

Outcome Document of the

**NORTH AMERICA (U.S. AND CANADA) CIVIL  
SOCIETY CONSULTATION ON THE IMPACT OF  
COUNTER-TERRORISM MEASURES ON CIVIL  
SOCIETY AND CIVIC SPACE**

## Acknowledgements

This regional consultation was co-convened by IniThis regional consultation was co-convened by the Charity & Security Network. The following civil society organizations participated in the regional consultation. Their inclusion does not constitute their endorsement of all of the views expressed in the document. The list is not exhaustive as some organizations asked not to be named due to security concerns.

- American Civil Liberties Union (ACLU)
- Brennan Center for Justice
- Canadian Civil Liberties Association
- Canadian Muslim Lawyers Association
- Canadian Muslim Public Affairs Council.
- Charity & Security Network
- Harvard Law School Program on International Law and Armed Conflict
- Institute for Social Policy and Understanding (ISPU)
- International Civil Liberties Monitoring Group (ICLMG)
- Muslim Advocates
- Muslim Justice League

## Introduction

On 12 May 2023, 20 civil society participants from Canada and the United States of America convened for a 2-hour virtual consultation to elaborate on the impact of counter-terrorism (CT) and preventing/countering violent extremism (P/CVE) measures on civil society and civic space in their respective countries. Participants discussed the developments, evolutions and new trends regarding counter-terrorism and P/CVE laws, policies and practice and how these measures affect civil society, focusing in particular on vulnerable groups.

Throughout the consultation, participants commented on the problematic vagueness and over-

breadth of the CT & P/CVE legislative and regulatory frameworks, as well as on the lack of precise evidentiary standards operating in these two countries. Participants identified a range of CT & P/CVE measures, including discriminatory criminalization and incarceration, community policing and surveillance, travel bans and border screening processes, and bank de-risking which were of concern. They observed that such measures often target from the outset and/or have disproportionate impacts on vulnerable groups, including ethnic, religious, and racial minorities, LGBT and gender diverse communities, and indigenous peoples. They also highlighted serious chilling effects from these laws and measures on these intersectional communities. They also traced the discriminatory implementation of such practices to deep-seated colonial legacies, racism, and the mistreatment of people of color and indigenous peoples. These realities and the ongoing misuse of CT and PCVE measures have devastating impacts on the full scope of human rights, including fair trial and due process guarantees, freedom of religion and belief, the right to privacy, freedom of speech and association, and more.

This outcome document summarizes the key findings of the online regional civil society consultation and concludes with specific recommendations tailored to Member States, the United Nations and other regional and international organizations, the private sector, and civil society. The findings will contribute to the upcoming Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

## Key Findings

### KEY FINDING #1

CT & P/CVE laws, policies, and measures—typically through a web of criminal and administrative enforcement and decentralized surveillance—have disproportionately impacted ethnic, religious, and racial minorities, especially Muslim and immigrant communities. Such discriminatory implementation is rooted in and perpetuated by complex histories and structures of systemic racism, Islamophobia, and colonialism.

Participants observed how governments in the region use CT & P/CVE rhetoric, laws, and policies to perpetuate systemic racism and Islamophobia. Participants from Canada and the US cited examples where black and brown communities, Muslim communities, immigrant communities and indigenous communities have been disproportionately prosecuted, sanctioned or otherwise smeared with terrorist-related charges, and impacted by other CT and P/CVE measures and surveillance. Participants cited several statistics and studies to support this discriminatory implementation. For instance, Muslims in the United States are reportedly three times more likely to be charged with terrorism-related charges or ideologically motivated offences or manufacture/possession of weapon of mass destruction. Moreover, **terrorism charges were pursued in 83% of cases where the alleged perpetrators of violent ideologically motivated plots were perceived to be Muslim**, as opposed to 25% for non-Muslims. In the sentencing phase, perpetrators perceived to be Muslim in the United States are also reportedly subject to harsher sentences for similar offenses when controlled for severity (on average, 20 years sentence rather than 5 years for non-Muslims) and detained more frequently under maximum security measures.

Participants described how Muslim minorities were disproportionately subject to a complex web of and administrative measures like sanctions, travel bans and restrictions, surveillance and investigations, and organizational dissolutions. Administrative measures are often not based on factual evidence of wrongdoing but on predictive policing, including through the use of automated systems or artificial intelligence and similar tools. Bank account closures and transfer blockages on counter-terrorism financing grounds were repeatedly identified by participants as one such administrative measure disproportionately impacting Muslim communities. Participants also highlighted data that demonstrate that **Muslims in the United States were more than twice as likely as non-Muslims to report challenges while banking**, including having their personal bank account under investigation, in some cases for terrorism financing related reasons. Participants also identified several cases where administrative measures were piled on after terrorism-related charges were brought but failed to be sustained due to lack of evidence. In Canada, counter-terrorism financing measures have led to the removal of legal status and closure of Muslim charities. In some cases, it was reported that State tax agencies and others when describing the basis for such removals, cite to reporting from foreign think tanks and non-governmental organizations with biased and Islamophobic agendas as a basis for their actions.

These vulnerabilities must be situated within the broader structures of anti-Muslim discrimination and systemic racism in these countries. In the United States, **62% of American Muslims reported experiencing anti-Muslim discrimination**. Moreover, 40% of American Muslims experience discrimination when interacting with law enforcement. In the banking industry, **more than a quarter of Muslims in America face challenges when they interact with financial institutions**, including facing the impossibility of opening a bank account, accounts suspended or closed, and payments under investigation (about 30% of total payments). Similar issues

are faced in business and non-profit banking. One participant cited a study finding that 64% of Muslim in America have experienced challenges with business accounts and that Muslims were four times more likely than non-Muslims to face challenges with their non-profit bank accounts.

These CT and P/CVE measures have chilling effects and significant downstream consequences. For instance, one participant in the United States asserted that a direct effect of counter-terrorism policies and programs that disproportionately target Muslims and the deep entrenchment of fear is the self-censorship of many Muslim advocates and community members, who feel less comfortable advocating on issues like the closure of the Guantanamo detention facility. Participants in Canada explained how counter-terrorism financing measures against Muslim individuals and families have not only led to the removal of legal status and closure of Muslim charities but have also had an impact on humanitarian aid transnationally, as not only can it become very risky for organisations to engage in areas where terrorist groups are active (i.e., in Afghanistan where they still cannot operate), but also where Government stops funding organisations listed as terrorist by other countries (i.e., India and Israel).

Participants emphasized that the discriminatory implementation of CT and P/CVE is rooted in longer histories of viewing these communities as security threats and disproportionately criminalizing them. Participants alleged that the detrimental effects date back to the historically colonial and racist roots of these countries, including through colonial domination of indigenous peoples, slavery in the United States, and carceral approaches to these communities as tools to embed such domination over time. For instance, participants from Canada stressed that, although CT criminalization and measures share similarities with the US model, they must also be situated within Canada's history of past colonial violence, including against indigenous peoples. In this manner, they observed that among the individuals targeted today under CT and P/CVE policies, prominent examples include indigenous land and

water defendants.

Participants asserted that inadequate safeguards were in place to protect against discrimination and racial and other biased profiling in CT and P/CVE investigations. In the US context, participants underscored the continued demands that the government take concrete actions to ensure non-discrimination and adherence to civil and political rights and liberties, including due process, religious freedom, and privacy rights. Participants stressed that although the Department of Justice revised its anti-discrimination guidance (which the Department of Homeland Security has also adopted) to make certain improvements, serious loopholes permitting bias remain embedded. Participants noted that the anti-discrimination guidance is improved in that it now covers disability but highlighted that it still excludes nationality and sex characteristics. Participants stressed that the anti-discrimination guidance still permits biased profiling in national security, intelligence, and border operations.

## KEY FINDING #2

States have fuelled prejudices and problematic public narratives through the discriminatory and community-based implementation of P/CVE programming, entrenching stereotypes and presumptions of “dangerousness” of marginalized communities.

Participants observed how the disproportionate targeting of the Muslim community through CT and P/CVE enabled broader forms of societal discrimination. Participants from both the United States and Canada commented in particular on the ways in which efforts in P/CVE are proliferating beyond law enforcement and moving into schools, hospitals, and other community spaces and public domain, and how such changes have fuelled unfounded prejudices and “extremist” rhetoric in new spaces. For instance, participants observed how deep-seat-

ed Islamophobia and so-called terrorism risk assessments can be found throughout many American schools, e.g., with students questioned by both the police and the counsellor's office about their religion, the events of 9/11, the reasons why 'their' people engage in terrorism, and asked inappropriate and harassing questions such as whether they have a bomb under their hijab.

Participants argued that P/CVE measures are becoming too broad, engaging in ideology- or belief-based investigations despite being unable to identify any specific categories or empirically-sound predictors of violence. For example, participants in the United States pointed to the DHS's categorization of different types of "threats" even where there is no sound evidentiary basis –e.g., broader framing of protest as threat and linked to property crimes, black identity extremism and black separatism. In implementing these P/CVE frameworks, participants also mentioned concerns relating to the surveillance of the Muslim community and other vulnerable communities. Among the victims of pervasive US federal law enforcement and P/CVE programming and surveillance are black and brown communities, including Muslims communities, activists associated with Black Lives Matters as well as African families, refugees (i.e., from Afghanistan) and Chinese nationals teaching or studying in the US. Those individuals are often targeted by state agencies who visit and question them and, in some cases, including when they are not informed of their rights, those individuals have suffered intense distress, embarrassment, intimidation and anxiety (even days or months after the visit). Participants also identified the ways in which the State had infiltrated digital spaces: for instance, one participant referred to the case of the app "Muslim Pro" –a Muslim prayer and Quran app– from which the U.S. bought access to user data, including location and other sensitive information.

Another issue identified by participants in Canada is its immigration inadmissibility regime, which is excessively broad as there are no evidentiary bars established and courts have no little oversight. Participants have identified such a practice as an instru-

ment for individual officers to discriminate against Muslim individuals and the community more broadly (i.e., cases reported by the same border officers are based on links with the Muslim Brotherhood). Participants have also stressed new trends such as the decision of some municipalities to increase funding to organizations implementing racialised frameworks/indicators or risk-based models to target Muslims (i.e., in Quebec), or the creation of new types of organizations in the area of countering-violent extremism (CVE), which adopt an apolitical and deracialised kind of approach in their framework and strategy, targeting white supremacists and other forms of violence.

Participants called for the elimination of the rhetoric that the targeting of particularly vulnerable communities for surveillance and investigation is an "unintended consequence" of CT and CFT measures. Participants underscored that the targeting of particular communities is inseparable from past and current practices and strategies, which include the demonization of those groups that they aim to target.

### KEY FINDING #3

CT intelligence measures rely on the practice of watchlisting, with limited or non-existent due process and procedural safeguards.

Both US and Canadian programmes rely on a watchlist system. The Canadian watchlist, called the "Passenger protect programme", is not public and people are included on the list in secrecy. Participants have observed that Canada is an example that mirrors the US model when it comes to CT intelligence measures. The Canadian law also allows for the application of the US no-fly list and flights are covered by the secure flight programme. Similarly, the U.S. watchlisting system is based on vague, overbroad and often secret standards and evidence. Partici-

participants noted it results in unjustified stigma for people wrongly categorized as a terrorism suspect or “threat,” questioning, harassment (such as pressuring people to become informants in their communities), and administrative measures such as an indefinite ban on flying through placement on the no-fly list. Although also secret, the US watchlisting system has grown to include well over one million people, and participants reported that it disproportionately targets Muslim and immigrant communities. Participants emphasized that the US government watchlist redress process fails to provide due process safeguards like meaningful notice, evidence, and an opportunity to challenge wrongful placement before a neutral decisionmaker. In addition, as regards the US intelligence operations, participants also observed that DHS intelligence office 1) adopts unreliable indicators that foster bias against vulnerable communities, including indigenous communities and environmental actors; 2) monitors social media; 3) collaborates with the FBI and a nationwide network of state and local fusion centers, sharing intelligence data, operating under secrecy and without adequate civil rights, liberties, or privacy safeguards. Participants observed that Canada is an example that mirrors the US model when it comes to CT intelligence measures. A report by a Muslim group in the US has revealed that over 98% of entries in the US watchlist are Muslim and/or Arab names. The report, titled “Twenty Years Too Many, A Call to Stop the FBI’s Secret Watchlist,” details the FBI’s use of the Terrorism Screening Database and how it targets Muslims. Participants called for transparency on national and homeland security investigative and information-sharing operations, and meaningful notice and due process for individuals who to challenge and appeal wrongful watchlisting decisions.

## Recommendations

### Member States

- Address institutional islamophobia by introducing effective and public civilian oversight, favour transparency of state agencies’ work for example with stricter evidentiary standards to justify their actions.
- Prohibit security officials from using actual or perceived race, ethnicity, gender, nationality, national origin, religion, sexual orientation, sex characteristics, disability, or gender identity as a factor in intelligence and law enforcement operations except for strictly limited use when (1) persons with such a trait is implicated in an identified and specific violation of criminal law, (2) required to determine whether to confer a benefit or determine eligibility for relief, such as refugee or asylum status.
- Provide effective training to counter bias, audit intelligence and law enforcement programs to ensure they do not reflect discriminatory profiling, and provide accountability for discriminatory profiling.
- Eliminate P/CVE programs and their successors which are not based in evidence and have a history of targeting racial, religious, and other minority communities and political dissent.
- Establish mechanisms aimed at documenting the historical and ongoing misuse of counterterrorism and its linkages to legacies of oppression, including mechanism, such as a truth and reconciliation or a commission of inquiry.
- Ensure investment in research on Islamophobia within State apparatuses and society through investment in research. Insufficient funding is allocated to such research given the gravity of the rights

violations outlined throughout this document.

- Ensure that if governments use administrative measures such as watchlists, the standards for placement should be appropriately narrow and public, information relied on must be accurate and credible, and the manner of use must be consistent with the presumption of innocence and the due process requirements of notice, provision of evidence, and the right to a hearing before a neutral decisionmaker.
- Provide remedies, specifically in the Canadian context, for those affected by counter-terrorism measures; drawing on the discourse from black abolitionist thoughts about difference between reformist reforms vs. non-reformist reforms as dismantling existing state powers has yet to become an entrenched entry point.

## **United Nations**

- Establish mechanisms aimed at documenting the historical and ongoing misuse of counter-terrorism and its linkages to legacies of oppression, including such mechanisms as a truth and reconciliation or a commission of inquiry.

## **Private Sector or Other Stakeholders**

- Adopt robust data privacy and protection standards.
- Implement a policy of refusing to share data with law enforcement absent a court order.
- Financial institutions should revise their policies to ensure they are narrowly tailored to comply with laws, rather than burdening Muslim clients with overbroad or overly enforced compliance measures that disproportionately exclude Muslims.
- Media companies must desist from perpetuating negative stereotypes about

Muslims, or sensationalizing dubious federal law enforcement claims, and instead offer space to Muslim voices and nuanced portrayals; similarly, the media should reclaim its essential role in investigating and exposing governmental abuses of civil and human rights.

- Integrate religion into diversity, equity and inclusion efforts within the private sector. Currently, religion is not often thought about when it comes to such efforts despite the serious importance of its inclusion. There are often blind spots for employees as well as communities affected by private sector action.