



**GLOBAL STUDY ON THE IMPACT  
OF COUNTER-TERRORISM ON  
CIVIL SOCIETY & CIVIC SPACE**

# CHAPTER 3

## THE PLAYBOOK FOR MISUSE

### Part 1: Judicial Harassment & Fair Trial Violations

Counter-terrorism and P/CVE have been repeatedly invoked across jurisdictions to justify judicial harassment and a wide range of criminal, civil, and administrative measures unduly targeting civil society. In fact, among the Special Procedures communications reviewed for the Global Study, roughly 62% centered on the use of security measures and forces against civil society, including overlapping physical, verbal, and judicial forms of harassment. This part of the Study surveys different forms of judicial harassment and fair trial violations that civil society actors have been subjected to in the name

of counter-terrorism and/or P/CVE.

According to Front Line Defenders, of the 211 charges against human rights defenders documented in their casework in 2022, 44% related to counter-terrorism or broader national security claims.<sup>227</sup> Global Study respondents reported counter-terrorism related arrests and charges implicating a wide range of civil society actors, including humanitarians, environmentalists, religious leaders, LGBT and gender diverse activists, women human rights defenders, journalists, lawyers, doctors, academics, student organizations, pro-democracy advocates, political dissidents, indigenous land rights activists, trade unions, migrants, farmers, and environmentalists.<sup>228</sup> Judicial harassment measures have extend-

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227 FLD Input (13% terrorism/membership or support of terrorist org; 19% national/state security/sedition; 1% foreign agent law; 11% defamation/insulting state/damaging national unity).

228 See Regional Consultation Outcome Documents (human rights defenders, humanitarians, journalists, lawyers, migrants, religious leaders, land rights activists, environmentalists, students, trade unions); see also, e.g., SHOAA Input (Algeria, human rights defenders); Confidential (Turkey, academics, doctors); C&SN Input (US, environmentalists); Defend Panay Input (Philippines, human rights defenders, peace advo-

ed not only to civil society staff and their donors and partners, but also to beneficiaries, families, and other community members. Documented harms have been particularly gendered (Chapter 1, Part 3). Children have also borne the brunt, with children as young as 13 facing arbitrary arrests, detention, and prosecutions on the basis of counter-terrorism,<sup>229</sup> in potential contravention of the special status of children and minimal protections afforded to children under international law.<sup>230</sup>

As UN Special Procedures mandate-holders have found, in many cases, individuals are not even formally charged, but rather forcibly disappeared and arbitrarily detained in the context of countering terrorism, and then subject to torture, cruel, inhuman and/or degrading treatment and/or extrajudicial killings.<sup>231</sup> 32 per cent of Global Study inputs identified instances of alleged arbitrary detention in the counter-terrorism context,<sup>232</sup> 25 per cent of Global Study inputs alleged torture, cruel, inhuman, or degrading treatment violations in the counter-terrorism and/or P/CVE detention context,<sup>233</sup> and 16 per cent identified instances of extrajudicial killings.<sup>234</sup>

The scope of arbitrary detention is often widespread and systematic in nature, with hundreds to thousands of detainees—raising credible allegations of mass arbitrary detention under pretext of counter-terrorism and/or de-extremism.<sup>235</sup> People with disabilities are particularly vulnerable to cruel, inhuman and degrading treatment in counter-terrorism detention settings.<sup>236</sup>

Far from being isolated incidents, these and other documented cases frequently stem from compromised judiciaries and entrenched emergency and exceptional powers and procedures—sometimes codified through the creation of special courts on terrorism and an absence of or reduction in specialized human rights mechanisms.<sup>237</sup> These instances raise human rights challenges, including with regard to well-settled fair trial and due process safeguards, such as the right to review before an independent, impartial tribunal, presumption of innocence, and equality of arms.<sup>238</sup> According to these data, counter-terrorism and P/CVE criminal proceedings across jurisdictions have been riddled with documented instances of due process violations. Incidents in-

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cates, farmers indigenous peoples, environmentalists, journalists); Confidential Input (Kurdistan, journalists); Justice for All Input (India, activists, journalists, political dissidents and opponents, student protestors); A/HRC/52/67 (2023), para. 49.

229 See, e.g., Confidential Input (Israel); Asia & the Pacific Consultation (Thailand, 14 years old); Australian Muslim Advocacy Network Ltd Input (Muslim teenagers as young as 15 charged under terrorism laws); see also, Latin America and the Caribbean Consultation (El Salvador, minors being tried as adults); West, East, & Central Africa Consultation.

230 See, e.g., UN General Assembly, Convention on the Rights of the Child, 20 November 1989; UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (A/RES/40/33); UN Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/45/113).

231 See, e.g., A/HRC/13/42; A/HRC/49/45; UN Human Rights Experts, “El Salvador: Extended state of emergency undermines right to fair trial” press release, 22 May 2023; UN Human Rights Experts, “UN experts call for end to violence during demonstrations, urge respect for human rights,” press release, 6 March 2023; A/HRC/50/42, para. 53; A/HRC/44/49/Add.1; Office of the High Commissioner for Human Rights (OHCHR), Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China, 31 August 2022.

232 See, e.g., EMR, CIHRS, CFJ, and EFHR Input; Access Now Inputs (Egypt); Confidential Input; Solidarity with Others Input (Turkey); Confidential Input (El Salvador); Confidential Input (France); CEJIL Input (Peru); Confidential Input (Sri Lanka); Amnesty International Input (Cameroon); Middle East & North Africa Consultation (Bahrain, Egypt, Saudi Arabia, Israel); West, East & Central Africa Consultation (Cameroon, Rwanda, Mozambique); Latin America & the Caribbean Consultation (El Salvador, Venezuela).

233 See, e.g., FLD Input (incommunicado detention and other violations including torture or other forms of cruel, inhuman and degrading treatment across documented human rights defender cases); CIHRS Input (Egypt); CIVICUS Input (Pakistan); Solidarity with Others Input (Turkey); Amnesty International Input (Cameroon); Espacio Público Input (Venezuela); Middle East & North Africa Consultation (Egypt, Saudi Arabia, Libya); Latin America Consultation (Venezuela, El Salvador); Asia & the Pacific Consultation (Thailand, Papua).

234 See, e.g., NUPL Input (Philippines); West, East & Central Africa Consultation (Burkina Faso); Asia & the Pacific Consultation (Indonesia, Myanmar, Philippines, Thailand).

235 See, e.g., OHCHR, Xinjiang Assessment (2022).

236 USA 26/2022; GBR 13/2022; EGY 10/2021; MEX 2/2020; OTH 41/2019; ISR 1/2019.

237 See, e.g., FLD Input (describing compromised legal systems); CEJIL Input (Peru, rise in prosecutors specializing in terrorism and decrease in specialized human rights prosecutors); CIHRS (Egypt, terrorism circuits); EMR & CIHRS (Egypt, Emergency State Security Courts); CIVICUS Input (Pakistan, secret military courts); CIHRS (Libya, military courts); Confidential Input (Venezuela, anti-terrorism court); see also Middle East & North Africa Consultation.

238 ICCPR, art. 14.

# ISSUE IN FOCUS

## OHCHR Assessment of Mass Arbitrary Detention in Xinjiang

In August 2022, the Office of the United Nations High Commissioner for Human Rights found that a pattern of large-scale arbitrary detention had occurred in “Vocational Education and Training Centres” in the Xinjiang Uyghur Autonomous Region, affecting a significant proportion of the Uyghur and other predominantly Muslim ethnic minority community in region on the purported basis of countering terrorism and “extremism.”

Source: OHCHR, Xinjiang Assessment (2022), paras. 2, 57 (citing White Paper on “Vocational Education and Training in Xinjiang”); CHN 12/2022; A/HRC/WGEID/116/1; CERD/C/CHN/CO/14-17.

clude the prolonged and/or repeated incidents of pre-trial detention without charge, often justified due to the exceptional nature of counter-terrorism<sup>239</sup>; inadequate and monitored access to counsel<sup>240</sup>; incommunicado detention, without family

notifications or visits<sup>241</sup>; lowered evidentiary thresholds and the use of secret, torture-derived, and/or fabricated evidence and trials in absentia.<sup>242</sup> Extradition and transnational cooperation often facilitate such abuse, raising the possibility of State respon-

239 See, e.g., FLD (repeated short-term administrative detention in documented cases); Asia & the Pacific Consultation (Hong Kong, Pro-Democracy activists held in detention for almost two years; Indonesia, pre-trial detention under the Anti-Terrorism Law up to 221 days; Singapore, detention may be extended by two years where the minister views that the act at issue was “prejudicial to Singapore”); Cairo Institute (Egypt, pre-trial detention for almost three years and near automatic renewals of pre-trial detention terms; Israel/Occupied Palestinian Territory, six periods of imprisonment and arbitrary arrests documented in a single case; Libya, 18 months of pre-trial detention in a military prison in Benghazi); Ambika Satkunanathan Input (Sri Lanka, example of pre-trial detention for over 18 months); Omnium Cultural Input (Spain, 2 years in pre-trial detention for nine Catalan leaders arbitrarily detained); Alkarama Foundation Input (Saudi Arabia, extended administrative detention); Justice for All (India, prolonged arbitrary detention); see also Regional Consultation Outcome Documents.

240 See, e.g., CIHRS (Egypt, limited access to counsel and no right to communicate in full confidentiality); Confidential Input (El Salvador, denial of access to counsel); Espacio Público Input (Venezuela, denial of access to private counsel); Alkarama Foundation Input (Saudi Arabia, access to a lawyer only granted after 12-day period and only sporadically.); MENA Rights Group (UAE, numerous impediments to access lawyer); see also FLD Input (restricted recourse to bail and legal representation at the center of majority of HRD cases documented); West, East, & Central Africa Consultation (Burkina Faso, no access to lawyers for 160 people currently charged with terrorism); see also, e.g., A/HRC/46/26/Add.1, para. 27 (Maldives).

241 See, e.g., Asia & the Pacific Consultation; Latin America and the Caribbean Consultation; Libya; Broken Chalk Input (Turkey, Gulden Sayin arbitrary detention and separation from parents); Confidential Input (El Salvador, denial of access to family); Confidential Input (Sri Lanka, many in the group were detained for months without access to counsel or court hearings); ARE 1/2018; CHN 15/2018.

242 See, e.g., Confidential Input (Israel, Palestinian human rights defenders held without charge on the basis of “secret information” and under minimal evidentiary thresholds); Justice for All Input (India, numerous reported instances where people have been falsely accused of forced conversions, or arrested based on the mere act of interfaith marriage); NUPL Input (Philippines, false charges based on perjurious testimonies of military assets); Defend Panay Input (Philippines, charges based on fabricated evidence); SHOAA Input (Algeria, fabricated terrorism file with a list of names supposedly involved in a subversive organization was fabricated); Confidential Input (Turkey, trial relying on secret witnesses and “unknown sources”); Adalah Input (CT law authorizes the use of classified evidence and holding detention hearings, reviews, and appeal proceedings in the absence of the detainee, and refraining from informing the detainee of decisions made in his/her case); Confidential Input (Belarus, secret evidence); Omnium Cultural Input (Spain, Court has not given the attorneys access to the full content of the investigation); North America Consultation (Canadian academic tried in absentia by a French court); see also, e.g., A/HRC/46/26/Add.1 (Maldives, arrests without warrants on basis of “probable and reasonable grounds”); EGY 10/2020; ARE 1/2022; IRN 12/2021.

sibility and complicity, including in cases with substantiated non-refoulement concerns.<sup>243</sup>

Often charges are brought concurrently or consecutively under multiple laws and proceedings.<sup>244</sup> As Front Line Defenders found in its assessment of human rights defenders subject to counter-terrorism related charges, public authorities commonly filed multiple criminal cases using a combination of counter-terrorism, national security, and other criminal laws with the aim of prolonging detention, including in cases where bail had been granted in a separate case.<sup>245</sup>

Disproportionate sentencing on the basis of the purportedly exceptional nature of terrorism, violent extremism and/or national security more broadly is also common, with prison sentences ranging upwards of 150 years or life,<sup>246</sup> or invocation of the death penalty<sup>247</sup>—sometimes through mass death penalty sentences.<sup>248</sup> Global Study respondents also identified multiple situations involving children facing adult sentences under terrorism or violent extremism charges, as well as children detained because of their “association” with adults suspected of terrorism.<sup>249</sup> Some identified individuals were

also subjected to prolonged detention, even after serving their already-disproportionate sentence.<sup>250</sup>

At the same time, notwithstanding rule of law and governance challenges in many settings, there have been promising examples of judiciaries resisting misuse. For instance, in cases in Niger, Honduras, India, Tunisia, and Kenya, human rights defenders were freed or acquitted after being unfairly accused.<sup>251</sup> In Colombia, the Supreme Court cautioned against the stigmatizing narratives being used by the State to frame peaceful protestors as terrorists (as well as insurgents and narco-terrorists) and ordered the government to develop regulations to protect against the undue use of force by law enforcement and arbitrary detention and inhumane treatment.<sup>252</sup>

## Recommendations

- Institute strict regulations on law enforcement, security forces, and other governmental actors in the appropriate uses of force, coercive measures, equipment, and weapons, incorporating the principles of lawfulness, necessity, propor-

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243 See, e.g., Middle East & North Africa Consultation (Arab Interior Ministers Council).

244 See, e.g., EGY 12/2021, EGY 5/2021, EGY 2/2021, EGY 13/2020, EGY 4/2020; IND 19/2021.

245 FLD Input.

246 Confidential Input (Turkey, 125 years); PEF Input (Thailand, 150 years for protest activities); UN Human Rights Experts, “UN Experts decry US Rhetoric on Designation of Terrorist Groups,” press release, 19 June 2020).

247 According to a review of Human Rights Committee Concluding Observations, there were 16 concerning application of the death penalty, with 18.8% of those cases involving counter-terrorism measures against civil society. See also, BLR 3/2022; A/HRC/44/49/Add.1 (Ethiopia); CIV-ICUS input (Pakistan, death penalty for terrorism offenses); EMR & CIHRS Input (Egypt, amendments have expanded the definition of funding terrorism and added new crimes for which penalties range from a fine to the death sentence); SHOAA Input (Algeria, terrorist act charge is punishable by death); Asia & the Pacific Consultation (Myanmar).

248 UN Human Rights Experts, “Israel: UN experts alarmed by potential reinstatement of death penalty for ‘terrorism offences,’” press release, 24 February 2023; EMR & CIHRS Input (Egypt, mass death penalty and long-term prison sentences).

249 See, e.g., Australian Muslim Advocacy Network Ltd Input (Australia, alleging 15 year old Muslim teenagers being charged under terrorism laws and facing up to 15 years in prison under adult sentencing guidelines); EMR & CIHRS Input (ESSC under case No. 653/2021 verdicts including prison terms for 23 children); Confidential Input (Occupied Palestinian Territory, concerning children detained until reaching legal age under counter-terrorism laws); AUT 1/2023; TTO 3/2022; GBR 13/2022; AUS 4/2022; CAN 3/2022; GBR 7/2022; AUS 2/2022; AUS 1/2022; AUT 1/2022; FRA 1/2022; DEU 1/2022; SWE 1/2022; GBR 1/2022; USA 2/2022; NLD 4/2021; CAN 8/2021; TUN 6/2021; CHE 4/2021; FRA 1/2021; AFG 3/2020; ALB 1/2021; DZA 1/2021; AUT 1/2021; AZE 2/2021; BGD 1/2021; BEL 1/2021; BIH 1/2021; CAN 1/2021; EGY 1/2021; EST 1/2021; FIN 1/2021; FRA 6/2020; GEO 1/2021; DEU 3/2021; IDN 1/2021; IRN 30/2020; KAZ 2/2021; KGZ 1/2021; LBN 1/2021; LBY 1/2021; MYS 3/2020; MDV 1/2021; MAR 1/2021; NLD 1/2021; MKD 1/2021; NOR 1/2021; PAK 14/2020; PHL 2/2021; POL 1/2021; PRT 1/2021; ROU 2/2021; SAU 14/2020; SEN 1/2021; SRB 1/2021; SOM 2/2020; ESP 1/2021; PSE 1/2021; SDN 1/2021; SWE 1/2021; CHE 1/2021; TJK 1/2021; TTO 1/2021; TUN 1/2021; TUR 2/2021; UKR 1/2021; GBR 2/2021; USA 8/2021; UZB 1/2021; VNM 1/2021; YEM 4/2020; AUS 1/2021; CHN 1/2021; DNK 1/2021; IND 1/2021; RUS 1/2021; ZAF 1/2021.

250 Middle East & North Africa Consultation (UAE).

251 See e.g., Frontline Defenders database of cases (dismissed). Available from: <https://www.frontlinedefenders.org/en>; Kenyan case of Wilfred Olal v. the Attorney General, High Court permanent stay.

252 STC 7641-2020.

tionality, and the precautionary principle and consistent with the lawful use of force under international human rights law.

- Establish safeguards to prevent arbitrary detention, torture, cruel, inhuman or degrading treatment, extrajudicial killings, and other forms of state violence and judicial harassment. Investigate and provide full remedies where such allegations are sustained.
- Ensure further accountability including through establishing independent national and regional mechanisms, such as, national protection mechanisms established by law<sup>253</sup> and ensure they are adequately funded to respond to misuse of counter-terrorism and P/CVE misuse against civil society.
- Foreign donors and technical assistance providers to States' security sector apparatuses should perform ex ante impact assessments and human rights due diligence to protect against the dangerous legitimization of State misuse of counter-terrorism administrative measures.
- Non-abolitionist State Parties "should pursue an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*."<sup>254</sup>

## Part 2: Overlapping Administrative Measures Without Procedural Safeguards

Augmenting the challenges of judicial harassment measures, administrative measures like restrictions on movement, citizenship stripping, sanctions (Chapter 3, Part 4) and employment bans pose sizeable challenges for civil society including restricting capacity to function and operate within national laws. The cumulative effects of the multifaceted and layered criminal, civil, administrative, and other judicial and non-judicial counter-terrorism measures have been profound. There are two forms of administrative measures that come to the fore from the data. First, procedural administrative requirements which may appear to be facially neutral (i.e., appear to affect all non-profits or civil society actors equally)<sup>255</sup> but in practice have a disproportionate impact on small grassroots organizations, women-led civil society, and civil society placed in or representative of historically marginalized communities and seen as inherently 'suspect' by the authorities.<sup>256</sup> Second, specific administrative counter-terrorism or countering violent extremism measures which are directed against individuals alleged to be, associated with, or supportive of terrorism or (violent) extremism.<sup>257</sup> The use of administrative measures in both categories appears to be widespread and consolidating though reliable cross-national data is unavailable.<sup>258</sup>

On the proliferation of state and local administrative regulation of non-profits, there is no dispute that effective administration of the non-profit and civil society sectors can serve important transparency, accountability, and efficiency needs. However, the Global Study data shows how increased proceduralism of administrative measures across regions has operated in unduly burdensome ways that risk eliminating meaningful exercise of associational

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253 For example, States could rely upon the "Model Law to Recognize and Protect Human Rights Defenders," International Service for Human Rights (2016) (developed through vast consultation with civil society).

254 UN Human Rights Committee, General Comment No. 36 on article 6: right to life (2018) (CCPR/C/GC/36).

255 For example, administrative regulation deriving from compliance with FAFT standards.

256 ADM Input (France, inability to maintain a bank account); Confidential Input (Belarus, liquidation process failure to provide legal address and other information).

257 Legal administrative measures applied by France fall into this category (A/HRC/40/52/Add.4).

258 See e.g., Global Counter-Terrorism Forum (GCTF), Memorandum on the Use of Rule of Law-Based Administrative Measures in a Counter-terrorism Context (2019).

# ISSUE IN FOCUS

## Cumulative Counter-Terrorism Measures Affecting Civil Society in Jammu & Kashmir

UN Special Procedures have issued several communications raising concerns about multiple, overlapping judicial and administrative measures against human rights defenders, journalists, and other civil society actors in Jammu & Kashmir, pursuant to the Unlawful Activities (Prevention) Amendment Act and other legal bases. The allegations include intimidation, arbitrary arrest and detention, physical raids of homes and civil society organization offices, searches and confiscations—including of laptops, cell phones, documents like passports and salary strips, and hard drives with testimonies and highly sensitive data collected over decades of human rights investigations.

Source: See OL IND 7/2020; UA IND 4/2021 (after a judge ruled that the Unlawful Activities Prevention Act (UAPA) did not apply, the claimant was allegedly arrested and detained under a different charged related to terrorist financing); see, e.g., AL IND 20/2020; UA IND 19/2021; UA IND 4/2021; UN Human Rights Experts, “UN experts urge Indian authorities to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately,” press release, 22 December 2021.

life, including free speech, religious exercise, and the right to participate in public affairs and appear discriminatory.<sup>259</sup> Global Study respondents reported numerous instances of liquidation of organizations, the inability to operate for failing to provide adequate paperwork or filings, financial difficulties in opening and operating bank accounts, and asset freezing and targeted financial sanctions<sup>260</sup>—often lacking procedural and substantive due process rights. In one Central European country the num-

ber of signatures required to register and operate a mosque or religious community went up from 20,000 to 50,000, effectively precluding Muslims from being able to register due to their low population in the country.<sup>261</sup> The Special Rapporteur on freedom of association has systematically documented how national administrative requirements and restrictions for civil society organizations’ registration, tax audits, building inspections, and other reporting requirements have made it increasingly

259 Despite a rise in such administrative regulatory measures, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that “very few, if any, instances of terrorism financing have been detected as a result of [civil society organization]-specific supervisory measures.” (A/HRC/ 23/39) para. 25.

260 See, e.g., Confidential Input (Belarus); ADM Input (France); Confidential Input (Germany); Centre for Financial Crime and Security Studies (CFCS) RUSI Input (global); see also, e.g., A/HRC/50/23; AL CHE 2/2023.

261 A/HRC/46/30, para. 28.

**“THE REPERCUSSIONS ARE ENORMOUS. I HAVE NOT SEEN MY SISTER IN FIVE YEARS, AND OUR FAMILY IS IN A TRAVEL BAN. THIS IS COLLECTIVE PUNISHMENT.”**

**Woman Human Rights Defender, Middle East and North Africa Civil Society Consultation**

difficult to operate and discharge core responsibilities (Chapter 3, Part 3).<sup>262</sup> As a result, the financial and emotional costs of operation are often simply too high for many, particularly grassroots and women-led organizations.<sup>263</sup> In fact, 57.6 per cent of the Committee on the Elimination of Discrimination against Women’s cases of undue regulation and registration of civil society reviewed for the Global Study pertained to restrictions on the basis of counter-terrorism.

Regarding the use of administrative measures against specific individuals and groups, the Study observes that the ‘toolkit’ of counter-terrorism leans increasingly into such capacities. Their attractiveness is manifest.<sup>264</sup> Because such measures are not viewed as involving “liberty” deprivation the legal burdens of proof are lowered in their application (making use easier as a legal matter); the power to

exercise these measures can lie with a range of official actors (specifically they generally do not require judicial authorization); review is generally a posteriori not a priori; and the constraint on individual or group action is considerable. Information provided to this Study demonstrated the use of administrative measures applied to a variety of civil society actors from lawyers,<sup>265</sup> to religious institutions including churches and mosques,<sup>266</sup> to humanitarian organizations.<sup>267</sup> According to a 2020 literature review by InterAction of counter-terrorism measures impacting humanitarian actors, 53 per cent of the impacts catalogued were operational, likely posing immediate barriers to the delivery of humanitarian assistance.<sup>268</sup>

Travel bans and restrictions and border screening processes in the name of counter-terrorism have been documented by UN human rights mecha-

262 A/HRC/50/23; TGO 3/2021; GRC 1/2021; TUR 3/2021; AL KOR 5/2020; Espacio Publico Input (Venezuela).

263 UN Women, Global Digital Consultation (2020).

264 CFCS RUSI (commenting on the attractiveness of CFT for states with weak institutional safeguards); Confidential Input (“Within repressive countries where civil society operates at risk, it has spurred governments as well as banking institutions to impose disproportionate administrative burdens on civil society”).

265 Crimean Tartar Resource Centre Input; CIHRS, CFJ, and EFHR Input.

266 See, e.g., A/HRC/40/50/Add.4, para. 28 (France); NUPL Input (Philippines); Confidential Input (global).

267 Confidential Input.

268 InterAction Input.



nisms and Global Study respondents, both part and parcel of criminal powers, and separately as independent administrative powers.<sup>269</sup> In either form, intrusive border measures and travel restrictions raise human rights concerns and deep unease in particular of racial and religious profiling amounting to discriminatory use of discretionary powers against certain groups in society.<sup>270</sup> While at least initially, administrative procedures at border points may appear less intrusive than arrest—for example stop and search, extra screening and questioning at airports—all these actions highlight vulnerability, create stigma, and open civil society actors up to greater scrutiny and other forms of rights interference.<sup>271</sup> As one Global Study respondent explained, “harassment at the border has become a matter of common experience” for certain communities.<sup>272</sup> More extreme administrative measures include travel bans,<sup>273</sup> though in many contexts the individual will be unaware they have been subject to such a ban until they seek to travel.<sup>274</sup> In some settings, family members of designated or targeted individuals are also precluded from traveling.<sup>275</sup> Notably, 33.3 per cent of the Human Rights Committee and Committee on the Elimination of Discrimination against Women communications involving travel bans pertained to travel bans against women in the

name of counter-terrorism. Remedies for such bans are poor and hard to access.

States have also resorted to additional measures like expulsion, deportation and revocation of permanent residency status, and citizenship stripping or deprivation of nationality—where the withdrawal is initiated by the authorities of the State—on counter-terrorism and P/CVE grounds.<sup>276</sup> Citizenship stripping is an especially extreme measure facilitated variously and cumulatively by legislative measures, administrative means, policy decisions and institutional practices at the national level in multiple countries. The Special Rapporteur has previously documented the immense legal, political, social, and economic harms of citizenship stripping,<sup>277</sup> and the Committee on the Elimination of Discrimination Against Women has cautioned that citizenship stripping laws in the name of counter-terrorism or other national security interests create a high risk of statelessness for women and girls in particular.<sup>278</sup>

Some States have also initiated employment bans or restrictions, as well as public benefit restrictions on counter-terrorism and P/CVE grounds<sup>279</sup>--again with significant downstream harms. Government curfews, house arrests, and movement restrictions

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269 See, e.g., A/HRC/40/52 (travel bans against humanitarian workers, medical staff, peaceful activists, human rights defenders, members of political parties, youth activists, people associated with NGOs, and academics); A/HRC/48/55, paras. 47-48 (travel bans against human rights defenders); see also Occupied Palestinian Territory Consultation; Middle East & North Africa Consultation; North America Consultation; Confidential Input; IHRC Input (UK); PEF Input (Thailand); Access Now Input (Saudi Arabia); Adalah Input (Israel); Broken Chalk Input (Turkey).

270 See, e.g., ALC (USA, airport stop and search, laptop seizure, searching of all electronic devices at airports of Arab, Middle Eastern, Muslim and South Asian communities); Geneva Academy of International Humanitarian Law (Geneva Academy) Input (Israel, screening of Palestinians).

271 See, e.g., USA 2/2020; CIHRS (Libya, targeting of activists at airports).

272 Asian Law Caucus Input.

273 See, e.g., A/HRC/40/52/Add.4, para. 19 (France); see also BADIL Resource Centre for Palestinian Residency and Refugee Rights (BADIL) Input (Occupied Palestinian Territory); Broken Chalk Input (Turkey); Espacio Público Input (Venezuela); C&SN Input (global, in reprisal for UN engagement); ISR 11/2022; USA 8/2022; EGY 2/2022; EGY 15/2020.

274 Confidential Input.

275 Confidential Input (Sri Lanka); Broken Chalk Input (Turkey).

276 These include 11 communications on citizenship stripping and 34 on expulsion or deportation by the Human Rights Committee, and 12 communications on arbitrary deprivation of citizenship or revocation of nationality by Special Procedures; Access Now Input (Israel); IHRC Input (UK); Confidential Input; ALC Input (USA).

277 Fionnuala Ní Aoláin, Position Paper of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Human Rights Consequences of Citizenship Stripping in Counter-Terrorism Contexts with a particular emphasis on North-East Syria (February 2022).

278 CEDAW/C/KAZ/CO/5 (2019), paras 33-4.

279 See, e.g., ALC Input (USA); Confidential Input (Sri Lanka); UN Security Council Sanctions Regimes, Fact Sheet, 2023; OHCHR, Human Rights, Terrorism, and Counterterrorism Fact Sheet No. 32.

# ISSUE IN FOCUS

## Citizenship Stripping

In Bahrain, high rates of citizenship stripping remain of concern, including to the Committee on the Elimination of Racial Discrimination. Despite the restoration of some individuals' citizenship, a high number of persons remain stateless due to citizenship stripping based on national security rationales. Paired with the lack of national statistics, including of stateless persons, the number of human rights defenders, activists, and civil society deprived of citizenship is unknown.

Source: CERD/C/BHR/CO/8-14, para. 23; Middle East & North Africa Consultation; Amnesty International, "Bahrain: Citi-

are also used to forbid civil society entry into certain areas,<sup>280</sup> with significant consequences for family and professional life.<sup>281</sup> Land evictions and house demolitions have also been used as forms of targeted or collective punishment for residents suspected of supporting terrorist groups—with disproportionate impacts on people in vulnerable situations, including indigenous peoples and ethnic, religious and other minorities.<sup>282</sup> In other cases, certain designated individuals or households have been subject to mandatory guest-checks or other periodic meetings with security forces on the basis of counter-terrorism and/or P/CVE—at times subject to repeat and overlapping visits by different officers and security units with duplicative powers.<sup>283</sup>

The use of any of these administrative measures, or

a combination thereof, can be a gateway to a range of other legal interferences and is generally never experienced as a singular interaction with the State but builds on sustained points of intrusion. The evidence used for administrative measures is generally subject to national security restrictions meaning it will not be fully disclosed—limiting in turn the scope for lawyers to meaningfully review the intelligence basis for the measures and posing challenges for the right to full and meaningful legal representation. In some cases, undated or otherwise uncorroborated evidence is used to support administrative measures and restrictions,<sup>284</sup> exacerbating the risk of administrative abuse. The result is that the pernicious drag of an administrative measure can have extraordinary consequences for the targeted individual and resources may be stunted or entirely lacking.

280 West, East, & Central Africa Consultation (Mali & Niger); Confidential Input (global); Defend Panay Network Input (Philippines); Crimean Tatar Resource Center Input.

281 See, e.g., A/HRC/40/52/Add. 4, para. 24 (France).

282 A/HRC/6/17, para. 63.

283 See, e.g., Confidential Input (Sri Lanka); PEF Input (Thailand).

284 See, e.g., A/HRC/40/52/Add.4, para. 27 (France); ISR 11/2021.

## Recommendations

- Make broadly available and easily accessible national statistics—with gender identity, ethnicity, race, religion, and age disaggregated—pertaining to the application, use, and consequences of counter-terrorism administrative measures, including data on the effects on particular communities and groups.
- Judiciaries must play a full a priori role overseeing administrative counter-terrorism measures to determine the necessity, proportionality, legality and non-discriminatory application of such measures.
- Courts should address how the application of administrative measures may in fact amount to a de facto deprivation of liberty in respect of travel, measures of home or geographical confinement, or reporting requirements.
- States must provide safeguards against the arbitrary deprivation of nationality with a view to preventing statelessness, including the right to legal representation, access to relevant information, and to lodge an appeal.
- Address the gendered and familial impacts of administrative measures particularly their long term and cumulative use.
- Foreign donors and technical assistance providers to States' security sector apparatuses should perform ex ante impact assessments and human rights due diligence to protect against the dangerous legitimization of State misuse of counter-terrorism administrative measures.

## Part 3: Misuse & Misapplication of Counter-Terrorism Financing Standards

Across regions, human rights defenders, humanitarians, political dissidents, journalists, lawyers, religious leaders, environmentalists, migrants and other civil society actors have been subject to countering the financing of terrorism (CFT) measures. These come in the form of non-profit registration and reporting requirements, and a range of preventive, disciplinary, and enforcement measures like dissolution, surveillance, office raids, asset freezing, bank de-risking, and prosecutorial action (Chapter 3, Parts 1, 2). State implementation of CFT measures is often incentivized by global compliance pressures, including pursuant to the soft-law Financial Action Task Force Standards (FATF).<sup>285</sup>

This chapter builds on the Special Rapporteur's position paper on The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures<sup>286</sup> and enumerates trends in the design, delivery, and assessment of CFT measures. It takes stock of the cascading effects of the wide-ranging and overlapping CFT tools adopted by States, banks, financial intermediaries, and other stakeholders. Whether intentionally or not, many stakeholders have erred towards a zero-risk approach to terrorist financing, often presuming without evidence that the non-profit and charitable sector as a whole is at high-risk and adopting undue, disproportionate, and discriminatory measures. The legal, political, economic, social, and cultural impacts of undue CFT measures, not only to civil society organizations and their operations, but also their staff and families, beneficiaries, and

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285 A/74/335; Fionnuala Ní Aoláin, Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights and rule of law implications of countering the financing of terrorism (CFT) measures implemented pursuant to international CFT norms and standards (CFT Position Paper) (2022), p. 9; see also A/HRC/50/23, paras. 37-39; A/HRC/49/49, para. 46..

286 CFT Position Paper.

# ISSUE IN FOCUS

## Terrorist Financing Risk Assessments

In 2020, the North Macedonian civil society organization Konekt reached out to the Financial Intelligence Unit to update the national terrorist financing risk assessment before a FATF evaluation. The joint government-civil society terrorist financing risk assessment that followed downgraded civil society organizations from “high risk”—finding instead a subset (13 per cent) of civil society organizations at “low-medium” risk for terrorist financing, with the remainder “low risk.”

Source: European Center for Not-for-Profit Law (ECNL) Learning Center, Risk Rating for CSOs Reduced in Collaborative Process for Risk Assessment in North Macedonia (2020); see also Konekt & ECNL, Handbook for Non-Profit Organiza-

communities, is well documented<sup>287</sup> and raises serious human rights challenges, as well as practical questions of effectiveness, especially as civil society actors move into the informal economy or finds other workarounds as a result.<sup>288</sup>

### Lack of Sectoral Terrorist Financing Risk Assessments

The starting point for the design of any CFT measure must be an assessment of terrorist financing

risk. Risk assessments are the prerequisite for ensuring a necessary, proportionate CFT measure in line with both international human rights law<sup>289</sup> and the FATF risk-based approach.<sup>290</sup> In practice, risk assessments are rarely undertaken with sufficient regularity, specificity, and public consultation.<sup>291</sup> Although discrete good practices of collaborative and participatory multi-stakeholder risk assessments have begun to emerge (see text-box below), most Global Study civil society respondents claimed that no sectoral risk assessment had been performed in

287 See CFT Position Paper, pp. 23-25; see also, e.g., Confidential Input (Syria); Confidential Input (Hong Kong); BADIL input; Regional Consultation Outcome Documents.

288 See, e.g., Asia & the Pacific Consultation (Myanmar, Thailand, and the Philippines (resorting to transferring funds through MoneyGram, Western Union or remittances through foreign organizations and small grant and civil society support networks)); West, East, & Central Africa Consultation (finding many organizations prefer to register as societies or trust funds instead); Confidential Input (according to one survey of 30 partner organizations operating in Myanmar, 25 organizations reported using the informal banking system due to limited bank access, organizational dissolution, office raids, staff arrests, and other pressures).

289 Proportionality requirement under international human rights law. See, e.g., ICCPR, arts. 12(3), 18(3), 19(3), 21(3), 22(2); ICESCR, arts. 8(1); see also E/CN.4/1985/4 (Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights).

290 FATF Recommendation 1; see also FATF, Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures (2007).

291 See CFT Position Paper, pp. 19-21.

their country of operation.<sup>292</sup> Where respondents identified the existence of a non-profit risk assessment, they commonly expressed concern that there was little to no public consultation,<sup>293</sup> resulting in some cases with a shadow risk assessment undertaken by civil society and coming to completely different findings;<sup>294</sup> that existing regulatory requirements and non-profit self-governance measures were not taken into account;<sup>295</sup> that assessors relied upon unverified social media posts, inputs from government-organized non-governmental organizations, and automated algorithmic assessments<sup>296</sup>; and that the entire non-profit sector was identified as higher risk or otherwise treated by default as obliged or reporting entities without any granularity.<sup>297</sup> As of November 2021, out of 118 Mutual Evaluations, just six jurisdictions were found Compliant with FATF Recommendation 8, which requires a risk-based approach to terrorist financing risks in the non-profit sector.<sup>298</sup> In this regard, FATF's project to study and mitigate the unintended consequences resulting from the incorrect implementation of the FATF Standards, including the ongoing review of its Best Practices Paper on combatting the abuse of non-profit organizations, Recommendation 8, and assessment Methodology and Procedures may help to strengthen compliance and a more risk-based

approach.<sup>299</sup>

## Undue Non-Profit Registration, Reporting, and Funding Requirements

Tethered or not to a terrorist financing risk assessment, restrictive civil society requirements in the name of CFT are widespread and counting, and focus particularly on non-profit registration and reporting requirements—implicating in turn the rights to freedom of association and peaceful assembly, freedom of opinion and expression, and privacy, among others.<sup>300</sup> Global Study respondents documented an increase in these requirements for non-profit organizations, as well as religious groups, political parties and trade unions, often involving complex bureaucratic processes with procedural and substantive obstacles. According to one input, 90% of civil society organizations operating in their country of operation faced impediments to registering or maintaining their registrations, namely due to CFT restrictions.<sup>301</sup> UN Special Procedures mandate-holders have issued communications on restrictive CFT registration and reporting measures and proposals in Egypt, Nicaragua, Niger, Serbia, Thailand, Turkey, Venezuela, and Zimbabwe, among others.<sup>302</sup> Women civil society organizations are of-

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292 See, e.g., Asia & the Pacific Consultation (a large majority reported that they had not seen any risk assessment indicating the vulnerability of their sector to terrorist financing); Central & Eastern Europe Consultation (small majority similarly said they had not seen one); Barbados & El Salvador (no NPO risk assessment); see also C&SN Input (Latin America, lack of sectoral risk assessments).

293 Asia & the Pacific Consultation, including Indonesia; El Salvador (no NPO consultation); see also A/HRC/50/23, para. 39.

294 See, e.g., Serbia; see also Global NPO Coalition

295 Confidential Input (Belarus, claiming CFT financial reporting requirements were duplicative of existing measures); Asia & the Pacific Consultation (Indonesia, same). For self-governance features, see Serbia, Macedonia, Montenegro, Ukraine.

296 See also Solidarity with Others input.

297 Latin America and the Caribbean Consultation (Venezuela).

298 Ben Evans, "Supporting Member States in conducting periodic risk assessments of their non-profit sectors to inform the implementation of a risk-based approach."

299 FATF Input.

300 CFT Position Paper, pp. 21-25; see, e.g., OL QAT 1/2022; OL THA 7/2021; OL ZWE 3/2021; OL VEN 8/2021; OL BLR 2/2021; OL TUR 3/2021; see generally A/HRC/50/23.

301 *Civilis Derechos Humanos* Input (Venezuela, 58.3% due to obstacles or delays in processing; 25% for high registration costs; 23% due to lack of information on procedures and requirements; 21.3% for the rejection of applications for registration; 13.1% for additional requirements or not in accordance with the provisions of the laws; and 8.2% due to the suspension of registration acts in the offices that correspond to the organizations due to their legal domicile).

302 See, e.g., OL TUR 3/2021; OL NIC 3/2020; Press Release, Nicaragua: UN experts denounce arbitrary shutdown of civil society organizations (29 July 2022); AL EGY 6/2021; OL VEN 8/2021; OL ZWE 3/2021; OL THA 7/2021; A/HRC/48/59/Add.2 (Venezuela), para. 79; A/HRC/50/23/Add.2, paras. 70(c), 72 (Niger); A/HRC/50/23/Add.3, para. 65 (Zimbabwe).

ten especially affected.<sup>303</sup>

Restrictive registration and reporting requirements were typically enacted to comply with the FATF Standards—in some cases in advance of a mutual evaluation or follow-up assessment by the FATF or FATF-Style Regional Body.<sup>304</sup> They include the mandatory disclosure of all existing and intended beneficiaries;<sup>305</sup> past and present founders and beneficial owners;<sup>306</sup> all individual and institutional donors, including in some cases donations as marginal as 4 USD;<sup>307</sup> and underlying grant contracts and other project-related documents.<sup>308</sup> There is often confusion and a lack of clarity, including conflation of beneficiaries and beneficial owners, and increasingly the treatment of the philanthropic and foundations' sector as obliged entities.<sup>309</sup> In recent years, expansive registration and reporting restrictions on crowdfunding and the use of other new payment technologies have also become increasingly common.<sup>310</sup> These requirements are often disproportionate to any identified risk and leave

significant discretion to the government to deny applications,<sup>311</sup> raising significant rights concerns.<sup>312</sup> Registration processes can be cumbersome and resource and time-intensive, taking away vital resources from already resource-strapped organizations.<sup>313</sup> Fines and sanctions for non-compliance can also be debilitating.<sup>314</sup>

Many States have focused their CFT efforts on restricting funding, typically foreign funding, to local civil society organizations,<sup>315</sup> which can be especially debilitating for civil society organizations with missions focused on, inter alia, women, gender identity and sexual orientation, and ethnic and religious minorities, given their reliance on foreign donors. Restrictions range from banning or severely restricting non-profit organizations from receiving any foreign funds;<sup>316</sup> requiring registration as “foreign agents” or other prior governmental approval to receive foreign funds;<sup>317</sup> prohibiting transfers from specific foreign donors or otherwise directly targeting those donors (in stark contrast to the un-

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303 A/HRC/46/36, para. 13.

304 See, e.g., Central & Eastern Europe Consultation (Bosnia and Herzegovina, Albania); Asia & the Pacific Consultation (participants unanimously observed how the FATF Standards were invoked by their governments to justify new restrictive registration and reporting requirements); South Asia Consultation.

305 See, e.g., Philippines; West, East, & Central Africa Consultation (This also threatens advocate-client privilege since many of these CSOs also offer legal assistance).

306 See, e.g., Central & Eastern Europe Consultation (North Macedonia, Albania). requirements to the non-profit sector.

307 See, e.g., OL VEN 8/2021; see also See, e.g., CELS Argentina Input (Argentina).

308 See, e.g., Occupied Palestinian Territory Consultation; Asia & the Pacific Consultation (Philippines).

309 Philea et al., Urgent call to clarify and simplify AML beneficial ownership policy for public benefit foundations and NPOs in light of new proposals (Feb. 2023).

310 See, e.g., Central and Eastern Europe Consultation; Fionnuala Ní Aoláin, Position Paper of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on International Human Rights Law Considerations for Counter-Terrorism Financing Regulation of Crowdfunding, Virtual Assets, and New Payment Technologies (2023).

311 See, e.g., OL VEN 8/2021; Confidential Input (Belarus); Civilis Derechos Humanos (Venezuela); Confidential Input (Myanmar); Confidential Input (India); EMR & CIHRS Input (Egypt); Ambika Satkunanathan Input (Sri Lanka); ODIHR Input.

312 See CFT Position Paper, pp. 21-25.

313 See, e.g., the Kvinna till Kvinna Foundation.

314 See, e.g., Latin America & the Caribbean Consultation (Barbados, absolute fee that may be disproportionate to the operating budget of the organization); Central & Eastern Europe Consultation (Albania, fines based on operating costs); see also A/HRC/50/23, para. 44.

315 See, e.g., CFT Position Paper (citing, e.g., OL TUN 4/2022; OL VEN 8/2021; OL THA 7/2021; AL OTH 71/2020; OL BLR 2/2021); OL NIC 3/2020; A/HRC/50/23, paras. 33-45 (India, Egypt, Nicaragua, Russia, Hong Kong, Algeria, Egypt, Uganda); see also Transparency International, The Impact of Anti-Money Laundering and Counter Terrorist Financing Regulations on Civic Space and Human Rights (2021); A/HRC/23/39, paras. 8-18 (noting the right to seek, receive and use resources — human, material and financial — from domestic, foreign and international sources is also protected under international law, as part of the right to freedom of association).

316 See, e.g., Latin America and Caribbean Consultation (Venezuela, art. 5 of the Law for the Defense of Political Sovereignty and National Self-Determination); EMR & CIHR Input (Egypt); Justice for All Input (India); Asia & the Pacific Consultation (Thailand).

317 See, e.g., South Asia Consultation; Asia & the Pacific Consultation; Middle East & North Africa Consultation.

hampered access to foreign counter-terrorism donors<sup>318</sup>;<sup>319</sup> capping the amount of foreign funds that non-profit organizations may receive<sup>320</sup>; and taxing foreign funds.<sup>321</sup> State-instituted restrictions are further exacerbated by targeted financial sanctions and donor-instituted restrictions, such as no-contact policies in funding agreements prohibiting civil society organizations from contacting designated terrorist groups, often the de facto authorities in conflict regions where organizations seek to implement humanitarian and human rights projects.<sup>322</sup>

The information disclosed as part of these CFT registration and reporting measures may include sensitive information, including bank account information, photo identification, home addresses, and other personal information of founders, staff, and beneficiaries, who may be particularly vulnerable to reprisals or specific project activities and underlying travel and whereabouts. In some cases, States invoked further surveillance and oversight powers in order to obtain additional information such as specific banking and transactional information or otherwise investigate civil society.<sup>323</sup> The storage and potential transfer of such information<sup>324</sup>—including among public and private entities across borders—raise significant rights challenges, including with respect to the right to privacy (Chapter 3, Part 5).

Notably, successful appeals and/or judicial review of these registration and reporting requirements are rare though emerging, including in France and Nigeria.<sup>325</sup>

## Toolkit of CFT Disciplinary and Enforcement Measures

In the name of CFT, States have adopted a range of disciplinary and enforcement measures, often through administrative means (Chapter 3, Part 2). Many States enjoy the discretionary power to order asset freezing where individuals or organizations are under investigation for terrorist financing offences or otherwise affiliated with suspicious transactions—sometimes due to automated listing or notices.<sup>326</sup> States may also implement targeted financial sanctions (Chapter 3, Part 4). In some cases, there are no formal charges, no opportunity to appeal, and/or no time limits.<sup>327</sup> Sometimes the measures appear politically motivated, e.g., freezing assets of human rights defenders and democracy advocates only during elections.<sup>328</sup>

It is also well documented that civil society organizations have been subject to forced dissolution and de-registration on the basis of CFT.<sup>329</sup> These measures are often paired with physical harassment

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318 See, e.g., Asia & the Pacific Consultation.

319 See, e.g., C&SN Input (Hungary, India).

320 West, East, & Central Africa Consultation.

321 West, East, & Central Africa Consultation; Israel Consultation (proposed legislation regarding potential imposition of a tax on donations given by foreign governmental entities to nonprofit civil society organizations).

322 Confidential Input (Afghanistan); Confidential Input (Syria); Kvinna till Kvinna Foundation Input (follow-up administrative questioning based on national lists even if donor State uses another); Confidential Input (e.g., Gaza and Iran).

323 See, e.g., AL OTH 71/2020; see also OL SAU 12/2020; OL QAT 1/2022; OL TUR 3/2021; AL OTH 71/2020; A/HRC/52/66, paras. 28-30.

324 See, e.g., Asia & the Pacific Consultation (Philippines, information is shared with the Financial Intelligence Unit, the Anti-Money Laundering Council, and other government entities); Central & Eastern Europe Consultation.

325 Nigeria amended the Money Laundering Act in 2022 to de-list NPOs among Designated Non-Financial Institutions, thus lessening their reporting obligations; France's Conseil de'Etat decision rejected overburdensome screening requirements.

326 See, e.g., ADM input; Justice for All input (India); Regional Consultation Outcome Documents.

327 See, e.g., West, East, & Central Africa Consultation (Uganda).

328 See, e.g., West, East, & Central Africa Consultation (Uganda, leading up to the 2021 Presidential and Parliamentary elections in Uganda, the government froze bank accounts belonging to a women's network, citing reasons of terrorism financing); Tanzania (law enforcement ordering a commercial bank in Tanzania to freeze the accounts a human rights defenders coalition prior to elections); see also, Amnesty International, "India Should Stop Using Abusive Foreign Funding Law," 19 January 2022.

329 UN Human Rights Experts, "UN experts denounce arbitrary shutdown of civil society organizations" press release, 29 July 2022; FATF UIC

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## A Bank's Call for a More Risk-Based Approach

The Dutch Central Bank has called for banks and supervisory authorities to adopt a more targeted, risk-based approach to CFT and anti-money laundering--as it would be more effective and “reduce the undesirable side effects of the gatekeeper role of banks and other financial institutions, such as the unnecessary refusal or exclusion (“de-risking”) of customers from payment systems.”

Source: Dutch Central Bank Input (citing De Nederlandsche Bank, *From Recovery to Balance: A Look Ahead to a More Risk-Based Approach to Preventing and Combating Money Laundering and Terrorist Financing*)

and intimidation. Indeed, Global Study respondents identified multiple raids of civil society organization offices and human rights defenders and their families' homes, sometimes without warrants and in phishing attempts for CFT-related inquiries and investigations.<sup>330</sup> Such harassment is often the precursor to arrests, prosecutions, and other judicial harassment of human rights defenders and civil society actors (Chapter 3, Part 1). As a result, individuals may be left stigmatized, unemployed and un-hirable, even upon acquittal.<sup>331</sup> Women often bear the

brunt of such cumulative practices (Chapter 2, Part 3; Chapter 3, Part 4) Families are also targeted due to mere association or otherwise face compounding social, financial, and other harms.<sup>332</sup>

### Banks De-risking Measures

Banks and financial intermediaries have played a central role in implementing CFT measures that affect civil society, particularly in adopting de-risk-

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Synopsis (documenting “forced dissolution, de-registration or expulsion of NPOs”); see also; Mozambique (judges have the authority to order the shutdown of NPOs ex parte); Confidential Input, (India, between 2019-2021, the registration of 1811 NGOs was canceled); ADM Input (mass closures of Muslim mosques and organizations); Confidential Input (Belarus, forcible liquidation of 700 civil society organizations since 2021); Confidential Input (Nicaragua, closure of more than 2,000 non-profit organizations); C&SN Input (Nicaragua and Venezuela non-profit closures); EMR & CIHRS Input (Closure decisions for 1607 associations); West, East, & Central Africa Consultation (in 2015, three civil society groups, Muslims for Human Rights (MUHURI), HAKI Africa and Agency for Peace and Development had their licenses revoked by the NGO Coordination Board because of an alleged connection to financing terrorism; 959 NGOs were deregistered for discrepancies in their financial reports); Confidential Input (India).

330 See, e.g., Confidential Input (India); Asia & the Pacific Consultation (Philippines); Central & Eastern Europe Consultation (Serbia); Middle East & North Africa Consultation (Egypt); West, East, & Central Africa Consultation (Uganda); CS&N (Nicaragua); Confidential Input (Myanmar); Adalah Input (Occupied Palestinian Territory).

331 See, e.g., A/HRC/35/28/Add.2 (USA, asset freezing of Muslim charities created the false impression of involvement in terrorist financing); Confidential Input (Turkey, academics affiliated with the Gulen Movement left unemployed and denied opportunity to work at other institutions).

332 CFT Position Paper, pp. 18-19.



ing measures that terminate or otherwise restrict banking and other business relationships with civil society “to avoid, rather than manage, risk.”<sup>333</sup> In every Global Study regional consultation, participants identified de-risking incidents, including blocked or significantly delayed money transfers<sup>334</sup> and bank account closures or the inability to open a bank account,<sup>335</sup> that significantly affected their ability to operate and deliver core activities.<sup>336</sup> In some cases banks were directly instructed by the State to implement restrictive measures against non-profit organizations.<sup>337</sup> Banks also place restrictive burdens on civil society clients in the form of prohibitive fees for applications or background checks, or open discouragement from opening an account.<sup>338</sup> Banks and financial intermediaries have the responsibility to respect and protect human rights, as laid out in the Guiding Principles on Business and Human Rights. Yet as a result of these bank de-risking and other restrictive measures, humanitarian, refugee, and human rights organizations have been precluded from delivering activities, particularly in conflict zones, ranging from humanitarian, medical, and development assistance to educational, legal, political and cultural awareness activities, and blocked from securing

future funding and public support.<sup>339</sup> Religious and other minorities are often disproportionately impacted by these measures<sup>340</sup> (Chapter 1, Parts 2-4). Moreover, de-risking measures enable increased surveillance of civil society organizations and actors, many of whom work with vulnerable groups like refugees and asylum seekers or project beneficiaries in humanitarian crises.<sup>341</sup>

De-risking measures are often implemented by banks, financial intermediaries, and other stakeholders upon the slightest suspicion that the entity or individual may fall into a suspect category like politically exposed persons or affiliates of designated organizations. Like States, financial institutions and financial technology companies frequently rely on listing databases such as World Check and Interpol Red Notices, as well as national lists.<sup>342</sup> Individuals and organizations were rarely notified in advance, and when they asked for the basis for the de-risking measure, informed that it was subject to bank confidentiality or internal compliance measures.<sup>343</sup>

## Recommendations

- Facilitate meaningful civil society participation in national and sector-specific terrorist financ-

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333 FATF clarifies risk-based approach: case-by-case, not wholesale de-risking, October 2014. Available at: [www.fatf-gafi.org/documents/documents/rba-and-de-risking.html](http://www.fatf-gafi.org/documents/documents/rba-and-de-risking.html).

334 See, e.g., Regional Consultation Outcome Documents (Israel, Thailand, France; Lithuania); the Kvinna till Kvinna Foundation Input.

335 See, e.g., CIHRS Input (Egypt, citing banks unilaterally closing accounts); Regional Consultation Outcome Documents (Serbia, Macedonia, Lithuania, Cyprus, Kosovo, Ukraine, Kenya).

336 See Regional Consultation Outcome Documents; see also, CHE 2/2023 OTH 17/2023 OTH 16/2023.

337 A/HRC/50/23, para. 44.

338 Bulgarian Center for Not-for-Profit Law (BCNL) Input; Muslim Advocates Input.

339 See CFT Position Paper, pp. 33-34; see also, e.g., Confidential Input (Syria); BADIL Input; AFSC Input (Occupied Palestinian Territory); InterAction Input; Asia & the Pacific Consultation (Myanmar, Thailand); West, East, & Central Africa Consultation (Uganda, Kenya, Ghana); Central & Eastern Europe Consultation (Lithuania, Cyprus, Kosovo, Serbia, Macedonia).

340 See, e.g., Muslim Advocates Input; France ADM Input; North America Consultation (USA).

341 Confidential Input.

342 See, e.g., Confidential Input (citing an internal survey where 20% of the international non-governmental organization's country programs had bank issues related to the fact that the organization was listed on World-Check); Confidential Input (citing an example where an individual even after the deletion of the Red Notice was still unable to transfer or receive money through Western Union); Muslim Advocates Input (noting how many financial technology companies, such as Venmo and WePay create automated filters that flag huge swaths of innocuous material); Solidarity with Others Input (Turkey, some banks refused to open accounts for decree-law victims, citing a blacklist).

343 See, e.g., ISAR Edannia Input (Ukraine, CSOs, particularly registered on the occupied or newly liberated territories, are facing difficulties with banking services, due to blocking of the funds' transfers by intermediary banks to the CSOs in Ukraine (effect of application of counter-terrorism frameworks). Due to absence of communication regarding this issue by intermediary bank to CSOs in Ukraine, it is not clear what are the reason for such blocking); BCNL Input (Bulgaria).

ing risk assessments, the design, delivery, and oversight of CFT measures, and compliance assessments, including the FATF mutual evaluation review and follow-up processes. Such participation requires regular, fulsome, and reciprocal multi-stakeholder dialogue, including direct access to financial intelligence units and assessors.

- Refrain from using CFT registration and reporting regulations to restrict or dissolve groups for the legitimate exercise of their rights, especially the rights to freedom of association and expression. Funding restrictions on domestic civil society organizations should be reconsidered or lifted to ensure they are solely commensurate to the empirically validated, differentiated risks of terrorist financing, in accordance with the objective criteria of legality, proportionality, necessity, and non-discrimination.
- Issue clear guidance on the correct application of a risk-based and human rights and rule of law-based approach, including clarifying regulatory expectations of due diligence in correspondent banking and the requisite transparency of compliance policies and supporting guidance documentation.
- Ensure independent oversight and judicial review processes to tackle arbitrariness and human rights abuses in the implementation of CFT penalties, including appeal procedures for listing and designation procedures, asset seizures, non-profit dissolutions, and other sanctions and penalties. Over-regulation and human rights violations committed in the CFT context—particularly with respect to the disparate impacts on organizations representing the interest of women, as well as ethnic

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### Humanitarian Exemptions

The Special Rapporteur has welcomed the passage of UN Security Council resolution 2664 (2022) in response to civil society advocacy and human rights and humanitarian documentation, which established a limited, standing humanitarian-related “carve out” from Council agreed asset freezes. The obligation arising from this resolution are complex and raise clear intricacies of how they will be implemented in national law, but tools are available. Member States must now, in line with operational paragraph 4, assess the compliance of their implementation of UN sanctions, including for the purposes of this Study counter-terrorism targeted sanctions, with the exemption. This is the next step in advancing meaningful protections in counter-terrorism and compliance with international humanitarian law. To date, the United States through U.S. Department of the Treasury’s Office of Foreign Assets Control issued general licenses to bring domestica sanctions towards compliance with international humanitarian law and the UN Security Council 2664 exemption (December 2022) and the Council of the European Union has also modified several of its acts towards compliance (March 2023).

Source: Harvard Law School, An Interpretive Note for U.N. Member States on Security Council Resolution 2664, Program on International Law and Armed

and religious minorities—should also be taken into account in mutual evaluation review and other CFT compliance efforts.

## Part 4: Human Rights & Humanitarian Harms of Sanctions & Listing

Civil society organizations face cross-cutting challenges in the use of sanctions and listing related to terrorism, including through domestic implementation of UN counter-terrorism targeted sanctions and the use of domestic regimes untethered to international regimes that create broad opportunities for misuse under the guise of counter-terrorism. Domestic level use is often tied to the cover provided by global focus on the obligation of States to address terrorism with rationales offered in responses to human rights mechanisms citing UN Security Council resolutions. The Special Rapporteur has previously 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>344</sup>

While 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>345</sup> Multiple submissions to the Global Study emphasized the negative use of sanctions and listing to target humanitarian actors operating in conflict settings, with devastating consequences for access to food, medicine, shelter and the essential means for the civilian population to survive.<sup>346</sup> In addition, as the Special Rapporteur has previously raised, notwithstanding the fact that the Office of the Ombudsperson undertakes important and valuable work to delist, the process provides neither a fair process nor a fair remedy to those who are subject to it, as is required by international law.<sup>347</sup> Moreover, the burdens placed on civil society and non-profit organizations,<sup>348</sup> through resultant CFT measures has continued to impact their ability to function.<sup>349</sup>

The current practice of Member States in using (and sharing) national and regional terrorism sanctions lists, including through partnership with the private sector such as Thomson Reuters' World Check and lack of human rights due diligence, raise numerous challenges of legality (lack of precision and definition of offences), due process (no means to get off lists once on them), targeting protected groups (the inclusion of children on such lists). The consistent lack of an international law compliant definitions of terrorism allows for arbitrary or malicious designations of any individual or group, including civil society organizations on such lists.<sup>350</sup>

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344 A/73/361, para. 19; A/65/258; A/67/396; A/HRC/34/61.

345 Fionnuala Ní Aoláin, Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights and rule of law implications of the UN Security Council counter-terrorism sanctions regimes (Sanctions Position Paper), p. 13.

346 See e.g., Confidential Input (Myanmar, Israel/Occupied Palestinian Territory, Zimbabwe); A/HRC/52/66 (2022), paras. 28-30; Defend Panay Input (Philippines); InterAction Input (Global) (citing InterAction's Counter-Terrorism & Humanitarian Action Resource Library (April 2021); see also A/HRC/51/33, paras. 20, 30, 56-58, 79.

347 Sanctions Position Paper.

348 See further details in Chapter 3, Part 2.

349 See e.g., the Kvinna till Kvinna Foundation Input; International NGO Input (Confidential).

350 Confidential Input (global, expressing concern at the joint database World-Check that screens all stakeholders, including partners, donors and beneficiaries against the UN Security Council Consolidated Sanction list, the European Union Sanctions list, the National Sanctions list of the State of Qatar, and the US OFAC Sanctions list); EGY 1/2022; EGY 8/2021 on listing. A/HRC/WGAD/2016/6; A/HRC/WGAD/2021/45; A/HRC/WGAD/2021/1.

At the national level, the use of terrorism watchlists and their justification under global reliance on counter-terrorism targeted sanctions, which respondents to the Global Study survey and consultations have termed “pretext of international criminal cooperation in counterterrorism,” has closely linked the misuse of administrative measures with their implementation.<sup>351</sup> These restrictions on individuals rights that flow outward from domestic “listing” have cross-cutting impacts, such as restrictions on travel, internal movement, access to identity documentation, ability to seek meaningful employment and more. The gendered impacts of such listing and sanctions are echoed in this Study and were previously documented by the Special Rapporteur.<sup>352</sup> The lack of consistent and transparent data on which organizations and individuals are being listed, the ways in which the listing of individuals is shared across countries and within regional organizations,<sup>353</sup> often between countries with poor human rights records, have multiple consequences for the rights of human rights defenders from privacy intrusion, to limitations on travel to non-refoulement consequences when individuals are transferred between States under the legitimizing umbrella of the Security Council. The misuse of ‘red notices’ against human rights defenders and civil society activists based on their inclusion on defective lists, which operate to penalize their human rights-related activities and is not directed at genuine terrorist threats is a persistent issue.<sup>354</sup> Civil society respondents made a number of observations specific to cooperation with Interpol and related abuse and called for immediate due diligence measures, both immediate and long-term to stop

the misuse against civil society actors and human rights defenders.<sup>355</sup>

Violations under the guise of cooperation also apply to cases of non-refoulement, and include the listing and expulsion of peaceful political opponents.<sup>356</sup> These compounding harms result in and create conditions conducive to increased risk of arbitrary detention.<sup>357</sup> Moreover, civil society who advocate for the use of international sanctions regimes to address violations of international human rights and humanitarian law have been the target of abusive domestic listing regimes, undermining the ability for the UN to receive and support those advocating for human rights compliance domestically.<sup>358</sup> Such cyclical forms of repression of civil society that begin with the cover provided at the international level and subsequently prevent the UN and other international or regional bodies from carrying out human rights-based processes are of direct concern in the context of sanctions and their contribution to long-term peace and security.

Counter-terrorism targeted sanctions remain an area, particularly for the UN, where the risk of co-optation of civil society into State-led international and national security agendas is high. The international communities’ work in this area continue to promote limited engagement with civil society on specific issues, and among more narrow constituencies, including with subsequently high risks of co-optation and instrumentalization in the 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, includ-

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351 See e.g., Alkarama Foundation Input; Chapter 3, Part 2.

352 A/HRC/22/52; A/HRC/46/36, para. 16; A/64/211.

353 Confidential Input (Regional, Shanghai Cooperation Organization); MENA Rights Group Input (Arab Interior Ministers’ Council).

354 USA 2/2020; BHR 1/2022; SRB 4/2022; SRB 2/2022; LBN 1/2022; MAR 7/2021; LBN 2/2021.

355 MENA Rights Group Input (Regional); Confidential Input (citing e.g., Council of Europe Parliamentary Assembly (PACE) Resolutions 2315, Interpol reform and extradition proceedings: building trust by fighting abuse”, 29 November 2019); Solidarity with Others Input; Confidential Input (China).

356 Alkarama Foundation Input (Algeria, Spain) and Solidarity with Others Input (Belgium).

357 Solidarity with Others Input (Belgium).

358 West, East, and Central Africa Consultation.

# ISSUE IN FOCUS

## Surveillance Misuse through Pegasus

In August 2021, Special Procedures mandate-holders issued communications to the cyber-intelligence company NSO Group and Israel regarding the reported use of Pegasus spyware developed by the NSO Group to surveil, intimidate, and harass at least 180 journalists, human rights defenders and political leaders from 20 countries. The Dutch Central Bank has called for banks and supervisory authorities to adopt a more targeted, risk-based approach to CFT and anti-money laundering--as it would be more effective and “reduce the undesirable side effects of the gatekeeper role of banks and other financial institutions, such as the unnecessary refusal or exclusion (“de-risking”) of customers from payment systems.”

Source: AL ISR 7/2021.

ing through overarching human rights reforms of counter-terrorism and P/CVE frameworks.

### Recommendations

- The Security Council should build greater transparency within the work of the Sanctions Committees for counter-terrorism regimes, including through engagement with civil society. Consistent inclusion of civil society in briefings and dialogue with Member States should be made possible to facilitate greater transparency and reflection of the impact of UN counter-terrorism sanctions on the ground and the downstream harms on individual rights, and civil society. This includes dedicated engagement of women civil society leaders and gender equality advocates in line with the Security Council’s commitments to women, peace, and security. This should also include greater transparency in the composition of the Monitoring Team to foster diversity.
- Address the lack of human rights safeguards in the implementation, sharing and reinforcement of domestic sanctions regimes that often transcend national borders and are integrated and replicated across regions. This includes addressing the immediate and long-term need for human rights due diligence and misuse facilitated through cooperation between Interpol and Member States.
- Implement human rights and rule of law reform, specifically to strengthen the role of the Ombudsperson in respect of UN counter-terrorism targeted sanctions regimes, which will only be effective once brought into human rights compliance and better able to contribute to solutions rather than fuel grievances, arbitrary deprivation, and rights violations that

perpetuate the production of violence.

- States should review and repeal terrorism watchlists that violate the principles of legality, necessity, proportionality, and non-discrimination, and conduct further reviews of underlying legislation.
- Research should be developed on the gendered impact of sanctions beyond the listed individual to document and understand the ways in which civil society organizations, families, and communities are affected by the process of listing and corresponding administrative effects.<sup>359</sup>

## Part 5: Weaponization of New Technologies Against Civil Society

The development of new technologies promises enormously positive benefits for civil society, providing new possibilities for deepening connection and communication, promoting new educational and professional opportunities, and offering heightened security and efficiency. Those benefits, when distributed equally, transparently, and without discrimination, can make technology a partner in the strengthening of civil society and the promotion and protection of civil, political, economic, social, and cultural rights for people worldwide. The various ways in which new technological capacities are being deployed in the name of counter-terrorism and P/CVE, however, represent a fundamental threat to civil society and meaningful civil society participation.

This chapter builds on the Special Rapporteur's 2023 report to the Human Rights Council on the development, use, and transfer of new technologies in the counter-terrorism and P/CVE context.<sup>360</sup> Drawing from the Global Study data, it surveys how the development and deployment of new technologies for counter-terrorism and P/CVE purposes—namely surveillance, content moderation, Internet shutdowns, biometrics and facial technology, and drones—have substantially limited the ability of civil society to exercise their fundamental rights and implement their core human rights, humanitarian, and other activities.

### Surveillance

The capacity for mass surveillance as the default tool for counter-terrorism investigation has been dramatically increased by a series of converging trends in recent years: the precipitous decline in the cost of technology and data storage; the ubiquity of digital devices and connectivity; and the exponential increase in the processing power of computers. Calls by multilateral organizations to implement routine surveillance and data collection for counter-terrorism investigations have further incentivized the use and transfer of a range of hardware and software tools.<sup>361</sup> Intrusion hardware takes many forms and functions to directly access physical communications infrastructure, such as the cables that carry worldwide Internet traffic, the servers of Internet service providers, or individual mobile devices.<sup>362</sup> Spyware software in particular infiltrates individual computers or mobile devices and can access and record video, audio, and text/email communications, including on supposedly secure platforms such as WhatsApp, as well as accessing calendars,

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359 For example, the SR has documented the following ripple effects for women, including difficulty in securing work; renting or purchasing a home; prohibitions on travel; accepting financial assistance; and more. A/HRC/46/36, para. 16, 39(e).

360 A/HRC/52/39.

361 See, e.g., Council of Europe Cybercrime Programme Office, Standard operating procedures for the collection, analysis and presentation of electronic evidence (September 2019); INTERPOL, Guidelines for Digital Forensics First Responders: Best practices for search and seizure of electronic and digital evidence (March 2021).

362 See, e.g., UK GCHQ Tempora program; US NSA XKeyscore and Upstream systems and Prism System; Russia System for Operative Investigative Activities. The operation of the Russian system was considered and held to constitute a breach of the European Convention right to privacy, by the Grand Chamber of the European Court of Human Rights in *Roman Zakharov v Russia* [2015] ECHR 1065; (2016) 63 EHRR 17.

contacts, and geolocation data. Spyware software has proliferated internationally and poses substantial risks to the promotion and protection of human rights. Such profound challenges have prompted inquiries and litigation worldwide.<sup>363</sup>

The ubiquity of sophisticated communications surveillance poses obvious threats to civil society actors rights of privacy and free expression, as well as related rights like the freedom of assembly, freedom of association, and freedom to manifest one's religion.<sup>364</sup> Many Global Study respondents, including Amnesty International,<sup>365</sup> reported experiences of digital surveillance of operatives or associates and transfer of their private data across Europe,<sup>366</sup> the Middle East,<sup>367</sup> Africa,<sup>368</sup> Latin America,<sup>369</sup> North America, and Asia and the Pacific,<sup>370</sup> leading to concerns about covert data access, and, in a range of cases, to physical threats and violence facilitated by the pinpoint targeting spyware affords. In some cases, such surveillance has been entrenched or repurposed under cover of the Covid-19 pandemic and related regulations.<sup>371</sup> Such surveillance creates a chilling effect due to the 'very possibility'<sup>372</sup> of surveillance—leading those most likely to be targeted (e.g., whistleblowers, political dissidents, journalists, human rights defenders) to self-censorship.<sup>373</sup>

Multiple civil society organizations worldwide have opted to reduce or alter their strategies for communication and organizing so as to avert government scrutiny.<sup>374</sup>

The majority of surveillance tools have been obtained from private cybersecurity firms, including firms based in Israel, Germany, France, Italy, Hungary, North Macedonia, the United Kingdom, and the United Arab Emirates.<sup>375</sup> These businesses and multinational companies have benefitted from a dearth of regulation and due diligence, although the tide is shifting: for instance, in April 2022, Costa Rica became the first State to join the call for a moratorium on the trade in spyware technology,<sup>376</sup> while a broad coalition of civil society reiterated the demand for a moratorium at the World Economic Forum meeting, held in Davos, Switzerland, in May 2022.<sup>377</sup>

## Content Moderation

Alongside the development of surveillance of private content, monitoring of public online content has also become widespread, prominently facilitated by new algorithmic and machine learning tools that allow for the efficient collection and analysis of social media posts, photographs, and private and

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363 See, e.g., European Parliament, "Spyware: MEPs sound alarm on threat to democracy and demand reforms," press release committee of inquiry, 8 May 2023; European Parliament, Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware (2023); United States Federal Case No. 19-cv-07123-PJH, WhatsApp Inc. et al v. NSO Group Technologies Ltd et al.; A/HRC/51/16 (identifying additional hearings, investigations, criminal investigations, and civil lawsuits).

364 Fionnuala Ní Aoláin, Position paper of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Global Regulation of the Counter-Terrorism Spyware Technology Trade (Spyware Position Paper) (2023), paras. 36-47; see also, A/HRC/52/34 (2023), para 64.

365 Amnesty International Input.

366 See e.g., Central & Eastern Europe Consultation; Omnium Cultural Input; see also, e.g., A/HRC/52/34, para. 64; A/HRC/50/29, paras. 49-56.

367 See Middle East & North Africa Consultation; see also, e.g., Access Now Input; Confidential Input (Occupied Palestinian Territory).

368 See West, East, and Central Africa Consultation; see also, e.g., CIHRS Input.

369 See Latin America & the Caribbean Consultation.

370 See Asia & the Pacific Consultation.

371 See, e.g., Asia & the Pacific Consultation (Hong Kong).

372 David Kaye, 'The Spyware State and the Prospects for Accountability' (2021) 27(4) Global Governance 483-492, 489.

373 A/HRC/27/37, [20]; and A/HRC/32/38, [57].

374 C&SN Input; West, East, and Central Africa Civil Society Consultation; Privacy International Input.

375 A/HRC/52/39, para. 47.

376 Access Now, "Stop Pegasus: Costa Rica is the first country to call for a moratorium on spyware technology," press release, 13 April 2022.

377 Access Now, "Human rights leaders at Davos 2022: spyware is a weapon," press conference, 23 May 2022.

professional networks as disclosed on publicly-accessible communications platforms. Recognizing that online media have been used to promulgate terrorist propaganda and hate speech,<sup>378</sup> civil society organizations have reported many instances where State agencies have invoked vague content moderation powers, including to prevent the promotion/glorification of terrorism, instead to block the communications of civil society actors.<sup>379</sup> Such impacts have been particularly keenly felt by those advocating on behalf of minority communities<sup>380</sup> or disseminating information perceived as critical of government.<sup>381</sup> Some States have also established information operations on social media to target civil society and smear them as terrorists, extremists, or sympathizers thereof.<sup>382</sup>

Just because content monitoring looks at publicly-available information, does not prevent it from being unlawfully intrusive.<sup>383</sup> As has been noted by the High Commissioner on Human Rights, the protection of the right to privacy extends to public spaces and information that is publicly available.<sup>384</sup> The Human Rights Committee has rejected the notion that data gathered in public areas is automatically in the public domain and may be freely accessed.<sup>385</sup>

## Internet Shutdowns

States have also deployed the blunt instrument of intentional Internet disruption as a public order mechanism purportedly in response to unrest—often under the pretext of counter-terrorism and national security.<sup>386</sup> Despite access to the Internet being widely recognized as an indispensable enabler of a broad range of human rights,<sup>387</sup> there were at least 182 Internet shutdowns in 34 countries in 2021 according to Access Now (compared to 159 shutdowns in 29 countries in 2020).<sup>388</sup> A relatively small number of countries are responsible for the vast majority of such disruptions: in 2021, there were 85 Internet shutdowns in Jammu and Kashmir and 15 shutdowns in Myanmar. The longest shutdowns have been a period from 2016 to 2021 in Pakistan's Federally Administered Tribal Area and 18 months in the Tigray region in Ethiopia. Trends reveal widespread use of mobile Internet shutdowns during protests in Bangladesh, Burkina Faso, Chad, Cuba, Eswatini, India, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Myanmar, Pakistan, Senegal, South Sudan, Sudan, Turkmenistan, and Uganda, and during elections in 2021 in Chad, the Republic of Congo, Iran, Niger, Uganda, and Zambia.<sup>389</sup>

The practical impact of Internet shutdowns on civil

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378 UNDP Input.

379 See, e.g., Coming Out Input; Access Now Input; Middle East & North Africa Consultation; Central & Eastern Europe Consultation.

380 C&SN Input; Espacio Público Input; Access Now Input; Adalah (Israel) Input; EMR, CIHRS CFJ EFHR Input; NUPL Input.

381 See, e.g., Asia & the Pacific Input (Hong Kong, Myanmar, Indonesia; Singapore, Philippines, Vietnam, Thailand); Justice for All Input; MENA Rights Input

382 See, e.g., Asia & the Pacific Input (Thailand).

383 UNDP Input; ODIHR Input.

384 A/HRC/39/29, para 6.

385 CCPR/C/COL/CO/7 (Colombia), para. 32; European Court of Human Rights has also recognized that publicly available information may well fall within the scope of the right to privacy, especially when novel collection methods allow for the collation of a profile of an individual from disparate public sources, whereas each individual source of public information would not provide intrusive details. *Rotaru v Romania*, [43]; and *Vukota-Bojic v Switzerland*, [55].

386 A/HRC/43/46/Add.1 para. 27 (Kazakhstan).

387 A/HRC/RES/47/16; A/66/290, para. 12; A/HRC/50/55, paras. 7-14 (citing right to freedom of expression, the right to education, freedom of association and assembly, and the right to participate in social, cultural and political life, right to health, and the right to work and economic development).

388 Access Now Database, "An Overview of Global Internet Shutdowns in 2022," Keep It On Database. Available from: <https://www.accessnow.org/keepiton>.

389 The use of Internet shutdowns during election periods apparently to stymie opposition political organizing has previously been identified by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'Freedom of Expression and Elections in the Digital Age,' Research Paper 1/2019 (June 2019).



# ISSUE IN FOCUS

## Proliferation of Drone Technology

The Black Hornet drone— which weighs less than 20 grams, fits in one hand, flies virtually silently, and was developed by Prox Dynamics of Norway—is now officially used by approximately 20 military forces, including the United States Marines, the British Army and the armed forces of Australia, France, Germany, South Africa, Turkey and others. Current models can be equipped with cameras for motion and still images, with a 1.6 km range. Thousands of these micro-drones have been deployed by military forces in the past five years.

Source: See, FLIR Wins Additional \$15.4M Contract for Black Hornet Nano-UAV Systems for U.S. Army Soldier Borne Sensor Program, press release, 4 May 2021; FLIR Systems Awarded \$89 Million Contract from French Armed Forces to Deliver Black Hornet Personal Reconnaissance System, press release, 18 January 2019; Government of Norway, Norwegian-developed drone to Ukraine, press release, 24 August 2022.

society especially given the role civil society organizations play in the expression and protection of human rights is catastrophic. As the Office of the UN High Commissioner for Human Rights May 2022 Report on internet shutdowns recorded, shutdowns have disrupted essential and emergency services in the health, education, and social assistance sectors,<sup>390</sup> with particularly acute effects for vulnerable or remote communities disproportionately reliant upon online access to services. The economic impact is also catastrophic: the World Bank recently calculated that Internet shutdowns in Myanmar alone during 2021 cost that country's economy nearly \$2.8 billion.<sup>391</sup> Internet shutdowns also di-

rectly interfere with civil society organizations' primary channels of fundraising,<sup>392</sup> communication between staff, and dissemination of information to news outlets and the general public.<sup>393</sup>

## Biometrics and Facial Recognition Technology

Biometric surveillance technologies comprise a suite of tools including facial and gait recognition cameras and software which capture facial and/or movement characteristics, allowing for profiling of individuals on the basis of ethnicity, race, gender, and other apparent features, or even identify-

390 A/HRC/50/55, paras. 35-39.

391 World Bank Group, Myanmar Economic Monitor: Contending with Constraints, Special Focus: Digital Disruptions and Economic Impacts (2022).

392 See, EMR, CIHRS, CFJ, EFHR Input.

393 Coming Out Input.

ing specific individuals. Recognition technology is widely used to deal rapidly with large volumes of video footage and digital photographs, allowing users (typically law enforcement or security agencies) to process data efficiently and allocate resources away from initial identification. These systems have been controversially used for the profiling of persons as potential terrorist or extremist threats—using artificial intelligence algorithms which seek to predict individual behavior on the basis of datasets of previous behavior throughout the population. In addition, facial and gait recognition technologies are increasingly being integrated in counter-terrorism and P/CVE systems with artificial intelligence systems with the objective of identifying or inferring individual's intentions or emotions and, ultimately, predicting (and preventing) likely future conduct. Such recognition technologies are believed to have been used domestically in at least 64 countries,<sup>394</sup> and are particularly widespread in the United States,<sup>395</sup> United Kingdom,<sup>396</sup> and China.<sup>397</sup>

Biometric monitoring tools raise significant human rights concerns. A system which necessarily requires the harvesting of biometric data from a large crowd without any discrimination between potential persons of interest and those raising no law enforcement interest inevitably casts its net too widely. As the High Commissioner for Human Rights has recommended, States should “[r]efrain from recording footage of assembly participants, unless

there are concrete indications that participants are engaging in, or will engage in, serious criminal activity, and such recording is provided by law, with the necessary robust safeguards.”<sup>398</sup> Disproportionate use of biometric monitoring has an inevitable chilling effect by which the fear of intrusive monitoring disincentivizes participation in civic events, thus depopulating the public spaces that are the crucial tool of assembly, communications, protest movements, and democratic exchange.<sup>399</sup> That concern is particularly keenly felt by persons who already perceive themselves as targeted by State authority, including members of religious or ethnic minorities.<sup>400</sup>

## Drones

The application of drones for counter-terrorism purposes also poses substantial risks for civil society. Drone technology is proliferating at a remarkable speed and has followed the same well-worn path from battlefield to the home front, which has been observed in policing tactics and weaponry generally. This move from use justified in the context of conflict and counter-terrorism to ‘regular’ homeland use tracks a consistent pattern where the exceptionality of counter-terrorism consistently moves to the local, domestic, and ‘regular’ legal system.

Particularly following the adoption in 2016 by the

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394 Steven Feldstein, *The Global Expansion of AI Surveillance*, Carnegie Endowment for International Peace Working Paper (September 2019); see also, e.g., *Asia & the Pacific Consultation (Vietnam)*; *Central & Eastern Europe Consultation (Hungary, Serbia)*. IRL 3/2022; OTH 229/2021 (European Union legislation: “A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond” and the Proposal for Amending Regulation (EU) 2016/794” on the use of artificial intelligence). Dr. Krisztina Huszti-Orbán and Fionnuala Ní Aoláin, *Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?* (Report prepared under the aegis of the Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism).

395 Police departments and defence agencies have all used the Clearview AI tool – a system which matches faces to a database of more than three billion images harvested from the Internet, including from social media platforms. See Katie Canales, ‘Thousands of US Police Officers and Public Servants have Reportedly Used Clearview’s Controversial Facial Recognition Tech Without Approval,’ *Business Insider* (6 April 2021).

396 As demonstrated in the first legal challenge to police facial recognition technology, police forces in the UK have deployed automated systems in crowd settings pursuant to ongoing trials since 2017. See *The Queen (on the application of Bridges) v Chief Constable of South Wales Police and ors* (2020) 1 WLR 5037 (CA).

397 More than 100 cities operate such systems, and the central government is reported to be constructing the world’s largest facial recognition database. See Jeffrey Ding, *Deciphering China’s AI Dream*, Centre for the Governance of AI, Future Humanity Institute, University of Oxford (March 2018); CHN 18/2019 (collection of biometric data); CHN 14/2020.

398 A/HRC/44/24, para. 53(i).

399 Privacy International Input, referring to a forthcoming report from ECNL.

400 A/HRC/32/38, para. 57; and A/HRC/29/32.

U.S. Federal Aviation Authority of a rule permitting deployment of drones within domestic civilian airspace,<sup>401</sup> the use of drones by domestic law enforcement, first in the United States and then globally, has rapidly expanded<sup>402</sup> (including under the guise of enforcing the travel restrictions responding to the spread of the Covid-19 pandemic).<sup>403</sup> Police forces in the United States,<sup>404</sup> United Kingdom<sup>405</sup> and Europe, China, India, Israel, the Gulf, South America, and Australia are using these technologies.<sup>406</sup>

As drone technology becomes more sophisticated, it is likely that operators will shift to micro- or nano-drones, with profound human rights consequences resulting from their easier deployment and intrusion.

The use of drones to surveil protests, and the unremarkable manner in which drone technology—once the exclusive preserve of covert battlefield operations—has, without proper regulation or scrutiny, become an everyday aspect of counter-terrorism and ordinary law enforcement tactics pose significant challenges for civil society operations. In addition to the obvious implications for privacy, freedom of assembly, freedom of expression and the like, the use of drones coupled with the coercive power of the police also risks violations of the prohibition on arbitrary detention, as well as the rights to liberty and security of the person, and the right to life.

## Recommendations

- Address the development, use, and transfer of new technology to surveil and by

doing so curb civil society participation in communication, public discourse, and the exercise of their full human rights, including the right to privacy.

- Commit to exercise legal powers governing the regulation or restriction of information online in line with existing international human rights standards (including shutting down the Internet or blocking access to certain websites), exercising those powers only as necessary as part of a proportionate, necessary and non-discriminatory response to empirically identified terror or security threats.
- Ensure that, in their development, use, and transfer of biometric technologies, including in the context of border management, they observe principles of legality, necessity, proportionality, and non-discrimination.
- Subject any proposed deployment of drones in domestic law enforcement contexts to close legal and judicial scrutiny to ensure that the adverse human rights implications of widespread drone surveillance do not become normalized.
- Address the disparate and discriminatory impacts, including along race, age, and gender lines of the development, use and transfer of technologies for counter-terrorism purposes.

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401 See, Federal Aviation Administration, Timeline of Drone Integration.

402 See, e.g., Asia & the Pacific Input (Singapore); PEF Input; Central & Eastern Europe Consultation (Albania, Cyprus, Hungary).

403 Privacy International Input, referring to the litigation brought by two French civil society organizations, La Quadrature du Net and La Ligue des Droits de l'Homme to block the use of drones to monitor Covid-19 regulation compliance in Paris.

404 According to research, more than a thousand police departments in the United States are currently using drone technology. See Electronic Frontier Foundation, Atlas of Surveillance Documenting Police Tech in Our Communities with Open Source Research, Reynolds School of Journalism at the University of Nevada.

405 At least 40 out of 43 police forces in the United Kingdom use drones. See: Chris Cole and Jonathan Cole, Benchmarking police use of drones in the UK, Drone Wars (2 November 2020). Not all forces publish details regarding their use of drones. Those which do include: West Midlands Police; Dorset Police; Lancashire Police; Sussex Police; and Kent Police.

406 Christof Heyns, Presentation made at the informal expert meeting organized by the States Parties to the Convention on Certain Conventional Weapons 13-16 May 2014, Geneva, Switzerland, 13 May 2014.