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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

### **Promotion and protection of human rights and fundamental freedoms while countering terrorism**

#### **Note by the Secretary-General\***

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, submitted in accordance with Assembly resolution [72/180](#) and Human Rights Council resolution [49/10](#).

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\* The present report was submitted after the deadline in order to reflect the most recent information.



## **Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin**

### **Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention**

#### *Summary*

In the present report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presents the core analysis and findings of a global study on the impact of counter-terrorism measures on civil society and civic space. The study and its data were published in June 2023, following a global consultative process. The data were collected and collated through a participatory process led by civil society that comprised 13 civil society consultations across regions, 110 written inputs, of which 78 were from civil society, and 2 civil society surveys.

The global study documents unrelenting restrictions on civic space across every region and reveals a direct link to the regulatory and institutional practices of counter-terrorism and prevention and countering of violent extremism. In the present report, the Special Rapporteur sets out five key findings regarding the conditions, features and consequences of such systemic misuse: (a) civil society experiences complex and compounding misuse of measures and practices relating to counter-terrorism and prevention and countering of violent extremism, with connections to an ever-growing national, regional and global counter-terrorism, prevention and countering of violent extremism and security architecture; (b) the multiplicity of measures described is consistent and constant; moreover, certain regionally concentrated features of counter-terrorism and the prevention and countering of violent extremism stem from regional partnerships, donor relations and multilateral technical assistance and capacity-building programmes; (c) when States deploy counter-terrorism or prevention and countering of violent extremism measures, they enter a realm of exceptionality where human rights deficits pervade and the normal rules of due process and procedural protections generally do not apply, creating sustained vulnerabilities to further and layered human rights violations; (d) misuse is often discriminatory and directed against religious, ethnic and cultural minorities, women, girls, lesbian, gay, bisexual and transgender and gender-diverse persons, Indigenous communities and other groups in society that are historically discriminated against; and (e) there is limited monitoring and evaluation and/or independent oversight of laws and programming on countering terrorism or preventing and countering violent extremism and, overall, accountability for violations of counter-terrorism-related human rights abuses is either absent or deficient.

In the present report, the Special Rapporteur also shares findings from her technical visits to the United States of America and the detention facility at the United States naval station, Guantanamo Bay, Cuba, and to the north-east of the Syrian Arab Republic. She addresses several legal issues, including the question of responsibility under international law, in relation to the situation of mass and arbitrary detention of an estimated 70,000 persons in various detention facilities in the north-east of the Syrian Arab Republic. The Special Rapporteur highlights in particular the gross and systematic human rights violations experienced by children that potentially implicate core crimes.

## I. Introduction

1. The present report by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, is submitted pursuant to General Assembly resolution 72/180 and Human Rights Council resolution 49/10. In the report, she analyses the impact of counter-terrorism on civil society and civic space, drawing directly from the global study published by the Special Rapporteur in June 2023.

2. The Special Rapporteur presents the full scope of her activities and concludes by addressing the question of responsibility for serious violations of international law arising from the continued mass arbitrary detention, primarily of children, in various detention facilities in the north-east of the Syrian Arab Republic.

## II. Activities of the Special Rapporteur

3. The Special Rapporteur has prioritized sustained engagement with diverse Member States and regional groups. She conducted a country visit to Bosnia and Herzegovina from 13 to 20 January 2023 and a joint thematic country visit to Germany and North Macedonia from 3 to 12 July 2023 addressing the repatriation, reintegration and prosecution of persons returning from the north-east of the Syrian Arab Republic.

4. The Special Rapporteur addressed issues related to the interface among new technologies, counter-terrorism and human rights, notably in her report on the human rights implications of the development, use and transfer of new technologies in the context of counter-terrorism and preventing and countering violent extremism (A/HRC/52/39) and her position paper on the global regulation of the counter-terrorism spyware technology trade.<sup>1</sup> In June 2023, she attended RightsCon Costa Rica, at which she affirmed the necessity of global and binding regulation of the spyware industry.

5. The Special Rapporteur issued several position papers and multiple communications regarding human rights violations committed while countering terrorism finance, including a position paper addressing counter-terrorism financing regulation of crowdfunding, virtual assets and new payment technologies. She continued to engage closely with the Financial Action Task Force and attended its Private-Sector Consultative Forum held in Vienna in May 2023.

6. The Special Rapporteur conducted a technical visit to the United States of America and to the detention facility at the United States naval station at Guantanamo Bay, Cuba, marking the first official visit to the site by a United Nations expert. The visit took place over a three-month period and comprised three parts: (a) the rights of victims of the terrorist attacks on 11 September 2001; (b) the rights of detainees at the Guantanamo Bay detention facility; and (c) the rights of former detainees. The Special Rapporteur met with victims, survivors and families of the terrorist attacks of 11 September. She welcomed the open and constructive engagement of the United States Government to facilitate the technical visit, affirming the fundamental importance of access to all places of detention without exception.

7. The Special Rapporteur held that the terrorist attacks of 11 September constituted a crime against humanity. She commended the significant legislative,

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<sup>1</sup> Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Global regulation of the counter-terrorism spyware technology trade: scoping proposals for a human-rights-compliant approach”, position paper, 2023.

social, symbolic and financial support provided to the victims of terrorism, but found that gaps remained, such as the right to reparations, including comprehensive legislative provisions to ensure the long-term security and reliability of victim compensation and medical entitlements. She upheld the rights of victims and found that the most significant impediment to the fulfilment of the victims' rights to justice and accountability was the use of torture. Torture was a betrayal of the rights of victims.

8. During the visit, the Special Rapporteur was given all requested access to detention facilities and detainees, including both "high-value" and "non-high value". She also met with military and civilian personnel, military commission personnel and defence lawyers. Every detainee she met with continues to live with the unrelenting harm of rendition, torture and arbitrary detention. Notwithstanding significant improvements to the material conditions of confinement, the Special Rapporteur expressed serious concerns about the continued detention of (then) 34 men and the systematic arbitrariness that pervaded their day-to-day life, bringing severe insecurity, suffering and anxiety to all, without exception. She concluded that the totality of practices and omissions had cumulative and compounding effects on the dignity and fundamental rights of detainees and amounted to cruel, inhuman and degrading treatment under international law. The Special Rapporteur also met with repatriated and resettled detainees and their families, as well as government personnel in other countries. Regarding former detainees who have been repatriated or resettled, the Special Rapporteur remains intensely concerned that the vast majority lack the means and support to live a dignified life realized through access to legal identity, health care, education, housing, family reunification and freedom of movement. An adequate system of oversight and reparation must be established for those harmed by systematic practices of torture and rendition. She highlighted ongoing concerns about the adequacy of non-refoulement protection for those being transferred from the detention facility, including at the present time, and underscored the obligations of receiving States as well as the continued obligation of the United States Government in respect of persons whom it had tortured and arbitrarily detained. She underscored that there was no statute of limitations on torture, one of the gravest crimes recognized by international law and abhorred by the community of nations.

### **III. Presentation of the global study on the impact of counter-terrorism measures on civil society and civic space<sup>2</sup>**

#### **A. Introduction**

9. Civil society plays an extraordinarily important role in ensuring the well-being, vibrancy, diversity and functionality of all societies. Undue restrictions on civil society undermine long-term counter-terrorism and prevention of violence strategies, as well as governance, sustainable development, peacebuilding, gender equality and conflict resolution priorities.

10. Notwithstanding the virtues and benefits of fostering civil society and the civic space, both have experienced significant challenges across the globe in recent decades. Today, just 3.2 per cent of the world's population lives in countries with open civic space, 11.3 per cent in countries where civic space has narrowed, 14.9 per cent in countries where civic space is obstructed, 42.2 per cent in countries where

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<sup>2</sup> All citations unless otherwise noted are attributable to the global study on the impact of counter-terrorism measures on civil society and civic space, available at [https://defendcivicspace.com/wp-content/uploads/2023/06/SRCT\\_GlobalStudy.pdf](https://defendcivicspace.com/wp-content/uploads/2023/06/SRCT_GlobalStudy.pdf).

civic space is repressed and 28.5 per cent where civic space is closed.<sup>3</sup> Building on her 2019 report to the Human Rights Council (A/HRC/40/52), in the global study on the impact of counter-terrorism measures on civil society and civic space, the Special Rapporteur explored the interface among the proliferation of counter-terrorism norms, institutions post 11 September and the constriction of civic space, affirming the resilience, capacity and innovation of civil society in the face of immense challenges.

11. The Special Rapporteur began with a close examination of the ever-expanding counter-terrorism and prevention and countering of violent extremism architecture and provided observations on critical topics that underpinned the range of impacts that counter-terrorism and prevention and countering of violent extremism measures had on civil society and civic space. She also detailed the “playbook of misuse”, which included measures ranging from judicial harassment and fair trial violations to administrative measures absent procedural safeguards, the misuse and misapplication of counter-terrorism financing measures, the humanitarian and human rights harms of sanctions and listing, and the weaponization of new technologies against civil society. The “playbook” covered by the global study presented unique findings and data specific to the trends observed by Governments, civil society, the international community, including United Nations special procedures mechanisms, as well as original research. While all topics addressed in the global study have been included in the present report, the detailed findings and observations can be found in the full report.

## **B. Playbook of misuse**

### **1. Judicial harassment and fair trial violations**

12. Counter-terrorism and the prevention and countering of violent extremism have been repeatedly invoked across jurisdictions to justify judicial harassment and targeting of civil society with a wide range of criminal, civil and administrative measures. Among the special procedures communications reviewed, roughly 62 per cent concerned judicial harassment.

13. Respondents in the global study reported judicial harassment measures as being directed not only at civil society staff and their donors and partners, but also at beneficiaries and family members. Documented harms were notably gendered. Children as young as 13 years of age had also been targeted, through arbitrary arrest, detention and prosecution on the basis of counter-terrorism, in contravention of the special status of children and the minimum protections afforded to children under international law.

14. United Nations special procedures experts have frequently found that individuals are forcibly disappeared and arbitrarily detained, often absent any formal charges, in the name of counter-terrorism and then subjected to torture, ill-treatment and/or extrajudicial killings. Thirty-five per cent of the global study inputs identified instances of alleged arbitrary detention in the counter-terrorism context, 27 per cent alleged torture and ill-treatment in counter-terrorism-related and prevention and countering of violent extremism-related detention and 16 per cent identified instances of extrajudicial killings.

15. 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 terrorism

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<sup>3</sup> Global study, citing CIVICUS Monitor, “Civic space in numbers”, available at <https://monitor.civicus.org/facts/> (accessed on 28 May 2023).

courts and often marked by the absence of or reduced powers for specialized human rights mechanisms.

16. Disproportionate sentencing based on the purportedly exceptional nature of terrorism, prevention and countering of violent extremism and national security more broadly is also common, with prison sentences ranging from upwards of 15 years to life or involving the use of the death penalty.<sup>4</sup> Respondents also identified multiple situations of children facing adult sentences under terrorism or violent extremism charges and children detained because of their “association” with adults suspected of terrorism. Some identified that individuals had also been subjected to prolonged detention after serving their already disproportionate sentences.

17. Notwithstanding challenges relating to the rule of law and governance in many settings, there have been promising examples of judiciaries resisting misuse. For instance, in Honduras, India, Kenya, the Niger and Tunisia, human rights defenders were freed or acquitted after being unfairly accused.

## **2. Overlapping administrative measures without procedural safeguards**

18. 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 collected for the global study: (a) procedural administrative requirements that may appear to be facially neutral in that they affect all non-profits or civil society actors equally, but in practice have a disproportionate impact on small grass-roots organizations, women-led civil society, and civil society located in or representative of historically marginalized communities, which are often viewed as inherently “suspect” by authorities; and (b) specific administrative counter-terrorism or prevention and countering of violent extremism measures that are directed against individuals alleged to be associated with or supportive of terrorism or violent extremism. Both categories appear to be widespread, although reliable cross-national data are unavailable.

19. Regarding the proliferation of State and local administrative regulation of non-profits and civil society actors, there is no dispute that effective administration can serve important transparency, accountability and efficiency needs. However, global study data show how increased proceduralism in administrative measures across regions has operated in unduly burdensome and discriminatory ways, affecting the meaningful exercise of associational life, including free speech, religious exercise and the right to participate in public affairs. Respondents reported numerous instances of the liquidation of organizations arising from their inability to operate because they had failed to provide adequate paperwork or filings, financial difficulties in opening and operating bank accounts, and asset-freezing and targeted financial sanctions – measures that are very often taken in the absence of procedural and substantive due process rights. A total of 57.6 per cent of the Committee on the Elimination of Discrimination against Women communication cases of undue regulation and registration of civil society reviewed pertained to restrictions based on countering terrorism.

20. Information provided for the study demonstrates the use of administrative measures against a variety of civil society actors, from lawyers to religious institutions – including churches and mosques – to humanitarian organizations. According to a 2020 literature review by InterAction of counter-terrorism measures

<sup>4</sup> According to a review of Human Rights Committee concluding observations, there were 16 sentences concerning the application of the death penalty, with 18.8 per cent of those cases involving counter-terrorism measures against civil society.

affecting humanitarian actors, 53 per cent of the impacts catalogued were operational, likely posing immediate barriers to the delivery of humanitarian assistance.<sup>5</sup>

21. Travel bans and restrictions and border-screening processes in the name of counter-terrorism have been documented by United Nations human rights mechanisms and global study respondents, both as part and parcel of criminal powers and separately as independent administrative powers. In either form, intrusive border measures and travel restrictions raise profound human rights concerns of racial and religious profiling amounting to discriminatory use of discretionary powers against certain groups in society. 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 such actions highlight vulnerability, create stigma and open civil society actors up to greater scrutiny and other forms of rights interference. Notably, 33.3 per cent of the Human Rights Council and Committee on the Elimination of Discrimination against Women communications involving bans pertained to travel bans against women in the name of counter-terrorism. Remedies for such bans are poor and inaccessible.

22. States have also resorted to such measures as expulsion, deportation and revocation of permanent residency status, and citizenship stripping – where the withdrawal is initiated by the authorities of the State – on grounds of counter-terrorism and prevention and countering of violent extremism. 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.

23. Some States have also initiated employment bans or restrictions, as well as public benefit restrictions on grounds of counter-terrorism and preventing and countering violent extremism, with significant downstream harms. Government curfews, house arrests and movement restrictions are also used to forbid civil society entry into certain areas, with significant consequences for family and professional life. 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.

24. The use of any of the above-mentioned administrative measures, or a combination thereof, can operate as 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. Connectedly, the evidence used for administrative measures is generally subject to national security restrictions, meaning that 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. The result is that the pernicious drag of an administrative measure can have extraordinary consequences for the affected individual.

### **3. Misuse and misapplication of counter-terrorism financing standards**

25. Across regions, human rights defenders, humanitarians, political dissidents, journalists, lawyers, religious leaders, environmentalists, migrants and other civil society actors have been subject to measures countering the financing of terrorism. This includes non-profit registration and reporting requirements and a range of preventive, disciplinary and enforcement measures such as dissolution, surveillance, office raids, asset-freezing, bank de-risking and prosecutorial action. State

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<sup>5</sup> Global study, citing InterAction (2021).

implementation of such measures is often incentivized by global compliance pressures, including pursuant to the soft-law Financial Action Task Force standards.

26. Whether intentionally or not, many stakeholders have erred towards a zero-risk approach to countering the financing of terrorism, 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, reputational and cultural impacts of undue measures aimed at countering the financing of terrorism not only on civil society organizations and their operations, but also their staff and families, beneficiaries and communities, is well documented and raises serious human rights challenges, as well as practical questions of effectiveness.

27. The starting point for the design of any measure to counter the financing of terrorism must be an assessment of the terrorist financing risk. Risk assessments are the prerequisite for ensuring a necessary, proportionate measure in line with both international human rights law and the risk-based approach of the Financial Action Task Force. In practice, risk assessments are rarely undertaken with sufficient regularity, specificity or public consultation. Although discrete good practices of collaborative and participatory multi-stakeholder risk assessments have begun to emerge, most global study civil society respondents claimed that no sectoral risk assessment had been performed in their country of operation. Where respondents did identify the existence of a non-profit risk assessment, they commonly expressed concern that there had been little to no public consultation, resulting in some cases in a shadow risk assessment undertaken by civil society with completely different findings, including for example, that existing regulatory requirements and non-profit self-governance measures had not been taken into account. As of November 2021, out of 118 mutual evaluations, just six jurisdictions had been found to be compliant with Financial Action Task Force recommendation 8, which requires a risk-based approach to terrorist financing risks in the non-profit sector.

28. Many States have focused their efforts in the area of countering the financing of terrorism on restricting funding, typically foreign funding, to local civil society organizations, which can be especially debilitating for those 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, requiring registration as “foreign agents” or other prior governmental approval to receive foreign funds and taxing foreign funds. It is also well documented that civil society organizations have been subject to forced dissolution and de-registration on the basis of countering the financing of terrorism. Successful appeals and judicial review of such registration and reporting requirements are rare albeit emerging, including in France and Nigeria.

29. Banks and financial intermediaries have played a central role in implementing measures to counter the financing of terrorism that affect civil society, in particular in adopting de-risking measures that terminate or otherwise restrict banking and other business relationships with civil society “to avoid, rather than manage, risk”.<sup>6</sup> In every global study regional consultation, participants identified de-risking incidents, including blocked or significantly delayed money transfers and bank account closures or inability to open a bank account, that significantly affected their ability to operate and deliver core activities.

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<sup>6</sup> “FATF clarifies risk-based approach: case-by-case, not wholesale de-risking” (October 2014). Available at <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Rba-and-de-risking.html>.



#### 4. Human rights and humanitarian harms of sanctions and listing

30. Civil society organizations face cross-cutting challenges in the use of sanctions and listing related to terrorism, including through domestic implementation of United Nations counter-terrorism targeted sanctions and the use of domestic listing regimes untethered to international regimes that create broad opportunities for misuse under the guise of countering terrorism. Domestic-level misuse is often tied to the cover provided by the sustained global focus on the obligation of States to address terrorism, including through Security Council resolutions. The Special Rapporteur has previously noted how abusive designations have been made easier by the broadened criteria introduced in Security Council resolution [1617 \(2005\)](#) under the targeted terrorism sanction regime.<sup>7</sup> Multiple submissions to the global study emphasized the negative use of sanctions and listing to target humanitarian actors operating in conflict sites, with devastating consequences for access to food, medicine, shelter and the essential means for the civilian population to survive. The Special Rapporteur welcomes the adoption of resolution [2664 \(2022\)](#) in response to civil society advocacy and human rights and humanitarian documentation, in which the Council established a limited, standing humanitarian-related “carve-out” from Council-agreed asset freezes. Member States must now, in line with paragraph 4 of the resolution, assess the compliance of their implementation of United Nations sanctions, including, and for the purposes of the study, counter-terrorism targeted sanction regimes, with the exemption.

#### 5. Weaponization of new technologies against civil society

31. 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 the prevention and countering of violent extremism, however, represent a fundamental threat to civil society and its meaningful participation.

32. Drawing on global study data, the Special Rapporteur assesses in the present report how the development and deployment of new technologies for counter-terrorism and prevention and countering of violent extremism purposes, namely, surveillance, content moderation, Internet shutdowns, biometrics and facial technology, and drones, have substantially limited the ability of civil society to exercise its fundamental rights and implement its core human rights, humanitarian and other activities. The findings of the global study build upon the 2023 report of the Special Rapporteur to the Human Rights Council ([A/HRC/52/39](#)).

33. The ubiquity of sophisticated communications surveillance poses obvious threats to civil society actors’ and organizations’ rights to privacy and free expression, as well as such related rights as the freedom of assembly and association and the freedom to manifest one’s religion.<sup>8</sup> Many global study respondents reported experiences of digital surveillance and the transfer of their private data across Europe, the Middle East, Africa, Latin America,<sup>9</sup> North America and Asia and the Pacific,

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<sup>7</sup> See [A/65/258](#), in particular paras. 53–58; [A/67/396](#); [A/73/361](#), para. 19; and [A/HRC/34/61](#), paras. 17–20.

<sup>8</sup> Position paper of the Special Rapporteur on the global regulation of the counter-terrorism spyware technology trade, paras. 36–47.

<sup>9</sup> Consultation with respondents from Latin America and the Caribbean as part of the global study.

leading to deep concerns among civil society about permissive surveillance and data-sharing arrangements, and a dearth of regulation and due diligence with respect to both States and private companies. The lack of regulation for private cybersecurity firms is profoundly concerning. The pernicious effect of unchecked and unregulated surveillance on civil society has been vividly demonstrated in the field of spyware. The position paper of the Special Rapporteur on the global regulation of the counter-terrorism spyware technology trade sets out in detail the inadequacy of the existing regulatory regime and identifies the minimum features of a rights-respecting approach to the unique challenge of spyware.

34. In the global study, the Special Rapporteur also records how States deploy the blunt instrument of intentional Internet disruption as a public order mechanism purportedly in response to unrest, often using national security as a pretext. Notwithstanding that access to the Internet is widely recognized as an indispensable enabler of a broad range of human rights, according to Access Now, there were at least 184 Internet shutdowns in 34 countries in 2021, compared with 159 shutdowns in 29 countries in 2020.<sup>10</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 in Myanmar.

35. The Special Rapporteur further addresses how biometrics surveillance systems have been controversially used and underscores the threats to the life, security and privacy of civil society actors from the misuse of biometric data collection processes.

### **C. Meaningful participation of civil society, United Nations architecture and the role of United Nations human rights mechanisms**

36. In the global study, the Special Rapporteur undertakes critical analyses of the current status of civil society's meaningful participation in efforts to prevent and counter terrorism, including through Member State, regional and United Nations engagement. She also draws on United Nations human rights mechanisms' documentation of the range and extent of violations to draw out data on the impact of counter-terrorism and prevention and countering of violent extremism measures on civil society.

#### **1. Meaningful participation of civil society**

37. The trends of misuse identified throughout the global study cannot be fully addressed without documenting what they mean for the fundamental rights of civil society to full, equal and meaningful participation in its society's decision-making and governance, including in counter-terrorism and national security. The current level of threat is unacceptable and an absolute barrier to any participation and would constitute an unacceptable level of risk for any actor; yet, civil society partners continue to show up, committed, and trusting that the dial will move.

38. Beyond such challenges, civil society is also faced with complex dynamics in its engagement with security actors. Security arenas, from intelligence services to interior ministries, are often places where civil society is not welcome. Participants reported that civil society organizations that were closely aligned with government were included, to the exclusion of diverse and critical voices. Governments, and sometimes the United Nations, view civil society participation in many security contexts as a mostly cumbersome and unwelcome "box-ticking" exercise.

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<sup>10</sup> See <https://www.accessnow.org/keepiton>.

39. At the national level, there are no quick fixes to meaningful participation. Trust must be built. At a minimum, States must address historic human rights violations perpetrated by the security sector, promote security sector reform and make concrete commitments to abide by human rights-compliant practices in the future. In order for civil society to meaningfully participate in the work of collective security, it must be safe. Member States cannot, on the one hand, endorse civil society inclusion in international forums and, on the other, kill, injure, disappear, arbitrarily detain and sanction civil society members at home. Trust-building requires confidence-building measures and must be sustained by concrete and consistent action.

40. Some areas of the United Nations system are practised in engaging civil society. The mandate of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), for example, directly responds to feminist civil society movements within the United Nations system. In contrast, counter-terrorism arenas at the United Nations have been historically closed and inaccessible to civil society. There have been some positive developments assisted by the stated prioritization of the Executive Office of the Secretary-General of promoting civic space. One such example includes the formal recognition in the United Nations Global Counter-Terrorism Strategy of the value of civil society engagement. A few quarterly briefings to Member States by the United Nations Global Counter-Terrorism Coordination Compact have featured some civil society speakers, but civil society briefers to the Security Council, including women briefers, continue to face reprisals and threats from Member States. Greater ambition, consistency and reorientation are needed to foster a meaningful and participatory space for civil society, if the United Nations is to lead by example.

41. Numerous inputs were received in which the respondents highlighted civil society's frustrations with the lack of consistent, timely and meaningful engagement with the Security Council (specifically, the Counter-Terrorism Committee), the General Assembly and counter-terrorism entities (specifically, the special political mission of the Counter-Terrorism Committee Executive Directorate and the Office of Counter-Terrorism). The Security Council, including the Counter-Terrorism Committee, as a prerequisite to the meaningful participation of civil society in counter-terrorism and the prevention and countering of violent extremism, must substantively address the misuse of counter-terrorism measures as a grave risk to peace and security. While the United Nations has robust procedures and policies on reprisals, including an Assistant Secretary-General-level focal point on acts of reprisal and intimidation, further systematized and dedicated approaches are necessary to capture the level of State targeting of civil society under the guise of counter-terrorism and prevention and countering of violent extremism at the national level.

42. The lack of compliance by the Office of Counter-Terrorism with existing United Nations due diligence standards and related guidelines is a reality that civil society is closely attuned to, in particular given its experience of the Office as an increasingly programmatically engaged entity at the country level. While the Executive Directorate has increased its engagement with civil society since its establishment, including through country-visit discussions and additions to thematic meetings, civil society has identified other challenges in the implementation of the Executive Directorate's mandate. Such challenges include a continued lack of advance notification of country assessments notwithstanding its revised mandate, as well as a lack of transparency as to how it undertakes and integrates assessments of the impact of counter-terrorism measures on civil society and civic space.

43. If the United Nations counter-terrorism architecture is unable to model good practice in relation to civil society inclusion, it will be hard to persuade Member States to do the same. Notably, there are positive examples of meaningful civil society consultation and engagement, such as the engagement by the Financial Action Task

Force with the Global NPO Coalition on the Financial Action Task Force and its private sector forum, as well as by the European Union in its formal process to adduce civil society input to legislative enactments and policy.

## 2. Role of United Nations human rights mechanisms

44. In the global study, the Special Rapporteur presented original research documenting how human rights treaty bodies' concerns and recommendations relating to the use of counter-terrorism and prevention and countering of violent extremism targeting civic space has increased over time, in particular since 2015.<sup>11</sup> Following the terrorist attacks of 11 September, and as expansive counter-terrorism measures increased, United Nations human rights mechanisms began to address ways in which those measures conflicted with human rights standards. While their concerns were expressed generally, during the mid-2010s, human rights treaty bodies began to turn their attention to the increasingly extensive use of security measures directed at civil society actors and to document a range of harms. Since 2013, they have begun to explicitly benchmark the ongoing use of extreme security measures and the ways in which rights restrictions for security purposes have begun to impinge on social and political life as well as civic space. Even where security measures or prescribed powers have not been used or have been used as a last resort, human rights treaty bodies remained concerned "that there is a risk that such emergency [CT] measures could, over time, become the norm rather than the exception" (CCPR/C/AUS/CO/6, para. 15).

45. Given the human rights remit of the Human Rights Committee, it has understandably addressed a broader range of measures than the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee on the Elimination of Discrimination against Women. All three Committees, however, frequently address verbal and physical harassment, intimidation and persecution, with the Committee on the Elimination of Discrimination against Women focusing predominantly on gender-based violence and harassment. The Human Rights Committee and the Committee against Torture have further raised ongoing concerns about security legislation that is indiscriminate or overbroad or that violates rights under the Convention compared with other types of measures. For both Committees, half of all their concerns relate explicitly to the targeting of civic space. The following section details those concerns and subsequent recommendations of human rights treaty bodies for each type of measure or practice.

46. The United Nations human rights treaty body system has widely documented trends across the categories of misuse documented in the present report.<sup>12</sup> While treaty bodies have not systematically addressed and explicitly called out the effects of continued efforts to counter terrorism and new measures to prevent and counter violent extremism on civic space, it is clear that their increased documentation runs counter to the trends of increased United Nations support to government-led action in this field. The Human Rights Committee has thus taken a welcome lead in increasingly raising concerns about those trends and identifying them in granular and specific ways. In the global study, the Special Rapporteur generally finds that the lack of integration of the trends in the risk and human rights analyses of the United Nations counter-terrorism architectures is rooted in a lack of political will to address those challenges in the Security Council and the General Assembly, noting however the

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<sup>11</sup> All reference to data, research briefs and findings in this section are available through the global study. See also "The role of UN human rights treaty bodies in addressing the misuse of counter-terrorism and preventing and countering violent extremism measures", available at [https://defendcivicspace.com/wp-content/uploads/2023/06/SRCT\\_GlobalStudy\\_Thematic-Brief\\_UN-Human-Rights-Treaty-Bodies.pdf](https://defendcivicspace.com/wp-content/uploads/2023/06/SRCT_GlobalStudy_Thematic-Brief_UN-Human-Rights-Treaty-Bodies.pdf).

<sup>12</sup> See full data set at <https://defendcivicspace.com/resources/>.

positive call for such integration included in the seventh review of the United Nations Global Counter-Terrorism Strategy. She finds that increased integration of the recommendations of the Committee against Torture and the Committee on the Elimination of Discrimination against Women would advance the objectives of promoting and protecting civil society and civic space. In addition to the human rights treaty bodies, special procedures have also been taking an active role in calling attention to how proposed or enacted security legislation and other measures to counter terrorism and violent extremism may affect civil society and run counter to international human rights standards. Nearly 100 of the communications analysed for the global study contained detailed and nuanced analyses of provisions within national security, emergency, counter-terrorism, prevention and countering of violent extremism, immigration and cybersecurity laws as well as measures regulating the existence and operation of civil society organizations. Special procedure mandate holders have used those communications to encourage the review and reconsideration of key aspects of a measure such that security legislation is brought into compliance with international human rights obligations, as well as to provide practical guidance to Member States on how to meet their international law obligations. Regrettably, little of that guidance has been implemented.

47. The communications frequently address one or more definitions (or lack thereof) for key terms or activities within security legislation, including “national security”,<sup>13</sup> “religiously motivated extremist association”,<sup>14</sup> “terrorist result”, “opposing the State” or “non-allegiance to its leadership”,<sup>15</sup> “promoting terrorism”,<sup>16</sup> “widespread terror through political extremism” and “serious social disturbance”.<sup>17</sup> Mandate holders have noted that broad, vague or subjective concepts and terminology may create ambiguity as to what the State deems a prohibited offence and be used to unlawfully restrict human rights.<sup>18</sup> Failure to use precise and unambiguous language in relation to terrorist or security offences may fundamentally affect the protection of several fundamental rights and freedoms.<sup>19</sup> Some of the many trends identified by human rights treaty bodies include the matter of “permanent state[s] of emergency”<sup>20</sup> and States’ use of overly broad legislative provisions such as “supporting terrorism” or legislative provisions on indirect support to terrorism that may “capture a range of legitimate activities and would restrict the work of civil society, lawyers, journalists and human rights defenders in particular”.<sup>21</sup> Also identified was the use of legislation to create unnecessary burdens, restrict financing, introduce bureaucratic hurdles and even shut down civil society organizations, which “has the effect of limiting, restricting and controlling civil society”,<sup>22</sup> and the use of expansive security surveillance powers, which “creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders” (A/HRC/41/35, para. 26). Regarding the prevention and countering of violent extremism, human rights treaty bodies have consistently held that using the term “extremism” as a criminal legal category is “irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights”, in

<sup>13</sup> Communication No. AUS 2/2018.

<sup>14</sup> Communication No. AUT 2/2021.

<sup>15</sup> Communication No. ARE 6/2020.

<sup>16</sup> Communication No. CAN 1/2015.

<sup>17</sup> Communication No. BRA 8/2015.

<sup>18</sup> Communication No. BRA 2/2014, p. 2.

<sup>19</sup> Communication Nos. ARE 6/2020 and DNK 3/2021.

<sup>20</sup> Communication No. FRA 2/2020, p. 4.

<sup>21</sup> Communication Nos. NZL 1/2021, p. 4–5, and ZMB 1/2021, p. 4.

<sup>22</sup> See global study, pp. 6–7.

particular when it “is deployed, not as part of a strategy to counter violent extremism, but as an offence in itself”.<sup>23</sup>

48. As it relates to recommendations that are specific to participation, special procedure mandate holders often recommend that the process of legislative revision be “transparent and accessible, inviting the widest possible engagement from stakeholders”,<sup>24</sup> and that States “open a public space for discussion with civil society and experts to ensure conformity with international human rights standards”.<sup>25</sup> Communications further call upon Governments to ensure that security legislation is subject to regular parliamentary process to ensure a robust, public debate, and not fast-tracked through urgent parliamentary processes.<sup>26</sup>

## **IV. Assessment of and responsibility for human rights and humanitarian law violations in detention facilities in the north-east of the Syrian Arab Republic**

### **A. Violations of international law**

49. The Special Rapporteur conducted a technical visit to the north-east of the Syrian Arab Republic from 15 to 20 July 2023, at the invitation and with the constructive facilitation of the Government of the Syrian Arab Republic. The access to multiple places of detention was practically enabled in a facilitative manner by the detaining authority.<sup>27</sup> The Special Rapporteur recognizes and acknowledges the grievous and scalar human rights abuses and violations of humanitarian law committed by Da’esh in this territory and against its population, including core international crimes.<sup>28</sup> She also recognizes the ongoing investigations of alleged serious international law violations in respect of the Syrian Arab Republic.<sup>29</sup> She acknowledges the wide-ranging humanitarian challenges experienced by the population in the region as a whole and highlights in particular the challenges of access to water, electricity, food and medicine.

50. Based on figures made available to the Special Rapporteur during and after the visit and on her own findings, more than 70,000 men, women and children are currently detained in the north-east of the Syrian Arab Republic. This includes more than 65,000 in the two largest camps, Al-Hol and Al-Roj, of whom over 31,000 are Iraqis and over 12,000 are third-country nationals. She notes that there are other closed camps in the region, including at least one that she has identified as under the

<sup>23</sup> Communication Nos. ETH 3/2019, p. 8, and EGY 4/2020, p. 2.

<sup>24</sup> Communication No. ETH 3/2019, p. 3.

<sup>25</sup> Communication No. BLR 2/2021, p. 9.

<sup>26</sup> Communication Nos. BRA 6/2021, p. 4, and EGY 6/2021, p. 5.

<sup>27</sup> See end-of-mission statement, available at <http://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>. Access was provided to Al-Hol and Al-Roj camps and Gweiran Sina’a (Panamora) and Alaya prisons, as well as two places where boy children and adolescent boys are detained (Houri and Orkesh). The Special Rapporteur was not given access to Al-Hol annex.

<sup>28</sup> Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Prosecution of individuals with alleged links to designated non-State armed groups for crimes committed in North-East Syria as a key aspect of the right of victims of terrorism”, position paper, 2023.

<sup>29</sup> International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since 2011 (2011) and Independent International Commission of Inquiry on the Syrian Arab Republic (2011).

control of a third State.<sup>30</sup> In addition, 10,000 men are detained in 12 known detention centres throughout the territory of the north-east, including over 1,000 detainees who were apprehended as boy children and have since crossed the threshold into adulthood. Of those, approximately 3,000 are Iraqis and 2,000 are third-country nationals. The Special Rapporteur estimates that more than 1,000 boy children are detained in the region, either in prisons or in closed rehabilitation centres. She finds all sites and procedures of detention in the territory to be mass, arbitrary and indefinite in nature and therefore that all engage serious and systematic breaches of international law.<sup>31</sup>

51. In the present report, the Special Rapporteur addresses solely the scale of human rights and humanitarian law violations occurring in places of detention and constituting serious breaches of international law. She finds these to include mass, indefinite arbitrary detention of adults and children;<sup>32</sup> torture and cruel, inhuman and degrading treatment and punishment;<sup>33</sup> sexual and gender-based violence and coercion;<sup>34</sup> practices of trafficking and sexual exploitation;<sup>35</sup> mass forced transfer and abduction of boy children<sup>36</sup> and hostage-taking;<sup>37</sup> deliberate denial of access for humanitarian relief and deprivation of access to essential medical treatment, which can endanger the right to life;<sup>38</sup> withholding of food (starvation) in detention;<sup>39</sup>

<sup>30</sup> Communication No. AL TUN 6/2021.

<sup>31</sup> End-of-mission statement, paras. 5–6.

<sup>32</sup> Third Geneva Convention, article 21; Protocol I Additional to the Geneva Conventions of 1949, article 75; Protocol II Additional to the Geneva Conventions of 1949, articles 4–5, and common article 3 of the Geneva Conventions; International Committee of the Red Cross, study on customary international humanitarian law (2003), rule 99 ; International Covenant on Civil and Political Rights, article 9; [CCPR/C/GC/35](#) (2014); Universal Declaration on Human Rights, article 9; Convention on the Rights of the Child, article 37; Rome Statute of the International Criminal Court, article 7 (1) (e); and *Prosecutor v. Milorad Krnojelac*, case No. IT-97-25-T, Trial Chamber, judgment of 15 March 2002, para. 105.

<sup>33</sup> Common article 3 of the Geneva Conventions; Third Geneva Convention, article 13; International Committee of the Red Cross, study on customary international humanitarian law, rule 90; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 1, 2 and 16; International Covenant on Civil and Political Rights, article 7; Universal Declaration on Human Rights, article 5; Convention on the Rights of the Child, article 37; and Rome Statute of the International Criminal Court, article 7 (1) (f).

<sup>34</sup> Common article 3 of the Geneva Conventions; Third Geneva Convention, article 14 (2); International Committee of the Red Cross, study on customary international humanitarian law, rule 93; and Rome Statute of the International Criminal Court, article 7 (1) (g).

<sup>35</sup> General Assembly resolution [55/25](#), annex.

<sup>36</sup> International Committee of the Red Cross, study on customary international humanitarian law, rules 93, 105, 131 and 135; and Convention on the Rights of the Child, articles 2, 9 and 35.

<sup>37</sup> Common article 3 of the Geneva Conventions; and International Committee of the Red Cross, study on customary international humanitarian law, rule 96.

<sup>38</sup> Common article 3 of the Geneva Conventions; International Committee of the Red Cross, study on customary international humanitarian law, rule 55; International Covenant on Civil and Political Rights, article 6; and Rome Statute of the International Criminal Court, article 7 (1).

<sup>39</sup> Instructions for the Government of Armies of the United States in the Field (Lieber Code) (1863), article 17; Rome Statute of the International Criminal Court, amended article 8; Protocol II Additional to the Geneva Conventions of 1949, article 14 ; Military Manuals (cf. Australia, France, United States of America and Union of Soviet Socialist Republics); and International Committee of the Red Cross, study on customary international humanitarian law, rules 53, 54 and 118.

coercive interrogations;<sup>40</sup> mass enforced disappearances;<sup>41</sup> and trials lacking the “basic judicial guarantees that are recognized as essential by civilized peoples”.<sup>42</sup>

52. The Special Rapporteur finds all sites and procedures of detention in the territory to be imposed without due process of law, legal basis or legal avenues of challenge for all the men, women and children detained and therefore that all engage profound and systematic breaches of international law.<sup>43</sup> She underscores that the vast majority of those detained are children, rendering the north-east of the Syrian Arab Republic the largest site of detention of children for counter-terrorism purposes worldwide, and stresses that under both international human rights and humanitarian law, children are entitled to special protection, including during armed conflict,<sup>44</sup> and that certain fundamental rights in respect of children constitute *erga omnes* obligations.<sup>45</sup>

53. Torture and other forms of ill-treatment, including of persons deprived of their liberty, irrespective of the charges or alleged rationale for their confinement, are a breach of both customary and treaty law (*jus cogens*), and the prohibition and prevention of such abhorrent practices is a binding obligation for all actors in a conflict.<sup>46</sup> The prohibition of enforced disappearances is a *jus cogens* norm binding on both State and non-State actors.<sup>47</sup> The failure to provide medical treatment to those *hors de combat* is a breach of treaty and customary law<sup>48</sup> and is binding on both State and non-State actors.<sup>49</sup> Starvation of a detained population is a breach of international humanitarian law, including during a non-international armed conflict. The systematic separation of children in a situation of armed conflict is prohibited under the Fourth Geneva Convention in situations of inter-State armed conflict and may be viewed as an emerging norm in non-international armed conflicts. These violations are occurring in multiple sites of detention in the north-east of the Syrian Arab Republic and provoke alarm regarding the treatment of a majority child detainee population in multiple “camps”, prisons and “rehabilitation facilities”. The Special Rapporteur recalls that not a single woman or girl child in these camps, nor any boy held in

<sup>40</sup> See footnote No. 33 on the prohibition of torture.

<sup>41</sup> International Convention for the Protection of all Persons from Enforced Disappearance (2006), articles 1–2; International Committee of the Red Cross, study on customary international humanitarian law, rules 98, 116, 117 and 123; and Rome Statute of the International Criminal Court, article 7 (1) (i).

<sup>42</sup> Common article 3 of the Geneva Conventions; noting the decision of the International Court of Justice in the case *Nicaragua v. United States of America* (1986), para. 218; Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (1950), Principle V; International Committee of the Red Cross, study on customary international humanitarian law, rules 100 and 103; and International Covenant on Civil and Political Rights, articles 9 and 14.

<sup>43</sup> End-of-mission statement, paras. 5–6.

<sup>44</sup> International Committee of the Red Cross, study on customary international humanitarian law, rule 135; Geneva Declaration of the Rights of the Child of 1924, article 3; and Rome Statute of the International Criminal Court, article 68 (1).

<sup>45</sup> Geraldine Van Bueren, *The International Law on the Rights of the Child* (Martin Nijhoff Publishers, 1995); and Legal Status and Human Rights of the Child, advisory opinion of the Inter-American Court of Human Rights (2002), paras. 57–61.

<sup>46</sup> Universal Declaration on Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; Convention on the Rights of the Child, article 37 (a); see generally the Convention against Torture; International Tribunal for the Former Yugoslavia, *Prosecutor v. Anto Furundzija*, case No. IT-95-17/1-T, judgment of 10 December 1998, paras. 155–157; and Inter-American Court of Human Rights, the *Gómez-Paquiyaury Brothers v. Peru*, judgment of 8 July 2004, para. 112.

<sup>47</sup> Committee on Enforced Disappearances (2010); and Inter-American Court of Human Rights, *Blake v. Guatemala*, 1998.

<sup>48</sup> Common articles 2 and 3 of the Geneva Conventions.

<sup>49</sup> Common articles 1 and 3 of the Geneva Conventions.



“rehabilitation centres”, has been subject to any legal process, much less one that is compliant with human rights or international humanitarian law. She highlights the abject and abhorrent human rights conditions experienced by women and girls in Al-Hol and Al-Roj camps (housing, education, sanitary conditions), breaching a slew of fundamental both derogable and non-derogable norms.

54. The Special Rapporteur holds that the conditions of detention of children may amount to grave violations against children in times of conflict,<sup>50</sup> including abduction of children, for those forcibly separated from their mothers, and use of children, in particular for intelligence-gathering purposes,<sup>51</sup> killing or maiming of children, including through torture and inhuman and degrading treatment, and sexual violence against children, as well as the denial of humanitarian access.

55. The human rights and humanitarian law violations observed in places of detention in the north-east of the Syrian Arab Republic are not singular but systematic in nature.<sup>52</sup> In respect of mass arbitrary detention,<sup>53</sup> the question may reasonably be posed as to whether the threshold for crimes against humanity is implicated by the scale, subjects and indefinite nature of such arbitrary detention and related practices. The Special Rapporteur highlights the following elements of such crimes, noting that crimes against humanity<sup>54</sup> have both a treaty and customary law basis. There is a broad consensus that an attack on the civilian population “need not necessarily be military in nature and may involve any form of violence against a civilian population”.<sup>55</sup> The course of conduct that can engage crimes against humanity embodies a systemic aspect, as it describes a series or overall flow of events as opposed to a mere aggregate of random acts.<sup>56</sup> The Special Rapporteur highlights the cumulative nature of the human rights and humanitarian law violations engaged by detention, in particular of children, the vast majority under the age of 12 years. She notes that, by definition, crimes against humanity require an attack (e.g., torture, disappearance, transfer) on a civilian population. The jurisprudence of international criminal tribunals is clear that “a person shall be considered to be a civilian for as long as there is a doubt as to his or her status”.<sup>57</sup> Notably, the mere presence of some combatants (non-civilians) among the population does not nullify the characterization or status of the population as civilian. The term “civilian population” means that the population must simply be “predominantly civilian in nature”.<sup>58</sup> Crimes against humanity can also be committed not only against civilians in the strict sense but against persons no longer taking part in hostilities, those *hors de combat*, in particular,

<sup>50</sup> See Security Council resolution 1261 (1999).

<sup>51</sup> See S/2021/398, paras. 15–16.

<sup>52</sup> International Criminal Court, *Prosecutor v. Bosco Ntaganda*, judgment of 8 July 2019, para. 692; *Prosecutor v. Katanga*, decision on the confirmation of charges, 30 September 2008, para. 397; and *Prosecutor v. Ntaganda*, trial judgment of 8 July 2019, paras. 692–693.

<sup>53</sup> Imprisonment, torture, enforced disappearances of persons, forcible transfer of population and other inhumane acts that would constitute a violation of article 7 (1) of the Rome Statute of the International Criminal Court. See International Tribunal for the Former Yugoslavia, *Prosecutor v. Milorad Krnojelac*, judgment of 15 March 2002, paras. 113–115.

<sup>54</sup> Rome Statute of the International Criminal Court, article 7 (1).

<sup>55</sup> International Criminal Court, Trial Chamber II, *Prosecutor v. Katanga*, judgment of 7 March 2014, para. 1101; International Tribunal for the Former Yugoslavia, *Prosecutor v. Dragoljub Kunarac et al*, case No. IT-96-23-T and IT-96-23/1-T, judgment of 22 February 2001, para. 419.

<sup>56</sup> International Criminal Court, *Prosecutor v. Laurent Gbagbo*, case No. ICC-02/11-01/11, decision of 12 June 2014, para. 209.

<sup>57</sup> *Prosecutor v. Dragoljub Kunarac et al*, judgment of 22 February 2001, para. 426.

<sup>58</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Dario Kordic, Mario Cerkez*, case No. IT-95-14/2-T, judgment of 26 February 2001, para. 180.

due to their wounds or their being detained.<sup>59</sup> The widespread nature of an attack on a civilian population can be quantitative or qualitative in nature; both requirements appear to be implicated in respect of the treatment of this detainee population.<sup>60</sup> The Special Rapporteur highlights that policies that reach the threshold of crimes against humanity need not be disseminated, formalized or engage a pre-established plan.<sup>61</sup> Knowledge of the conduct can be in general and not in specific terms.<sup>62</sup> The existence of mass detention, also as an enabler for other serious human rights violations, including separation of children, inhumane treatment of detainees, withholding of food and medical care leading to widespread contagion of infectious disease, appear to be widely known to the detaining authority and Member States whose nationals are held in these facilities.

## B. Specific findings on Al-Hol and Gweiran Sina'a (Panamora) prison

56. Augmenting the various human rights concerns pertaining to detention in the north-east of the Syrian Arab Republic highlighted by the Special Rapporteur in the findings from her technical visit, she addresses in particular the treatment of women in detention “camps”, especially third-country nationals, in addition to the treatment of men held in Gweiran Sina'a (Panamora) prison.

57. The Special Rapporteur has consistently communicated with Governments on the situation of their nationals (women and girls) detained in the Al-Hol and Al-Roj detention facilities.<sup>63</sup> Her access to multiple sites of detention during the visit and complementary fact-finding during other country visits affirm the following human rights abuses: (a) an absolute lack of independent human rights oversight and limited humanitarian access to women and girls held in mass arbitrary detention in the Al-Hol annex, combined with a failure to keep records of persons in custody and a stated lack of knowledge as to who was in custody in the Al-Hol annex, combined with a denial of contact with the outside world, notably legal counsel and family members, which meets the threshold of mass incommunicado detention and may amount to mass enforced disappearance under international law;<sup>64</sup> (b) evidenced lack of access to essential medical treatment for women and girls in the Al-Hol annex demonstrated by observed extreme security measures, leaving women to negotiate their access with guards and delinking access from objective and possibly urgent medical need; (c) evidence of coercive interrogation by both the Syrian Democratic Forces and personnel of intelligence agencies of third countries in the context of regular

<sup>59</sup> International Committee of the Red Cross, study on customary international humanitarian law, rule 47; International Tribunal for the Former Yugoslavia, *Prosecutor v. Tihomir Blaskic*, case No. IT-95-14-T, judgment of 3 March 2000, para. 214; International Criminal Court, Appeals Chamber, *Prosecutor v. Bosco Ntaganda*, case No. ICC-01/04-02/06, judgment of 8 July 2019, para. 883.

<sup>60</sup> *Prosecutor v. Ntaganda*, judgment of 8 July 2019, para. 691; *Prosecutor v. Kunarac*, judgment of 22 February 2001, para. 428; and International Criminal Court, *Prosecutor v. Jean-Pierre Bemba Gombo*, case No. ICC-01/05-01/08, judgment of 21 March 2016, para. 163.

<sup>61</sup> *Prosecutor v. Bemba Gombo*, judgment of 21 March 2016, para. 160; and *Prosecutor v. Katanga*, judgment of 7 March 2014, para. 1109.

<sup>62</sup> *Prosecutor v. Gbagbo*, decision of 12 June 2014, para. 214.

<sup>63</sup> See Office of the United Nations High Commissioner for Human Rights, “Return and repatriation of foreign fighters and their families”, available at [www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families#:~:text=The%20urgent%20return%20and%20repatriation,detained%20in%20inhumane%20conditions%20in](http://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families#:~:text=The%20urgent%20return%20and%20repatriation,detained%20in%20inhumane%20conditions%20in).

<sup>64</sup> International Committee of the Red Cross, study on customary international humanitarian law, rule 98. End-of-mission evidence appears to confirm that intelligence services of third countries have regular and sustained access for interrogation purposes to this population.

interrogations;<sup>65</sup> (d) evidence from former detainees concerning direct physical violence that reaches the threshold of torture and inhuman and degrading treatment carried out by other detained persons and the guard force; (e) forced separation of children from their mothers, causing extreme mental pain and suffering and further trauma;<sup>66</sup> and (f) evidenced absence of measures to protect the life and physical integrity of the detained population, including no capacity to report harm, obtain investigations or measures to prevent reoccurrence, despite insecurity pervading daily life in the camp, and incidents of violence, including murder, physical harm, intimidation and sexual assault by camp authorities and other detainees occurring with some regularity. The Special Rapporteur finds mass arbitrary detention of third-country nationals, women and girls as engaged in at Al-Hol annex to constitute fundamental breaches of multiple international obligations, including *jus cogens* norms, and to engage the prohibition against core crimes.

58. The treatment and conditions of detention of women, girls and boys held in Al-Hol annex, their extreme psychological suffering owing to the uncertainty about their fate and the arbitrariness of their detention, in addition to the risk of further imprisonment and physical violence as a form of disciplinary punishment, cumulatively constitute systematic and widespread torture and other forms of ill-treatment (A/HRC/43/49, paras. 66, 67 and 70). Treatment and conditions are targeted against a group of persons based on their nationality, which would engage the responsibility of many States with access to the camp's annex in respect of the extraterritorial implementation of their obligation to refrain from and prevent torture by taking positive measures to stop those serious violations. Failure to act, or interrogating women, girls, and children held in these conditions, may amount to acquiescence or complicity<sup>67</sup> in the crime of torture, engaging both liability for torture practices and responsibility to grant compensation and redress to victims.

59. The Special Rapporteur visited Gweiran Sina'a (Panamora) prison and acknowledges the importance of the visit as the first by a human rights expert. She insists on the necessity of the detaining authority ensuring sustained, uninterrupted and unhindered access by independent human rights experts and humanitarian agencies to the site. The site is purpose-built, high-security-proofed and of a superior quality in terms of structure and building materials – far above any other facility that the Special Rapporteur visited in the region.<sup>68</sup> She observed large holding rooms for detainees and medical facilities, although none of the latter were in use during her visit. She was not able to interview any of the men or meet any of the reported 700 boy children held in the prison. The detaining authority confirmed the presence of widespread tuberculosis among at least 50 per cent of the prison population, including the detained children, with no obvious quarantine or separation procedures in place. The detaining authority confirmed that no tuberculosis treatment programme was in place and reported fatalities among prisoners and guards, without providing numbers. The Special Rapporteur recalls that untreated tuberculosis is a life-threatening condition estimated by the World Health Organization to cause fatality in 50 per cent of cases. She had the opportunity to observe a discrete number of the detained adult men as she walked through the facilities. They had shaved heads and were wearing uniforms of a brown hue. She found their physical condition to be of extreme concern –

<sup>65</sup> Interrogations confirmed through interviews with former detainees during multiple country visits by the Special Rapporteur in the past three years.

<sup>66</sup> International Criminal Court, Office of the Prosecutor, *Policy on Children* (November 2016), paras. 21–22 and 44–47; see also report of the Secretary-General on children and armed conflict (A/77/895–S/2023/363, para. 1).

<sup>67</sup> Rome Statute of the International Criminal Court, article 25 (3) (b–d); Convention against Torture, article 1; and A/HRC/14/46, para. 23.

<sup>68</sup> Communication Nos. USA 2/2022, SWE 1/2022, GBR 1/2022, FRA 1/2022, DEU 1/2022, AUT 1/2022 and AUS 1/2022.

what she could only describe as evidencing physical signs of emaciation, including thin limbs and pronounced or protruding bones. She was shocked by the abject contradiction between the quality of the security infrastructure and reported training provided to the detaining authority<sup>69</sup> and the absolute lack of the necessities for survival (food and essential medical treatment) for the detainee population.

60. The Special Rapporteur notes with concern the stated inability of the detaining authorities to provide information about the prison population and their claim that detainees often gave contradictory identity details or were able to hide their identity, in particular after the prison attack of January 2022. This claim seems to lack credibility owing to the information-gathering exercise that she observed during her visit (a process of filming a group of detainees who were described as providing information), the reported transfer of detainees who survived the January 2022 attack from the old prison to the new prison, and a process of collection of biometric information (confirmed by the prison administration), which took place prior to the attack. She finds that the lack of information regarding a group of male adults and children, who are held incommunicado with no access to the outside world, and no information on their fate amount to systematic enforced disappearance under international law. This situation is further exacerbated by the high risk of tuberculosis infection and unreported fatalities.

### C. Considerations on the question of responsibility for serious human rights violations and core international crimes

61. The Special Rapporteur concludes by affirming that the primary responsibility for the material conditions and practices of mass arbitrary detention and ensuing serious international human rights and humanitarian law violations rests with the detaining authority. She underscores that such serious violations can also implicate core international crimes<sup>70</sup> through individual, including command criminal responsibility.

62. The Special Rapporteur highlights the following elements that are relevant to the question of responsibility. She recalls that under common article 1 of the Geneva Conventions, States are bound to “ensure respect” for the provisions of international humanitarian law, including, in accordance with common article 3, “in all circumstances”. She notes in particular the decision of the International Court of Justice in the case of *Nicaragua v. United States of America* that States are “under an obligation not to encourage persons or groups [...] to act in violation of common Article 3 of the Geneva Conventions”.<sup>71</sup> She notes that in addition to this negative component, there is a positive external component of common article 1 that implies that States that are not a party to the conflict as well as international and regional organizations have an obligation to exert their influence and take every possible step to safeguard compliance with common article 3 of the Geneva Conventions.<sup>72</sup> Failure

<sup>69</sup> See letter dated 12 July 2022 in response to the communication by special procedures. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37003>.

<sup>70</sup> Rome Statute of the International Criminal Court, article 7.

<sup>71</sup> International Court of Justice, *Nicaragua v. United States of America*, Merits, 27 June 1986, para. 220; see also *Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*, provisional measures, Order of 8 April 1993, in which States parties with influence over “military, paramilitary or irregular armed units which may be directed or supported by it” were ordered to refrain from illicit acts.

<sup>72</sup> International Committee of the Red Cross, Updated commentary on Geneva Convention I, article 1, 2016, para. 153 and following paragraphs. Available at <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-1/commentary/2016?activeTab=undefined>.

to act diligently and take necessary measures may incur international responsibility, something that can be evaluated only on a case-by-case basis.<sup>73</sup>

63. The Special Rapporteur further highlights the obligations of Member States to prevent and suppress serious violations of international law, in particular regarding those obligations that are peremptory norms under international law (*jus cogens*),<sup>74</sup> underlining that a number of violations identified in the present report qualify as *jus cogens*.<sup>75</sup> She recalls the general regime of State responsibility, in particular that States are under an obligation not to knowingly aid and assist in the commission of violations of international law or international human rights law,<sup>76</sup> including by knowingly providing an essential facility or financing the activity in question.<sup>77</sup> The Special Rapporteur highlights that international core crimes may implicate Member States by omission or failure to act if situated to prevent serious violations of international law.

64. The Special Rapporteur underscores that the only international law-compliant solution to the situation of mass arbitrary detention in the north-east of the Syrian Arab Republic remains repatriation (in line with the *jus cogens* norm of non-refoulement), reintegration and prosecution as appropriate. It is clear that the length and breadth of detention practices in the region can never be reconciled with the principles of necessity and proportionality. She acknowledges that a number of States have made significant efforts in respect of repatriation, but many others have regrettably been unwilling to resolve the grievous situation of their nationals, in particular children.

## V. Conclusions and recommendations

### A. Global study

**65. The findings of the global study require pause and recognition of the resilience, positive force and sheer determination of civil society across the globe, which seeks to realize peaceful, just and inclusive societies. Notwithstanding the hardship, challenges and undulating Sisyphean task of advancing rights in complex and closing spaces, civil society consistently shows up, takes risks for rights, defends the vulnerable, strives for the greater good and is tireless in its advocacy, hard work, reliability and solidarity. The individuals who took risks to provide evidence for the global study, who take risks every day for the dignity and humanity of others, deserve recognition, support, protection, defence and care.**

**66. The terrain described in the global study is exceedingly difficult and the scale of harms experienced is indisputable and unacceptable. It should also be self-evident that effective counter-terrorism is not being realized through the widespread, systemic targeting of civil society. Precisely the opposite is true. The kinds of violations revealed by the global study demonstrate that security is not**

<sup>73</sup> Knut Dörmann and Jose Serralvo, “Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations”, *International Review of the Red Cross*, 2015, pp. 723–724.

<sup>74</sup> International Law Commission, draft articles on responsibility of States for internationally wrongful acts, with commentaries (2001), article 4; and International Law Commission, draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), conclusion 19.

<sup>75</sup> International Law Commission, draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), conclusion 23.

<sup>76</sup> Draft articles on responsibility of States for internationally wrongful acts, with commentaries, article 16.

<sup>77</sup> *Ibid.*

the goal of abusive State practice but rather its opposite, namely, the continuance of instability, insecurity and cultures of impunity and violence. The Special Rapporteur reiterates the full scope of the recommendations found in the global study and their importance for Member States, the United Nations, regional organizations, the private sector and civil society. She calls for full review and implementation of those recommendations.

#### **1. Recommendations for States**

67. Reorient militarized approaches to counter-terrorism so that they respond to the deep evidence on strategies and investments that lead to successful prevention of violence, advancing peacemaking and peacebuilding alternatives.

68. Diligently pursue deliberate and intentional pruning of national, regional and international counter-terrorism architectures that have bulged over the past 20 years to bring balance and human rights compliance in this arena.

69. Use the decades of documentation and implement recommendations by the human rights treaty bodies and special procedures as a tool to achieve increased human rights and rule of law-compliant responses to terrorism and violence.

70. Establish effective and transparent accountability mechanisms for violations of human rights resulting from the misuse of counter-terrorism and prevention and countering of violent extremism measures.

71. Rebalance domestic budgets and allocations to address the prevention of violence in a sustained and meaningful way. This requires participatory budget processes, budgeting and allocation of adequate resources to the strengthening of the rule of law and the institutionalization of human rights. Advance accountability, mainstreaming anti-corruption and structural commitments to ensure prevention.

#### **2. Recommendations for the United Nations**

72. Prioritize investments in rule of law-based approaches, throughout all United Nations entities, focused on addressing the conditions conducive to terrorism and violence rather than simple technocratically labelled programming on counter-terrorism and prevention and countering of violent extremism. This includes agencies, funds and programmes that specialize in legal and security sector reform, good governance, gender equality and women's peacebuilding, and broader community-based violence prevention. Focus should be placed on those core areas of work rather than on adapting programming to demands of counter-terrorism and prevention and countering of violent extremism narratives.

73. Establish consistent, United Nations-wide, public, principled and official stances on the impact of counter-terrorism and prevention and countering of violent extremism measures on civil society and civic space, with a view to advancing the compliance of those measures with human rights and the rule of law. This includes addressing the lack of a visible, outspoken and clear position among senior United Nations officials on the documented impacts of counter-terrorism on civil society and civic space.

74. Collect global disaggregated data in line with principles of do-no-harm, informed consent and human rights due diligence, to identify discriminatory and group-based patterns of misuse of counter-terrorism and prevention and countering of violent extremism measures in a sustained way, using the findings of the present report as a baseline.

75. Assume accountability for existing commitments to concretely mainstream gender equality and human rights, specifically through transparent and urgent implementation of the gender marker within the Office of Counter-Terrorism, in consultation with UN-Women and the Office of the Controller, as proposed by the Secretary-General in his most recent report on the implementation of the United Nations Global Counter-Terrorism Strategy (A/77/718); and adopt overdue procedures on the allocation of a minimum of 15 per cent of all funds for counter-terrorism efforts to human rights and gender equality, as originally recommended in 2015 by the Secretary-General.

76. Implement all relevant recommendations of the UN-Women global digital consultation and report on their implementation in appropriate forums.

## **B. Recommendations concerning serious violations of international law in the north-east of the Syrian Arab Republic**

77. Mass arbitrary and indefinite detention of men, women and children in the north-east of the Syrian Arab Republic must end. The repatriation of persons from all detention facilities must be advanced, in full observance of the absolute obligation of non-refoulement.

78. The policy of mass separation of adolescent and younger boy children from their mothers by the detaining authorities implicates core international crimes and must be ended as a matter of urgency. Boy children must have meaningful and sustained contact with their family members. States with influence on the practices of the detaining authority must act to prevent serious violations of international law from being committed against children in all places of detention.

79. The denial of medical care and the systematic lack of access to food in male high-security prisons must end, as such practices constitute, at a minimum, a violation of common article 3 of the Geneva Conventions (1949) and articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Children must urgently be removed from facilities where they face an imminent threat to life because of exposure to contagious disease without adequate treatment or nourishment.

80. The de facto authorities in the north-east of the Syrian Arab Republic are required under international humanitarian law to treat all detainees in their control humanely, without discrimination, and with respect for their inherent dignity.

81. Consideration should be given to addressing the grave violations against children in times of conflict through the children and armed conflict agenda.

82. Impartial humanitarian actors must urgently gain sustained and meaningful access to all places of detention, especially those holding children in the north-east of the Syrian Arab Republic.