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**Virtual Counter-Terrorism Week 2020**  
**Webinar IV: Protecting and Promoting Human Rights as a**  
**Cornerstone for Building Resilience against Terrorism**



**Statement of the UN Special Rapporteur on the promotion and  
protection of human rights and fundamental freedoms while  
countering terrorism**

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## **Protecting and Promoting Human Rights as a Cornerstone of building resilience against terrorism**

*"... because the arc of the moral universe is long, but it bends towards justice"<sup>1</sup>*

Excellencies, Ladies and Gentlemen,

I am pleased to join you today in this session focused on human rights in the context of countering terrorism. Let me start with some global contextualization on the state of human rights across the globe. Human rights protection and promotion is under severe and undulating strain. It is estimated that civic space is restricted or impaired in its operations in 111 countries.<sup>2</sup> In 2019, 300 human rights defenders were killed, including a rising number of women human rights defenders who lost their lives.<sup>3</sup> Torture, inhuman and degrading treatment remains widespread and institutionally tolerated.<sup>4</sup> Human rights are in uphill struggle, but the demands for justice by ordinary men, women, boys and girls remain visible and continue to break through even in this time of pandemic. These short snapshots are not generic, they are intimately connected with and sustained by national security practices, and the use of counter-terrorism measures as a normalized 'exception' in multiple states across the globe. As I documented in my 2019 Report to the Human Rights Council,<sup>5</sup> over 66% of all communications engaged by the mandate I hold between 2005-2018 involved counter-terrorism measures used against civil society actors, including women and girls, and persons advocating for a range of fundamental rights including equal rights for victims of terrorism.

The retreat of human rights and the forceful blows to the work of civil society are distinctly

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<sup>1</sup> Martin Luther King Jr, Remaining Awake Through a Great Revolution, Speech given at the National Cathedral, March 31, 1968.

<sup>2</sup> CIVICUS: The World Alliance for Citizen Participation has identified that civic space is closed, repressed or obstructed in 111 countries across the world, and only 4 per cent of the global population live in areas where civic space is open.

<sup>3</sup> <https://www.frontlinedefenders.org/en/violation/killing>

<sup>4</sup> <https://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

<sup>5</sup> A/HRC/40/52

and directly related to the rise of counter-terrorism and security discourses and practice nationally, regionally and internationally. To state the very obvious, when States get to define terrorism exclusively on their own terms,<sup>6</sup> when national counter-terrorism legislation defines acts protected by international law including but not limited to speech and assembly as terrorism or security threats then we face an epidemic of exceptionalism, now exacerbated and accelerated by the use of Covid-19 as a basis for new security legislation. Moreover, when it appears that Covid-19 has functioned as a means for speeding up the passage of pending counter-terrorism legislation,<sup>7</sup> it seems obvious to say that simply 'adding human rights to the mixture of counter-terrorism' is only a short-term solution to a more profound structural problem.

Ladies and Gentlemen, Excellencies

Let me speak now to some of that structure and particularly the Global Counter-Terrorism Architecture, a matter I have already addressed in two reports to the General Assembly.<sup>8</sup> The human rights deficits of the counter-terrorism architecture have been detailed in multiple reports including the 2018 Report of the Secretary-General on the Global Counter-Terrorism Strategy<sup>9</sup> (although disappointingly broadly ignored in the more recent Report (2020)). The 4<sup>th</sup> pillar is the weakest in terms of spending, research, programming and specialized human rights expertise within the Global Counter-Terrorism Strategy.<sup>10</sup> Simply invoking the words 'human rights' does not mean that human rights are

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<sup>6</sup> In general, State practice appears to broadly ignore the strictures imposed by United Nations Security Council Resolution 1566 and the 19 Suppression Conventions on Terrorism. See, assessments of the Special Rapporteur, Legislation Review.

<sup>7</sup> The Special Rapporteur has noted a surge in national counter-terrorism legislation see <https://www.ohchr.org/EN/Issues/Terrorism/Pages/LegislationPolicy.aspx>

<sup>8</sup> A/74/335 (2019) and A/73/361 (2018)

<sup>9</sup> A/72/840.

<sup>10</sup> Global Center, Blue Sky V: An independent analysis of UN efforts to implement the United Nations Global Counter-Terrorism Strategy (2020) "The counterterrorism and PVE agenda can be harmful to civil society and can undermine efforts to build lasting security, including by securitizing its work; imposing restrictions on the freedoms of expression and opinion, association, assembly, and religion; and placing onerous reporting requirements as part of sanctions regimes and countering terrorism financing regulations"; Saferworld, A Fourth Pillar for the United Nations? The Rise of Counter-Terrorism (2020) "Globally, however, counter-terrorism has become many states' primary pretext for violating human rights in the name of security, portraying particular groups as a security threat. Education and empowerment for peace programmes have mutated into tools for preventing young people's radicalisation leading to violence."

included at every stage of counter-terrorism design, consultation, planning, delivery and assessment. Wishing good will on 'human rights' will not make 'human rights' magically appear in the global-counter-terrorism architecture and its programming. Ensuring human rights in counter-terrorism, and specifically the counter-terrorism architecture will at a minimum require:

- 1) A serious debate about the current size, effectiveness and added value of the counter-terrorism architecture as it currently functions and is paid for is necessary. Given the lack of integrated and systematic M & E in the architecture, including specific human rights impact assessments,<sup>11</sup> States can and should rightly ask if any of actually works; does the programming address the underlying conditions of insecurity, violence, poor governance, corruption and rule of law deficits that produce and sustain systemic violence? A critical starting point as to whether counter-terrorism the best starting point for complex, fragile settings where violence thrives and how the delicate 'balance' of goals and means contained in the UN Charter itself must be maintained.
- 2) Establishing a stand-alone and adequately funded human rights oversight entity within the global counter-terrorism architecture. For example, an Independent Reviewer of counter-terrorism or Ombudsperson based on best practice of independent reviewers in the UK and Australia as two examples.
- 3) Meaningfully integrating human rights recommendations and findings from UPR, Treaty Bodies, and Special Procedures into the regular programmatic work of the Global Compact.<sup>12</sup>
- 4) Sustained, meaningful, and direct participation with independent civil society, including humanitarians, NGOs, victims' organizations, women's rights organizations and youth organizations.

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<sup>11</sup> The Special Rapporteur acknowledges that a Working Group has been established on resource mobilization, but we are a long way from seeing its operationalization in practice.

<sup>12</sup> Noting the inclusion of CTED recommendations into the work of the Coordination Compact but underscoring the lack of transparency in the production of those recommendations and the fact that the underlying Reports and assessment of States are **not** public.

- 5) Seriously addressing and ameliorating the risks and costs of securitizing areas such as health, education, humanitarian assistance and conflict prevention. These should not be the playground of counter-terrorism action, not least because the adverse impact of securitizing these spaces to counter-productive, ineffective and a poor use of existing resources.

Let me turn to civil society engagement. On June 11<sup>th</sup>, 2020 over 1,000 participants of which over 400 were civil society organizations held a high-level event addressing human rights and counter-terrorism under the banner of #ReformUNCT. Notably, when the Secretary-General issued a call for inputs into his 2020 Report on the Global Counter-Terrorism Strategy over 55 CSOs submitted their views on the interface between CT and human rights, by way of counterpoint, 44 states submitted their views to the strategy. All to say, civil society is deeply engaged in, watching and taking account of what is happening to human rights in the counter-terrorism arena. Not all of that scrutiny is comfortable for States. It is not intended to be, as the role of civil society it to be watchful, critical, engaged, and the guardian of the values of openness, participation and stakeholding in our societies.

But civil society remains at the periphery of consultation, engagement and partnership of national, regional and global counter-terrorism law and practice, though as my 2019 Report to the Human Rights Council amply illustrated, it is frequently the direct and intended target of counter-terrorism measures. We are two years on from the last High-Level Conference of Heads of Counter-Terrorism Agencies of Member States and the issues of marginalization and exclusion continue. There is now a positive development in a published civil society engagement strategy, by UNOCT. But let us be clear that a strategy is not an outcome, but rather an intention towards an outcome. If States desire legitimacy and effectiveness in their counter-terrorism work, then civil society is an indispensable partner. Partnerships are hard work. They require inclusion from beginning to end; in planning, in consultation, in modification, in delivery and in assessment. There is no short-cut around meaningful inclusion – and the occasional good-will gesture of inclusion is not a substitute for a lack of sustained inclusion which means listening and changing ones' path based on the input and advice from civil society. Unfortunately, there is not much partnership in

evidence, though I will acknowledge and commend UNCTED's recent regularization and transparency in placing its meetings with civil society on a firm footing. Another positive example to highlight was the African Regional High-Level Conference on Counter-Terrorism and Prevention of Violent Extremism Conducive to Terrorism held in Kenya where UN Women's deep grassroots connections enabled a gathering of substance and deliberation with grassroots activists. Positive examples exist but they are few and far between. The UN counter-terrorism architecture can and should do better. There is a Call to Action for Human Rights issued by the Secretary General and noting the obvious it applies to counter-terrorism too.<sup>13</sup>

Finally, I will address Covid-19 and the discussion foreshadowed in this conference of a role for the United Nations Counter-Terrorism architecture. I note that my mandate issued an early warning with a number of my Special Procedures colleagues on the misuse of counter-terrorism, security and emergency measures in the context of Covid-19.<sup>14</sup> In addition, the SRCT & HR mandate with two leading NGOs ICNL and ECNL has created a global tracker on the use of emergency legislation in the context of Covid-19,<sup>15</sup> which demonstrates a number of profoundly concerning trends in the appropriation of counter-terrorism tools to the regulation of a health emergency. These include widespread use of data-tracking including the most sensitive data (e.g. biometric health data) without in some contexts any or sufficient protections on collection, storage, use or transfer of such data. I caution unreservedly about the flirtation with counter-terrorism law and practice as a basis of response to the global pandemic. Moreover, as other Special Procedures mandate-holders have documented the policing of Covid-19 has exacerbated discriminatory patterns of abuse in the use of force. Epidemiological evidence across a number of States reveals that Covid-19 is causing disproportionate deaths among racialized minorities or other historically vulnerable groups. Consider then the proposition that the tools of the surveillance states

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<sup>13</sup>[https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Rights\\_English.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Rights_English.pdf); See also the remarks of the Secretary-General to this Conference, <https://www.un.org/sg/en/content/sg/statement/2020-07-06/secretary-generals-remarks-the-opening-of-the-virtual-counter-terrorism-week-united-nations-delivered>

<sup>14</sup> Add link to the press release

<sup>15</sup> Globally, however, counter-terrorism has become many states' primary pretext for violating human rights in the name of security, portraying particular groups as a security threat. Education and empowerment for peace programmes have mutated into tools for preventing young people's radicalisation leading to violence. <https://www.icnl.org/covid19tracker/>

and the use of force capacity of the state would be further mobilized against those communities who experience trust and harm deficits with the security sector. The positive human rights outcomes from the Covid-19 pandemic might include an emerging consensus on the right to health and the right to adequate housing as fundamental rights. It might also include a recognition that the right to information is a safeguard to prevent the spread of disease across the planet. We are not well-served in safeguarding global health by giving security sector actors with limited oversight and even less transparency a central role in managing the complex health needs and challenges of diverse populations. Given the demonstrated human rights and civil society deficits of the global counter-terrorism architecture, there are a range of other actors better placed to safeguard the right to health, the right to a home, and right to water, and the right to challenge government information about health risks than counter-terrorism and security actors, whom as this input suggests, have significant human rights deficits to be righted, arcs to be corrected and trust to be built in the work they already do.

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