

Outcome Document of the

**LATIN AMERICA & THE CARIBBEAN CIVIL
SOCIETY CONSULTATION ON THE IMPACT OF
COUNTER-TERRORISM MEASURES ON CIVIL
SOCIETY AND CIVIC SPACE**

Acknowledgements

This regional consultation was co-convened by the International Center for Not-for-Profit Law (ICNL). The following civil society organizations participated in the regional consultation. Their inclusion does not constitute their endorsement of all of the views expressed in the document. The list is not exhaustive as some organizations asked not to be named due to security concerns.

- Acceso a la Justicia
- Conectas Direitos Humanos
- Center for Human Rights Defenders and Justice (CDJ)
- Center for Research and Promotion of Human Rights (CIPRODEH)
- Cristosal
- Cubalex
- Fabianna Alexander Consulting
- Fundación Karisma
- Hiperderecho
- Mesoamerican Initiative of Women Human Rights Defenders (IM-Defenders)
- Mesoamerica International Protection

Introduction

In May 2023, 26 participants from 15 Latin America and the Caribbean countries convened for a 2-hour online consultation to elaborate on the impact of counter-terrorism (CT) measures on civil society (CSOs) and civic space. Participants discussed the trends of counter-terrorism laws and policies in the region and how such measures restrict civic space.

Throughout the consultation, participants commented on the problematic vagueness and overbreadth of the CT legislative and regulatory frameworks, including countering the financing of terrorism (CFT) legislation, operating in their home countries — often compounded by further restrictive measures, such as the use of laws related to “sedition,” “espionage” and “subversion.” In

addition, some participants highlighted laws that restrict freedom of assembly through broad definitions of “terrorism activities.” The participants also observed the impact of the use of states of emergency, authoritarian regimes, and ongoing conflicts across the region, noting how such challenges have led to the shrinking of civic space and a restriction on the work of civil society, including resultant human rights abuses and the dissolution of many CSOs. Participants underscored how particular groups are often disproportionately targeted or affected, including human rights defenders; activists; women; trade unionists; lesbian, gay, bisexual and transgender people and their organizations; and indigenous peoples.

This outcome document summarizes the key findings of the online regional civil society consultation and concludes with brief and tailored recommendations for Member States (including governments in the region), the United Nations and other regional and international organizations, and civil society. The findings contributed to the Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Key Findings

KEY FINDING #1

Misuse of CT measures and prolongations of the states of emergency are impinging upon civic space and resulting in human rights violations of civil society actors, individuals, and communities.

Participants observed a close relationship between the abuse of CT measures and emergency powers. They observed that Governments in the region often refer to the threat of terrorism to publicly defend the expansion of exceptional powers that are generally used to repress peaceful political dissent and target journalists, human right defenders and social activists. Thus, Governments who seek to implement a “state of exception” often justify this practice based on the necessity to combat an emergent or “terrorist” threat. Participants observed that the threat of terrorism has been manipulated to design a form of “pre-emptive” defense, which neither includes a real nor imminent threat. The notion of imminence is used in an elongated and permissive manner. During the consultation, for example, participants from Mexico and Guatemala addressed this dynamic, underscoring the role of militarized approaches to public security risks where the State, and primarily military actors, have broad discretion to decide which subjects present a potential harm to national security. Consequently, across several contexts, vague security imperatives prevail over the limited safeguards for civilian populations that are vulnerable to a wide range of abuses, affecting and diminishing fundamental rights and creating a legal and social atmosphere of unnecessary and disproportionate use of military force. The Law of Public Order of 1965 in Guatemala was raised as an example where a “state of prevention”, which does not require Congressional Authorisation, the Executive can “demand that the organs of publicity or dis-

semination avoid all publications which, in the opinion of the authority, contribute to or incite the alteration of public order. [...]”. Participants observed that a central problem with this and other similar laws is the ambiguity with which the definition of “public order” can be used and the indefiniteness of the use of such laws outside of emergency.

Participants also report that in El Salvador, since March 2022, the Government has continued to prolong the state of emergency based on the necessity to combat groups of maras and pandillas, as well as organized crime which the Government qualifies as “terrorists”. The government of El Salvador adopted anti-maras laws, as well as CT laws, thereby restricting freedom of expression, freedom of assembly and association. This was linked to the historical contexts of military dictatorships, civil wars, generalised violence, armed conflicts and insurgencies that have led to the adoption of anti-terrorism laws and contributed to the declaration of states of emergency by the Governments in power. Many counter-terrorist laws in force are the remnants of laws enacted in the context of civil dictatorships, armed conflicts or civil wars.

KEY FINDING #2

CT legislation across the region is often broad and vague in definitions of terrorism and are used as an instrument to restrict civic space, human rights, and fundamental freedoms.

Participants observed how Governments in the region use CT legislation to target civil society organizations, human rights defenders, media, peaceful protesters, businesses, trade unionists, dissidents, among others. Participants also observed that such measures are often implemented with the intent to instil fear in the population and create a state of alarm, disquiet, and urgency within the society.

Participants from Brazil, Venezuela, El Salvador, and Honduras stressed how national legislation provides vague and broad definitions of terrorism, thus criminalizing a wide range of legitimate activities and exercising of human rights and fundamental freedoms, inevitably restricting the rights to freedom of opinion and expression and freedom of assembly and association.

During the consultation, participants from Venezuela, El Salvador and other countries highlighted the categorization of human rights defenders and activists as “high risk” as CT laws and criminal provisions are used to prosecute such individuals and undermine their work. Participants reported that between March 2017 – March 2023 a total of 2,276 attacks against civil society had taken place (1654 between 2017 and 2021; 396 in 2022; 226 in the first trimester del 2023). In addition, participants highlighted the issue of severe reprisals, including torture and other violations, as a direct response to dissent. Participants from El Salvador highlighted that since the declaration of the state of exception: a) more than 70.000 individuals have been charged with illicit activities or terrorism; b) at least 152 people died under custody for violence, negligence or denial of medical treatment; c) the Government has created a prison with the capacity for 42.000 prisoners with the aim to combat terrorism; d) special judges are irregularly appointed and law enforcement officers have special powers; e) minors are tried as if they were adults; f) there have been 5.000 allegations of torture and cruel, inhuman and degrading treatment in prison; g) prisons are severely overcrowded. Moreover, participants from Guatemala, Brazil, Colombia, Cuba, and elsewhere observed that CT laws are specifically used to restrict the work of HRDs. In particular, in Cuba, HRDs have been prosecuted on charges of association. Participants observed how governments often accept NGOs only if they have been registered and affiliated to the government itself. Participants from Brazil highlighted recent legislative developments, including the Senate Committee Bill 3283/2021 which aims to expand the definition of terrorism and amend the 2016 Anti-Terrorism Law, stressing the lack of consultation

with civil society during the process and highlighted calls from certain officials for broader definitions of terrorism that would significantly impact peasant movements.

Participants from Colombia emphasised the chilling effect that CT legislation and criminal law have on the rights to freedom of expression and freedom of assembly and association. Participants have also stressed the disproportionate sanctions adopted under CT legislation in Colombia, also as an instrument to repress the social protest. In addition, within the context of the Colombian armed conflict, it has been alleged that CT measures have been used to undermine human rights. The case of the so called “falsos positivos” is a compelling example where the military allegedly inflated the body count by killing civilians. Participants have also stressed how in the ambit of the Peace Agreement of 2016, notwithstanding the peacebuilding efforts, including the formal dissolution of the Revolutionary Armed Forces of Colombia (FARC), former FARC members seeking reintegration continue to experience the effects of the terrorist label due to their political affiliations, which has led to the splintering of “FARC dissidents” into other factions.

Participants have also underscored that CT laws have become an instrument to target and prosecute protesters who question the Government, as for example in the case of Colombia, Nicaragua, Venezuela and Cuba. Participants across these contexts have highlighted the risk to civil society and those protesting to be charged with terrorism and incitement. In addition, participants raised the distinct experience of trade unionists who negotiate for better conditions who have been arrested on terrorism-related charges, have faced harassment by government officials, and in some cases arbitrarily detained, threatened, and subject to cruel, inhuman and degrading treatment or torture. In Cuba and Peru, participants underscored arrests of protesters for sedition, acts against independence and social subversion or protesters arrested on the basis of accusations of affiliation with Sendero Luminoso, apology for terrorism, or posting com-

ments of social media, respectively.

Participants have also observed that in some countries, including in Cuba and Nicaragua, CT laws are used as an instrument to force particular individuals or groups into exile. Participants noted patterns of citizenship stripping based on terrorism-related charges, which has been seen in countries like Nicaragua where citizens have been deprived of their nationality without trials and subsequently forced to leave the country. In 2022 alone, the Government of Nicaragua deprived 94 Nicaraguans of their citizenship, stripping them of also of their assets.

Participants called for a revision of CT legislation in order to protect the important work of civil society, vulnerable groups, and ensure fundamental rights and freedoms for all.

KEY FINDING #3

New technologies are being employed by States to control civil society.

Participants from Colombia noted that, after the protests in 2021 (“protestas sociales”), the State has implemented the use of new technologies, including cyber-patrolling by the police. The use of mass surveillance technologies has been justified by the Colombian State as being necessary to fight against terrorism and ensure national security. It has been reported that CSOs cannot access information on the processes through which technology is procured and from what company, thus no follow-up is given to the complaints filed. In addition, the profiling of journalists, HRDs has become a common pattern. Such activities are not regulated under national law and police does not have the authority to investigate such offences unless the victims claim the violation. A similar situation has been noted by participants from Peru where the Government employs technologies to facilitate surveillance. However, as in Colombia, the national law fails to regulate such phenomenon and does not allow

accountability. Besides, Peruvian CSOs do not have access to information gathered by state officials. Participants from Brazil drew attention to the growing acquisition of surveillance technologies and their indiscriminate use and noted that the fragility of control mechanisms, the unwillingness of the institutions responsible for effectively monitoring their use and the limited participation of civil society around the issue of surveillance technologies aggravated the scenario.

KEY FINDING #4

Women civil society actors, women human rights defenders, and others who defy traditional gender norms, including lesbian, gay, bisexual and transgender activists are at higher risk of reprisals from the Governments.

Participants from Mexico, Nicaragua and El Salvador observed that women HRDs are also targeted on the basis of counter-terrorism regulations and policies. Participants stressed the normalization of attacks to women civil society actors and human rights defenders. Participants highlighted that in a regional context in which women, adolescents and girls have historically had to face patriarchy, misogyny and social inequality, women HRDs are at a greater risk of human rights violations on the basis of their gender or for defying gender norms. Participants stressed that feminist organizations or organizations that advocate for the rights of lesbian, gay, bisexual, transgender, or gender diverse peoples (LGBT) have been targeted through the abuse of counter-terrorism measures. Governments continue to push back on issues around gender identity and sexuality; there are continuous attacks and aggressions against women, as well as a regressive gender narratives. Participants urged the importance of intersectional analysis on the impact of the counter-terrorism measures on these particular groups with a differential approach to gender and human rights.

KEY FINDING #5

CTF/AML measures often do not meet the requirements under FATF Recommendations.

Another pattern identified within the region is the use of CFT legislation to justify the removal of the legal status of local NGOs, forcing them to shut down. For example, in Nicaragua the Government has eliminated the legal status of more than 3,400 CSOs, resulting in the termination of their assets and properties and in the arrest, harassment, and prosecution of their members. In 2018, Nicaragua accused the country's Red Cross that it didn't comply with the principle of impartiality and neutrality. In addition, at the beginning of May 2023 the Government ordered the removal of the organization's legal status and its dissolution. Furthermore, participants from Venezuela raised concerns in relation to the registration procedure as it gives full discretion to the authorities to determine which organizations could be considered as terrorist. It has been alleged that the national authorities are identifying the entire sector of human rights organizations as constituting a "high-risk" to the State by national authorities for their protected work, which in turn justifies the misuse of counter-terrorism lenses and frameworks against the sector.

Participants have observed that in countries like El Salvador and Honduras the Government has failed to comply with the risk assessment criteria under Recommendation 8 of the FATF. In particular, in Guatemala, piece of legislation such as the Law against the laundering of money or other assets (Decree 67-2001) and its regulations (Governmental Agreement 118-2002), the Law to prevent and repress the financing of terrorism (Decree 58-2005) and its regulations (Governmental Agreement 86-2006) serve as a basis for public officials to impose disproportionate administrative burdens on civil society organisations, based on the assumption that

they will be used as a mechanism to launder money and finance terrorism. Participants from Guatemala expressed their concern regarding IVE's audits of civil society organisations that receive international cooperation funds. There have been reports of cases of organisations that have requested confidentiality, in which, during IVE audits, reference has been made to the search of signs of financing "social terrorism" or "terrorism by contamination", terms whose interpretation in the current context can be ambiguous and extend to the exercise of freedom of peaceful assembly.

In El Salvador, the lack of appropriate legislation and the exclusion of the CSO's sector from the risk assessment approach, has led to the exclusion of CSOs from banking services and financing opportunities. In addition, it has been alleged that AML legislation is used by the Government to stigmatize civil society. Conversely, participants from Barbados have reported a better situation compared to those of other countries in the region. The country has enacted AML legislation and has amended the Charity Act and the Company Act for NGOs. However, participants from Barbados have reported the lack of risk assessment criteria, claiming that there is little knowledge in the country's sector of AML/CFT and relating legal and statutory requirements and many unintended consequences have been experienced. Finally, participants from Peru have stressed that the FATF report on non-profit sector did not show that organizations have been used to engage in terrorist acts.

Recommendations

Member States should:

- Cease the use of anti-terrorism legislation to restrict civic space, persecute human rights defenders and criminalize social protest, including through the dissolution of social organizations under the guise of counter-terrorism, and amend existing legislative that is overly broad.
- Engage in meaningful dialogue and consultation with civil society organizations as a key stakeholder to understand their concerns, needs, and perspectives. This will foster a collaborative approach and help develop effective and inclusive policies and practices, leading to greater understanding of shared goals within society.
- Foster and increase transparency and accountability across government actors and institutions through independent oversight of government counter-terrorism actions undertaken, including to assess legality of such actions, factual bases, outcomes, and more. The continued lack of transparency due to “national or international security concerns” leads to lack of public scrutiny, access to information and accountability.
- Support independent human rights mechanisms and processes to ensure acknowledgement of violations, truth, reparations and guarantees of non-recurrence when violations of human rights occur, including under the framework of counter-terrorism.
- Ensure legislative measures adopted and enforced that provide clear legal safeguards for civil society organizations, activists, and human rights defenders. These safeguards should protect against arbitrary detention, abusive restrictions on funding, surveillance,

and harassment. In addition, States should ensure that all measures to counter-terrorism are implemented in line with international human rights law and the principles of legality, necessity and proportionality.

- As regards new technologies, establish legal safeguards prior to the receipt and use of any technological tools or processes for the purposes of preventing and detecting terrorism. In this regard, State should ensure the use of technological mechanisms for the purpose of preventing the detection of terrorism is respectful of human rights. In particular, any intrusion should be necessary and proportionate to the rights affected and the purpose pursued.
- Invest in addressing the structural and root causes of violence through implementing the Sustainable Development Goals to reduce the conditions conducive to terrorism. Progress is best guaranteed by good governance, respect for the rule of law and human rights.
- Acknowledge and protect the work of those human rights defenders who monitor counter-terrorism regulations and practices, and protect them in case of risk and reprisals, from a comprehensive approach that incorporates a gender and intersectional perspective.

United Nations should:

- Examine its early warning and protection mechanisms at the national, regional and international level as the growing misuse of counter-terrorism by Member States in the region and high levels of impunity leave civil society extremely vulnerable and often unable to safely access such mechanisms or for such mechanisms to be meaningfully engaged or effective.
- Prioritize capacity building in the areas of respect for human rights, rule of law, rights-based legislative and security sector reform

for governments in the region, rather than technical assistance in areas of counter-terrorism that are not risk-based to specific to national level political analyses. The securitization of the region on the basis of a one-size-fits-all approach to counter-terrorism through the support of the United Nations counter-terrorism entities will not result in long-term peace and stability. Standards of legality, necessity, proportionality and distinction must be central to all work undertaken by the United Nations.

- Create independent monitoring mechanisms to assess the impact of counter-terrorism measures on civil society and civic space to include regular reports, recommendations, and support to affected countries and advocate for necessary changes. This may include increased focus among special procedure mandate holders, as well as the Office of the High Commissioner for Human Rights.
- Halt support to the use of new and emerging technologies for counter-terrorism purposes in countries where their application of counter-terrorism and national security laws and policies are inconsistent with international humanitarian and international human rights law.
- Encourage Member States to rethink their counterterrorism strategies to promote compliance with international humanitarian and international human rights law frameworks and increase their advocacy and vocalness on the illegality of various counterterrorism practices as described in this document.
- Promote human-centered approaches and plural exchanges in the face of divided communities who are urged to be reconciled, with a particular emphasis to cultural and religious diversity and tolerance.
- Establish more concrete support to civil

society and human rights defenders who experience reprisal for their work and the expression of their fundamental rights that goes beyond advocacy from a comprehensive protection approach.. This can included opportunities for accompaniment systems with relevant UN entities that lead on human rights for affected individuals and families, or rapid funding support for critical expenses, including those incurred during judicial processes that severely impact them and their families and communities.

- Ensure a technical gender impact analysis, in particular, ensure that it is prioritised when analysing counter-terrorism measures and related issues.

Regional Organizations should:

- Foster collaboration and exchange of best practices among member states within the region to facilitate dialogue, knowledge sharing, and capacity building on effective and rights-respecting counter-terrorism measures that minimize the impact on civil society, promoting broader principles of legality, necessity and proportionality of all measures to combat terrorism.
- Facilitate regional dialogue and coordination of advocacy actions to address the expectations and classification of the region as highly susceptible to AML/CFT violations.
- Serve as platforms for dialogue and coordination among governments in the region, civil society organizations, and other stakeholders to advocate with international institutions for more equitable implementation of international human rights compliant measures to counter-terrorism emphasizing key areas that need to be addressed, including social marginalization, lack of equal opportunities, social injustice, poverty, political exclusion, cultural and ethnical tensions, and more.

- Establish regional mechanisms or working groups dedicated to monitoring and addressing the impact of counter-terrorism measures on civil society. These mechanisms can gather data, conduct assessments, and provide guidance on mitigating any negative effects.
- Undertake on-site visits, mutual dialogues, or fact-finding missions where relevant to document how counter-terrorism regulations are being used to restrict the exercise of fundamental rights and freedoms such as freedom of expression, freedom of association and the right to defend human rights. This will also serve as an opportunity to discuss pathways for repeal and reform of overly broad laws and policies, as well as to highlight those cases where individuals have experienced reprisals, convictions, and other violations for their human rights and social advocacy.
- The regional or international organizations in charge of overseeing the fulfilment of human rights must

Civil Society Organizations should:

- Strengthen collaboration and partnerships among civil society and with other stakeholders, such as government, broader coalitions of human rights defenders, academics, media, and grassroots organizations to enhance advocacy, knowledge sharing, and joint initiatives to protect civic space and strengthen the sector's ability to respond to advocate for better implementation of policies. As a first step, this could include a meeting between activists, NGOs, and UN to achieve a plan of action and effective help to those affected by counter-terrorism measures.
- Actively monitor and document impacts (intended or not), and any abuses or violations of civil liberties and civic space resulting from

counter-terrorism measures and integrate a gender and intersectionality approach. This could include for example, overly broad definitions as well as emerging measures of abuse of technology. This evidence-based approach will help raise awareness, advocate for change, and hold governments accountable. This requires undertaking as thorough a census of people criminalized on the basis of CT legislation and policy as possible across the region and who are held in prisons and whose identity is unknown.

- Foster public awareness and educational initiatives to promote an understanding of the importance of civic space and the impact of counter-terrorism measures on civil society and civic space. This will encourage public support and participation in safeguarding civil society.
- Promote counter-narratives that reject the discrimination and sectarian hatred that later explodes into violence. Educational approaches build resilience; eradicate intolerance between cultures, and ideologies that promote violence, creating new ground for tolerance and reconciliation.
- Consider how to provide increased support to individual activists and rights defenders who do not belong to an organization and encourage pathways for mutual financial or logistical support to civil society actors and human rights defenders and their family members impacted by the misuse and abuse of counter-terrorism laws or policies. This could include finding ways to support those imprisoned at all stages of a process, including to promote the restitution of fundamental rights (social, moral, economic, etc.) until the reparation is made for the violations.