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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 General Assembly resolution 74/147 and Human Rights Council resolution 40/16.

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

Advancing human rights through the mainstreaming of human rights in counter-terrorism capacity-building and technical assistance at the national, regional and global levels

Summary

The present report addresses the human rights and international law dimensions of the provision of capacity-building and technical assistance in the context of countering terrorism and countering or preventing violent extremism. It is written in the context of the extraordinary expansion of capacity-building and technical assistance in countering terrorism and countering or preventing violent extremism. The Special Rapporteur affirms that human rights and rule of law-compliant capacity-building and technical assistance play a valuable role in strengthening a "whole-of-society" approach to countering terrorism and can be a vital aspect of preventing the conditions conducive to the emergence of sustained violence in society. She observes, however, that the provision of counter-terrorism capacity-building and technical assistance comes in the context of unprecedented growth for counter-terrorism institutions, normative frameworks, programming and funding over the past two decades. She notes the increased role of certain United Nations entities in providing counter-terrorism capacity-building and technical assistance to States and the absence of comparable scaling in human rights due diligence.

The Special Rapporteur observes deep rule of law and human rights deficits in the provision of capacity-building and technical assistance in contexts where national definitions of terrorism and violent extremism are not compliant with international law, target the legitimate exercise of fundamental human rights and function to sustain and enable authoritarian modes of governance. She identifies an absolute dearth of ethically appropriate and scientifically rigorous monitoring and evaluation of capacity-building and technical assistance in the counter-terrorism arena, including by United Nations entities. She notes a sustained pattern of "one-off" and "train and equip" interventions, which are rarely integrated into a holistic approach to justice, security, governance and development at the national level, leaving underlying structures and injustices untouched and festering.

The Special Rapporteur stresses the need for the alignment of counter-terrorism capacity-building and technical assistance with sustained efforts to increase rule of law effectiveness, sustainable development priorities, anti-corruption measures, accountable institutional structures and the alignment of such priorities with existing development goals and processes. She identifies a pervasive failure to ensure that capacity-building and technical assistance is owned by a wide and diverse variety of stakeholders, including civil society at the national level. Civil society participation in and civilian oversight of the security sector is essential to prevent terrorism effectively. She decries a supply-driven, consumer request model of counter-terrorism capacity-building and technical assistance whose rationales are often far removed from genuine engagement with the conditions conducive to terrorism and lie in regime survival, parasitic co-option of security resources and funds and self-interest from security sectors. She cautions United Nations entities engaged in counter-terrorism capacity-building and technical assistance that their due diligence obligations must

be observed rigorously and that they cannot be complicit in strengthening systems of coercion and violence in the name of countering terrorism or preventing (violent) extremism. Counter-terrorism capacity-building and technical assistance practices are in dire need of transparency, accountability and overhaul to be both effective and human rights compliant.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, pursuant to Assembly resolution 74/147 and Human Rights Council resolution 40/16. The report addresses the impact on the promotion and protection of human rights and fundamental freedoms from the provision of capacity-building and technical assistance in the counter-terrorism and countering and preventing violent extremism arenas.

2. A report on the work undertaken by the Special Rapporteur in fulfilment of her mandate in the period since her previous report to the General Assembly[1] is provided below.

II. Activities of the Special Rapporteur

3. Despite the highly challenging circumstances posed by the coronavirus disease (COVID-19) pandemic, the Special Rapporteur had an exceptionally busy and fruitful year, defined by extensive dialogue with States and civil society stakeholders. She accepted a country visit to Singapore. She has deferred her visit to the Maldives pending the pandemic's resolution. Responding to the COVID-19 pandemic and her concerns about the misuse of emergency and counter-terrorism powers, she launched a global tracker on the use of exceptional powers, with two non-governmental organizations[2] as a global resource to ensure that legal responses to the pandemic were necessary, proportionate and non-discriminatory.

4. The Special Rapporteur presented her report on the human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family to the Human Rights Council in March 2021.[3]

5. The human rights compliant repatriation and reintegration of women and children from conflict zones remains a critical priority for the Special Rapporteur. She issued multiple communications to States on the matter, including a comprehensive communication to 57 States with third-country nationals held in Hawl and Rawj camps in North-East Syria.[4] She has issued numerous legal views on the legality and conditions of detention in these camps.[5] She notes positive dialogue with Denmark, Finland, Kazakhstan and the Russian Federation. The Special Rapporteur remains engaged in numerous judicial proceedings, including in the Supreme Court of the United Kingdom of Great Britain and Northern Ireland, the Supreme Court of the United States of America, the Supreme Court of the Philippines and the European Court of Human Rights.[6] She has given evidence to parliamentary bodies in the United Kingdom and Canada on the issue.

6. The Special Rapporteur makes it a priority to provide technical assistance and views concerning counter-terrorism legislation to States. She provided reviews of legislation or legislative developments to Brazil, Belarus, Burkina Faso, France, the

[1] A/75/337.
[2] www.icnl.org/covid19tracker/.
[3] A/HRC/46/36.
[4] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730&LangID=E.
[5] See www.ohchr.org/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf.
[6] *R (on the application of Begum) (Respondent) v. Secretary of State for the Home Department*, Supreme Court of the United Kingdom; *United States of America v. Zubaydah*, Supreme Court of the United States; *Mikolaj Pietrzak v. Poland* and *Dominika Bychawska-Siniarska and others v. Poland*, European Court of Human Rights.

Netherlands, Nicaragua, Saudi Arabia, Turkey, the United Arab Emirates and the European Union.

7. The Special Rapporteur had sustained positive working relationships with the Office of Counter-Terrorism and the Counter-Terrorism Committee Executive Directorate. The Special Rapporteur is a signatory of the United Nations Global Counter-Terrorism Coordination Compact and an active member of its working groups. She participated in multiple regional high-level conferences (e.g., of the Organization for Security and Cooperation in Europe and the European Union). She also participated as a moderator and speaker in several events during the United Nations high-level Counter-Terrorism Week, which was held online from 24 to 30 June, including co-sponsoring a side event on the victims of terrorism with the Governments of Afghanistan and Spain. The Special Rapporteur was highly engaged in providing technical assistance to States during the negotiation of the seventh biennial United Nations Global Counter-Terrorism Strategy, creating a range of technical resources for States, including dedicated web-based resources.[7] The Special Rapporteur acknowledges the positive leadership of the Co-Chairs, Oman and Spain, regarding the inclusion of civil society and the engagement with human rights issues in this process.

8. At the forty-seventh regular session of the Human Rights Council, the Special Rapporteur co-sponsored numerous side events including: a side event with the Government of Uzbekistan on the reintegration of women and children previously detained in camps in North-East Syria; a side event with the Governments of Afghanistan and Norway on the protection of victims of terrorism and human rights defenders; with special procedures mandate holders on the value of “one voice” for special procedures mechanisms on human rights issues of profound concern. At the forty-sixth regular session of the Human Rights Council, the Special Rapporteur co-sponsored a side event with the Russian Federation on good practices associated with the return and reintegration of women and children previously detained in camps in North-East Syria.

9. The Special Rapporteur continues her extensive engagement with civil society and non-governmental organizations (online). She held consultations in every region in 2021, including Latin America and the Caribbean, North America, Central and South-East Asia, the Middle East and North Africa, Europe and West and Central and East and Southern Africa. She has engaged closely with the non-governmental organization Coalition on Counter-Terrorism, the Security Policy Alternatives Network, Al Sur (the consortium of organizations operating in aid of civil society in Latin America) and the Global NPO Coalition on the Financial Action Task Force. She meets regularly with humanitarian organizations and continues her focus on the victims of terrorism in all aspects of her work.

III. Advancing human rights through mainstreaming in counter-terrorism capacity-building and technical assistance at the national, regional and global levels

10. The present report addresses the impact of capacity-building and technical assistance in the counter-terrorism and countering and preventing violent extremism arenas on the protection of human rights. Counter-Terrorism capacity-building and technical assistance has grown colossally in the past two decades. The Special Rapporteur observes in general the important and valuable contribution that rule of law compliant capacity-building and technical assistance plays in deepening inter-State cooperation, affirming solidarity and cooperation between States and

[7] See www.ohchr.org/EN/Issues/Terrorism/Pages/Strategy.aspx.

positively enabling human rights and rule of law practice across multiple institutions, stakeholders and systems at the national level. She further observes that counter-terrorism practice increasingly involves the provision of capacity-building and technical assistance at the bilateral, regional, multilateral and global levels. Such practices are often based on the premise that States should enhance their legal and operational frameworks and strengthen their national capacities to address the threat of terrorism and (violent) extremism.

11. The Special Rapporteur noted in her 2019 report to the General Assembly (A/73/361) that the growth of counter-terrorism practice has come at express, definable and widespread cost to the rule of law and human rights. Her 2019 report to the Human Rights Council (A/HRC/40/52) established and benchmarked the negative effects of human rights-deficient counter-terrorism and preventing and countering violent extremism on civil society. In her 2021 report to the Human Rights Council (A/HRC/46/36) the negative consequences of counter-terrorism and preventing and countering violent extremism practice on the human rights of women and girls was established and benchmarked. The present report builds on those findings. It draws attention to the fact that the scale, scope and impact of the immense growth of counter-terrorism capacity-building and technical assistance is not yet fully captured, monitored or appraised in current literature, policy or evaluation.

12. The terms “capacity-building” and “technical assistance” have multiple meanings for different stakeholders. The term “capacity-building” emerged in the lexicon of international development in the 1990s.[8] It then broadly referred to strengthening the skills, competencies and abilities of individuals and communities in developing societies to overcome the causes of their suffering and exclusion. The working definition used in the present report is that “capacity-building” addresses the strengthening of competencies for individuals, communities and States to prevent and respond to terrorist activities taking multiple forms. These include legislative review and drafting, model laws, drafting training curriculums, delivering training to a range of actors, including but not limited to law enforcement, military actors, the legal profession and other couther-terrorism stakeholders. It also includes training and equipment for military, policing and security forces, where the focus lies on improving the effectiveness of the security forces. It can involve technological transfers and upskilling in technologies relevant to terrorism regulation and prevention.

13. Technical assistance is generally defined as non-financial “assistance” provided by national or international specialists, including information sharing and expertise, instruction, skills training, the transfer of knowledge or mentoring, consulting services and the transfer of technical data. Providers of counter-terrorism capacity-building and technical assistance stress the definitional boundaries between these fields but, in practice, the two are often intermingled. States and international stakeholders use the nomenclature of “technical assistance” to describe activities that might be properly termed “capacity-building”. The Special Rapporteur observes that utilizing a nomenclature of technical assistance is perceived as “neutral” in character – thus potentially less risky than capacity-building signalling a lower level of jeopardy or risk for the providing State or entity. She does not believe this to be true in practice. She makes clear that both forms of practice carry inherent human rights risks in counter-terrorism contexts. Neither is structurally less risky than the other in terms of the potential for human rights violations and negative impact. Both also carry profound political risks in sustaining conflict, enabling dysfunctional governance and conferring legitimacy on human rights violative States.

[8] See United Nations Development Programme, “Capacity assessment and development in a systems and strategic management context”, technical advisory paper No. 3, January 1998, p. iii; General Assembly resolution 50/120, para. 22.

14. The Special Rapporteur also observes that the nomenclature of security "assistance" is an integral aspect of counter-terrorism capacity-building and technical assistance in some States. What is covered by the term "assistance" varies greatly in national and regional practice and can range from the co-deployment of military personnel to security sector support and reform. In parallel, the terminology of security "partnership" is increasingly being used to signify counter-terrorism support to third States. This terminology has also been utilized to provide counter-terrorism assistance to non-State actors on the territory of sovereignty States with obvious sovereignty implications. As with other forms of counter-terrorism efforts, transparency, accountability and monitoring in these arrangements is required alongside meaningful independent oversight, including by national parliaments. The Special Rapporteur is broadly troubled by the lack of adequate and independent oversight of counter-terrorism "assistance" and "partnership" practices. Parliaments and legislatures, as well as financial and audit bodies, should play a critical role in holding defence and security sector actors to account and must have the technical expertise and access to information to do so.[9] Broad stakeholder engagement in such assistance, including by civil society in the recipient States, is generally weak. She makes the preliminary observation that, in some contexts, such assistance and partnerships may render a supporting State a party to an armed conflict subject to the rules of international humanitarian law.[10]

15. The Special Rapporteur highlights the expanding role played by private companies in the design, delivery and implementation of counter-terrorism capacity-building and technical assistance. Their presence and investment have added to the unrestrained growth trajectory of capacity-building and technical assistance. She recognizes that Governments enter into diverse partnerships with private companies, and many have substantial social and economic benefits for society. While many of these companies have not per se developed their tools with the primary aim of security deployment, security actors increasingly find their tools attractive and transferable.[11] She specifically holds that the transfer of high-risk technologies to countries with systematically poor human rights records, and a persistent pattern of misusing counter-terrorism tools against civil society, political opponents and human rights defenders actors based on counter-terrorism capacity-building and technical assistance should cease. She reminds Governments and private companies of their human rights responsibilities under international human rights law, which imply a comprehensive due diligence duty aimed at ensuring that the development and deployment of new technologies is compliant with international human rights norms and standards.[12] The Special Rapporteur endorses the view that certain high-risk technologies with predilection for abuse in the counter-terrorism arena should be subject to licensing requirements when included in counter-terrorism capacity-building or technical assistance by States. Here, she endorses as a relevant framework the Wassenaar Arrangement[13] on Export Controls for Conventional Arms and the

[9] Barriers to scrutiny include limited powers, ruling majority influence of parliaments and undue executive influence; see African Union Policy Framework on Security Sector Reform, 2013.

[10] See, e.g., www.icrc.org/en/publication/4498-allies-partners-and-proxies-managing-support-relationships-armed-conflict-reduce.

[11] See, e.g., report of the Working Group on the use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, on the impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants (A/HRC/45/9), para. 33; see, generally, paras. 34–39, 58–61.

[12] Guiding Principles on Business and Human Rights; OHCHR, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide* (2012); See also European Commission, *ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (Luxembourg, 2013) (available at https://op.europa.eu/en/publication-detail/-/publication/ab151420-d60a-40a7-b264-adce304e138b).

[13] Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Founding Documents (Public Documents, Volume I) and List of Dual-Use Goods and Technologies and Munitions List, (Public Documents, Volume II).

dual-use goods and technologies regulation of the Council of the European Union.[14] The arrangement establishes a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Although their effectiveness has been limited, both frameworks provide useful models and tools, to improve oversight and tracking of the transfer of high-risk technologies under the guise of countering terrorism to States with sustained and evidenced records of abusing human rights under the banner of security and counter-terrorism.

A. The enduring problem of definition

16. Predictably, the lack of an internationally agreed definition of terrorism poses significant human rights challenges when capacity-building or technical assistance is provided on the premise of countering terrorism or preventing (violent) extremism. Despite agreement on 19 universal counter-terrorism instruments, international counter-terrorism regulation remains a normative "black hole", precisely because, in resolution 1373 (2001) and successive counter-terrorism resolutions, the Security Council has deliberately failed to advance a consistently used definition of terrorism. While the Security Council belatedly offered a non-binding narrow definition of terrorism in resolution 1566 (2004),[15] this definition has not appreciably influenced national practice and appears not to be used by either the Counter Terrorism Committee or the Counter-Terrorism Committee Executive Directorate to influence States in restraining or amending their national terrorism definitions. The Special Rapporteur observes that extraordinary leeway is granted to States in defining a far-reaching range of actions, including expression, religious practice, assembly, relationships and association (many protected by international human rights law) as "terrorism" subject to expansive legislative and executive action. While the Special Rapporteur has offered a precise and tightly drafted model definition of terrorism,[16] few States have adopted its circumscribed definition. The result is that the provision of capacity-building and technical assistance is carried out in a definitional vacuum; a permissive environment that is human rights "lite" by design and practice.

17. Consequently, when the global definition of terrorism remains unclear, and there are sustained practices of non-confrontation with national definitions of terrorism and (violent) extremism remaining the norm, and ample tolerance for national abuses of counter-terrorism, then precisely what is being capacity "built" or technically assisted can be a long way away from what might reasonably be considered counter-terrorism. There is a grave danger that capacity-building and technical assistance operates in many national settings to enable and support repressive security policies and practices. The Special Rapporteur has observed this phenomenon first-hand in its country visits. As a result, she raises serious questions about the transparency, oversight, legitimacy and the long-term value of capacity-building and technical assistance in counter-terrorism contexts.

18. The Special Rapporteur finds that the glaring gap regarding the definition of terrorism, as well as the proliferation of ill-defined preparatory offences identified in

[14] European Union, Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

[15] It cumulatively requires: (a) an intention to cause death or serious bodily injury or hostage taking, (b) an offense under one of the 19 existing "counter-terrorism" conventions, and (c) a purpose (or "specific intent") to provoke a state of terror in the public or a group of persons, or to intimidate a population, or to compel a government or international organization to do or to abstain from doing any act. See Ben Saul, "The legal black hole in United Nations counterterrorism" (International Peace Institute, Global Observatory, 2 June 2021). Available at https://theglobalobservatory.org/2021/06/the-legal-black-hole-in-united-nations-counterterrorism/.

[16] E/CN.4/2006/98, paras. 26–50 and 72.

Security Council resolutions,[17] constitutes a per se barrier to human rights-compliant capacity-building and technical assistance.

19. In parallel, no agreed definitions of violent extremism have been advanced at the international level. This shortcoming allows States to adopt highly intrusive, disproportionate and discriminatory measures with broad and highly problematic human rights implications. The implications of such laws and policies have been directly addressed by the Special Rapporteur and other human rights mechanisms.[18] The Special Rapporteur has taken the view that the term "extremism" has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights.[19] She is deeply concerned about the provision of technical assistance and capacity-building in contexts where the term extremism is ill-defined and functions as cover for systematic human rights violations, particularly against ethnic and religious minorities. She specifically highlights capacity-building and technical assistance by United Nations entities and regional bodies in third countries supportive to or premised on definitions of "extremism" in national practice absent any qualifier of violent action.[20] She is alarmed that the capacity being built in such contexts appears to be the capacity to engage in further significant human rights violations under cover of international support and legitimacy.

B. Bilateral technical assistance and capacity-building

20. Bilateral counter-terrorism and preventing and countering violent extremism capacity-building and technical assistance encompasses a vast array of programmes, practices and work that spans the globe. With the limited resources available to her, the Special Rapporteur cannot provide a global assessment of all such programmes and practices,[21] but rather addresses the broad opportunities and challenges offered by such work for the promotion and protection of human rights. She notes significant opacity on the support or programming for counter-terrorism provided bilaterally between States. For some States, the designation of certain capacity-building as belonging to the sphere of counter-terrorism involves the activation of greater oversight domestically, which is welcome;[22] some national legal systems prevent the use of national budgets for certain kinds of capacity-building projects;[23] and some States fold counter-terrorism capacity-building into generic programming, including but not limited to development, making its disaggregation and assessment especially opaque.[24]

[17] E.g., Security Council resolutions 1373 (2001), para. 2 (e); 1566 (2004), para. 2; 2178 (2014), para. 6; see also A/HRC/40/52, paras. 19 and 34.

[18] See, e.g., A/HRC/40/52; A/HRC/31/65 and A/HRC/33/29.

[19] A/HRC/43/46/Add.1, para. 15.

[20] A/HRC/43/46/Add.1.

[21] Including for example by traditional military institutions, e.g., the North Atlantic Treaty Organization (NATO). See www.nato.int/cps/en/natohq/topics_77646.htm.

[22] See United States, Leahy Law, prohibiting military training/other assistance to foreign military units given credible information concerning committal of gross human rights violations. See United States Code, Title 10, sect. 362; title 22, para. 2378d; United Kingdom Statutory Instrument 2019, No. 573, The Counter-Terrorism (International Sanctions) (European Union Exit) Regulations 2019, part 5, regulation 23; Canada, United Nations Act and Special Economic Measures Act.

[23] See International Crisis Group, "Averting an ISIS resurgence in Iraq and Syria" (11 October 2019). Available at www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/207-averting-isis-resurgence-iraq-and-syria.

[24] Jakarta Centre for Law Enforcement Cooperation. See www.devex.com/organizations/jakarta-centre-for-law-enforcement-cooperation-foundation-jelec-61148 (Indonesian National Police and Australian Federal Police counter-terrorism training and capacity-building +), established in 2004 following the Bali bombing. See www.jstor.org/stable/resrep04111.

21. Bilateral counter-terrorism capacity-building and technical assistance comes with significant human rights and rule of law risks. There are significant risks of unsuitable legal transplants where assistance aims to influence foreign legal cultures in the direction of the donor's or provider's own and/or influence the recipient's law in ways which dovetail with the donor's foreign policy and security imperatives. Those imperatives may be structured to undermine or limit the exercise of fundamental human rights or provide a basis domestically to marginalize their exercise. It is notable that significant counter-terrorism capacity-building is leveraged through traditional bilateral relationships, including those premised on prior colonial and security-entangled histories.[25]

22. There are clear risks when what is security-based counter-terrorism or, more obviously in recent years, preventing and countering violent extremism assistance,[26] is being provided under the guise of generic capacity-building, gender equality or women's empowerment, youth engagement[27] or other such nomenclature. In reality, many of these efforts are driven by donor or provider security imperatives and often function to marginalize civil society and other stakeholders to avoid the revelation of the donor's source, basis or ideology. Such forms of capacity-building and technical assistance involve the commodification of certain groups and individuals and in many cases, historically marginalized communities. These practices undermine the trust that would result from the full and transparent engagement of communities and individuals in meaningful and engaged local capacity-building.[28] Effective security cannot bypass or instrumentalize affected communities.[29] The Special Rapporteur regularly hears States ask why capacity-building is not working. She would suggest that the answer lies in a lack of meaningful and sustained relationship with the locals. Meaningful trust-building is slower and involves more risk and investment from the donor but ultimately is the only human rights-compliant and effective means to engage communities and individuals over the long haul.[30] Aside from the obvious ethical concerns of a failure to disclose, such models of capacity-building are fraught with risks of abuse, expose participants to greater vulnerability and risk in certain contexts and undermine the autonomy and dignity of those engaged in such programmes as a matter of principle. The lessons learned on community engagement and the promotion and protection of human rights within the United Nations along the continuum of sustaining peace sit contrary to this deeply paternalistic form of capacity-building and demand deeper understanding, respectful, coherent and flexible engagement and meaningful participation of women and youth.[31] It is stating the obvious to say that if the donor State does not have a strong or institutionalized human rights culture, the imprint of no human rights or human rights "lite" will consistently be translated into the provision of capacity-building and technical assistance in third States. If the recipient State has weak governance, lacks transparency and maintains long-standing

[25] See F. Alzubairi, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge, Cambridge University Press, United Kingdom, 2019).

[26] See, e.g., United States Agency for International Development (USAID) Policy for Countering Violent Extremism through Development Assistance. Available at www.usaid.gov/sites/default/files/documents/USAID-publication-Policy-for-Countering-Violent-Extremism-through-Development-Assistance-April2020.pdf); sport and human rights (see https://cfnhri.org/human-rights-topics/sport-and-human-rights/.

[27] Noting youth programmes undertaken by the United Nations Educational, Scientific and Cultural Organization (UNESCO). See https://en.unesco.org/preventing-violent-extremism/youth/project/about; https://en.unesco.org/preventingviolentextremism.

[28] See www.saferworld.org.uk/resources/publications/806-community-security-handbook.

[29] A/75/729 and A/75/729/Corr.1, para. 34.

[30] See Center for Civilians in Conflict, "Having their Say: Guidelines for Involving Local Civil Society in the Planning, Design, Implementation, and Evaluation of U.S. Security Assistance and Cooperation" (2020).

[31] See United Nations community engagement guidelines on peacebuilding and sustaining peace (August 2020).

rule of law deficits then counter-terrorism capacity-building and technical assistance may regrettably serve to deepen those patterns rather than transform them.

23. Some countries have premised their capacity-building and technical assistance on a model of "partnership" with foreign partners.[32] The specific location of such programmes in the scheme of government can be significant to their human rights content and oversight. It is regrettable that in some jurisdictions counter-terrorism capacity-building and assistance will be located in government departments such as departments of defence that are expressly given waivers or exclusion on human rights oversight.[33] In the Special Rapporteur's view these carve-outs are short-sighted on building effective counter-terrorism practice in third countries precisely because the lack of human rights integration and oversight constitutes a structural weakness that makes such programmes less effective, less strategic and less accepted by the communities that they aim to support.[34]

24. The Special Rapporteur highlights disquiet about the supply of new technologies, including but not limited to biometric data collection and application programming interface (API) and passenger name record (PNR) infrastructure capacity, through the prism of bilateral counter-terrorism capacity-building and technical assistance.[35] She notes that these concerns are shared by other human rights actors, including the Human Rights Committee.[36] She affirms that these technologies are inherently high-risk, with broad implications for a range of fundamental human rights from the right to life to the right to privacy.[37] The Special Rapporteur takes the view that capacity-building and technical assistance must go hand in hand with the existence or establishment of robust human rights protections which are institutionally embedded in recipient States. Human rights protections must function to oversee the collection, storage, use and transfer of data collected consistent with international human rights law standards. In the absence of such protections, capacity-building and technical assistance in new technologies will not be human rights compliant and should not be undertaken. She notes with profound concern the repurposing of many of these technologies during the COVID-19 pandemic without adequate safeguards or oversight, leading to the securitization of health provision, with particularly disparate effects on vulnerable and marginalized communities.[38]

25. Human rights-compliant bilateral counter-terrorism capacity-building and technical assistance requires (a) clear practices of solely supporting capacity-building and technical assistance premised on national definitions of terrorism and violent

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[32] USAID, "The Development Response to Violent Extremism and Insurgency Policy", September 2011, p. 3; European Parliament, Revised European Union Approach to Security and Development Funding, June 2021, p. 1 (available at www.europarl.europa.eu/legislative-train/theme-foreign-affairs-afet/file-revised-eu-approach-to-security-and-development-funding).

[33] United States Department of Defense programmes training and equipping foreign security forces are exempt from relevant human rights provisions of the Foreign Assistance Act and/or operate largely independently of the United States Secretary of State.

[34] United Nations Development Programme (UNDP), *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment* (2017), pp. 3 and 6.

[35] The Special Rapporteur highlights expanding technologies used to collect, process and analyse expanding categories of biometric data fingerprints, DNA, facial analysis, plus additional biological and behavioural biometrics, including gait and voice recognition; acknowledges the relevance of other new technologies, such as artificial intelligence, integrated data platforms, blockchain, 3D printing, inter alia; and notes the requirement in Security Council resolution 2396 (2017), para. 15, for States to responsibly adopt biometric data tools.

[36] CCPR/C/ITA/CO/6, para. 36. The Human Rights Committee calls on the State party to take measures to ensure that all corporations under its jurisdiction, such as technology corporations, respect human rights standards when engaging in operations abroad. Reminding the State Party of its regulatory functions vis-à-vis private actors affirming the Covenant's transnational application even where companies act abroad); CCPR/C/131/D/3163/2018, paras. 7.3–8.

[37] See Krisztina Huszti-Orbán and Fionnuala Ní Aoláin, "Use of biometric data to identify terrorists: best practice or risky business?" (Human Rights Center, University of Minnesota Law School, 2020).

[38] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E.

extremism that are international law compliant; (b) design, delivery and implementation in sustained consultation with and participation by subnational community structures and stakeholders; (c) using conditionality of assistance and capacity-building consistently and transparently; (d) clear red lines that require refusal of support to foreign partners that have committed serious and sustained human rights violations by abusing security and counter-terrorism capabilities; (e) refusal of support to countries that use counter-terrorism measures against human rights defenders, minorities, civil society actors and those engaged in the protected exercise of their human rights to expression, assembly, religious practice and participation in public affairs under international law; (f) engaging in human rights based risk assessment and mitigation planning at each stage of the capacity-building and technical assistance process from design, delivery, implementation and evaluation; (g) mandating meaningful and effective oversight, including financial audit of capacity-building and technical assistance in both the providing and recipient State; and (h) the capacity to provide meaningful remedies when human rights violations occur.[39]

IV. Multilateral and regional capacity-building and technical assistance

26. The Special Rapporteur acknowledges significant advantages to collective regional engagement, including that, in principle, such entities may hedge better against human rights risks than bilateral practices that may be politically inconsistent and buttressed by a range of other (non-security and non-human rights) interests. Regional engagement has taken on greater focus in the United Nations Global Counter-Terrorism Strategy[40] and is viewed as an important conduit to develop further capacity and technical proficiency among Member States. The Special Rapporteur affirms the importance of the credibility and reputation of regional bodies and their significant role in both countering terrorism and advancing human rights.

27. Most regional organizations provide counter-terrorism capacity-building and technical assistance support to their members and third States. These interventions have multiple goals. They are intertwined with strategic, political, economic and legal imperatives and are viewed as useful to inter alia prevent and counter terrorism, end or manage violent conflict and lay the foundations for development, good governance and strengthened rule of law. In parallel, many multilateral organizations provide extensive counter-terrorism capacity-building and technical assistance, often devoid of an extensive human rights grounding.[41] The Special Rapporteur observes that counter-terrorism interventions are often undertaken in complex conflict environments and fragile settings under weak governance, a lack of institutional safeguards and poor anti-corruption efforts[42] and where popular grievance is sustained by deficits across these areas. She observes that in counter-terrorism capacity-building and technical assistance there is persistent neglect in mainstreaming human rights, minimal oversight and a dearth of adequate or effective monitoring and evaluation, leaving underlying structures of impunity, failing

[39] An example of positive practice includes the United Kingdom Overseas Security and Justice Assistance human rights guidance.

[40] General Assembly resolution 75/291, para. 82.

[41] For example, the Global Counterterrorism Forum (www.thegctf.org). The Special Rapporteur notes the creation of "spin-off" institutions, for example the work of the Hedayah Centre on addressing violent extremism, particularly by supporting Governments to develop national action plans; and the International Institute for Justice and the Rule of Law, which delivers counter-terrorism related training. Neither of these bodies have sustained relationships with the entities charged with human rights capacity in the counter-terrorism field (the Special Rapporteur and OHCHR) and appear to have limited civil society participation. The Special Rapporteur is unaware of any human rights-based, or any, independent and robust monitoring and evaluation of their work.

[42] See Government Defence Integrity Index. Available at https://ti-defence.org/gdi/.

governance and ongoing marginalization of civil society. She observes paltry investment in civilian democratic oversight, which is essential to prevent the misuse of counter-terrorism capabilities.[43] She regrets that capacity-building and technical assistance in the counter-terrorism sector appears to concentrate on technocratic "wins" rather than long-term approaches that address entrenched rule of law, governance, transparency and accountability failures which are at the heart of the conditions conducive to terrorism. Consistent patterns of single-focus and one-off interventions are evident.[44]

28. The European Union has an extensive toolkit of resources supporting third countries in managing or mitigating terrorist threats. The Special Rapporteur positively affirms that the European Union broadly engages human rights discourse and invokes human rights standards in its framing and authorization for capacity-building and technical assistance. There are good examples of positive integration of human rights into the European policy articulations of counter-terrorism capacity-building and technical assistance.[45] For example, the European Union has committed to ensuring local ownership in counter-terrorism capacity-building, advancing a sustainable model aimed at supporting local expertise as a bedrock part of its support to third countries.[46] External European Union counter-terrorism capacity-building includes inter alia security sector reform, improving the governance of security providers, border management support, strengthening the armed forces of third countries and training law enforcement actors. Other aspects of the European Union's multifaceted assistance include technical support to prevent terrorist financing and an array of projects related to countering radicalization and violent extremism. She encourages sustained attention to translating policy into practice on the ground.

29. European Union support for security actors in partner countries has been increasing in recent years including through training and equipping.[47] The Special Rapporteur notes that disaggregating support to broadly defined stabilization and peace efforts from counter-terrorism action can be challenging, underscoring the methodological point that counter-terrorism capacity-building and technical assistance is often difficult to disaggregate from other entwined activities at both the macro and micro levels. It makes an accurate "count" of the scale of capacity-building and technical assistance difficult. This leads to confusion on the ground, particularly when "hard" or military focused counter-terrorism capacity-building is blurred with development, peacebuilding and rule of law efforts, undermining the latter's neutrality in perceptible and negative ways. She is concerned that the term "stabilization", which is broadly used in this context, lacks definitional clarity and, when conjoined with counter-terrorism efforts, fails to distinguish between a broad

[43] See Transparency International, "The missing element: addressing corruption through security sector reform in West Africa" (2020).

[44] See, for example, African Security Sector Network and Geneva Centre for Security Sector Governance (DCAF), Security Sector Governance and Reform in Africa, background paper developed for the Learning Lab on Security Sector Governance and Reform in Africa (April 2016).

[45] See European Union, Joint communication on elements for an EU-wide strategic framework to support security sector reform, 2016, pp. 2 and 5 (available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0031&from=EN); Council conclusions on EU-wide strategic framework to support security sector reform, para. 3 (available at www.consilium.europa.eu/media/24227/ssr-st13998en16.pdf).

[46] See www.europarl.europa.eu/RegData/etudes/BRIE/2017/614644/EPRS_BRI(2017)614644_EN.pdf.

[47] "Capacity-building of military actors in support of development and security for development", the establishment of the European Peace Facility financing external activities with military and defence implications, European Union Trust Fund; see https://eeas.europa.eu/headquarters/headquarters-homepage/46285/european-peace-facility-eu-budget-fund-build-peace-and-strengthen-international-security_en and https://africa-eu-partnership.org/sites/default/files/documents/apf_annual_report_2019_en.pdf.

notion of a safe and rights-bearing society for all its members and militarized security in which the security sector and elite political actors are supported and sustained.

30. The Special Rapporteur warns that European Union engagement with third-county armed forces and security sectors in the counter-terrorism and stabilization spheres heightens risks that such support will be used to increase violence against civilians, engage in sustained human rights violations, enable impunity and boost corruption. Recent development via the establishment of the European Peace Facility to "train and equip" third-country militaries, including with the provision of weaponry, has garnered concern from civil society and humanitarian actors.[48] The Special Rapporteur echoes those apprehensions. She notes the call for the establishment of a civilian complaints mechanism to accompany the establish of "train and equip" in the counter-terrorism and conflict stabilization spheres and affirms the additional value of an accountability focused institution in these contexts. Materializing concrete mechanisms to hold security partners accountable in counter-terrorism is essential given that the individuals harmed by corrupt or human rights violative assistance practices do not have recourse to existing accountability mechanisms.[49]

31. Unmet rule of law needs and human rights violations provide the fuel for continued cycles of conflict, violent extremism and terrorism. Counter-terrorism capacity-building and technical assistance will be counter-productive in practice if they contribute to those conducive conditions. Recognizing the positive value to advancing justice and security in third States, enhancing accountability, transparency and human rights requires balance to ensure that capacity-building and technical assistance does not directly or indirectly enable human rights or humanitarian law violations. Moreover, once risks or knowledge of human rights violations are identified, mitigation measures must be robust and rigorously implemented. The Special Rapporteur cautions against the use of management typologies that downplay the impact of "low"-risk human rights violations and harms, noting that such categorizations tend to systematically underappreciate the costs of counter-terrorism related human rights violations. In general, it appears that mitigation practices are primarily addressed by assurances, lobbying and representations, training on human rights, data monitoring, reporting or "balancing" by the provision of other assistance or capacity projects in parallel spheres. The Special Rapporteur expresses concern at the lack of rigorous and consistently applied oversight and accountability mechanisms. Misused capacity-building and technical assistance that undermines the rule of law and violates the human rights of individuals and communities damages effective counter-terrorism and creates mistrust, undercuts credibility and reputation and weakens long-term efforts to prevent violence. It is in the interests of States economically, politically and from a security perspective to ensure that capacity-building and technical assistance do not function to undermine the values that have prompted their application in the first place.

32. In the Americas, a subentity of the Organization of American States (OAS), the Inter-American Committee against Terrorism was established by the OAS General Assembly in 1999 to promote coordination by member States in preventing and

[48] Joint statement, transmitted to the European Union Foreign Affairs Council. Available at www.saferworld.org.uk/resources/news-and-analysis/post/917-joint-statement-a5billion-european-apeacea-facility-risks-fuelling-conflict-and-human-rights-violations-around-the-world.

[49] Specifically, those directly affected by support to third-country security actors are not part of the European Union constituency and have limited recourse to raise issues to the European Union directly including the Court of Justice of the European Union. The European Parliament has limited oversight of inter-governmental assistance, and the European Ombudsman cannot receive complaints from non-European Union citizens.

combating terrorism.[50] It is formally committed to promoting cooperation and dialogue in accordance with the principles of the OAS Charter, respecting the rule of law and international law. It provides technical assistance in the areas of cybersecurity, border controls, supply-chain security, cargo and container security, tourism security, weapons of mass destruction and general counter-terrorism policy assistance, including regulating terrorism finance.[51] Capacity-building by the Inter-American Committee against Terrorism is primarily focused on training marked by substantive collaboration with the private sector.[52] Regrettably, the annual reporting and written outputs of the Committee reveal limited engagement with human rights standards and principles in its capacity-building and technical assistance work,[53] and while engagement with United Nations and global counter-terrorism bodies is highlighted, no systematic relationships appear to have been developed with United Nations human rights entities consistently engaged in counter-terrorism work.[54]

33. The Special Rapporteur notes for example the establishment in 2019 of an inter-American network on counter-terrorism, to enable efficient and safe information exchange in the context of terrorism threat.[55] Observing that she has analysed multiple counter-terrorism national legislative provisions in the region,[56] and found them to contain significant human rights lacunae, the expansion of information exchange without due attention to the protection of individual rights including but not limited to the protection of individual rights in data use, storage, transfer and sharing is highly regrettable. Moreover, given the human rights strengths of the Inter-American system for the protection of human rights it is disappointing to see minimal to no engagement in the reported work of this regional counter-terrorism entity with its counterpart institutional human rights institution and systems. The Special Rapporteur also identifies a broader abiding concern that long-standing and salient challenges in the region including development, poverty reduction, efforts to combat corruption, drug trafficking and criminal gang activities will be redirected to counter-terrorism management as a perceived easy "fix" and points out the long-term rule of law, governance, legitimacy and human rights problems that ensue from such ill-conceived thinking. There is an appropriate role for counter-terrorism capacity-building and technical assistance in the region, but it must remain tailored and bespoke to the actual and genuine terrorism threats in the region, and not a speculative or opportunistic modality to "get other work done" via counter-terrorism.

34. The engagement of the Association of South-East Asian Nations (ASEAN) in counter-terrorism capacity-building predates the terrorist attacks of 11 September 2001 ("9/11"). Specifically, ASEAN adopted the Declaration on Transnational Crime in 1997 and an ASEAN action plan in 1999. Regional-level engagement with counter-

[50] Consistent with the Charter of the Organization of American States (OAS) and with the Inter-American Convention Against Terrorism. The Inter-American Committee against Terrorism exercises its functions under the Declaration of Lima to Prevent, Combat, and Eliminate Terrorism.

[51] Notably, funding from such assistance comes from third States outside the region, e.g., the Governments of Canada, Estonia the Netherlands, Spain, the United Kingdom and the United States, as well as financial and in-kind contributions from the private sector.

[52] The Special Rapporteur positively notes some gender-specific capacity-building. See, e.g., OAS Cyberwomen Challenge in 2019, strengthening the technical skills of women in the cyber-security field; and including women's voices in the maritime security domain (see www.oas.org/en/sms/cicte/prog-maritime-security.asp).

[53] See www.oas.org/en/sms/cicte/default.asp.

[54] Reporting is mandated under article 91 (f) of the OAS Charter, article 17 (h) of the statute of the Inter-American Committee against Terrorism and article 11 (e) of its rules of procedure.

[55] The programme is funded by the United States. See OAS press release, www.oas.org/en/media_center/press_release.asp?sCodigo=E-077/19.

[56] Comments by States on legislation and policy OL NIC 3/2020; OL PER 3/2020; BRA 6/2021. Available at www.ohchr.org/EN/Issues/Terrorism/Pages/LegislationPolicy.aspx.

terrorism is evidenced inter alia by the adoption in 2001 of the ASEAN Declaration on Joint Action to Counter-Terrorism.[57] Regional capacity-building on counter-terrorism has focused on augmenting existing capabilities of ASEAN member countries to investigate, detect, monitor and report on terrorist acts, increased capacity in countering terrorism financing, the provision of training in multiple areas,[58] the establishment of national focal points, workshops for key security stakeholders and extra-regional cooperation. Regrettably, human rights obligations appear marginal to the articulation of counter-terrorism imperatives and processes. Given the long-term benefits identified above of integrating human rights standards and processes into capacity-building and technical assistance, it is critical that further mainstreaming of human rights and civil society inclusion be advanced by this regional organization.

35. The Shanghai Cooperation Organization, founded in 2001 by six countries,[59] includes observer States and dialogue partners whose focuses encompass promoting economic cooperation, cooperation against religious extremist activities and transnational crimes, and advocating a set of principles for managing international relations. The Organization engages in technical assistance work in addressing terrorism, separatism and extremism.[60] The Special Rapporteur highlights the lack of attention to human rights in the defining framework of the Organization, and in particular the lack of legal certainty and precision in the definitions of extremism and terrorism in its founding legal documents, as well as significant elision in practice between these concepts.[61] While the Organization has not offered direct technical assistance to its members, it encourages the provision of such assistance among individual Member States. She strongly encourages review and revision of the language and definitions related to extremism and counter-terrorism, to ensure legal precision and conformity with international law regulating counter-terrorism.

36. It is imperative that the unique strengths and capacities of regional bodies are mainstreamed in capacity-building and technical assistance and that regional bodies consistently address the risks of ineffectiveness, counter-productive action and collusion in national human rights violations. There are grave risks for multiple regional entities when broader development aid, mediation, disarmament, conflict resolution and regional stability efforts may be sidelined, delegitimized or become less effective over time because they are functioning in the same region as or overlapping with human rights and rule of law-abusive counter-terrorism[62] and are holistically perceived negatively by beneficiary communities and allies.

V. United Nations capacity-building and technical assistance in counter-terrorism and preventing and countering violent extremism

37. The Special Rapporteur has consistently reported on the expanding agenda and presence of counter-terrorism policy and programming among the broader

[57] Seventh ASEAN Summit, 5 November 2001, Brunei Darussalam.

[58] Including soft target protection and border security.

[59] China, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan and Uzbekistan. See http://eng.sectsco.org/about_sco/.

[60] Charter of the Shanghai Cooperation Organization, 7 June 2002. Available at http://eng.sectsco.org/documents/.

[61] Noting that in article 1 (2) of the Shanghai Convention on Combating Terrorism, Separatism and Extremism, it is accepted that if a wider legal definition of terrorism exists in a national legal framework that will be accepted unreservedly.

[62] See A/HRC/46/54, paras. 5 and 97; Security Council resolution 2531 (2020), para. 2; A/HRC/43/76, paras. 12, 15 and 26; and www.ohchr.org/EN/Countries/AfricaRegion/Pages/G5-Sahel.aspx.

United Nations architecture and agendas.[63] She acknowledges the value of integrated and effective United Nations responses to threats to international peace and security and the role of combating terrorism alongside the importance of cooperation and information sharing among United Nations entities. She affirms the important work of the Office of Counter-Terrorism and its efforts to bring coordination, coherence, effectiveness and transparency to the work of the Organization in this arena.[64] She has nonetheless raised significant concerns about the unprecedented growth of the United Nations counter-terrorism architecture, the marginalization and underresourcing of human rights in United Nations counter-terrorism and the lack of meaningful monitoring and evaluation of United Nations counter-terrorism activity, specifically the failure to determine and remediate negative human rights impact.

38. In this regard, assessment of the United Nations United Nations Global Counter-Terrorism Strategy has revealed that its fourth pillar suffers from profound structural and policy weaknesses. In his recent report to the General Assembly (A/75/729), the Secretary-General underscored that "an urgent focus … was needed, supported by renewed political commitment and adequate resources, to strengthen the promotion and protection of human rights and the rule of law in the implementation of all four pillars of the United Nations Global Counter-Terrorism Strategy." It has become more apparent than ever that acute institutional and resource inequities leave the human rights mainstreaming capabilities of the United Nations stagnant. This lack of resources results in a lack of available technical human rights expertise in the design, development, implementation, monitoring and evaluation of policies and programmes. The lack of prioritization continues despite evidence demonstrating that, although conflict is one of strongest predictors of the impact of terrorism, so too are deficiencies in human rights protections, socioeconomic factors related to disenfranchisement, deficient rule of law and equality and more. Despite significant gains for human rights in the seventh biennial review of the Global Counter-Terrorism Strategy,[65] sizeable gaps remain, including the need for adequately resourced and independent oversight of United Nations counter-terrorism assuring mutual accountability between Member States and the United Nations and a results-based framework to measure impact and evaluate the work of United Nations counter-terrorism assistance.

39. In this context, the growth and scale of counter-terrorism and countering and preventing violent extremism capacity-building and technical assistance work carried out by a wide variety of United Nations entities is to a scale not yet fully appreciated by the international community.[66] This growth presents opportunities, but it also raises clear questions as to whether the United Nations human rights due diligence has reached scale at appropriate pace. This work is both led and coordinated by the Office of Counter-Terrorism,[67] as well as capacity-building and technical assistance that is separately initiated, led, implemented and overseen by individual United Nations entities. As self-reported by the Office, capacity-building supported by the United Nations Counter-Terrorism Centre currently involves "implementing 195 capacity-building workshops, outreach events and expert level meetings, engaging 9,698 individuals" engaging 175

[63] A/75/337, para. 27; A/74/335, para. 11.

[64] Technical recommendations on human rights and counter-terrorism for the seventh biennial review of the United Nations Global Counter-Terrorism Strategy (General Assembly resolution 72/284), p. 1. Available at www.ohchr.org/Documents/Issues/Terrorism/SR/GlobalStrategy/TechnicalRecommendations.pdf.

[65] See General Assembly resolution 75/291.

[66] United Nations Global Counter-Terrorism Coordination Compact joint projects and entities, pp. 2 and 3 (www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/210604_ct_compact_factsheet_mar-apr_2021.pdf); United Nations Office of Counter-Terrorism, *United Nations Counter-Terrorism Centre Annual Report 2020*, pp. 78 and 79. Available at https://www.un.org/counterterrorism/cct/publications-reports.

[67] General Assembly 71/291 established the Office of Counter-Terrorism.

Member States.[68] One particularly notable capacity-building programme, with wide-ranging human rights impact, is the United Nations Countering Terrorist Travel Programme formally premised on Security Council resolutions 2178 (2014), 2396 (2017) and 2482 (2019).[69] Importantly, the Programme's operation remains inaccessible to the Special Rapporteur, underscoring her concern about the integration of international law and human rights at the national level. In this regard, as with other United Nations programmes, the Special Rapporteur encourages the Programme's donors [70] and managing entities to facilitate greater transparency and access to information for the Special Rapporteur, as well as civil society. The negative impact of this programme on human rights in selected countries and the absence of mitigation and protection measures have been widely circulated in public forums with civil society and other actors, and these concerns may only grow as the Programme expands.

40. More broadly, the Special Rapporteur has identified a problematic service model or demand driven approach to capacity-building and technical assistance from the Office of Counter-Terrorism and the United Nations Global Compact. Recognizing that United Nations entities are called to support Member States in various ways in an increasingly resource-restricted environment, there remain clear lines that must be drawn when capacity-building is sought in contexts and by institutions, which have a demonstrated history of abusing counter-terrorism capabilities to violate human rights, have systematically targeted the exercise of fundamental rights (freedom of expression, assembly, participation in public affairs,[71] religious expression, women's rights) and fail to demonstrate the willingness to take corrective measures or pursue accountability. Moreover, when the United Nations provides counter-terrorism capacity-building and technical assistance to countries which stifle, harm and exclude civil society, fundamental questions must be raised about the value of such work and whether it is likely to be used to further undermine accountability, transparency and governance in the recipient States. Here the necessity for the exercise of due diligence obligations has never been more pressing. In parallel, the Special Rapporteur has continued to underscore the lack of human rights-based monitoring and evaluation of counter-terrorism capacity-building and technical assistance. She acknowledges that the Working Group on Resource Mobilization and Monitoring and Evaluation is undertaking a form of meta-synthesis analysis derived from shared evaluation and oversight by United Nations entities engaging with counter-terrorism projects. She welcomes this nascent step towards full evaluation but notes that meta-synthesis is not a suitable evaluative tool to determine and address human rights harms or impact. Comprehensive human rights evaluation and oversight remains lacking in the United Nations counter-terrorism architecture and must be addressed as a matter of priority.

41. In parallel, the Counter-Terrorism Committee, with the support of the special political mission Counter-Terrorism Committee Executive Directorate, is charged with monitoring the implementation of Security Council resolution 1373 (2001), which imposed a range of security-related counter-terrorism obligations on all United Nations member States and subsequent resolutions. Among other things, the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate is responsible for facilitating the delivery of counter-terrorism technical assistance[72] to

[68] *United Nations Counter-Terrorism Centre Annual Report 2020*, p. 14.

[69] See www.un.org/cttravel/.

[70] The Travel Programme is co-funded by the Netherlands, the European Union, the United States, Qatar, Australia, Japan and India.

[71] See OHCHR, Guidelines on the effective implementation on the right to participate in public affairs (2018). Available at https://www.ohchr.org/EN/Issues/Pages/DraftGuidelinesRightto ParticipationPublicAffairs.aspx.

[72] In 2021, the Counter-Terrorism Committee Executive Directorate facilitated delivery of technical assistance in line with its mandate – virtual visits to Kyrgyzstan (April), Ghana (May) and Mongolia (Travel Programme, April), South Africa (May).

States identified as requiring support to implement this resolution and others,[73] as well as engaging with and coordinating the counter-terrorism activities of international, regional and subregional bodies.[74] The Special Rapporteur recognizes and notes that the Counter-Terrorism Committee Executive Directorate has expanded its human rights in-house expertise and has a small number of highly expert human rights legal advisors. Its engagement on human rights has deepened in recent years and the Counter-Terrorism Committee Executive Directorate maintains a constructive dialogue with the Special Rapporteur.

42. One key challenge in evaluating the nature, scope and adequacy of the human rights advice given to States through the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate monitoring and reporting processes is that only one State has made its report public since 2006, and, while a few reports are now available through the Global Counter-Terrorism Coordination Compact, regrettably, they cannot be assessed publicly. The Special Rapporteur sincerely welcomes the positive transparency exercised by the Government of Finland in making its Counter-Terrorism Committee's report public, which provides some insight into the Committee's evaluative processes. While there is positive human rights language on citizenship stripping in the report she notes some human rights deficits in the posture of the Committee's report with respect to the protection of freedom of expression,[75] retrospective criminal regulation,[76] overregulation of extradition,[77] the unclear legal basis for the recommendation to abolish the political offence exception,[78] apparent overreach beyond the Security Council's guidance on penalties for terrorism finance,[79] concerns about an overly broad identification or profiling of "immigrant-based non-profit organizations" as being of higher risk,[80] a worrisome lack of positive reference to enabling humanitarian exemptions[81] and a very limited reflection on the human rights dimensions of integrated databases, necessitating attention to privacy, data-security and oversight.[82] The Special Rapporteur notes that the "deep-dive" process which the Counter-Terrorism Committee Executive Directorate undertakes, engaging directly in capacity-building and technical assistance with States, constitutes a unique opportunity to address the profound human rights deficits amply demonstrated in national counter-terrorism practice. It remains unclear, precisely because of the opacity of process and the narrow reliance on Security Council resolutions without full engagement with the totality of States' international law obligations, how effective this process may be in practice. In addition, as reiterated in the present report and others, as well as the newly revised Global Counter-Terrorism Strategy,[83] non-extractive and open

[73] The 2018 Addendum to the 2015 Madrid Guiding Principles acknowledged that the implementation of the requirements of resolution 2396 (2017) "requires legal frameworks, skills, capacity, expertise and equipment that [some Member States] do not currently possess". The Special Rapporteur emphasizes that, while the relevant obligations under the resolution are to be formally implemented in compliance with international human rights law, none of the United Nations human rights entities are explicitly mentioned as part of mandated United Nations efforts to offer capacity-building and technical assistance.

[74] Eric Rosand and others, "The UN Global Counter-Terrorism Strategy and Regional and Subregional Bodies: Strengthening a Critical Partnership" (2008), p. 22.

[75] Report of the Counter-Terrorism Committee on its follow-up visit to the Republic of Finland (9-11 April 2019), para. 15. Available at https://intermin.fi/documents/1410869/3723676/YKn+terrorismin+vastaisen+komitean+Suomea+koskeva+arviointiraportti+1.11.2019.pdf/6f290683-3f0d-47cf-6121-965807776b43/YKn+terrorismin+vastaisen+komitean+Suomea+koskeva+arviointiraportti+1.11.2019.pdf?t=1604567925974.

[76] Ibid., para. 19.

[77] Ibid., paras. 22–25.

[78] Ibid., para. 44.

[79] Ibid., para. 47.

[80] Ibid., para. 62.

[81] Ibid., para. 66.

[82] Ibid., para. 80, the same deficiencies appear in respect of intelligence sharing at para. 83.

[83] General Assembly resolution 75/291, paras. 10, 29, 44, 99 and 110.

engagement with a diverse range of independent civil society actors is essential to United Nations counter-terrorism. Despite more recent sustained positive dialogue with civil society, the United Nations counter-terrorism architecture has a long way to go before sufficient trust has been built, transparency measures installed regarding the nature, format and results of civil society engagement, and therefore any policy, practice and programming can claim to meaningfully engage civil society. Greater efforts and political support are required for recognizing the value added of civil society participation and inputs to counter-terrorism regulation.

43. The United Nations Office on Drugs and Crime (UNODC), through its Terrorism Prevention Branch and the Global Programme against Money Laundering, has been the principal provider of counter-terrorism capacity-building and technical assistance within the United Nations system.[84] The Special Rapporteur broadly views UNODC model assistance positively, with consistent examples of good practice evidenced by a strong consultative ethic, not only across United Nations agencies but also with independent civil society. She views UNODC long experience of criminal justice and legal reform, both generally and on terrorism through the Terrorism Prevention Branch, which predated 9/11, as an asset that ensures its work is grounded in rule of law principles and rigorous application of international law standards across cross-cutting primary and other sources of international law. The Special Rapporteur acknowledges distinct challenges at the country level but affirms that capacity-building and technical assistance, when delivered as part of United Nations country teams and under the leadership of the Resident Coordinator, produces more sustainable and grounded approaches more likely to be embedded within the broader human rights, development and peace and security goals of the United Nations and the host country. Ultimately, this results in more effective programming. She finds a positive rule of law and rights-based tradition at UNODC and urges maintenance of its holistic approach to the legal frameworks of capacity-building grounded in customary and primary sources of international law and treaty obligations, Security Council resolutions as appropriate and consistent with the Charter, and with sustained recognition of human rights obligations.

44. Several other United Nations entities are substantively engaged in counter-terrorism or capacity-building and technical assistance for countering terrorism and countering or preventing violent extremism, including but not limited to the International Organization for Migration (IOM),[85] the United Nations Educational, Scientific and Cultural Organization (UNESCO),[86] the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)[87] and the United Nations Development Programme (UNDP).[88] The Special Rapporteur recognizes that all entities work within their mandates and subject to diverse constraints, including financial and donor considerations. For each entity there are significant risks of human rights violations following from capacity-building and technical assistance in national settings where definitions of terrorism and extremism remain broad, ambiguous and abusive in practice and oversight is weak. She highlights the grave consequences for engaged individuals and communities, as well as the legitimacy and values for

[84] E.g., in Latin America, UNODC has provided technical assistance related to drug trafficking, money-laundering and counter-terrorism capacity-building. UNODC, in partnership with the Inter-American Committee against Terrorism has been involved in assisting States in drafting counter-terrorism legislation and helping them develop and maintain focused criminal justice systems. See www.files.ethz.ch/isn/91416/latin_america.pdf.

[85] Huszti-Orbán and Ní Aoláin, “Use of biometric data to identify terrorists” (see footnote 37), pp. 8 and 9 (addressing IOM work on regulating borders).

[86] See https://en.unesco.org/preventingviolentextremism.

[87] See www.unwomen.org/en/what-we-do/peace-and-security/preventing-violent-extremism.

[88] See, e.g., A/75/729 and A/75/729/Corr.1, paras. 52, 53 and 64; UNDP statement at the Global Counter-Terrorism Compact Coordination Committee Meeting (available at www.undp.org/speeches/global-counter-terrorism-compact-coordination-committee-meeting); see also, generally, www1.undp.org/content/oslo-governance-centre/en/home/our-focus/preventing-violent-extremism.html.

United Nations entities where core missions may be distorted or commodified through support to sustaining counter-terrorism practices that impinge on primary institutional core goals including peace and security, sustainable development, good governance, gender equality and women's empowerment, as well as overall sustainability and accountability. She reminds these entities of their unique contribution and obligations to promote and protect human rights, particularly the rights of the most vulnerable (youth, children, migrants, refugee and asylum seekers, ethnic and religious minorities, women and girls) in all circumstances without exception. She encourages prudence and adherence to the compulsory requirements of the human rights due diligence policy on United Nations support to non-United Nations security forces when assessing the form and scale of engagement in counter-terrorism and capacity-building and technical assistance for countering terrorism and countering or preventing violent extremism.

45. For all United Nations entities, what would good practice look like? The Special Rapporteur suggests it would include both "intensive" and "extensive" human rights application on the ground. There is a rising cost to human rights non-compliance in the field of counter-terrorism and countering terrorism and countering or preventing violent extremism, and United Nations entities will face deepened scrutiny over any failures to adhere to their human rights due diligence policy on United Nations support to non-United Nations security forces requirements in counter-terrorism and capacity-building and technical assistance for countering terrorism and countering or preventing violent extremism. Human rights must be seen as an operational asset for States, allied with a necessary and growing sense of the costs of failure to integrate human rights. United Nations entities must resist the narrative that human rights are an obstructionist impediment to "getting to yes" with donors and recipient countries on more counter-terrorism. All United Nations entities must increase the visibility of human rights together with a values-based approach to capacity-building and technical assistance. They must also learn to say "No" to projects and engagement that will increase the likelihood of increased human rights violations in the name of countering terrorism, contributing to impunity in national settings. They must also avoid the securitization of core normative areas of United Nations work, most particularly the sustainable development and sustaining peace agendas, which aim to achieve holistic development goals, and broker peace through prevention. The United Nations itself must wholeheartedly embrace internal independent oversight of its counter-terrorism work to ensure its own transparency and accountability in this high-risk arena.

VI. Recommendations

A. Recommendations for States

46. **Clearly define terrorism in compliance with international law and ensure compliance with the principles of legality, necessity and proportionality and repeal laws, policies and programmes that regulate "extremism", which have no purchase in international law and domestic law. These are prerequisites for rights-compliant capacity-building and technical assistance.**

47. **Meaningfully engage civil society and affected communities as partners in the design, development, implementation and evaluation of capacity-building and technical assistance in line with the principles of do no harm and ensure civilian oversight of the security sector and counter-terrorism efforts as essential to effective, human rights-compliant and sustained counter-terrorism capacity-building and technical assistance.**

48. **Ensure that all counter-terrorism capacity-building and technical assistance integrates a full analysis, scoping and diagnosis of human rights records among States, assesses human rights risks, develops risk mitigation**

strategies focused on the rights of affected individual and communities and ensures the inclusion of available, adequate, effective, prompt and appropriate remedies as essential to effective capacity-building and technical assistance. All "train and equip" support should include the establishment of a civilian complaint mechanism.

49. **Cease the transfer of high-risk technologies to countries with systematically poor human rights records, and a persistent pattern of misusing counter-terrorism tools against civil society, political opponents and human rights defenders actors based on counter-terrorism capacity-building or technical assistance should cease.**

50. **Commit to independent and adequately resourced oversight of the United Nations counter-terrorism architecture as a necessary component of ongoing capacity-building and technical assistance provided by the United Nations and continue to advance such efforts in line with the recommendations of the United Nations Global Counter-Terrorism Strategy.**

B. Recommendations for the United Nations

51. **Ensure the full application of international law, including international human rights law, international humanitarian law and refugee law and avoid undermining any of these three bodies of interdependent norms directly or indirectly through capacity-building and technical assistance. This includes ensuring engagement with the United Nations human rights mechanisms, including the universal periodic review, United Nations human rights treaty bodies and independent special procedures of the Human Rights Council, as well as the Office of the United Nations High Commissioner for Human Rights (OHCHR).**

52. **Ensure the full application of the human rights due diligence policy on United Nations support to non-United Nations security forces as a mandatory requirement for capacity-building and technical assistance in support to non-United Nations security forces. Engage resident coordinators in this essential oversight.**

53. **Consider, at the most senior levels, the distinct human rights and peace and security implications for capacity-building and technical assistance in the field of counter-terrorism and ensure that the human rights due diligence policy is applied in line with its mandatory requirements and includes implementing measures fit for purpose in its unique application in the counter-terrorism space.**

54. **Urgently undertake a tailored human rights impact assessment of the capacity-building and technical assistance of the United Nations Global Counter-Terrorism Coordination Compact. This requires the involvement of all relevant United Nations entities, particularly human rights entities, and dedicated analysis of the impact of such initiatives on the human rights of women and girls.**

55. **Ensure that independent and adequately resourced oversight of the United Nations Counter-Terrorism architecture is considered as a necessary component of architecture measures and reforms identified in the requests of the newly revised United Nations Global Counter-Terrorism Strategy.**

C. Recommendations for regional bodies or multilateral security organizations

56. **Ensure that building and technical assistance efforts led by regional or multilateral security organizations rely upon clear definitions of terrorism in compliance with international law and ensure compliance with the principles of legality, necessity and proportionality in such efforts.**

57. **Meaningfully engage civil society and affected communities to fully understand the risks, needs and impact of initiatives at the subregional and local levels and ensure civilian oversight of the security sector and counter-terrorism efforts as essential to effective, human rights-compliant and sustained counter-terrorism efforts.**

58. **Ensure that all counter-terrorism capacity-building and technical assistance formulated at the regional level or in multilateral dialogue integrates a full analysis, scoping and diagnosis of the status of the implementation of human rights commitments for any recipient country and assess the human rights risks of programming, as essential to integrate preventive and mitigation measures, as well as remedies that are robust, adequate and rigorously implemented.**

59. **Sustain engagement and integration of regional human rights expertise and regional human rights institutions in the design, development, implementation and oversight of capacity-building and technical assistance for countering terrorism and countering or preventing violent extremism.**

60. **Ensure engagement with the United Nations human rights mechanisms, including the universal periodic review, United Nations human rights treaty bodies and the independent special procedures of the Human Rights Council, as well as OHCHR, in meaningful and sustained ways.**