



# General Assembly

Distr.: General  
1 March 2019

Original: English

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 3

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

## **Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders**

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

#### *Summary*

In the present report, submitted in pursuant to General Assembly resolution 73/174 and Human Rights Council resolutions 31/3 and 37/27, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, examines the impact that measures and practices used to counter terrorism and to prevent and counter extremism have on the protection of human rights for civil society and human rights defenders. She further examines the global challenges of protecting civic space that have arisen as a result of the implementation of counter-terrorism law and practice. Since 2001, civil society space has been shrinking around the globe. This is indisputably linked to the expansion of security measures. The Special Rapporteur gives an empirically based assessment of the scale of misuse of such measures, and identifies 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 addressed urgently.

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



## 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 frequently stigmatized and sometimes discriminated against, and its actors are subjected to smear campaigns, defamation and physical harassment, spuriously charged and sentenced under various laws. Their peaceful actions are often criminalized, and many members of civil society are simply unable to carry out their work because they have been detained, prosecuted, 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: World Alliance for Citizen Participation, civic space is closed, repressed or obstructed in 111 countries across the world, and only 4 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 between the beginning of 2015 and into 2016 alone.<sup>2</sup> According to Front Line: International Foundation for the Protection of Human Rights Defenders, at least 321 human rights defenders were killed in 2018.<sup>3</sup> Other key violations contributing 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.<sup>4</sup>

3. Between 2001 and 2018, at least 140 Governments adopted counter-terrorism legislation.<sup>5</sup> New and multiple legislative and 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 passed laws relating to foreign fighters between 2013 and 2017 – the largest wave of counter-terrorism measures since the immediate aftermath of the attacks of 11 September 2001.<sup>6</sup>

4. The link between security frameworks and assaults on civil society can be seen in the following trends and figures. Since the mandate's inception in 2005, 66 per cent of all relevant communications sent by the mandate holders have related to the use on civil society of counter-terrorism laws and policies and prevention and countering of violent extremism or broadly defined security-related measures. This is an extraordinarily high proportion, which underscores the abuse and misuse of counter-terrorism measures against civil society and human rights defenders since 2005.<sup>7</sup> In 2017–2018, the proportion was slightly higher, at 68 per cent. This robust empirical finding measured from 2005 to 2018 affirms that the targeting of civil society is not a random or incidental aspect of counter-terrorism law and practice. It suggests the hard-wiring of misuse into counter-terrorism measures taken by States around the globe. This upward trend seen in the mandate's 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 received in a four-year

<sup>1</sup> "People power under attack: a global analysis of threats to fundamental freedoms" (2018).

<sup>2</sup> "Survey of trends affecting civic space: 2015-16", *Global Trends in NGO Law*, vol. 7, No. 4 (2016).

<sup>3</sup> "Front Line Defenders Global analysis 2018" (2019).

<sup>4</sup> Civicus, "People power", and Front Line: International Foundation for the Protection of Human Rights Defenders, "Global analysis 2018".

<sup>5</sup> Center for Strategic and International Studies, *Counterterrorism Measures and Civil Society: Changing the Will, Finding the Way* (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 to legal technical advice on draft or adopted legislation or standards, as well as standard communications about the repatriation and trial of foreign fighters and on the follow up to the joint global study, and institutional communications to the United Nations. The figures reflect only the cases that have been submitted directly to the Special Rapporteur. Methodologically, the figures likely reflect substantial underreporting.

period happening in 2018, and only 10 in 2014.<sup>8</sup> In the cases dealt with by Front Line: International Foundation for the Protection of Human Rights Defenders in 2018, 58 per cent of the human rights defenders charged were charged under security legislation.<sup>9</sup> Under the mandate of the Special Rapporteur, over 67 per cent 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 of 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, on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously.<sup>10</sup> The ramping up of security space, leading to the narrowing of civic space, can be directly traced back to the international security-focused dynamic that emerged in 2001, and the embedding of international matrices in the global counter-terrorism architecture in order to authorize and sustain security measures.

6. The determination with which the international community took draconian measures after 11 September 2001 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 with respect to countering terrorism. Despite the advice given by former Secretary-General Kofi Annan to the Security Council 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 resolutions consistently lack a comprehensive definition of terrorism and of violent extremism and requirements for comprehensive assessment of the human rights impact of the required measures.<sup>12</sup> In addition, the post-2001 period has seen the emergence of new entities intrinsic to the global counter-terrorism architecture, whose relationship to traditional regulatory bodies and oversight remain opaque and underregulated. Here, recommendation 8 of the obscure but influential Financial Action Task Force 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 was translated into polarizing political rhetoric: "with us or with the terrorists". This has led to the targeting of civil society members who question the legitimacy of the counter-terrorism measures. Loose international frameworks requiring national implementation have provided Governments with 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 matrices allow States to qualify threats to themselves as terrorism, violent extremism, extremism or, even more broadly, threats to national security.<sup>15</sup> In an article co-authored by the first person to serve as the Special Rapporteur on the promotion and protection of human rights while countering terrorism,

<sup>8</sup> "Targeting the messenger: journalists ensnared by national security legislation, 2014–18" (2019).

<sup>9</sup> "Global Analysis 2018". This includes charges under provisions relating to national or State security or sedition (17 per cent), defamation, insulting the State or damaging national unity (17 per cent), spreading fake news, rumours or propaganda (14 per cent), terrorism or membership or support of a terrorist organization (9 per cent) and cybercrime (1 per cent).

<sup>10</sup> General Assembly resolution 68/181.

<sup>11</sup> First Security Council open debate on counter-terrorism, 18 January 2002.

<sup>12</sup> Notably, resolutions 1373 (2001), 2178 (2014) and 2396 (2017). See also A/73/361.

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

<sup>14</sup> Center for Strategic and International Studies, "Counterterrorism measures and civil society", p. 5.

<sup>15</sup> In March 2002, the United Nations High Commissioner for Human Rights expressed concern regarding this approach, and referred to similar concerns expressed by 17 special procedure mandate holders. (See the introductory statement by the High Commissioner at the fifty-eighth session of the Commission on Human Rights).

Martin Scheinin, it was stated that “for a while, the global consensus about the imperative of combating terrorism was so compelling that authoritarian governments could get away with their repressive practices simply by renaming political opponents as terrorists”.<sup>16</sup>

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 comments on ways to do things better, in accordance with international human rights obligations, constitutes a form of terrorist activity or violent extremism or a 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 instrumentalization of counter-terrorism, the prevention and countering of violent extremism, and protection of national security measures is brutal, with members of civil society arrested and detained on spurious grounds, with some States even using counter-terrorism laws to silence defenders of the rights of lesbian, gay, bisexual, transgender and intersex persons,<sup>17</sup> and others surveilling individuals involved in peaceful protests against climate change and linking them to terrorism investigations<sup>18</sup> or branding them as “ecoterrorists”.<sup>19</sup> Journalists have been particularly targeted by counter-terrorism and extensive security legislation.<sup>20</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 that such measures, which have proliferated under the internationalized security framework, have had across civil society, locally and globally, individually and collectively, and how they have undermined civil society and civic space.

10. Although States often justify measures against civil society through broad invocations of countering terrorism, preventing and countering violent extremism or protecting national security, targeting civil society actors is wholly inconsistent with meaningfully attending to those 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.<sup>21</sup> Civil society restrictions do not make a country safe from terrorist attacks; the security rhetoric does not achieve the expected outcomes.<sup>22</sup> This means that such measures would fail wholesale at any proportionality and necessity tests.

11. The key role played by a vibrant and active civil society was recognized during the United Nations High-level Conference of Heads of Counter-Terrorism Agencies of Member States in June 2018. In an opinion editorial written in connection with the Conference, the Secretary-General stated that civil society was central to broader counter-terrorism strategies.<sup>23</sup> At the Conference, the representative of Finland stated that civil society and religious communities played a significant role in preventing violent extremism and countering terrorism;<sup>24</sup> the representative of Fiji said that successful implementation of the United Nations Global Counter-Terrorism Strategy would no doubt require popular support, which could only be built and sustained with the support and cooperation of civil

<sup>16</sup> Martin Scheinin and Mathias Vermeulen, “Unilateral exceptions to international law: systematic legal 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 Law Working Paper (2010).

<sup>17</sup> Center for Strategic and International Studies, “Counterterrorism measures and civil society”, p. 6.

<sup>18</sup> Adam Federman, “Revealed: FBI kept files on peaceful climate change protesters”, *Guardian*, 13 December 2018.

<sup>19</sup> Justine Calma and Paola Rosa-Aquino, “The term ‘eco-terrorist’ is back and it’s killing climate activists”, *Grist*, 2 January 2019.

<sup>20</sup> Mapping Media Freedom, “Targeting the messenger”.

<sup>21</sup> Jeong-Woo Koo and Amanda Murdie, “Liberty or security: do civil society restrictions limit terrorism?”, Center for Strategic and International Studies blog post, 4 June 2018.

<sup>22</sup> *Ibid.*

<sup>23</sup> See [www.un.org/en/counterterrorism/hlc/statements.shtml](http://www.un.org/en/counterterrorism/hlc/statements.shtml).

<sup>24</sup> See [www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Finland-opening-statement.pdf](http://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Finland-opening-statement.pdf).

society,<sup>25</sup> while the representative of Canada affirmed that a civilian-led approach, engaging civil society and communities, was the most effective way to prevent violent extremism.<sup>26</sup>

## B. Value of civil society in countering terrorism

12. Beyond the political rhetoric, recent studies<sup>27</sup> demonstrate the necessity of the role of civil society in channelling discontent and allowing for constructive engagement with States, and in directly undermining the factors leading individuals to be drawn to terrorism and violent extremism, the conditions conducive to terrorism as identified by the United Nations Global Counter-Terrorism Strategy, and in the agenda of the United Nations on preventing and countering violent extremism.<sup>28</sup> Where civil society actors are present in areas where the State is unable or unwilling to govern, they often play an intermediary role, owing to their credibility and access to remote communities. They can meaningfully generate peace and development, including implementation of the 2030 Agenda for Sustainable Development, and can clearly articulate the sources of grievances identified as factors leading to terrorist and extremist violence. As recruitment in certain regions is localized, with their invaluable knowledge of local drivers and local trends, civil society actors can help fill a government gap by providing alternative narratives and developing locally driven initiatives that respond to community-specific needs.

13. Furthermore, it is 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 instrumentalization of agendas to counter terrorism and to prevent and counter violent extremism 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. In the present report, the Special Rapporteur examines the international framework (sect. II) and the role it plays in allowing restrictive measures to develop and proliferate at the national level (sect. III), before looking at the specific impact of the combined measures on civil society (sect. IV), including the lack of accountability mechanisms to adequately address the cumulative effect of the security framework used to restrict civic space, and presents a set of conclusions and recommendations (V).

<sup>25</sup> See [www.un.org/en/counterterrorism/hlc/statements.shtml](http://www.un.org/en/counterterrorism/hlc/statements.shtml).

<sup>26</sup> Ibid.

<sup>27</sup> UNDP, *Journeys to Extremism in Africa: Drivers, Incentives and the Tipping Point to Recruitment* (2018).

<sup>28</sup> Security Council resolution 2178 (2014), Secretary-General's Plan of Action to Prevent Violent Extremism (A/70/674).

<sup>29</sup> Institute for Economics and Peace, *Global Terrorism Index 2017* (2017).

## II. Impact that the global matrices that regulate counter-terrorism, prevention of violent extremism and protection of national security have on civil society

### A. Security Council

16. In a report to the General Assembly, the Special Rapporteur focused on the role of the Security Council in the development, since 11 September 2001, of international counter-terrorism frameworks and their impact on human rights.<sup>30</sup> In the present report she examines the human rights consequences of the regulatory requirements contained in Council resolutions 1373 (2001), 1624 (2005), 2170 (2014), 2178 (2014) and 2396 (2017), and of the overall approach of the resolutions on human rights, which are far-reaching and can be particularly severe for civil society.

#### 1. Procedural aspect

17. Security Council resolutions regulating counter-terrorism and prevention and countering of violent extremism are all characterized by a lack of engagement with civil society actors in the determination of legal, political, social and cultural effects of such resolutions.<sup>31</sup> Resolution 2178 (2014) is the first such resolution to contain a reference to civil society in its operative part.<sup>32</sup> In its resolution 2396 (2017), the Council recognized the role that civil society organizations could play in the health, social welfare and education sectors in contributing to the rehabilitation and reintegration of foreign terrorist fighters and their families, and encouraged States to engage with them proactively in that context.

18. The Special Rapporteur cautions against co-opting civil society into State-led international and national security agendas, promoting limited engagement with civil society on specific issues, and allowing key constituencies, including women, to be instrumentalized and empowered solely in furtherance of a broader security agenda. Instead, the Security 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 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 precisely, is an issue that has been highlighted under this mandate from its inception,<sup>33</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 the Council to "terrorists" as a category of individuals separated from the criminal acts,<sup>34</sup> or to "terrorism in all forms and manifestations" as one of the most serious threats to international peace and security without further qualification,<sup>35</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 (2014) 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>36</sup>

<sup>30</sup> A/73/361.

<sup>31</sup> Ibid.

<sup>32</sup> Resolution 1624 (2005) 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>33</sup> E/CN.4/2006/98, A/HRC/16/51 and A/73/361.

<sup>34</sup> See, for example, Security Council resolution 2170 (2014).

<sup>35</sup> Security Council resolution 2178 (2014).

<sup>36</sup> A/HRC/16/53/Add.1, paras. 99–106. See also Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 46.

### 3. Terrorism sanctions and the criminalization of various forms of support for 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 organizations or be used to maliciously target them. The mandate holder has already noted how abusive designations have been made easier by the broadened criteria introduced by the Security Council in its resolution 1617 (2005) under the targeted terrorism sanction regime.<sup>37</sup> Although the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities has never listed an individual solely on the basis of the provision of medical or humanitarian assistance, it is worrying that medical activities had been referenced as part of the basis for listing two individuals and two entities.<sup>38</sup> Under national and regional terrorism sanctions lists requested pursuant to resolution 1373 (2001), the lack of a definition of terrorism also allows arbitrary or malicious designations of any individual or group, including civil society organizations, under the legitimizing umbrella of the Council.<sup>39</sup>

### 4. Absence of exemption clauses for civil society actors

21. In both its legislative action and its sanctions regime, the Security Council disallows, almost entirely, any form of loose support for terrorism or for terrorist groups. While the sanctions regime administered by the United Nations 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 them, or not, in their own national provisions.<sup>40</sup> In its resolution 72/284, the General Assembly urged States to ensure that counter-terrorism measures did not impede humanitarian activities or engagement. 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>41</sup>

22. The Special Rapporteur fully supports the recommendation of the Special Rapporteur on extrajudicial, summary or arbitrary executions that States should unambiguously exempt humanitarian actions from their counter-terrorism measures at every possible opportunity, nationally, regionally and internationally, and that the Security Council should adopt a resolution expressly clarifying that humanitarian protection and assistance must never be conceptualized as support for terrorism and suppressed or criminalized on that basis.<sup>42</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism further recommends that adequate remedies at all levels be available and accessible to all civil society actors affected by sanctions, not solely humanitarian actors.

### 5. Measures limiting the movement of “foreign terrorist fighters” and “terrorists”

23. In its resolutions 2170 (2014), 2178 (2014), and 2396 (2017), the Security Council decided that States were to prosecute as “serious criminal offences” the travel, recruitment and financing of “foreign terrorist fighters”. Mandate holders have already widely examined the gaping human rights shortcomings of some of these measures.<sup>43</sup> Given the large number of individuals who can be caught in the resolutions’ broad net, there is evident concern that some States will abuse the systems set up through these resolutions to target “undesirable” individuals, including members of civil society. This will lead to such individuals being subjected to the numerous impingements that these resolutions allow on

<sup>37</sup> A/73/361, para. 19. See also A/65/258, A/67/396 and A/HRC/34/61.

<sup>38</sup> Alice Debarre, “Safeguarding medical care and humanitarian action in the UN counterterrorism framework” (International Peace Institute, 2018).

<sup>39</sup> The Security Council defines “support” for terrorism very loosely. See its resolution 1373 (2001), para. 1 (d).

<sup>40</sup> A/70/371, para. 32.

<sup>41</sup> Norwegian Refugee Council, “Principles under pressure” (2018).

<sup>42</sup> A/73/314, para. 52. Exemptions exist, but can be limited. See also A/70/371 and A/73/314, para. 51.

<sup>43</sup> A/HRC/29/51 and A/73/361.

rights (e.g., on 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, internationalize their “undesirability”.

24. A worrying development is the breadth of some of the measures in resolution 2178 (2014) and, in particular, 2396 (2017), which can, through the application of disjunctive standards, extend beyond “foreign terrorist fighters”. In several instances in resolution 2396 (2017), in particular operative paragraph 5, the Security Council loosely categorizes individuals as “terrorists” and “foreign terrorist fighters”, giving great leeway for implementing States to apply measures to a wide range of individuals. The mandate welcomes the addendum to the guiding principles on foreign terrorist fighters (2018),<sup>44</sup> including the specificity and breadth 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. Use of the Internet for terrorist purposes**

25. In addition to mandating States to take measures to prohibit by law incitement to commit terrorist acts (resolution 1624 (2005)), the Security Council expressed concern, in its resolutions 2178 (2014) and 2396 (2017), over the increased use of communications technology, including the Internet, for recruiting and incitement purposes. The resolutions are aimed at advancing State cooperative action that formally respects human rights and fundamental freedoms. Measures countering violent extremism online may touch upon multiple human rights, including the rights to freedom of opinion and expression, to privacy, to an effective remedy, to due process and a fair trial and to a family life, as well as health-related rights. They can also seriously impinge on the right to freedom of religion, as noted by the Special Rapporteur on freedom of religion or belief, who reported that since 2012, accusations of online blasphemy had risen, and new threats and patterns of violence had emerged. He noted that individuals using the Internet to disseminate views considered blasphemous increasingly faced capricious arrest and prosecution, and that the securitization of online activity had provided a wide margin of operation for national authorities against civil society without proper scrutiny.<sup>45</sup>

26. Electronic modes of expression are a critical means for civil society to exercise their freedom of opinion and expression, and are 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>46</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>47</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. General Assembly and Human Rights Council**

28. The United Nations Global Counter-Terrorism Strategy was the General Assembly’s balanced approach to then pervasive security-first approaches to counter-terrorism. By stating that respect for human rights is part of “the fundamental basis of the fight against terrorism” the Assembly places human rights at the centre of the Strategy. In the Strategy, the Assembly reaffirms the inextricable links between human rights and security. By encouraging non-governmental organizations (NGOs) and civil society to engage, as

<sup>44</sup> S/2018/1177.

<sup>45</sup> A/73/362, para. 49.

<sup>46</sup> International Principles on the Application of Human Rights to Communications Surveillance.

<sup>47</sup> A/HRC/23/40 and Corr.1, para. 24.

appropriate, on how to enhance efforts to implement the Strategy, it is the first United Nations counter-terrorism document to refer to civil society. 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 resolution 72/284, the latest resolution entitled “The United Nations Global Counter-Terrorism Strategy Review”, the Assembly encourages civil society interaction with States and the United Nations system to enhance the implementation of the Strategy “as appropriate”, and encourages Member States and the Counter-Terrorism Implementation Task Force to enhance engagement with civil society. NGOs rightly stated the following: “At a time when civic space is being essentially eroded around the world ... we are deeply disappointed that the review does not recognize 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>48</sup>

29. Of significant concern to the mandate holder is the adoption of resolutions, by the General Assembly and the Human Rights Council, on the effects of terrorism on human rights.<sup>49</sup> 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>50</sup> It is of even greater concern that the Assembly has merged this new series of resolutions with the resolutions on the protection of human rights and fundamental freedoms while countering terrorism, in a new resolution on terrorism and human rights.<sup>51</sup> The new “streamlined”, resolution does retain some key aspects relating to civil society contained in resolution 72/180, namely, that States must safeguard the work of civil society, and that they are to ensure that measures taken to counter terrorism do not hinder the work and safety of those organizations and that they are in compliance with the obligations of States under international law. Regrettably, some of the key human rights aspects gained during the drafting process of the resolutions on protection of human rights have been lost. Given the range of measures that can affect civil society actors, the Assembly must address the deficits that have followed from the merger.

### C. Role of new global outsource entities

30. In contradistinction to the United Nations counter-terrorism framework, which, despite administrative flaws, is an inclusive regulatory structure including all States Members of the United Nations and operating within the legal structure of the Charter of the United Nations, a number of opaque and inaccessible outsource entities lacking global legitimacy have consolidated within the counter-terrorism architecture. As these entities – initially – responded to the particular counter-terrorism interests of selected States, they developed a narrower set of perspectives and inputs. They are largely characterized 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 underscores the patterns of exclusion and accountability gaps highlighted throughout the present report. Through a process of “exportation” to and “integration” of regulations and standards into 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

<sup>48</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”, (11 July 2018).

<sup>49</sup> For example, General Assembly resolution 72/246 and Human Rights Council resolution 31/30.

<sup>50</sup> Article 19, “UNHRC 31: Egypt-led ‘terrorism’ resolution is a danger to human rights”, 31 March 2016.

<sup>51</sup> Resolution 73/174.

proliferation of these entities and norms – importing language from one another – contributes to increased fragmentation of global counter-terrorism regulation in ways that are not fully appreciated.

31. For example, the mandate of the Financial Action Task Force was extended to include the prevention of terrorism financing in the weeks following 11 September 2011, without any consultation with national parliaments or civil society. Its recommendation 8,<sup>52</sup> which aims to protect non-profit organizations from terrorist financing abuse, was premised on an alleged high vulnerability that civil society organizations had to terrorism financing.<sup>53</sup> Many measures States were asked to take seriously limited the ability of non-profit organizations to operate (obligation to register, to maintain information on the purpose and objectives of the organization's 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, decertification, delicensing and deregistration, were envisaged.<sup>54</sup> Despite the obvious risks of this recommendation and its lack of reference to human rights, there was no consultation with civil society. The Task Force lent a veneer of legitimacy to States that, without due respect for their international human rights obligations, turned soft law to hard law by implementing the provisions of recommendation 8 through wholesale measures that strictly regulate 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 the previous mandate holder.<sup>55</sup>

32. Similarly, the Global Counterterrorism Forum is an informal regulatory body established by 29 States plus the European Union. By bringing together experts and practitioners and developing 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>56</sup> While the Forum notes its support for the United Nations Global Counter-Terrorism Strategy, which has a strong human rights component, the Forum itself, starkly and surprisingly, has no structural commitment to human rights protections.<sup>57</sup> Occasional and generic references to human rights in Forum documents do not assuage this profound concern. The Forum 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 the Forum should spark concern for all States (particularly those excluded from that body); it also demonstrates 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. National measures and trends affecting civil society

33. The security pandemic has translated into various measures that States have taken that have curbed civic space, which cannot be seen in topical, temporal or geographical vacuums. The lack of adequate definitions is central to the global closing of civic space and underpins most of the subsequent challenges at the national level. Also, 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.

<sup>52</sup> The Task Force has issued 40 non-binding recommendations, as well as interpretative notes, best practices and a handbook for countries and assessors.

<sup>53</sup> In the initial (2012) interpretive note to recommendation 8, it was stated that it had been demonstrated “that terrorists and terrorist organizations exploit the [non-profit organization] sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and operations”.

<sup>54</sup> Interpretative note (2012), point 5(b)(vii).

<sup>55</sup> A/70/371, paras. 22–24 and 26.

<sup>56</sup> See [www.thegctf.org](http://www.thegctf.org).

<sup>57</sup> The Forum identifies supporting the implementation of the Strategy as a main goal, including the pillar relating to human rights, although in practice is it unclear how it does so.

Further, 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 in national implementation of the Security Council counter-terrorism framework is the global emergence of overly broad and vague definitions of terrorism.<sup>58</sup> As foreseen, these carry the potential for unintended human rights abuses,<sup>59</sup> and have been deliberately misused to target a wide variety of civil society groups, persons and activities. 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>60</sup>

35. In some States, legislation to curb violent extremism, extremism, extremist activity, or radicalization are emerging.<sup>61</sup> The core concept of extremism is context dependent, which means that its definition can easily be challenged and manipulated,<sup>62</sup> and conceptually weaker than the term terrorism, which has an identifiable core.<sup>63</sup> Such laws are likely to criminalize legitimate expression, including controversial viewpoints and information of legitimate public interest,<sup>64</sup> and restrict freedom of religion or belief.<sup>65</sup> The number of criminal prosecutions and the use of administrative measures against civil society members are, unsurprisingly, increasing.<sup>66</sup>

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

36. National counter-terrorism legislation increasingly includes 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>67</sup> In its resolution 7/36, the Human Rights Council 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. The potential for adverse impact of such measures is exacerbated when applied to online-based forms of expression.

37. While incitement to terrorism is prohibited under international law,<sup>68</sup> many laws criminalize, often with a lack of precision, acts that do not amount to incitement because they lack the element of intent and/or of danger that the act will lead to the actual commission of violence. These include the glorification,<sup>69</sup> justification,<sup>70</sup> advocacy, praising

<sup>58</sup> Recent examples include those referred to in communications sent to representatives of Guatemala, Honduras and Sri Lanka. For details of all communications sent under the mandate, see <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. For the examples mentioned here, see GTM 3-2018, HND 8-2016, and LKA 3-2016.

<sup>59</sup> A/HRC/16/51, para. 26.

<sup>60</sup> See, for example, PAK 4-2016, CHL 2-2018, PHL 5-2018, PAK 11-2016, SAU 12-2017 and TUR 3-2018.

<sup>61</sup> RUS 19-2018, RUS 15-2018, CHN 21-2018, TUR 12-2018.

<sup>62</sup> Peter R. Neumann, *Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region* (International Centre for the Study of Radicalisation, 2017).

<sup>63</sup> A/70/371.

<sup>64</sup> CCPR/CO/79/RUS, paras. 20–21.

<sup>65</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 and E/CN.4/2005/61/Add.1, para. 152.

<sup>66</sup> Council of Europe, “Misuse of anti-terror legislation threatens freedom of expression”, 4 December 2018.

<sup>67</sup> GBR 7-2018 and AUS 2-2018.

<sup>68</sup> Security Council resolution 1624 (2005).

<sup>69</sup> Amnesty International, “Spain: Tweet... if you dare” (2018).

or encouragement of terrorism, and acts relating to “propaganda” for terrorism.<sup>71</sup> The element common 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>72</sup> Consistent with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,<sup>73</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.

38. The Special Rapporteur is very concerned about the proposal for a regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online.<sup>74</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 Directive (EU) 2017/541 of 15 March 2017 (already considered as posing a risk of violating the principles of legality and of proportionality<sup>75</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. Such regulation stifles dissent and advocacy by peaceful critics, human rights activists and members of minority groups, and 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>76</sup>

40. Many States have legislated counter-terrorism and security provisions preventing reporting on or publicly discussing acts of terrorism, through the criminalization of, inter alia, the publication of news or other material likely to promote terrorism, or the propagation of false information. Such measures seriously limit transparency and the accountability of government officials and security forces for human rights violations perpetrated 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” content absent a requirement of terrorist intent can have a serious impact on civil society, notably investigative journalists, academic researchers and human rights advocates.<sup>77</sup>

41. Laws that criminalize having contact or corresponding with groups hostile to the State, or holding 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>78</sup>

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

42. Often in the name of transparency, and to respond to the requirements of Financial Action Task Force 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; and provisions that threaten deregistration or even

<sup>70</sup> “1847 délits d’apologie et de provocation au terrorisme enregistrés en 2016”, *Le Monde*, 19 January 2017.

<sup>71</sup> TUR 13-2018.

<sup>72</sup> A/HRC/31/65, para. 39.

<sup>73</sup> A/HRC/22/17/Add.4, appendix, para. 29.

<sup>74</sup> See <http://data.consilium.europa.eu/doc/document/ST-15336-2018-INIT/en/pdf>.

<sup>75</sup> Human Rights Watch, “EU counterterrorism directive seriously flawed’ (30 November 2016).

<sup>76</sup> A/HRC/40/52/Add.2, paras. 27–28.

<sup>77</sup> OL GBR 7/2018.

<sup>78</sup> Front Line: International Foundation for the Protection of Human Rights Defenders, “Global Analysis 2018”, p. 7.

criminal prosecution.<sup>79</sup> These measures are often taken administratively. Any ex post judicial recourse can be very difficult. Profound limitations on access to foreign funding have severely restricted the existence of NGOs, which are often wholly dependent on such funding, particularly affecting human rights and women's organizations.<sup>80</sup> Some laws require NGOs that receive foreign funding to be labelled as "foreign agents". Such legislation stigmatizes and marginalizes NGOs and delegitimizes their work.<sup>81</sup> Security considerations have been consistently used to justify such measures with no objective verification of the claims made in those justifications.

#### **D. Measures that limit various forms of support for terrorism**

43. A web of international and national, public and private regulations and requirements is emerging, placing immense pressure on civil society actors, particularly, but not limited to, those operating in areas where terrorist groups are active.<sup>82</sup> Qualifying a wide range of acts as impermissible "support for terrorism", counter-terrorism measures are found in laws that apply extraterritorially 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 terrorists. This results in harassment, arrest and prosecution of humanitarian, human rights and other civil society actors.

44. This typically affects life-saving humanitarian activities, including food and medical assistance.<sup>83</sup> The Secretary-General has 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>84</sup> Material support provisions may also affect 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 providing assistance to migrants.

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

45. Emboldened by pervasive security rhetoric, the past 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 those "affecting national security, political and social stability" and "dangerous to the political, economic or social system". Many activities of civil society organizations, human rights defenders, journalists, bloggers and political opponents will fall under such laws, whose main objective is to criminalize legitimate expressions of opinion and thought.

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 alone, 300 journalists had been arrested and detained on alleged grounds that their publications had contained apologist sentiments about terrorism and other

<sup>79</sup> A/HRC/38/34, paras. 28–29. See also Ben Hayes, *Counter-Terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society* (Transnational Institute/Statewatch, 2012).

<sup>80</sup> A/HRC/23/39, paras. 8–18. See also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 13.

<sup>81</sup> A/HRC/23/39, para. 20. See also RUS 2-2018 and RUS 15-2018.

<sup>82</sup> A/70/371, paras. 31–44.

<sup>83</sup> Debarre, "Safeguarding medical care".

<sup>84</sup> S/2009/277, para. 45.

similar “verbal act offences”, or for “membership” of armed organizations and “assisting a terrorist group”.<sup>85</sup>

## F. Increased use of administrative measures

48. Administrative measures are increasingly used by States to address various terrorism and security threats. The many laws adopted after the adoption of Security Council resolution 2178 (2014) to curb the threat posed by foreign terrorist fighters include executive travel bans and revocation of citizenship. Given the lack of a 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>86</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 that, until recently, have had little to do with countering terrorism or violent extremism. Such actors find themselves obliged to play a front-line 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 time frames. These delegation processes can have a serious impact on fundamental rights and freedoms necessary for the existence of civil society. First, because the complex 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 threat of judicial action, will almost inevitably lead the subcontracted companies to over-regulate.

50. Information and communications technology companies hosting third-party content, which have been facing mounting pressure from Governments to proactively monitor and police content generated or disseminated by users in the field of terrorism, have been particularly affected by legislation that imposes obligations to take down “terrorism-related” content and is used as a basis for threats of criminal litigation or civil liability. The threats involved and the lack of guidance given to companies often lead to overregulation, as shown by the overly broad and imprecise definition of terrorism applied by Facebook, which equates all non-State groups that use violence in pursuit of any goals or ends to terrorist entities,<sup>87</sup> a matter that the mandate holder has addressed bilaterally with Facebook.

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>88</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>89</sup> while the implementing decision that affects the right of civil society to access resources results 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

<sup>85</sup> TUR 14-2018.

<sup>86</sup> Human Rights Watch, “Foreign terrorist fighter laws: human rights rollbacks under UN Security Council resolution 2178” (2016). See also [www.hrw.org/news/2015/11/01/egypt-scores-barred-traveling#](http://www.hrw.org/news/2015/11/01/egypt-scores-barred-traveling#) and [www.hrw.org/news/2015/07/10/tunisia-arbitrary-travel-restrictions#](http://www.hrw.org/news/2015/07/10/tunisia-arbitrary-travel-restrictions#).

<sup>87</sup> OHCHR, “UN human rights expert says Facebook’s ‘terrorism’ definition is too broad”, (3 September 2018).

<sup>88</sup> A/70/371, paras. 42–44.

<sup>89</sup> See, for example, Collectif de développement et secours Syrien, “Defense d’aider? Comment les institutions financieres francaises entravent l’action humanitaire en Syrie”, (2018).

shielding them from any risk of liability under counter-terrorism legislation. Overregulation has translated into refusal to deal with civil society actors operating in or with “high-risk” environments or actors,<sup>90</sup> limits on access to financial services, refusal to open or arbitrary closure of bank accounts, inordinate delays or termination of transactions, and onerous administrative requirements.<sup>91</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 Special Rapporteur, not be left to private actors that may not have the ability and resources to develop 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 Amal Fathy, a member of the Egyptian Commission for Rights and Freedoms,<sup>92</sup> Cemil Tekeli, professor of law at Medeniyet University in Istanbul and a member of the International Jurists Union,<sup>93</sup> Taner Kilic, Chair of Amnesty International Turkey,<sup>94</sup> and Saeed Baloch, the Secretary General of the Pakistan Fisherfolk Forum and a member of the Human Rights Commission of Pakistan,<sup>95</sup> as well as individuals working for national and international NGOs, bloggers, writers, lawyers, translators, doctors, artists and film directors, such as Oleg Sentsov,<sup>96</sup> representatives of indigenous and minority groups, trade union activists and refugees, as well as entire groups, such as women and lesbian, gay, bisexual, transgender and intersex activists, and religious and indigenous groups, even populations of entire countries<sup>97</sup> – are increasingly subjected to a range of overlapping harassment measures broadly linked to countering terrorism. Importantly, multiple allegations dealt with under 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 serves to discredit civil society as a whole.

## 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>98</sup> whose objective is to delegitimize civil society and tarnish the reputation of its actors, by loosely characterizing them as “terrorists”, implying that they are “threats to national security” or “enemies of the State”, even by lobbying other States or through international forums. 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>99</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

<sup>90</sup> Martin Arnold and Sam Fleming, “Regulation: banks count the risks and rewards”, *Financial Times*, 13 November 2014.

<sup>91</sup> A/HRC/23/39/Add.1, para. 84.

<sup>92</sup> EGY 14-2018

<sup>93</sup> ISR 5-2018

<sup>94</sup> TUR 1-2018.

<sup>95</sup> PAK 4-2016.

<sup>96</sup> RUS 16-2018.

<sup>97</sup> USA 2-2017.

<sup>98</sup> PHIL 4-2018.

<sup>99</sup> A/HRC/13/22, para. 27.

holder allege the use of torture,<sup>100</sup> arbitrary detention,<sup>101</sup> sometimes followed by illegal deportation,<sup>102</sup> incommunicado and secret detention,<sup>103</sup> and enforced disappearance,<sup>104</sup> including by secret services operating on foreign soil.<sup>105</sup> Some extremely serious measures, such as mass detention, affect entire religious and minority groups, thereby affecting members of civil society as well.<sup>106</sup>

## K. Judicial harassment

56. There is increasing use of spurious criminal proceedings under security legislation against civil society.<sup>107</sup> In many cases, it appears that charges under security legislation are brought to legitimize other measures taken against civil society actors, such as house raids, arrests, detention (often lengthy) and travel bans.

## L. Group persecution

57. Multiple allegations received by the mandate holder refer to the systematic persecution and repression of certain religious and ethnic minorities, including Ahmadis, Dalits, Uighurs, Kazakhs, members of the Church of Scientology and Jehovah's Witnesses, through undue restrictions on their rights to freedom of religion or belief, freedom of expression and peaceful assembly. This includes dissolution or closure of their societies, organizations and entities, criminalization of their activities, restrictions on certain practices, systematic harassment of clerics, leaders, representatives and members, and restrictions on the right to practice a religion and peaceful assembly, together with the discriminatory imposition of various administrative measures.<sup>108</sup> The Special Rapporteur on freedom of religion or belief 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 incitement.<sup>109</sup>

58. Indigenous groups such as the Mapuche have been targeted,<sup>110</sup> and, in one case, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, was defined as a terrorist in a government petition.<sup>111</sup> Such tactics are being used against women activists and human rights defenders. Women have been subjected to death threats and 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>112</sup> Human rights defenders experience reprisals for speaking to the Human Rights Council and in other international settings about the human rights situation in their countries.<sup>113</sup>

<sup>100</sup> RUS 16-2018. See also A/HRC/WGAD/2017/46.

<sup>101</sup> RUS 15-2018, RUS 22-2018 and RUS 17-2018. See also A/HRC/WGAD/2018/29.

<sup>102</sup> GAB 2-2018

<sup>103</sup> ARE 1-2018 and CHN 15-2018. See also A/HRC/WGAD/2018/11 and A/HRC/WGAD/2017/83.

<sup>104</sup> ISR 5-2018.

<sup>105</sup> TUR 6-2018, KSV 1-2018 and KSV 2-2018.

<sup>106</sup> CHN 21-2018.

<sup>107</sup> See, for example, 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 and TUR 14-2018.

<sup>108</sup> BHR 5-2016, PAK 11-2016, RUS 19-2018, RUS 22-2018, SAU 14-2018 and CHN 21-2018.

<sup>109</sup> A/73/362, para. 20.

<sup>110</sup> CHL 2-2018 and CHL 3-2018.

<sup>111</sup> PHL 5-2018.

<sup>112</sup> NIC 4-2018.

<sup>113</sup> NIC 5-2018 and PHL 5-2018.

## 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 and often underexamined negative impacts on civil society actors and on civic space.

### A. Chilling effect

60. Civic space is directly affected when overly broad definitions of terrorism and counter-terrorism are used to arrest, detain and prosecute peaceful members of civil society organizations. Similarly, the closure of such organizations, 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 those 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>114</sup> Women's organizations, which tend to be smaller and more informal, have been significantly more affected by these increased administrative requirements.<sup>115</sup>

### B. Stigmatization

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 rebrand civil society as “terrorists”, “violent extremists”, “threats to national security” and “enemies of the State”, with de facto collusion by bodies responsible for the oversight of the frameworks. Effective negative labelling sends a clear signal that civil society actors are legitimate targets for attacks and then legitimizes the adoption of further restrictive measures. When civil society actors are negatively labelled, the stigmatization can extend into the ability to find work and housing and other socioeconomic rights. Family members can also be caught up and face similar stigmatization.

### C. Financial marginalization

62. Where financial institutions' counter-terrorism regulations affect civil society organizations, the physical risk to staff and offices increases, because larger amounts of cash are transported and used to enable ongoing operations.<sup>116</sup> Where financial services were refused or delayed, NGOs have had to scale down or close altogether. Where bank accounts are refused or closed, the reputation cost for the NGO is severe. The effect of these measures ripples down, affecting in-country partner organizations through delayed funds and unpaid salaries, as well as the beneficiaries in need of assistance. Multiple examples confirm that such measures disproportionately affect Muslim charities and charities working in Muslim-majority areas or States.<sup>117</sup>

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

63. The new international focus on violent extremism means that programmes, policies and activities on preventing and countering violent extremism have become a donor

<sup>114</sup> Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action* (2013), pp. 72 and 84.

<sup>115</sup> Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* (2017).

<sup>116</sup> A/70/371, para. 42.

<sup>117</sup> A/HRC/6/17, para. 42 and A/73/314, para. 40.

priority. Many humanitarian, human rights and development organizations have been forced to increase programme focus and activities in this area. Real risks follow of civil society being co-opted into a top-down agenda for political or security objectives.<sup>118</sup>

## **E. Securitization**

64. Severe risks of securitization or instrumentalization in development, education, good governance, democracy and human rights promotion abound when the prevention and countering of violent extremism agenda is layered into the comprehensive agenda set out in the United Nations Global Counter-Terrorism Strategy. Substantial risks ensue from further drawing humanitarian actors into a security-driven political agenda.<sup>119</sup> The securitization of aid since 2001, the increased conflation of humanitarian and political agendas, notably where terrorism sanctions exist (Security Council resolution 1844 (2008)), and reporting requirements that involve humanitarian actors (Security Council resolution 1916 (2010)), as well as the increasing pressure for United Nations peace operations to engage more in counter-terrorism and prevention and countering of violent extremism, all have seriously underexamined consequences for humanitarian actors.

## **F. Exclusion**

65. It appears that those States engaging in repressive policies against civil society at the national level are aiming to spread those policies more broadly, actively working to silence criticism and opposition in international forums, including at the United Nations. This includes managing, denying and limiting civil society access to United Nations 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 for or forcing withdrawal of accreditation to the United Nations to silence them.<sup>120</sup>

## **G. Accountability vacuum**

66. Despite the fact that measures adopted at all levels – from global to local – seriously affect 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 State abuse and remedy the deep lacunae that have developed since 2001.

67. The Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (the Counter-Terrorism Committee) could play a mitigating role to diminish the impact that counter-terrorism matrices at the national level have on civil society, but has yet to do so forcefully. Positive developments include more consistent references to human rights in recent Council 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 the 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 Counter-Terrorism Committee'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 (2017), in which the Council directs the Counter-Terrorism Committee Executive Directorate to make a number of documents (excluding reports) available throughout the United Nations

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<sup>118</sup> Norwegian Refugee Council, *Principles under Pressure*.

<sup>119</sup> *Ibid.*

<sup>120</sup> International Service for Human Rights, "The backlash against civil society access and participation at the UN – Intimidation, restrictions and reprisals: 10 case studies" (2018).

system, except when requested by the assessed Member State to keep selected information confidential, and to share its findings outside the United Nations system, including with civil society, “as appropriate” and “in consultation with” the Committee, 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 subsidiary body of the Security Council and an initial point of contact for States, the Counter-Terrorism Committee must engage more proactively and transparently with Governments, increasing its responsibility for how States use Council resolutions to violate human rights at the national level. An effective and transparent mechanism must be found to address Governments that overreport or overstate the effectiveness of their counter-terrorism legislation when the empirical reality demonstrates misuse of such legislation. The Committee also needs to engage more fully with United Nations human rights mechanisms on reports and prior to any State visit. Proximity with the United Nations 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 institutionalization of the commitment to enhance engagement by United Nations Global Counter-Terrorism Coordination Compact entities included in the sixth review of the United Nations Global Counter-Terrorism Strategy. 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 Special Rapporteur to States, among other data points, broad invocations of the need to counter terrorism, to prevent and counter violent extremism and to protect national security have been abused by a number of States to close civic space.

72. The mandate holder makes the recommendations listed below.

73. The United Nations, particularly the Security Council, the Counter-Terrorism Committee and its Executive Directorate, the Office of Counter-Terrorism and the Counter-Terrorism Implementation Task Force, as well as the General Assembly and the Human Rights Council, must genuinely, proactively, meaningfully and constructively engage with a broad representation of local and international, diverse and independent civil society actors on counter-terrorism and the prevention and countering of violent extremism. In particular:

(a) Civil society’s input must be sought in developing all resolutions on counter-terrorism and prevention and countering of violent extremism to offer views and assess strategy and to provide information on the possible adverse impact of proposed measures on civil society;

(b) The Counter-Terrorism Committee and its Executive Directorate should meet formally and regularly with civil society actors on substantive and country issues, and the Security Council should consider regular briefings by civil society on thematic items and on geographic agenda items;

(c) Given the close working relationship between civil society and United Nations human rights mechanisms, formal and transparent cooperation between United Nations counter-terrorism bodies and human rights mechanisms must be enhanced. This mandate holder and other relevant special procedure mandate holders should be formally invited on a regular basis to brief the Counter-Terrorism Committee and its Executive Directorate. The General Assembly should convene an open yearly debate on the fourth pillar of the United Nations Global Counter-Terrorism Strategy in which civil society is fully and meaningfully included;

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

(e) The United Nations must 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 instrumentalized by unchecked, overly broad national counter-terrorism and security claims;

(f) The Security Council should unambiguously exempt humanitarian action from its counter-terrorism measures and expressly clarify that humanitarian protection and assistance must never be conceptualized as support for terrorism or suppressed and criminalized on that basis;

(g) Office of Counter-Terrorism and United Nations Global Counter-Terrorism Coordination Compact entities should ensure, prior to any formal cooperation with outsource entities, that they fully comply with human rights norms and standards;

74. United Nations counter-terrorism bodies must be accountable for the human rights implications of the international counter-terrorism framework. The Counter-Terrorism Committee and its Executive Directorate must engage more proactively with Governments on the way in which national implementing measures may breach international human rights law, particularly measures that affect civil society, including the definition of terrorism and the criminalization of legitimate expression and opinion. The Committee and its Executive Directorate must refuse any visit where human rights issues are off the agenda, where they cannot bring a human rights expert or where they cannot meet local civil society actors.

75. States must ensure that their measures to address the threats of terrorism, violent extremism and protect national security do not negatively affect 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 narrow 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 crack down on civil society actors;

(b) Legitimate expression of opinions or thought must never be criminalized. 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 are essential aspects of transparency and accountability. The key role of the Internet, particularly within repressive societies or for marginalized groups, must be recognized and protected;

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

(d) Measures aimed at regulating the existence of, controlling and limiting the funding of civil society must comply with requirements of proportionality, necessity and non-discrimination. Failure to comply with administrative requirements must never be criminalized;

(e) Regulatory measures relating to terrorism financing and removal of “terrorist content” must comply with principles of legality, proportionality, necessity and non-discrimination and be 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

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**extremism. Humanitarian action must be clearly exempt from measures criminalizing various forms of support for 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 affected by terrorism sanctions regimes;**

**(h) All national and institutional actors involved in countering terrorism and preventing and countering violent extremism 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 stigmatization, marginalization, co-optation and exclusion of civil society, as well as securitization;**

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

**76. 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 United Nations agencies and bodies traditionally seen as dealing with security-related issues, as well as with new outsource entities, including the Financial Action Task Force and the Global Counterterrorism Forum;**

**(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 of the impact of these measures in a systematic and open manner.**

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