



European Center for
Not-for-Profit Law



Input to the Honorable Fionnuala D. Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space

28 February 2023

The Charity & Security Network (C&SN) thanks the Special Rapporteur for the opportunity to submit input on the important topic of the impact of counter-terrorism measures on civil society and civic space.

Our mission is to promote and protect the ability of nonprofits to carry out effective programs that support peace and human rights, aid civilians in areas of disaster and armed conflict, and build democratic governance. Our members and partners, located around the world, have cited counter-terrorism mechanisms as a major barrier to their ability to operate. Consequently, we are encouraged by the Special Rapporteur's interest in bringing this important topic forward through the first independent Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space.

To inform this submission, C&SN held a Roundtable with approximately 30 representatives from civil society who face negative and harmful impacts of counter-terrorism measures in their contexts and operating environments, in addition to receiving written inputs included therein. Accordingly, this submission includes country-specific examples from Afghanistan, Cameroon, Canada, Iraq, Kenya, Nicaragua, Palestine, Somalia, Sri Lanka, Uganda, the United States (U.S.), and Venezuela.

In addition to partners who chose to remain anonymous, this input is submitted by C&SN jointly with the Arab Campaign for Education for All (ACEA), the Bridges Faith Initiative (BFI), the Center for Civilians in Conflict (CIVIC), the CIVIC Advisory Hub, the Common Action for Gender Development (COMAGEND), the Defenders Protection Initiative (DPI), Epuka Ugaidi, the European Center for Not-for-Profit Law (ECNL), the Human Security Collective (HSC), the International Civil Liberties Monitoring Group (ICLMG), the Muslim Legal Fund of America (MLFA), the Palestinian NGO's Network (PNGO), the Philanthropy Europe Association (Philea), Unidosc, and the Worldwide Initiative for Grantmakers Support (WINGS).

Civil society's critical role in humanitarian aid, peacebuilding, and violence prevention in fragile and conflicted settings

Civil society plays a critical role in preventing and addressing the conditions conducive to violence in society, particularly in complex, fragile, and conflicted settings. Unconventional wartime tactics increasingly target and impact non-combatant civilians. Civil society actors, especially those who live alongside armed actors, have unique and creative abilities to find alternatives to violence and to prevent and end conflict.¹ Civil society fosters conflict resolution and provides aid and resources

¹ Global Partnership for the Prevention of Armed Conflict. "Agents for Change: Civil Society Roles in Preventing War & Building Peace," p. 7. September 2006. <https://www.gppac.net/files/2018-11/Agents%20for%20Change.pdf>.

in areas where governments cannot reach, and has the “capacity to support changes in how people respond to conflict and to direct attention to the underlying causes that need to be addressed if a sustainable and just peace is to emerge.”² Instead of government force, civil society processes facilitate dialogues, identify and address the root causes of violence, and promote local programming to understand context-specific conflict dynamics that enable the prevention of conflict in the first place. Civil society plays critical roles in peacebuilding processes - particularly in Track II and Track III peace processes, as they are often excluded from Track I processes³ - that are crucial in particularly complex, fragile, and conflicted settings. Their roles include protection, monitoring, advocacy, socialization, mediation, and service delivery when state structures are either destroyed or weakened.⁴

Partners report that civil society makes the prevention and mitigation of, and response to, harm in conflict more feasible and likely. These harms include death, physical injury, psychological impacts, damage to property, and interruption or destruction of critical infrastructure and services. In contemporary conflicts, local civil society organizations (CSOs) work independently and often together to identify, represent, and vocalize critical protection concerns through direct engagement and advocacy with governments and other bodies, such as United Nations (UN) agencies. CSOs monitor, record, and document civilian casualties and potential violations of international human rights and humanitarian law and represent the interests of civilians seeking accountability for harm. Importantly, CSOs build and strengthen existing community capacities and resilience to violence and conflict by brokering accurate information for decision-making and connecting communities with state and non-state armed groups (NSAGs) to communicate needs and preferences for protection. CSOs play a large role in the oversight of security policies and practices in a way in which their value goes far beyond assuming an adversarial position relative to government, but in co-creating rights-respecting strategies with governments for contending with insecurity and conflict.

Background of counter-terrorism measures impact on civil society

Counter-terrorism laws and measures and the over-application of laws to counter terrorist financing (and money laundering) are seen as key drivers of restrictions on Freedom of Association and civil society’s, including philanthropy, ability to give or receive resources especially in cross-border areas and operations.

It is critical to stress that in many contexts, states do not restrict civil society activities through laws or regulations but through informal practices and processes that take precedence over laws and regulations. Hence, prima facie, it may appear there are not any restrictions. For instance, when approvals for projects are granted by local authorities, they request various

documents that are not required by law and subject organizations to unwarranted scrutiny. Certain work, such as work with families of the disappeared, and accountability for war crimes, are labeled as anti-national and enabling terrorism. This leads to organizations working on these issues to receive informal requests to omit such elements in their project proposals in order to obtain approval.

² Ibid, 8.

³ Peace Direct, in collaboration with Inclusive Peace & Transition Initiative. “Civil Society & Inclusive Peace. Key insights and lessons from a global consultation convened on Peace Insight.” February 2019. <https://www.inclusivepeace.org/wp-content/uploads/2021/05/report-civil-society-inclusive-peace-en.pdf>

⁴ Thania Paffenholz. The Centre on Conflict, Development, and Peacebuilding. “Civil Society and Peacebuilding,” p. 13. 2015. https://www.sfcg.org/events/pdf/CCDP_Working_Paper_4-1%20a.pdf.

The rest of this section is focused on counter-terrorism measures' impact on CSOs that work on better protecting civilians that have been directly affected by counter-terrorism-related restrictions and shrinking civic space. Subsequent sections focus on the background of counter-terrorism measures' impact on civil society more generally, and in specific country contexts.

Among the most common consequences of shrinking civic space on the role of civil society in the protection of civilians:

- **Restrictions on expression:** Explicit or implicit restrictions on speaking or writing about “sensitive” security issues or critiquing government security policy prevents local CSOs from calling attention to civilian protection concerns. Restrictions on public expression also prevents local organizations from offering constructive means of better protecting civilians in the course of security operations.
- **Arbitrary or targeted legal restrictions:** Counter-terrorism policy has led to unintended and sometimes intended limitations of civil society space. Legal and regulatory restrictions on civil society, often under the pretense of national security or counter-terrorism, prevents a range of local and international organizations from playing any number of constructive roles in the protection of civilians. Legislation and opaque or intentionally arcane regulatory procedure have provided the basis for invasive inquiries, detention, and imprisonment. Counter-terrorism regulations that prevent direct engagement by CSOs with suspected terrorists or armed groups has resulted in depriving communities of humanitarian aid, impaired peacebuilding efforts, deprived suspected “terrorists” and members of NSAGs of legal protection (e.g. the availability of legal counsel), and even prevented CSOs from promoting better protection of human rights and international humanitarian law (IHL) by the armed groups themselves.
- **Restrictions on access and movement:** Explicit, implicit, and arbitrary limitations on access and movement in the name of counter-terrorism impairs the delivery of humanitarian aid, peacebuilding activities, and support for community self protection.
- **Harassment and intimidation:** The expansion of counter-terrorism policies and practices has been accompanied by direct and indirect threats and harassment of local CSOs, which has resulted in a “chilling” effect on public reporting on certain issues or trends that affect the protection of civilians. For example, in some places, civil society cannot monitor and report on the activities or conduct of private military contractors for fear of reprisals and intimidation. In others, state and non-state actors (NSAs) have intruded the digital communications and stores of sensitive conflict-related data of local and international organizations.

Counter-terrorism policies have also *shaped* civic space in ways that affect the role played by civil society in the protection of civilians, for example by creating financial incentives for local organizations to shift toward a role in “countering violent extremism” (CVE). ***Ironically, many of the places where the government has placed a significant emphasis on countering terrorism while also placing greater restrictions on civil society have become more violent and even devolved into situations of armed conflict, thus exposing greater numbers of civilians and communities at risk of harm.***

The broad nature of counter-terrorism measures and laws and the lack of international accountability mechanisms allow for governments to utilize these measures to silence and create barriers for civil society actors

Overly broad and vague counter-terrorism laws inhibit civil society engagement in peacebuilding, because these laws restrict the ability to engage with any individuals or groups who are either connected to or suspected of being connected to proscribed individuals or groups alleged to be involved in terrorist activities under existing counter-terrorism frameworks. For example, due to the current domestic counter-terrorism laws in effect, partners working in Somalia report no ability to engage with organizations or groups engaged in violence in any way, even in critical peacebuilding contexts.

In Cameroon, partners report that government actors use counter-terrorism and CVE laws to silence civil society actors. In these contexts, where the government is targeting civil society through the legal framework of counter-terrorism, it is difficult for individuals to take up human rights concerns without being branded as part of a terrorist movement.

Organizations from different regions have reported to C&SN the use of counter-terrorism laws to target environmental activists. In the U.S., police in the state of Georgia are invoking a 2017 terrorism law, § 16-4-10, against environmental activists who occupied a woodland area to protest the trees being felled for the construction of police training centers.⁵ Partner organizations reported that nineteen people were arrested in Georgia and charged with Domestic Terrorism for protest-related activities, including trespass and vandalism. Arrest warrants assert that the Department of Homeland Security (DHS) had labeled the group organizing the protests, Defend the Atlanta Forest (DTAF), as domestic violent extremists.⁶ The protesters now face five to 35 years in prison for generally minor crimes. Vague and broad anti-terrorism laws allow for politically-motivated prosecutions aimed to monitor, punish, and chill free speech activities.

Recently in Iraq, a prominent environmental activist, Jassim Al Assadi, was kidnapped on his way to work by unidentified gunmen. Partners in the region reported that despite several calls for action by the government, it took two weeks until Assadi was released. While it is not alleged that the kidnappers were a part of the Iraqi government and terrorism charges have not been filed against Assadi, our partners note that this inaction by the government represents the shrinking civil society space in Iraq and the Iraqi government's restrictions on human rights defenders and their work. This includes the monitoring of posts on Facebook relating to lesbian, gay, bisexual, transgender, queer / questioning, intersex, and asexual (LGTBQIA+) rights, accusing activists of posting "fake" stories and labeling them as terrorists, and creating "red tape" around organizations' activities so that they cannot conduct their work.

In Palestine, counter-terrorism measures have been used to significantly curtail the work of civil society by criminalizing human rights work. According to partners in the region, in Palestinian civil society, everyone is a potential target under the broad authorizations of counter-terrorism laws, whether they are a CSO documenting rights violations, promoting socio-economic development, or delivering humanitarian assistance. Recently, Israel designated six Palestinian CSOs as terrorist organizations based on reasons that the UN Human Rights Office in the Occupied Palestinian Territories (oPt) said "appeared vague or irrelevant."⁷ Following this, the offices of all six organizations were raided, during which property was damaged and confiscated, and a military

⁵ Timothy Pratt. The Guardian. "Georgia is seeking to define 'Cop City' protests as terrorism, experts say." January 2023. <https://www.theguardian.com/us-news/2023/jan/28/georgia-cop-city-atlanta-protests>.

⁶ Georgia State Warrant and Affidavit. December 15, 2022. https://www.documentcloud.org/documents/23587689-dtwarrantscombined_redacted.

⁷ Rami Ayyub. Reuters. "Israel designates Palestinian civil society groups as terrorists, U.N. 'alarmed'." <https://www.reuters.com/business/aerospace-defense/israel-designates-six-palestinian-civil-society-groups-terrorists-2021-10-22/>.

order to shut down their offices was imposed.⁸

Despite Israel's failure to substantiate its accusations,⁹ the onus to rectify illegitimate and unjustifiable smear campaigns has often remained on Palestinian civil society. This has curtailed vital work and forced CSOs to often redirect their resources and time to defending themselves against baseless charges, while simultaneously being vulnerable to reputational damage and the suspension of crucial funding from donors.¹⁰ As a result, this has created an enabling environment precisely for civil society to be stifled, not supported.

According to a report by DPI,¹¹ Uganda has seen an increase of the use of broad anti-money laundering / countering terrorist financing (AML/CTF) laws to silence CSOs and human rights defenders in the wake of extreme violence, extra judicial killings, enforced disappearances, and torture during Uganda's Presidential and Parliamentary elections. In Uganda, the Financial Intelligence Authority (FIA) has the power to freeze and halt financial transactions of non-governmental organizations (NGOs) under Section 17A of the Anti-Terrorism (Amendment) Act of 2015.¹² This power is unchecked, leaving NGOs and others without a mechanism to challenge the freezing of their bank accounts and financial transactions. Furthermore, the law is silent on the length of time that the FIA can keep accounts frozen, leaving that determination within the sole discretion of the FIA. The use of these overbroad counter-terrorism measures to halt financial transactions and organizational productivity has stifled NGOs who promoted voter education and challenged the human rights violations during Uganda's elections.

Since the Taliban took over the government of Afghanistan, Canadian humanitarian and international development organizations have been told they need to cease operations in the country under threat of facing terrorism financing charges. Despite various UN resolutions, Canada had still not acted to resolve this matter. Some Canadian organizations are hesitant / have withdrawn from Gaza in particular over concerns that providing aid there would be viewed as providing support to Hamas. This was the case of a Canadian charity, the International Relief Fund for the Afflicted and Needy (IRFAN), which had its charitable status revoked and was placed on the Canadian "Terrorist Entities List" because of donations of millions of dollars worth of medical equipment to government-run hospitals in Gaza.¹³ They also faced unsupported / unproven allegations of illegal activity in relation to the Holy Land Foundation (HLF) legal case

⁸ Charity and Security Network. "Israel Shuts Down Palestinian Civil Society Groups as U.S. Continues to "Review" Unsubstantiated Allegations from Last Fall." August 2022. <https://charityandsecurity.org/csn-press-releases-advisories/israel-shuts-down-palestinian-civil-society-groups-as-u-s-continues-to-review-unsubstantiated-allegations-from-last-fall/>.

⁹ OHCHR. "Israel/Palestine UN Experts Call on Governments to Resume Funding for Six Palestinian CSOs designated by Israel as "Terrorist Organisations"." <https://www.ohchr.org/en/press-releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian>.

¹⁰ Palestinian NGO Network. "PNGO Supports Nine EU Member States Decision to Continue Cooperation with Designated CSOs." <https://www.pngo.net/?p=4066&lang=en>.

¹¹ Defenders Protection Initiative. "A Report on Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Laws: And Examination of Their Impact on Civic Space in Uganda." June 2021. <https://www.defendersprotection.org/wp-content/uploads/2022/03/A-Report-on-the-impact-of-AMLCTF-regulations-on-Civic-Space.pdf>.

¹² Ibid, 9.

¹³ Anver M. Emon and Nadia H. Hasan. "Under Layered Suspicion: A Review of CRA Audits of Muslim-led Charities." 2021. https://tspace.library.utoronto.ca/bitstream/1807/126225/1/Emon%20and%20Hasan_2021_Under%20Layered%20Suspicion.pdf

in the U.S., which was discredited. These are concrete examples of the direct chilling effect that overbroad terrorism laws can have on important humanitarian aid and charitable work.

In Sri Lanka, partners report counter-terrorism laws, especially the Prevention of Terrorism Act, are used to stifle dissent and threat by private actors and the military to coerce civil society actors of the Tamil and Muslim ethnic groups.¹⁴ Tamil mothers of the disappeared civil society actors report receiving threats by both the military and other government entities that their remaining children will be arrested under counter-terrorism laws and “put away for 20 years” if mothers continue with their quest for justice. Private actors such as bank managers in private banks also use counter-terrorism laws to question Tamil and Muslim CSO heads about sources of overseas funding. Nothing in Sri Lanka’s laws require such scrutiny or interrogation but it is used by these private actors who feel it is their “patriotic duty” to question non-majority community actors and ethnic groups from civil society. Perception and branding that civil society activists, especially those who work with the Tamil and Muslim ethnic groups, are terrorists, make the recruitment of staff and transfer of money to these organizations difficult.

Additionally, partners in Sri Lanka report the weaponization of social media and traditional media to entrench counter-terror narratives that restrict the activities of civil society. The rhetoric of government actors, such as ministers and even the president or Prime Minister (PM), who equate activists working with certain communities or working on human rights as terrorists or enablers of terrorism, results in self-censorship by civil society and thus restricts their activities. For example, Buddhist monks who have been vocal on the discrimination against Muslim communities in Sri Lanka after the Easter Sunday attacks, and who have engaged in inter-community peacebuilding and co-existence work, have been vilified, harassed, and labeled as terrorists on social media by regime supporters or anonymous accounts that are pro-regime.¹⁵ They have also been followed and questioned by state security agencies. The rhetoric and disinformation are not always deployed and disseminated by state actors, but by fake accounts on social media and media companies affiliated with the regime.

Partners also report that providing local organizations financial incentives to work on "violent extremism" (VE) is also driven by multilateral and bilateral donors, including the UN. For example, in Sri Lanka, the UN Office on Drugs and Crime (UNODC) had a project on CVE in prisons, although organizations in the country note that VE is not a problem in prisons. To the contrary, “radicalization” is likely to happen due to being arbitrarily arrested and detained for months - and sometimes even years - without a shred of evidence of wrongdoing. Hence, instead of tackling the root cause of the problem and preventing rights violations from taking place, these agencies are complicit in their silence on the violations perpetrated by the State, and instead expend resources to tackle the potential result of the violation. It also illustrates these agencies do not identify the problems that need to be addressed prior to initiating projects, as to date, such “radicalization” has still not been noted to be taking place in prisons in Sri Lanka. Even if these agencies argue this is pre-emptive action, pre-emptive action should be taken to prevent the violations from occurring in the first place. Instead, some agencies, such as UNODC, enable the State by providing advice to the government on drafting counter-terrorism laws that disregard

¹⁴ Human Rights Watch. “Sri Lanka: UN Report Describes Alarming Rights Situation.” March 2022. <https://www.hrw.org/news/2022/03/03/sri-lanka-un-report-describes-alarming-rights-situation>.

¹⁵ Information on File with Author - Non-public Study.

human rights principles and protections; notably, this took place in Sri Lanka during the Yahapala regime (2015 - 2020) during the drafting of the Counter Terrorism Act (CTA) of 2018.¹⁶

In the Latin American region, the worst cases have been witnessed in a few countries but their consequences are grave and far-reaching, as some countries in the region have tried to replicate these cases. The adoption of counter-terrorism legislation, as well as of the Russian-derived “foreign agents legislation,” which has been used by “[l]eaders from Nicaragua to Egypt..to target overseas-backed NGOs and media,”¹⁷ has had a deep impact in Nicaragua and Venezuela, where these policies have contributed to the stigmatization and criminalization of human rights organizations, labeling them as foreign agents or directly accusing them of terrorist financing or terrorism activities. Partners in the region report that between 2018 and 2022, more than 1,000 organizations were legally canceled (thus, forcibly dissolved), in addition to the imprisonment or exile of several activists.^{18 19}

In Nicaragua, a notable effort to restrict Freedom of Association and Freedom of Religion has been extended to the Catholic Church through the raids of parish facilities and arrests of priests and clergy members.²⁰ Venezuela has also incurred frequent criminalization of organizations and activists. The accusations are often related to terrorist activities for those persons that openly criticized public policies. For example, the arrest of human rights defenders from NGO Fundaredes is very significant, as it is considered one of the most relevant CSOs in the country that experienced this type of criminalization as part of counter-terrorism strategies.²¹

An overview of the situation in the Latin American region shows generalized usage and prevalence of a one-size-fits-all approach regarding laws and policies that impose obligations on CSOs. This generates unintended consequences that result in financial restrictions, banking exclusion, administrative overburden, and unequal legal treatment for CSOs.

Counter-terrorism financing laws continue to inhibit civil society funding, bank transfers, and operations.

Following the 9/11 terrorist attacks, CSOs were caught in a new focus on counter-terrorism enforcement through the financial sector.²² As highlighted in Charity & Security Network's 2017 *Financial Access for U.S. Nonprofits Report*, utilizing the U.S.'s influence in the global financial system, the Bush Administration implemented aggressive measures to halt the flow of money,

¹⁶ Human Rights Watch. “Sri Lanka Draft Counter Terrorism Act of 2018: Human Rights Watch Submission to Parliament.” October 2018. <https://www.hrw.org/news/2018/10/21/sri-lanka-draft-counter-terrorism-act-2018>

¹⁷ .coda. “Putin’s playbook: Strongmen around the world are using Russian tactics to quell dissent.” July 2021. <https://www.codastory.com/disinformation/russias-foreign-agents-law-reverberates-around-the-world/>.

¹⁸ CIVICUS. “Civil Society Outlawed in Practice by Nicaragua’s Authorities.” July 5, 2022. <https://monitor.civicus.org/updates/2022/07/05/civil-society-outlawed-practice-nicaraguas-authorities/> and

¹⁹ Human Rights Watch. “Nicaragua: Government Dismantles Civil Society - Arbitrary Closures of Groups Impede Rights, Humanitarian Work.” July 19, 2022. <https://www.hrw.org/news/2022/07/19/nicaragua-government-dismantles-civil-society>

²⁰ United Nations Human Rights Office of the High Commissioner. “Flash Report N.6: Crisis in Nicaragua.” August 2022. https://www.oacnudh.org/wp-content/uploads/2022/11/FlashReport_HumanRights_Nicaragua_No6.pdf.

²¹ Ámbito. “Venezuela: arrestan e imputan por terrorismo a tres activistas de derechos humanos.” July 2021. <https://www.ambito.com/mundo/venezuela/arrestan-e-imputan-terrorismo-tres-activistas-derechos-humanos-n5213715>.

²² Sue E. Eckert, with Kay Guinane and Andrea Hall. Charity & Security Network. “Financial Access for U.S. Nonprofits.” February 2017. [https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20\(2\).pdf](https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf).

calling it the “life-blood of terrorist operations.”²³ Regardless of little to no evidence, charitable organizations were considered vulnerable to terrorist abuse and several organizations were investigated, their assets were frozen, and they were ultimately shut down. CSOs continued to be characterized as “particularly vulnerable” to being abused by terrorists, until the Financial Action Task Force (FATF) updated their Recommendation 8 (R8) to remove this language in 2016.²⁴ Five years later, in 2021, the U.S. likewise updated the non-profit chapter of their Federal Financial Institutions Examination Council (FFIEC) *Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Examination Manual*, which “provides guidance to examiners for carrying out BSA/AML and Office of Foreign Assets Control (OFAC) examinations”,²⁵ stating that “Examiners are reminded that the U.S. government does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of being used or exploited for ML/TF or sanctions violations.”²⁶

While the financial sector is supposed to take a “risk-based approach” (RBA) to their compliance programs - where they evaluate vulnerabilities and implement mitigation procedures in situations they deem to be “higher risk” - they often instead operate in risk averse manners that negatively impact civil society’s ability to operate, usually where aid and support is most needed. For instance, instead of undertaking the RBA, financial institutions often engage in “de-risking,” whereby financial institutions close or restrain relationships to avoid risk altogether.²⁷ Financial institutions cite that the most common driver of de-risking is the concern for violating anti-money laundering / countering the financing of terrorism (AML/CFT) regulatory requirements. Banks under pressure to comply with these regulatory requirements and sanctions have delayed or denied financial transfers, complicating efforts by charities and humanitarian groups trying to deliver aid.²⁸ Despite this, U.S. government agencies, such as the U.S. Treasury Department in their *2022 National Strategy for Combating Terrorist and Other Illicit Financing (2022 Strategy)*, state that “profitability concerns are usually the main reason for de-risking”,²⁹ while other AML/CFT experts, and indeed the financial sector itself, cites the root cause as compliance risk due to AML/CFT regulations.³⁰ This discrepancy between the financial sector and the U.S. government agencies and regulators leads to responsibility being punted back and forth between these actors, leaving a dire status quo that harms not only NGOs operating in complex, conflict environments, but, more egregiously, the communities these NGOs are supposed to serve.

²³ The White House. President George W. Bush. “President Freezes Terrorists’ Assets: Remarks by the President, Secretary of the Treasury O’Neill and Secretary of State Powell on Executive Order.” September 2001. <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-4.html>.

²⁴ Global NPO Coalition on FATF. “Press Release: NPOs applaud important changes in Financial Action Task Force (FATF) policy – NPOs no longer considered “particularly” vulnerable.” June 2016. <https://charityandsecurity.org/system/files/2016%2006%20NPOs%20applaud%20important%20changes%20in%20Financial%20Action%20Task%20Force%20%28FATF%29%20policy.pdf>.

²⁵ FFIEC BSA/AML Examination Manual. “Introduction.” 2014. https://bsaaml.ffiec.gov/docs/manual/01_Introduction/01.pdf.

²⁶ FFIEC BSA/AML Examination Manual. “Charities and Nonprofit Organizations.” November 2021. <https://www.ffiec.gov/press/PDF/Charities-and-Nonprofit-Organizations.pdf>.

²⁷ NYU Paris EU Public Interest Clinic. “Bank De-Risking of Non-Profit Clients: A Business and Human Rights Perspective.” June 2021. https://www.hscollective.org/assets/Uploads/NYU-HSC-Report_FINAL.pdf.

²⁸ Sue E. Eckert, with Kay Guinane and Andrea Hall. Charity & Security Network. “Financial Access for U.S. Nonprofits.” February 2017. [https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20\(2\).pdf](https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf).

²⁹ U.S. Department of the Treasury. “National Strategy for Combating Terrorist and Other Illicit Financing.” May 2022. <https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf>

³⁰ Ashleigh Subramanian-Montgomery. Charity & Security Network. “Unpacking Treasury’s 2022 National Strategy for Combating Terrorist and Other Illicit Financing.” May 24, 2022. <https://charityandsecurity.org/blog/unpacking-treasurys-2022-national-strategy-for-combatting-terrorist-and-other-illicit-financing/>

The UN 2016 *Study on Humanitarian Impact of Syria-Related Unilateral Restrictive Measures*³¹ detailed the “chilling effect” of the private sector’s reluctance to support humanitarian activity. This reluctance, especially by banks, was partly fueled by a fear of fines for unintended violations of AML/CFT regulations. While the Treasury Department made significant strides in authorizing a series of new and amended baseline General Licenses in December 2022 “to further enable the flow of legitimate humanitarian assistance supporting the basic human needs of vulnerable populations while continuing to deny resources to malicious actors,”³² their overall licensing process still needs to holistically, adequately, and effectively address these access problems.³³ Without financial access, CSOs cannot make the international transactions necessary for their organizations to function. Transfers to all parts of the globe are impacted, even in areas not deemed “high-risk”; this problem is not limited to merely conflict zones or fragile states. Despite the aforementioned changes to the Treasury OFAC licensing and to regulator guidance, and despite alleged cases of terrorism funding through financial institutions decreasing since the 9/11 era, partner organizations still report that the prosecution of terrorism in the financial sector has continued to broaden in the U.S. context.

Additionally, in the European context, issues of increased bank de-risking and tighter reporting obligations, which raise privacy rights concerns, have been reported.³⁴ Restrictions on access to resources and cross-border funding are limiting the philanthropic space at the global level and pose barriers to the ability of funders to support vital work on human rights, social matters, and environment, amongst others. A number of funders have also reported to be under direct attack by the government (Hungary/India).

In the Latin American context, measures have been imposed throughout the region without having initially conducted sector-specific risk assessments (RAs), which is both against FATF Recommendation 8 (R8) guidelines and which results in a general imposition of obligations and ineffective protections for the most vulnerable organizations.³⁵ These consequences hinder the development of organizations, as well as their ability to conduct social initiatives. Furthermore, in Latin America, civil society is seldom included in the RA exercises and in the process of design, execution, monitoring, and assessment of norms and public policies. This leads to initiatives failing to take into consideration the specific needs and characteristics of the civil society sector, in complete disregard for R8.³⁶

³¹ Justine Walker. “Study on Humanitarian Impact of Syria-Related Unilateral Restrictive Measures: National Agenda for the Future of Syria.” May 2016. <https://assets.documentcloud.org/documents/3115191/Hum-Impact-of-Syria-Related-Res-Eco-Measures-26.pdf>.

³² U.S Department of the Treasury. “Press Releases: Treasury Implements Historic Humanitarian Sanctions Exception.” December 20, 2022. <https://home.treasury.gov/news/press-releases/jy1175>.

³³ Charity & Security Network. “Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and counter-terrorism Measures in the United States.” <https://charityandsecurity.org/sites/default/files/Safeguarding%20Humanitarianism%20Final.pdf>.

³⁴ Philea. “The Philanthropy Environment in Europe.” December 2022. <https://philea.eu/wp-content/uploads/2022/12/The-Philanthropy-Environment-in-Europe-December-2022-1.pdf>. See also Philea. “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.” October 2021. <https://philea.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2021.html>.

³⁵ The International Center for Not-for-Profit Law. “Mapeo sobre el riesgo de financiamiento de terrorismo en las organizaciones sin fines de lucro entre los países miembros del grupo de acción financiera de América Latina.” 2021. <https://www.icnl.org/wp-content/uploads/Regional-Report-for-Final-09.24.2021.pdf>

³⁶ FATF. “Interpretive note to recommendation 8 non-profit-organizations.” 2018. <https://cfatf-gafic.org/index.php/documents/fatf-40r/374-fatf-recommendation-8-non-profit-organisations>

Counter-terrorism measures have a disproportionate negative impact on women and women-led organizations.

It is important to note that counter-terrorism measures do not impact all of civil society equally. Counter-terrorism measures and counter-terrorism financing laws disproportionately burden the work of women's rights organizations and women-led organizations.³⁷ Historically, women are more affected by marginalization, poverty, and armed conflict.³⁸ However, the ways in which counter-terrorism financing laws have been created and implemented rarely take into account women's rights organizations and their operating environments.³⁹ While civil society as a whole has been impacted by counter-terrorism financing regulations, women's rights organizations have been uniquely impacted because of certain already-existing common characteristics of women-led and women's rights organizations, including being "nascent or newly-established... relatively small and often operat[ing] at the grassroots level, and already often fac[ing] some degree of financial exclusion."⁴⁰ Furthermore, many women-led and women's rights organizations focus on peacebuilding and conflict resolution as a means to preventing terrorism and violence - yet, most report that counter-terrorism measures as applied currently have a negative effect on their ability to operate.⁴¹ Therefore, they are increasingly "squeezed between terrorism and violent extremism on the one hand, and counter-terrorism or preventing and countering violent extremism (P/CVE) on the other."⁴²

States have utilized overbroad definitions of terrorism to suppress and sometimes criminalize the legitimate work of women's rights organizations. Examples include targeting and characterizing women's rights organizations as supporting "terrorism", reducing resources for women's rights organizations, and limiting women's rights organizations' ability to access foreign funding under the pretense of countering terrorism.⁴³ For instance, during the period leading up to the 2021 Presidential and Parliamentary elections in Uganda, the government froze bank accounts belonging to the Uganda Women's Network (UWONET), citing reasons of terrorism financing.⁴⁴ This organization and others (as noted in the *The broad nature of counter-terrorism measures and laws* section above) targeted during this time were involved in voter education and civic awareness initiatives that were aimed at informed decision-making during elections for marginalized groups such as women and youth.⁴⁵

³⁷ Elizabeth Mesok. "Women, Peace and Security and the Prevention of Violence: Reflections from Civil Society in the Context of the Fourth Swiss National Action Plan 1325," p. 9-10. September 2019.

³⁸ International Committee of the Red Cross (ICRC). "Women Facing War," p. 28. 2001. https://www.icrc.org/eng/assets/files/other/icrc_002_0798_women_facing_war.pdf; see generally, ICRC. "Addressing the Needs of Women Affected by Armed Conflict." March 2004. https://www.icrc.org/en/doc/assets/files/other/icrc_002_0840_women_guidance.pdf.

³⁹ Center for Human Rights and Global Justice. NYU School of Law. "A Decade Lost: Locating Gender in U.S. Counter-terrorism," p. 70. 2011. <https://chrgj.org/wp-content/uploads/2016/09/locatinggender.pdf> (stating that "[a]ccording to the U.S. Department of the Treasury . . . anti-terrorism financing measures are designed and implemented without a specific gender lens").

⁴⁰ Duke Law International Human Rights Clinic and Women Peacemakers Program, "Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security," p. 8. (2017). <https://law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf>.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid, 42-45.

⁴⁴ Defenders Protection Initiative. "A Report on Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Laws: And Examination of Their Impact on Civic Space in Uganda," p. 13. June 2021. <https://www.defendersprotection.org/wp-content/uploads/2022/03/A-Report-on-the-impact-of-AMLCTF-regulations-on-Civic-Space.pdf>.

⁴⁵ Ibid, 14.

According to partners in Cameroon, women's rights organizations and organizations who advocate for gender equality are often cut out or overlooked when it comes to implementing counter-terrorism laws, and in disarmament, demobilization, and reintegration (DDR) efforts, despite women being a leading force in these spaces. Due to this exclusion, partners from Cameroon highlighted the need for a UN-led quota system to instill mandatory consultations with women's rights organizations, as the perspectives of women's rights organizations will be vastly different from militarized governmental perspectives.

Partners in Kenya also report that integration of gender into domestic policy is lacking. Organizations in the country developed a policy brief which examined how the Nairobi County Action Plan, developed to counter violent extremism, failed to include gender and excluded women's perspectives. Likewise, it highlighted how gender writ large and women's perspectives in particular are not included in the development of national counter-terrorism policies and laws, and partners noted there is significant room for growth in this area. They also stated the need to hold states' accountable on human rights and on measures the national government employs in counter-terrorism and CVE that restrict civil rights, without becoming an enemy of the state.

Civil society cannot fully engage with the international community on the impact of counter-terrorism measures without continued commitment to due diligence safeguards that protect against reprisals.

A crucial component of providing a space for meaningful participation for civil society are due diligence safeguards to protect civil society actors against reprisals in their home countries and regions. Reprisals constitute a significant threat to the effectiveness of civil society, especially in the context of counter-terrorism. The threat of reprisal alone creates a chilling effect that prevents organizations and individuals on the ground that are otherwise impossible to reach by government actors and large aid organizations, from raising concerns to the UN and other international organizations. In recent years, the reported amount and severity of reprisals and intimidation against individuals and organizations who engage with the UN have increased. They have included "travel bans, threats and harassment, including by officials, smear campaigns, surveillance, introduction of restrictive legislation, physical attacks, arbitrary arrest and detention, torture and ill-treatment, including sexual violence or denial of access to medical attention, and killings."⁴⁶

It is critical that accountability mechanisms create safe spaces that specifically exclude government actors and law enforcement. Recently in Canada, law enforcement figures and government actors were invited to a civil society roundtable on CVE laws and programs. After complaints from civil society, law enforcement ended up being excluded from the roundtable but government figures remained, creating barriers for safe and meaningful input for civil society. The fact that this was viewed as an acceptable format for a civil society roundtable raises concerns about the precedent it sets for future Counter-terrorism Committee Executive Directorate (CTED) consultations.

Recommendations to States and regional and international organizations, including the United Nations, for ensuring adequate civil society participation and consideration of the impacts of counter-terrorism on civil society

⁴⁶ OHCHR. "OHCHR and intimidation and reprisals for cooperation with the United Nations in the field of human rights." <https://www.ohchr.org/en/reprisals>.

In the process of drafting this submission, C&SN spoke with several organizations and individuals within civil society about recommendations and potential solutions to address the negative impacts that counter-terrorism measures have on civil society.

The widespread and intentional use of counter-terrorism laws to target civil society without accountability can partly be attributed to the internationally broad definition of counter-terrorism and lack of international accountability mechanisms to hold states accountable for these actions. Several organizations called for accountability mechanisms within the UN that redefines / monitors an international definition of terrorism that prevents the broad use of terrorism against civil society actors and incorporates a gender / LGBTQIA+ lens in monitoring how counter-terrorism laws are applied in various contexts.

Additionally, organizations recommend creating spaces for civil society to report instances of abuse of counter-terrorism measures by States. This could be accomplished through accountability mechanisms and reporting requirements to monitor how counter-terrorism frameworks are used by States, and to monitor broad / vague use of counter-terrorism laws to

target human rights defenders and civil society.

Possible mechanisms and further recommendations proposed by C&SN and partner organizations include:

- 1) **Cameroon:** Redefine what terrorism is by the standards of the UN, and create a mechanism to hold states accountable. Create a desk where we integrate UN counter-terrorism agendas with the global WPS agenda, to ensure complementarity of actions. Create a UN-led quota system to instill mandatory consultations with women's rights organizations.
- 2) **Kenya:** Look at mechanisms that enable healthy relationships with governments and partners to come together and walk as allies.
- 3) **U.S.:** Establish a Commission of Inquiry into the affects of broad and vague counter-terrorism measures, used both to document targeting of civil society and as well as the impacts of counter-terrorism measures financially and practically for organizations working in particularly complex, fragile, and conflicted settings. This is envisioned as a truth-telling effort that enables the populations harmed by these measures to voice their grievances, as an important step towards rectifying the harms.
- 4) **For CTED:** Develop a clear country assessment methodology and integrate the assessment of the impact of counter-terrorism measures on civil society and civic space within CTED country assessments.
- 5) **For States:**
 - a) States should recognize the many critical contributions of local civil society to the protection of civilians in conflict, and at a minimum, abide by international standards for protecting the Freedoms of Assembly, Association, Expression, and Public Participation.
 - b) States should ensure that local civil society can access financial resources.
 - c) States should limit sanctions for material support to precise and narrowly defined actions in ways that abide by international human rights standards and do not impede legitimate activities.

- d) States affected by armed conflict should refrain from imposing arbitrary limits on movement and access.
 - e) States affected by armed conflict and organized violence should create channels for engaging with civil society on protection issues and priorities.
 - f) States should ensure that efforts to protect principled humanitarian action include concern and protections for independent local civil society.
 - g) States should actively inform, consult, and involve civil society in the design and implementation of counter-terrorism support activities (e.g. security assistance and arms sales).
- 6) **Universal Periodic Review:** The Human Rights Council (HRC) should formally adopt a requirement that each Universal Periodic Review (UPR) address the issue of civil society (including philanthropy) rights, with a special focus on whether counter-terrorism laws are infringing on rights guaranteed by the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and relevant UN Security Council Resolutions (UNSCR), such as UNSCR 2462 and UNSCR 2664. As one of the main features of the UN HRC, the UPR would provide a unique and universal accountability vehicle for the review of civil society rights via information provided by the State, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and other relevant stakeholders, including civil society. Civil society should be a special concern in the UPR process for the following reasons:
- a) An exclusive UPR focus on the rights of individuals (including classes of individuals such as women, disabled, etc.) ignores a crucial aspect of human rights law, which is the collective efforts and assertion of rights individuals make via civil society.
 - b) Civil society personifies the exercise of key human rights (Association, Assembly, Expression), so that laws and official actions that impede civil society impede those rights.
 - c) Civil society is often a vehicle people use to address violations of human rights, so the UPR can learn a great deal about the state of human rights in a country overall by an examination of civil society; and
 - d) There is a well documented global problem of infringement on civil society rights, including infringements based on counter-terrorism that demonstrates the need for a UN mechanism to address it. It is logical to use an existing UN process like the UPR to help address it.

This solution would address the issues of accountability, State cooperation, and international support that partner organizations have called for to combat the negative impacts of counter-terrorism laws on civil society rights. This would enable an additional forum where civil society rights under IHL and international human rights law (IHRL) are offered attention and protection. C&SN submits that the Special Rapporteur should undertake a feasibility study of adopting this requirement within the UPR.