inception, 66 percent of all relevant communications<sup>7</sup> sent by this mandate related to the use of counter-terrorism, PCVE or broadly defined security-related measures on civil society. This is an extraordinarily high figure, which underscores the abuse and misuse of counter-terrorism measures against civil society and human rights defenders since 2005. In the last two years, the number is slightly higher, at 68 percent. 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 from the mandates' data 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.<sup>8</sup> Front Line Defenders documented that of the cases it dealt with in 2018, 58 percent

<sup>1</sup> Civicus, *People Power Under Attack*, 27 November 2018.

<sup>2</sup> ICNL *Global Trends in NGO Law*, Survey of trends affecting civic space, volume 7 issue 4.

<sup>3</sup> Front Line Defenders, *Global Analysis* 2018.

<sup>4</sup> Civicus, *People Power Under Attack*, 27 November 2018 and Front Line Defenders, *Global Analysis* 2018.

<sup>5</sup> CSIS, "Counterterrorism measures and civil society: changing the will, finding the way", March 2018.

<sup>6</sup> Letta Tayler, "Overreach: How New Global Counterterrorism Measures Jeopardize Rights", Human Rights Watch, 2017.

<sup>7</sup> 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 be noted that these figures reflect only the cases that have been submitted directly to the SR. Methodologically this numbers likely reflect substantial under-reporting.

<sup>8</sup> "Targeting the Messenger: Journalists ensnared by national security legislation 2014-2018", Special Report, January 2019.

of those HRDs charged were charged under security legislation.<sup>9</sup> My mandate, for its part, finds that over 67 percent of all communications sent about civil society in 2018 related to alleged proceedings under counter terrorism or other broad security-related charges. These findings demand 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 attendant human rights violations.

## A. Counter-Terrorism Architecture, Security Imperatives and Civil Society

5. It is no coincidence that the proliferation of security measures to counter-terrorism and to prevent and counter violent extremism (PCVE), on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously.<sup>10</sup> Ramping up security space leading to the narrowing of civic space can be directly traced back to the international security-focussed dynamic started in 2001, and the embedding of international matrixes to authorize and sustain security measures.

6. The determination with which the international community took draconian measures post-9/11 and the blanket approach to counter-terrorism legislation which left no room for a determination of the necessity and proportionality of the measures, revealed a global consensus on a zero-risk imperative to countering terrorism. Despite the advice given by the late Secretary-General Kofi Annan to SC to ensure that counter-terrorism measures “do not unduly curtail human rights, or give others a pretext to do so”,<sup>11</sup> the Council’s binding legislative resolutions<sup>12</sup> 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, post-2001 has seen the emergence of new entities intrinsic to the global counter-terrorism architecture, whose oversight and relationship to traditional regulatory bodies remains opaque and under-regulated. Here, the obscure 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”<sup>13</sup> and has caused “incalculable damage to civil society.”<sup>14</sup>

7. 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 led to targeting civil society members questioning the legitimacy of these measures. Loose international frameworks, requiring national implementation, provided governments the means to secure their own power by silencing voices questioning their legitimacy or their policies on human rights grounds. As the phenomena being tackled are undefined or vaguely defined, existing matrixes allow States to qualify threats to themselves as terrorism, violent extremism, extremism, or even more broadly threats to national security.<sup>15</sup> The first SR 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”.

8. In many parts of the world any form of expression that articulates a view contrary to the official position of the state, addresses human rights violations and opines on ways to do things better in accordance with international human rights obligations, constitutes a form of

<sup>9</sup> 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%. Front Line Defenders, Global Analysis 2018.

<sup>10</sup> G.A. resolution 68/181.

<sup>11</sup> First SC Open Debate on counter terrorism, January 2002.

<sup>12</sup> Notably resolutions 1373 (2001), 2178 (2014) and 2396 (2016). See A/73/453.

<sup>13</sup> A/70/371, para 24.

<sup>14</sup> Lauren Mooney, “Counter-Terrorism Measures and Civil Society: Changing the will, finding the way”, CSIS, March 2018, p.5.

<sup>15</sup> In March 2002, seventeen SRs and independent experts of the Commission on Human Rights and the former High Commissioner for Human Rights challenged this approach. Introductory statement by Mary Robinson, Commission on Human Rights, 20 March 2002.

terrorist activity, violent extremism, or a very broad “threat to national security”, which often encompasses both terrorism and extremism. 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,<sup>16</sup> and others investigating individuals involved in peaceful protests against climate change as a form of terrorism<sup>17</sup> or branded as “eco-terrorists”.<sup>18</sup> Journalists have been particularly targeted by counter-terrorism and extensive security legislation.<sup>19</sup>

9. Rooted in the primacy of security imperatives, sustained measures to silence and even choke civil society have been taken. It is essential to grasp the serious impact of the cumulative sustained effect of these measures across these categories, from the global to the local, individually, and collectively, which have both been enabled to proliferate by internationalised security framework, and worked in tandem to undermine civil society and civic space.

10. Even though States often justify measures against civil society through broad invocations of countering terrorism, PCVE, or national security, targeting civil society actors is wholly inconsistent with meaningfully attending to these genuine threats. Recent research showed that there is no evidence that legal restrictions on civil society reduces the number of terrorist attacks within a country.<sup>20</sup> Civil society restrictions do not make a country safe from terrorist attacks; the security rhetoric does not achieve the expected outcomes.<sup>21</sup> This means that such measures would fail wholesale at any proportionality and necessity tests.

11. Targeting civil society actors is wholly inconsistent with meaningfully attending to genuine terrorist threats. 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, where the UN Secretary-General stated that “civil society is central to (...) our broader counter-terrorism strategies”,<sup>22</sup> the Representative of Finland stated that “civil society and religious communities play a significant role in preventing violent extremism and countering terrorism”,<sup>23</sup> the Representative for Fiji, who 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”,<sup>24</sup> 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”.<sup>25</sup>

## B. The Value of Civil Society in Countering Terrorism

12. Beyond the political rhetoric, recent studies<sup>26</sup> demonstrate the necessity of civil society to channelling discontent and allowing for constructive engagement with States, but

<sup>16</sup> CSIS, “Counterterrorism measures and civil society, Changing the will, finding the way”, March 2018, p.6; Communication 12-2018.

<sup>17</sup> Adam Federman, “Revealed: FBI kept files on peaceful climate change protesters”, The Guardian, 13 December 2018.

<sup>18</sup> Justine Calma and Paola Rosa-Aquino, “The term ‘eco-terrorist’ is back and it’s killing climate activists”, Grist, 2 January 2019.

<sup>19</sup> Mapping Media Freedom, “Targeting the Messenger: Journalists ensnared by national security legislation 2014-2018”, Special Report, January 2019.

<sup>20</sup> UNDP, *Journeys to Extremism in Africa: Drivers, Incentives and the Tipping Point to Recruitment* (2018)

<sup>21</sup> 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.

<sup>22</sup> <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/26june-sgoped-counterterrorism-EN.pdf>

<sup>23</sup> <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Finland-opening-statement.pdf>

<sup>24</sup> <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S4-Fiji.pdf>.

<sup>25</sup> <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S3-Canada.pdf>.

<sup>26</sup> UNDP, *op cite* 20.

also in directly undermining the factors leading individuals to be drawn to terrorism and violent extremism, the conditions conducive to terrorism as identified by the UN Global Counter-Terrorism Strategy,<sup>27</sup> and in the UN's new agenda on preventing and countering violent extremism.<sup>28</sup> Through their presence in areas where the State is unable or unwilling to govern, civil society often plays an intermediary role through its credibility and access to remote communities, and can meaningfully generate peace and development, including implementation of the Sustainable Development Agenda 2030 speaking directly to the sources of grievances identified as factors leading to terrorist and extremist violence. As recruitment in certain regions is localised, with its invaluable knowledge of local drivers and local trends, civil society can help fill a government gap, by providing alternative narratives, and developing locally-driven initiatives that respond to community specific needs.

13. Further, it now clear that government action can be a prominent accelerator of recruitment.<sup>29</sup> By requesting State transparency and by promoting effective accountability where human rights violations have been committed by both State and non-State actors, civil society restores confidence in national and international counter-terrorism efforts and the essential yet fragile trust between individuals, communities and the authorities in countering terrorism. Civil society can also meaningfully assist in channelling the grievances and desperation exploited by terrorist and violent extremist groups, providing peaceful alternatives and improving relationships between the State and its citizens.

14. The cost of stifling civil society to prevent any perceived threat of terrorism far outweighs its benefits. Any effective counter-terrorism strategy needs to strengthen, not weaken, civil society. There is growing evidence that the instrumentalisation of counter-terrorism and PCVE agendas is leading to a lack of trust in State authorities. By contrast, civil society can be seen as an impartial actor. A strong, resilient and vibrant civil society is both a sign of an open and inclusive society, and a buffer against repressive State practices and impunity. Restricting civil society's ability to operate is short-sighted, ineffective and futile and can itself be a contributing factor to violence.

15. This report first examines the role played by the international framework (II) in allowing restrictive measures to develop and proliferate at 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).

## **II. The Impact of the Global Matrixes that Regulate Counter-Terrorism, PVE and National Security on Civil Society**

### **A. The Security Council**

16. The SR has previously focused on the role of SC in the development of post-9/11 international counter-terrorism frameworks and their impact on human rights (A/73/453). The human rights consequences of both the regulatory requirements contained in SC 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 and are addressed here.

#### **(1) Procedural aspect**

17. SC resolutions regulating 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). SC resolution 2178 (2014) is the first to refer

<sup>27</sup> GA resolution 60/288, Annex, Pillar I.

<sup>28</sup> SC resolution 2178 (2014); UN Secretary-General's Plan of Action to prevent violent extremism, A/70/674.

<sup>29</sup> Institute for Economics and Peace, "2017 Global Terrorism Index", November 2017, p. 3.

to civil society in its operative part.<sup>30</sup> SC resolution 2396 underscores the positive role that civil organisations play in the health, education, social and welfare sectors in the context of rehabilitation and reintegration of foreign terrorist fighters and their families, and encourages States to engage with them proactively in this context.

18. The mandate cautions against co-opting civil society into international and national State-led security agendas, promoting limited engagement with civil society on specific issues, and allowing key constituencies, including women, to be instrumentalised and empowered solely in furtherance of a broader security agenda. Instead, the Council should positively promote civil society's key role as a force for change and remind States of their obligations to respect and protect it.

**(2) Key human rights issues: Lack of definitions of terrorism and of violent extremism**

19. The SC'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 precisely, is an issue has been honed on by this mandate from its inception,<sup>31</sup> as it is at the source of some of the most egregious human rights violations, and central to the challenges faced today by civil society. Similarly, references made by SC to "terrorists" as a category of individuals separated from the criminal acts<sup>32</sup>, or to "terrorism in all its forms and manifestations" as one of the most serious threats to international peace and security without further qualification<sup>33</sup> 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.<sup>34</sup>

**(3) Terrorism sanctions and the criminalisation of various forms of support to terrorism**

20. While targeted sanctions can be useful to address terrorism financing, they can also severely hamper the work of humanitarian and other civil society organisations (CSOs) or be used to maliciously target them. The mandate has already noted how abusive designations have been made easier by the broadened criteria introduced by resolution 1617 under the targeted terrorism sanction regime.<sup>35</sup> Although the 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 it has referenced medical activities as part of the basis for listing two individuals and two entities.<sup>36</sup> 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/group, including CSOs, under the legitimising umbrella of SC.<sup>37</sup>

**(4) The absence of exemption clauses for civil society actors**

21. In both its legislative and its sanctions legs, SC disallows almost entirely any form of loose support to terrorism or to terrorist groups. While the UN administered sanctions regime provides for humanitarian exemptions, national and regional regimes are not required to provide for humanitarian exemptions, thereby leaving it up to individual States to include

<sup>30</sup> 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.

<sup>31</sup> E/CN.4/2006/98, A/HRC/16/51, A/73/453.

<sup>32</sup> Inter alia resolution 2170 (2014).

<sup>33</sup> Resolution 2178.

<sup>34</sup> A/HRC/16/53/Add.1 paras 99-106; Human Rights Committee, General Comment No.34, (2011), para. 46.

<sup>35</sup> A/73/453, para 19. See previously from this mandate: A/65/258, A67/396, A/HRC/34/61.

<sup>36</sup> Alice Debarre, "Safeguarding medical care and humanitarian action in the UN counterterrorism framework", IPI September 2018.

<sup>37</sup> The SC very loosely defines 'support' to terrorism. See, UNSCR 1373(para. 1(d)).

them, or not, in their own national provision.<sup>38</sup> The GA urges States to ensure that counter-terrorism measures do not impede humanitarian activities or engagement.<sup>39</sup> Humanitarian exemptions are critical in protecting civil society actors operating in challenging environments where terrorist groups are active from sanctions regimes and counter-terrorism measures.<sup>40</sup>

22. The mandate fully supports the recommendation of the SR on summary executions that SC 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.<sup>41</sup> The SR further recommends that adequate remedies at all levels be available and accessible to all civil society actors impacted by sanctions, not solely humanitarian actors.

**(5) Measures limiting the movement of ‘foreign terrorist fighters’ and ‘terrorists’**

23. 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.<sup>42</sup> Given the wide number of individuals that can be caught in the resolutions’ broad net, there is evident concern that some States will abuse the systems set up by 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 rights (e.g. freedom of expression and association, freedom of movement, respect for the right to privacy and family life, various due process rights, and the right to non-discrimination). It will also, through the various provisions on sharing of information across borders, internationalise their ‘undesirability’.

24. A worrying development is the breadth of some of the measures in resolutions 2178 and particularly 2396, which can, through the application of disjunctive standards extend beyond ‘foreign terrorist fighters.’ In several instances, resolution 2396 loosely categorizes individuals as ‘terrorists’, and ‘foreign terrorist fighters’, giving great leeway to implementing States to apply measures to a range of individuals.<sup>43</sup> The mandate welcomes the Addendum to the Madrid Guidelines (December 2018), including the specificity and breath of human rights language and advice contained in this important document. Despite these considerable advances, while terrorism remains opaquely defined, and states have complete discretion to define terrorism and violent extremism in national law, the risks to civil society and human rights defenders remain.

**(6) Using the internet for terrorist purposes**

25. Additional to SC resolution 1624 (2005) mandating States to take measures to outlaw terrorism incitement, resolutions 2178 (2014) and 2396 (2017) expressed concern over the increased use of communications technology for recruiting and incitement purposes through the internet. The resolutions advance state cooperative action while formally respecting human rights and fundamental freedoms. Measures countering violent extremism online may touch upon multiple 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, the right to a family life and health-related rights. They can also seriously impinge on the right to freedom of religion, as noted by the SR on freedom of religion, reporting 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 increasingly face capricious arrest and prosecution. The securitization of online activity

<sup>38</sup> A/70/371, para. 32.

<sup>39</sup> A/RES/72/284, para. 79.

<sup>40</sup> Norwegian Refugee Council, “Principles under pressure”, 2018.

<sup>41</sup> A/73/314, para. 52. Exemptions exist, but can be limited. See A/70/371 and A/73/314 para. 51.

<sup>42</sup> A/HRC/29/51; A/73/453.

<sup>43</sup> UNSC resolution 2396, OP 5

provides a wide margin of operation for national authorities against civil society without proper scrutiny.<sup>44</sup>

26. Electronic modes of expression are a critical means for civil society to exercise their freedom of opinion and expression, and is particularly important in repressive societies. Restricting such platforms – blocking, filtering or removing content – can affect civil society, journalists, human rights defenders and others, disproportionately.<sup>45</sup>

27. Enjoyment of the rights to privacy and to freedom of expression are closely interrelated. Undue interference with the right to privacy limits the free development and exchange of ideas,<sup>46</sup> and can have a chilling effect on freedom of expression. Civil society may refrain from online exchange, for fear of attracting government interest. Restrictions have a particularly negative impact on journalists and human rights defenders who fear accusations of ‘spreading terrorist propaganda’.

## B. The General Assembly and the Human Rights Council

28. The Global Counter-Terrorism Strategy (2006), was the GA’s balanced approach to then pervasive security first approaches to counter-terrorism. By stating that human rights are ‘the fundamental basis of the fight against terrorism’ the Strategy places human rights at its centre, as the thread that runs through its entirety. The Strategy reaffirms the inextricable links between human rights and security. 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.<sup>47</sup> 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 civil society’s role in Strategy implementation. This debate has persisted throughout subsequent reviews, leading a number of countries to object to stronger language on civil society engagement. In its latest incarnation, the resolution encourages civil society interaction with States and the UN to enhance the Strategy implementation “as appropriate”, and encourages enhanced engagement with civil society.<sup>48</sup> NGOs rightly noted that “at a time when civic space is being essentially eroded around the world ... 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 ... States can and should do better, and make sure the UN does too”.<sup>49</sup>

29. Of significant concern to the Mandate is the adoption of resolutions, in the GA and the HRC,<sup>50</sup> on the effects of terrorism on human rights. These resolutions function to instrumentalize victims in order to bolster the need for greater counter-terrorism measures and thus weaken the international system as a whole.<sup>51</sup> It is of even greater concern that the GA 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.<sup>52</sup> Positively the new, ‘streamlined,’ resolution retains some key aspects relating to civil society from the last resolution,<sup>53</sup> namely that States must safeguard the work of civil society,<sup>54</sup> and that measures to counter-terrorism do not hinder the work and

<sup>44</sup> A/73/362, para. 49.

<sup>45</sup> International Principles on the Application of Human Rights to Communications Surveillance (2014), available online at <https://necessaryandproportionate.org/principles> .

<sup>46</sup> A/HRC/23/40, para. 24.

<sup>47</sup> See OP 3 (e) of the GCTS.

<sup>48</sup> A/RES/72/284.

<sup>49</sup> Global Group of NGOs Deplore Lack of Attention to Human Rights in Latest Review of UN’s Global Counterterrorism Strategy by UN Member States, Press Release, 11 July 2018

<sup>50</sup> A/RES/72/246; A/HRC/31/L.13.

<sup>51</sup> Article 19, “UNHRC 31: Egypt-led “terrorism” resolution is a danger to human rights”, 31 March 2016.

<sup>52</sup> A/C.3/73/L.43/Rev.1.

<sup>53</sup> A/RES/72/180.

<sup>54</sup> OP 12.

safety of these organisations, in international law.<sup>55</sup> Regrettably, some of the key human rights gained during the drafting process of the “Protection of human rights” resolutions have been lost. Given the range of measures that can impact civil society actors, the GA must address the deficits that have followed from the merger.

### C. Role of new global outsource entities

30. In contradistinction to the UN counter-terrorism framework, which despite administrative flaws is an inclusive regulatory structure including all UN Member States and operating within the legal structure of the UN Charter, a number of opaque and inaccessible outsource entities lacking global legitimacy have consolidated within the counter-terrorism architecture. As these entities - initially - respond to the particular counter-terrorism interests of selected States, they included a narrower set of perspectives and inputs. They are largely characterised by the development of ‘soft law’ standards and practices, often uninformed by human rights law, and without input from civil society. The exclusion of civil society from these highly influential regulatory bodies underscore the patterns of exclusion and accountability gaps highlighted throughout this report. Via a process of “exportation/integration” to other structures and through national implementation these entities have enabled global regulation that might not have emerged had formal law-making processes been fully complied with. This process, raises fundamental concerns about transparency, fairness, sovereignty and oversight. The proliferation of these bodies and norms – importing language from one another – contribute to increased fragmentation of global counter-terrorism regulation in under-appreciated ways.

31. For example, the mandate of Financial Action Task Force was extended to include the prevention of terrorism financing in the weeks following 9/11, without any consultation with national parliaments or civil society. Its Recommendation 8,<sup>56</sup> which aims to protect NPOs from terrorist financing abuse, was premised on an alleged high vulnerability that CSOs had to terrorism financing.<sup>57</sup> Many measures States were asked to take 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.<sup>58</sup> Despite obvious risks of this measure and its lack of reference to human rights, there was no consultation with civil society. Without due respect for their international human rights obligations,<sup>59</sup> 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 has been widely disputed and its significance minimized, including by this mandate.<sup>60</sup>

32. Similarly, the Global Counter-Terrorism Forum (GCTF) is an informal regulatory body established by 29 States plus the EU. By bringing together experts and practitioners and develop tools and strategies, it has the laudable overarching mission of reducing the vulnerability of people worldwide to terrorism. It deals with numerous issues having immediate relationship with human rights.<sup>61</sup> While the GCTF notes its support to the UN Global Counter Terrorism Strategy, which has a strong human rights component, starkly and

<sup>55</sup> OP 28.

<sup>56</sup> FATF has issued forty non-binding Recommendations, plus Interpretative Notes, Best Practices, and a Handbook for Countries and Assessors.

<sup>57</sup> Initial Interpretive 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.”

<sup>58</sup> See Interpretative Note point 5(b)(vii).

<sup>59</sup> A/70/371, para. 26.

<sup>60</sup> A/70/371, paras 22-24.

<sup>61</sup> <https://www.thegctf.org>

surprisingly, it has no structural commitment to human rights protections.<sup>62</sup> Occasional and generic references to human rights in GCTF documents do not assuage these profound concerns. The GCTF also lacks accessibility for a wide range of actors, including civil society, that ought to be meaningfully consulted on these topics. The closed nature of GCTF should spark concern for all states (particularly those excluded from this body) as well as demonstrating the broader pattern of civil society exclusion from global counter-terrorism governance. The lack of inclusion has an organic relationship with the downstream targeting, marginalization and discrimination experienced by civil society actors and human rights defenders.

### III. Typology of National Measures and Trends Impacting Civil Society

33. The security pandemic has translated into various measures that States have taken curbing civic space which cannot be seen in topical, temporal or geographical vacuums. This is, first, because the lack of adequate definitions is central to the global closing of civic space and underpins most of the subsequent challenges at national level. Second, because there is a clear interaction between multiple measures taken to close civic space. For example, campaigns to discredit civil society can precede the adoption or arbitrary application of legislation. Third, because 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. Overly broad definitions of Terrorism

34. A defining trend from national implementation of SC counter-terrorism framework is the global emergence of overly broad and vague definitions of terrorism.<sup>63</sup> As foreseen, these carry the potential for unintended human rights abuses, and have been deliberately misused to target a wide variety of civil society groups, persons and activities.<sup>64</sup> 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.<sup>65</sup>

35. In some States, legislation to curb violent extremism, extremism, ‘extremist activity’, or even ‘extremification’ are emerging.<sup>66</sup> As the core concept of extremism is context-dependent, which means that its definition can easily be challenged and manipulated,<sup>67</sup> and conceptually weaker than the term terrorism that has an identifiable core.<sup>68</sup> Such laws are likely to criminalize legitimate expression, including controversial viewpoints and information of legitimate public interest,<sup>69</sup> and restrict freedom of religion or belief.<sup>70</sup> Criminal prosecutions and the use of administrative measures are unsurprisingly increasing against civil society members.<sup>71</sup>

<sup>62</sup> 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 it is unclear how this occurs.

<sup>63</sup> Recent examples include: HND 8-2016; GTM 3-2018; LKA 3-2016;

<sup>64</sup> A/HRC/16/51, para. 26.

<sup>65</sup> See e.g. PAK 4-2016, CHL 2-2018, PHL 5-2018, PAK 11-2016; SAU 12-2017; TUR 3-2018.

<sup>66</sup> RUS 19-2018; RUS 15-2018; CHN 21-2018, TUR 12-2018.

<sup>67</sup> 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.

<sup>68</sup> A/70/371.

<sup>69</sup> CCPR/CO/79/RUS, paras. 20-21.

<sup>70</sup> 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.

<sup>71</sup> CoE, “Misuse of anti-terror legislation threatens freedom of expression” 6 December 2018

## B. Legislation criminalising the legitimate exercise of fundamental freedom

36. National legislative counter-terrorism 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.<sup>72</sup> The HRC 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”.<sup>73</sup> The potential for adverse impact of such measures is exacerbated when applied to online-based forms of expression, whether social media posts, pictures, articles, blogs or videos.<sup>74</sup>

37. While incitement to terrorism is prohibited under international law,<sup>75</sup> many laws criminalise acts which often lack in precision 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’,<sup>76</sup> ‘apologie’,<sup>77</sup> ‘advocacy’, ‘praising’, or ‘encouragement’ of, and ‘propaganda’ for, terrorism.<sup>78</sup> 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.<sup>79</sup> Consistent with the Rabat Plan of Action,<sup>80</sup> the threshold for these inchoate crimes requires 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.<sup>81</sup>

38. The SR is very concerned about the EU Commission Proposal for a Regulation on preventing the dissemination of terrorist content online.<sup>82</sup> The definition contained in Article 2(5) of the Proposal, building on the crime of ‘public provocation to commit a terrorist offence’ contained in the EU Directive on combating terrorism (already considered as violating the principles of legality and of proportionality,<sup>83</sup>) omits the element of intent altogether.

39. In some States, any verbal criticism of the State, the government or its authorities is considered as an act of terrorism. This mandate notes that such regulation stifles dissent and 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 that they will be prosecuted if they engage in these broadly defined activities.<sup>84</sup>

40. Many states have legislated counter-terrorism and security provisions preventing reporting on or publicly discussing acts of terrorism, through the criminalisation of *inter alia* ‘publication of news or other material likely to promote terrorism’, or the ‘propagation of false information’. Such measures seriously limit transparency and accountability of government officials and security forces for human rights violations in the course of countering terrorism, and can have a particularly negative impact on journalists and human rights defenders. Similarly, the criminalization of watching online ‘terrorist’ or ‘extremist’

<sup>72</sup> GBR 7-2018; AUS 2-2018.

<sup>73</sup> A/HRC/RES/7/36.

<sup>74</sup> A/71/373, para. 36.

<sup>75</sup> UNSCR 1624 (2005).

<sup>76</sup> Amnesty International, “Tweet... if you dare”, March 2018.

<sup>77</sup> Le Monde, “1847 délits d’apologie et de provocation au terrorisme enregistrés en 2016”, 19 January 2017. **FRENCH REPORT** on apologie – currently para 17.

<sup>78</sup> Communication TUR 13-2018.

<sup>79</sup> A/HRC/31/65, para. 39.

<sup>80</sup> A/HRC/22/17/Add.4.

<sup>81</sup> Rabat Plan of Action, UN Doc. A/HRC/22/17/Add.4, para. 29.

<sup>82</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.

<sup>83</sup> Amnesty International et al, ‘EU Counterterrorism Directive Seriously Flawed’, 30 November 2016, available at <https://www.hrw.org/news/2016/11/30/eu-counterterrorism-directive-seriously-flawed>.

<sup>84</sup>

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

content absent requiring terrorist intent can have a serious impact on civil society, notably investigative journalists, academic researchers, and human rights advocates.<sup>85</sup>

41. Laws that criminalise having ‘contacts’ or ‘corresponding’ with groups 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. Definitions of terrorism that include damage to property, including public property, also seriously affect the right to freedom of assembly, as in the absence of other qualifications, they can be used against individuals engaging in social movements, where damage to property is unwittingly incurred.<sup>86</sup>

### C. Legislation strictly regulating the existence of civil society

42. Often in the name of transparency, and to respond to the requirements of FATF Recommendation 8, many States have adopted legislation creating a complex legal environment that has the effect of limiting, restricting and controlling civil society. Such laws typically include obligations to register, burdensome, complicated, invasive procedures and regulations, provisions that threaten deregistration or even criminal prosecution.<sup>87</sup> These measures are often taken administratively. Any ex-post judicial recourse can be very difficult.<sup>88</sup> Profound limitations on access to foreign funding have severely restricted the existence of NGOs that are often wholly dependent on foreign funding, particularly impacting human rights and women’s organisations.<sup>89</sup> Some laws link NGOs that receive foreign funding to ‘foreign agents.’ Such legislation stigmatises and marginalises NGOs and delegitimising their work.<sup>90</sup> Security considerations have been consistently used to justify such measures with no objective verification of such claims.

### D. Measures that limit various forms of support to terrorism

43. A web of interwoven international and national, public and private, regulations and requirements is emerging placing immense pressure on civil society actors operating particularly, but not limited to, areas where terrorist groups are active.<sup>91</sup> By qualifying a wide range of acts as impermissible ‘support to terrorism’, counter-terrorism measures are found in laws that apply extra-territorially as well as in various donor agreements nefariously restricting access to populations in areas controlled by non-State armed groups and support to groups and individuals designated as terrorist. This results in harassment, arrest, and prosecution of humanitarian, human rights, and other civil society actors.

44. This typically touches life-saving humanitarian activities, including food and medical assistance.<sup>92</sup> Here, 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.<sup>93</sup> Material support provisions may also impact on the work of civil society involved in supporting *inter alia* fact-finding and evidence gathering for the purpose of prosecution, promoting the right to development, or assistance to migrants.

<sup>85</sup> OL GBR 7/2018, 17 July 2018.

<sup>86</sup> Front Line Defenders, Global Analysis 2018, p. 7.

<sup>87</sup> Ben Hayes, Counter-Terrorism, ‘Policy Laundering and the FATF: Legalising Surveillance, Regulating Civil Society’, Transnational Institute/Statewatch, 2012.

<sup>88</sup> A/HRC/38/34, para. 28 and 29.

<sup>89</sup> A/HRC/23/39, paras. 8-18, GA resolution 53/144, annex, Article 13.

<sup>90</sup> A/HRC/23/39, para. 20. See also Communications RUS 2-2018 and RUS 15-2018.

<sup>91</sup> A/70/371, paras. 31-44.

<sup>92</sup> Alice Debarre, ‘Safeguarding medical care and humanitarian action in the UN counterterrorism framework’, IPI September 2018.

<sup>93</sup> S/2009/277, para. 45.

## **E. Indiscriminate legislation choking civil society**

45. Emboldened by pervasive security rhetoric, the last few years have seen the emergence of 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.

46. 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, including ‘affecting national security, political and social stability’, and ‘dangerous to the political, economic or social system’. Many of the activities of CSOs, human rights defenders, journalists, bloggers, political opponents will fall under such laws whose main objective is to criminalise legitimate expressions of opinions and thoughts.

47. 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 only, 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” of armed organisations and “assisting a terrorist group”.<sup>94</sup>

## **F. Increased use of administrative measures**

48. Administrative measures are increasingly used by States to address various terrorism and security threats. For example, many laws adopted post SC 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.<sup>95</sup>

## **G. Devolution of regulation to private actors**

49. One significant concern is the increased use of measures that subcontract regulation and implementation to private actors which have had until recently 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 on fundamental rights and freedoms necessary for the existence of civil society for two main reasons. First, because 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.

50. 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 in the field of terrorism, have been particularly affected by legislation that imposes to take down “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

<sup>94</sup> TUR 14-2018.

<sup>95</sup> Human Rights Watch, ““Foreign Terrorist Fighter” Laws: Human Rights Rollbacks Under UN SC 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#>

Facebook, which equates all non-state groups that use violence in pursuit of any goals or ends to terrorist entities, a matter which the mandate has addressed bi-laterally with Facebook.<sup>96</sup>

51. Financial institutions have been similarly burdened by measures that address access to banking services for the purpose of countering the financing of terrorism.<sup>97</sup> In many countries, governments have turned to financial institutions for the implementation of new standards, drastically increasing the levels of regulatory compliance for financial institutions. Typically, these processes involve an administrative decision against a financial institution,<sup>98</sup> while the implementing decision that impacts on the right to access resources for civil society result from the operation of a private contract between the financial institution and its customer. As failure to comply can be very costly for financial institutions leading to punitive action, many risk-averse banks have implemented protocols shielding them from any risk of liability under counter-terrorism legislation. Over-regulation has translated into refusing to deal with civil society actors operating in or with “high-risk” environments or actors,<sup>99</sup> limiting access to financial services, refusal to open or arbitrary closure of bank accounts, inordinate delays or termination of transactions, and onerous administrative requirements.<sup>100</sup>

52. 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 SR, 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.

## H. Overlapping, cumulative and sustained forms of harassment

53. Civil society actors of all walks of society – academics, prominent human rights defenders, such as Ms. Amal Fathy, a member of the Egyptian Commission for rights and freedoms,<sup>101</sup> Mr. Cemil Tekeli, professor of law at Medeniyet University in Istanbul and a member of the International Jurists Union<sup>102</sup> Mr. Taner Kilic, Chair of Amnesty International Turkey,<sup>103</sup> Mr. Saeed Baloch is the General Secretary of the Pakistan Fisherfold Forum and a member of the Human Rights Commission of Pakistan,<sup>104</sup> as well as individuals working for national and international NGOs, bloggers, writers, lawyers, translators, doctors, artists, film directors, such as Mr. Oleg Sentsov,<sup>105</sup> 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,<sup>106</sup> are increasingly subjected to a range of overlapping harassment measures broadly linked to countering terrorism. Importantly, multiple 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. The ensuing exponential cumulative impact aims to discredit civil society as a whole.

<sup>96</sup> “UN human rights expert says Facebook’s ‘terrorism’ definition is too broad”, 3 September 2018.

<sup>97</sup> See A/70/371, paras. 42-44.

<sup>98</sup> See e.g. France; CODSSY, “Defense d’aider? Comment les institutions financieres francaises entravent l’action humanitaire en Syrie”, Avril 2018.

<sup>99</sup> See Financial Times, Regulation: bank counts the risks and rewards”, 14 November 2014, available at: <http://www.ft.com/cms/s/0/9df378a2-66bb-11e4-91ab-00144feabdc0.html#axzz3J2G48VEu>.

<sup>100</sup> A/HRC/23/39/Add.1, para 84.

<sup>101</sup> EGY 14-2018

<sup>102</sup> ISR 5-2018

<sup>103</sup> TUR 1-2018.

<sup>104</sup> PAK 4-2016.

<sup>105</sup> RUS 16-2018.

<sup>106</sup> USA 2-2017.

## I. Media campaigns

54. Contained within concerted efforts 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,<sup>107</sup> whose objective is to delegitimize civil society and tarnish their reputation, by loosely characterising them as ‘terrorists’, implying that they are ‘threats to national security’ or ‘enemies of the State’, even by lobbying other States or through international fora. Such methods, increase the vulnerability of all civil society actors contributing to the perception that they are legitimate targets for abuse by State and non-State actors.<sup>108</sup>

## J. Physical harassment

55. An extensive range of civil society actors are increasingly subjected to serious violations of non-derogable rights. Multiple communications received by the mandate allege the use of torture,<sup>109</sup> arbitrary detention,<sup>110</sup> sometimes followed by illegal deportation,<sup>111</sup> incommunicado and secret detention<sup>112</sup> enforced disappearances,<sup>113</sup> including by secret services operating on foreign soil.<sup>114</sup> Some extremely serious measures, such as mass detention, impact on entire religious and minority groups, thereby affecting members of civil society as well.<sup>115</sup>

## K. Judicial harassment

56. There is increasing use of spurious criminal proceedings under security legislation against civil society.<sup>116</sup> In many cases, it appears that charges under security legislation apply to legitimize other measures taken against civil society actors, such as house raids, arrests, often lengthy detention, and travel bans.

## L. Group Persecution

57. Multiple allegations dealt with by the mandate refer to the systematic persecution and repression of certain religious, and ethnic minorities, including Ahmadis, Dalits, Uyghurs and Kazakhs, the Church of Scientology and Jehova’s Witnesses, through undue restrictions to their rights to freedom of religion or belief, freedom of expression and peaceful assembly, including dissolution or closure of their societies, organisations and entities, 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.<sup>117</sup> The SR 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

<sup>107</sup> Communication PHIL 4-2018.

<sup>108</sup> A/HRC/13/22, para.27.

<sup>109</sup> RUS 16-2018. See also A/HRC/WGAD/2017/46.

<sup>110</sup> RUS 15-2018; RUS 22-2018; RUS 17-2018, A/HRC/WGAD/2018/29.

<sup>111</sup> GAB 2-2018

<sup>112</sup> A/HRC/WGAD/2018/11, A/HRC/WGAD/2017/83, ARE 1-2018; CHN 15-2018.

<sup>113</sup> ISR 5-2018.

<sup>114</sup> TUR 6-2018, KSV 1-2018 and KSV 2-2018.

<sup>115</sup> CHN 21-2018.

<sup>116</sup> 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.

<sup>117</sup> Communications BHR 5-2016, PAK 11-2016, RUS 19-2018; RUS 22-2018; SAU 14-2018, CHN 21-2018.

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 incitement.<sup>118</sup>

58. Indigenous groups such as the Mapuche have been targeted, and in one case, the UN SR on the Rights of indigenous peoples, Ms. Victoria Tauli Corpuz, defined as a terrorist in a Government petition.<sup>119</sup> Such tactics are being used against women activists and human rights defenders. 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.<sup>120</sup> Human rights defenders experience reprisals for speaking to the HRC and in other international settings about the human rights situation in the country.<sup>121</sup>

## IV. Key effects on civil society

59. The 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, often under-examined negative impacts on civil society actors and on civic space. Those direct and indirect effects are set out here.

### A. Chilling effect

60. 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 CSOs. Similarly, the closure of CSOs, the impossibility to obtain registration or access funding, and an overload of bureaucratic requests, all limit civic space. 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, but also to send a message to all civil society actors that they are at risk should they continue their activities. The result is a weakened civil space infrastructure and limited engagement in sites of most need.<sup>122</sup> Women's organisations, which tend to be smaller and more informal, have been significantly more affected by these increased administrative requirements.<sup>123</sup>

### B. Stigmatisation

61. The stigmatization of civil society is a defining factor in closing down civic space as a result of the post-2001 security paradigms. The legitimacy of countering terrorism through the global counter-terrorism architecture has enabled some governments to re-brand civil society as "terrorists", "violent extremists", "threats to national security", and "enemies of the state", with de facto collusion by those bodies responsible for the oversight of these frameworks. Effective negative labelling sends a clear signal that civil society actors are legitimate targets for attacks and then legitimises the adoption of further restrictive measures. When civil society actors are negatively labelled, the stigmatisation can extend into the ability to find work and housing and other socio-economic rights. Family members can also be caught up and face similar stigma.

<sup>118</sup> A/73/362, para. 20.

<sup>119</sup> CHL 2-2018, CHL 3-2018, PHL 5-2018.

<sup>120</sup> NIC 4-2018.

<sup>121</sup> NIC 5-2018; PHL 5-2018.

<sup>122</sup> Kate Mackintosh and Patrick Duplat, *op.cit.* pp. 72 and 84.

<sup>123</sup> Jayne Huckerby, "Tightening the purse strings.: What Countering Terrorism Financing Costs Gender Equality and Security", (2017).

### **C. Financial marginalisation**

62. Where financial institutions' counter-terrorism regulations impact on CSO's, this raises physical risk to staff and offices, because larger amounts of cash are transported and used to enable ongoing operations.<sup>124</sup> Where financial services were refused/delayed, NGOs have had to scale down, or close altogether. Where bank accounts are refused/closed, the reputation cost for the NGO are severe. The effect of these measures ripples down, impacting on NGOs in-country partner organisations with delayed funds and unpaid salaries, as well as to their beneficiaries, in need of assistance. Multiple examples the mandate has come across confirm that these disproportionately impact Muslim charities, or charities working in Muslim-majority areas or States.<sup>125</sup>

### **D. Co-optation into discriminatory government agendas**

63. 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 programme focus and activities on PCVE. Real risks follow that civil society is co-opted into a top-down PCVE agenda for political or security objectives.<sup>126</sup>

### **E. Securitization**

64. Severe risks of securitization/instrumentalisation in development, education, good governance, democracy, or human rights promotion abound when the PCVE agenda is layered into the comprehensive agenda set out in the Global Counter Terrorism Strategy. Substantial risks ensue from further drawing humanitarian actors into a security-driven political agenda.<sup>127</sup> The securitization of aid since 2001, the increased conflation of humanitarian and political agendas, notably where terrorism sanctions exist (UNSCR 1844), reporting requirements that involve humanitarian actors (UNSCR 1916), as well as the increasing pressure for UN peace operations to engage more in counter-terrorism and PCVE, all have seriously under-examined consequences for humanitarian actors.

### **F. Exclusion**

65. It appears that those States engaging repressive policies against civil society at national level are aiming to spread these policies more broadly, actively working to silence criticism and opposition in international fora, including at the UN. This includes managing, denying and limiting civil society access to UN counter-terrorism bodies, agencies, processes and meetings. Worryingly, some States are also using accusations of terrorism sympathies as a fast track reason to exclude certain civil society members by closing applications or forcing withdrawal of accreditation to the UN to silence them.<sup>128</sup>

### **G. Accountability vacuum**

66. Despite the fact that measures adopted at all levels – from global to local - seriously impact on civil society, there appears to be a complete lack of accountability for global violations that are occurring, and very few mechanisms that can call out on State abuse and remedy the deep lacunae that have developed since 2001.

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<sup>124</sup> A/70/371, para. 42.

<sup>125</sup> A/HRC/6/17, para. 42 and A/73/314, para. 40.

<sup>126</sup> Norwegian Refugee Council, "Principles under Pressure", 2018.

<sup>127</sup> Ibid.

<sup>128</sup> ISHR, "The backlash against civil society access and participation at the UN: Intimidation, restrictions and reprisals. 10 case studies", 2018.

67. The CTC, set up to monitor States' implementation of the UNSCR 1373, could play a mitigating role to diminish the impact of counter-terrorism matrixes at national level on civil society but has yet to do so forcefully. Some positive developments are noted, including more consistent references to human rights in recent SC Resolutions. However, it remains unclear how (if at all) the effect of counter-terrorism measures on civil society is monitored, how seriously the misapplication of terrorism definition is addressed, and what if any process exists to curb state abuse of counter-terrorism measures against civil society actors and human rights defenders.

68. 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. SC resolutions that seemingly increase transparency, such as resolution 2395 which "directs CTED" to make a number of documents available (excluding 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"<sup>129</sup>, place caveats that plainly mean that transparency remains discretionary. It remains difficult to determine whether human rights are now meaningfully taken into consideration.

69. As a SC subsidiary body and an initial point of contact for States, the CTC must engage more proactively and transparently with governments, increasing its responsibility for how States use SC resolutions to violate human rights at national level. An effective and transparent mechanism must be found to address governments that over-report or overstate the effectiveness of their counter-terrorism legislation when the empirical reality demonstrates misuse of counter-terrorism legislation. The CTC also needs to engage more fully with UN human rights mechanisms on reports and prior to any State visit. Proximity with 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 insights.

70. 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 Global Counter-Terrorism Coordination Compact entities included in the 6<sup>th</sup> 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.

## V. Conclusions and recommendations

71. As revealed by the percentage of communications sent by the SR to States amongst other data points, 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.

### **The mandate makes the following recommendations:**

72. The UN, particularly SC, the CTC, CTED, UNOCT and the CTITF, as well as the GA and the HRC, must genuinely, proactively, meaningfully and constructively engage with a cross-representation of local and international, diverse and independent civil society actors on counter-terrorism and PCVE. In particular:

(a) Civil society's input must be sought in developing all resolutions on counter-terrorism and PCVE to offer views and assess strategy and to inform on possible adverse impact of proposed measures on civil society.

(b) The CTC and CTED should meet formally and regularly with civil society actors on substantive and country issues and SC should consider regular briefings by civil society on thematic items and on geographic agenda items.

<sup>129</sup> UNSC resolution 2395 (2017), OP 13.

(c) Given 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 must be enhanced. This mandate and other relevant Special Procedures representatives should be formally invited on a regular basis to brief the CTC and CTED. The GA should convene an open yearly debate on the fourth Pillar of the UN Global Counter-Terrorism Strategy, in which civil society is fully and meaningfully included.

(d) Representation within the envisaged UNOCT civil society unit must be inclusive, legitimate, diverse and independent and it must be given meaningful capacity to offer views on policy and strategy, deepen the information and data available to, and share experiences with UNOCT. Best practices from the HRC and the Human Rights Committee should be emulated.

(e) UN must show lead the way in ensuring that it remains a safe, secure and inclusive space for civil society. Care must be taken that international procedures, including accreditation processes for civil society are not instrumentalised by unchecked overly broad national counter-terrorism and security claims.

(f) SC 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.

(g) OCT and Global Compact entities should ensure, prior to any formal cooperation with outsource entities, that they fully comply with human rights norms and standards.

73. UN counter-terrorism bodies must be accountable for the human rights implications of the international counter-terrorism framework. The CTC and CTED must engage more proactively with governments on the way in which national implementing measures may breach international human rights law, particularly on measures that impact 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 local civil society actors.

74. States must ensure that their measures to address the threats of terrorism, violent extremism and protect national security do not negatively impact on civil society. In particular:

(a) Definitions of terrorism and of violent extremism in national laws must not be overly broad and vague. They must be precise and sufficiently tight to not include members of civil society, or non-violent acts carried out in the exercise of fundamental freedoms. Emergency measures must be strictly limited and not used to crackdown on civil society actors.

(b) Legitimate expression of opinions or thought must never be criminalised. Non-violent forms of dissent are at the core of freedom of expression. Reporting on, documenting or publishing information about terrorist acts or counter-terrorism measures, as 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.

(c) Damage to property, absent other qualifications, must not be construed as terrorism.

(d) Measures aiming to regulate the existence, control and limit funding of civil society must comply with requirements of proportionality, necessity and non-discrimination. Failure to comply with administrative requirements must never be criminalised.

(e) Regulatory measures relating to terrorism financing and removal of “terrorist content” must comply with principles of legality, proportionality, necessity and non-discrimination, are subject to adequate oversight and accountability mechanisms. They should not be left solely to private actor enforcement.

(f) Humanitarian actors should be protected from any forms of harassment, sanctions or punishment resulting from measures to counter terrorism or violent extremism.

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Humanitarian action must be clearly exempt from measures criminalising various forms of support to terrorism. States should consider broadening these exemptions to all civil society actors involved in supporting respect for international norms.

(g) Judicial access and remedies must be available to all civil society actors impacted by terrorism sanctions regimes.

(h) All national and institutional actors involved in countering terrorism and PCVE must be conscious of the 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 be taken to avoid the stigmatisation, marginalisation, co-optation, and exclusion of civil society, as well as securitization.

(i) Oversight mechanisms at national and international levels need to be developed and strengthened to remedy the global human rights violations resulting from the development of deeply flawed matrixes adopted in the name of countering terrorism, violent extremism and threats to national security.

75. Civil society must find creative ways to raise awareness to the global crisis it faces resulting from global security frameworks. In particular:

(a) It must deepen its engagement with the global counter terrorism architecture, including UN agencies and bodies traditionally seen as dealing with security-related issues, as well as with new outsource entities, including FATF and the GCTF.

(b) It must innovate 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.

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