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**Seventy-eighth session**

Item 73 (b) of the provisional agenda[[1]](#footnote-1)\*

**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[[2]](#footnote-2)\*\*

 The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur, Fionnuala Ní Aoláin, submitted in accordance with Assembly resolution 72/180 and Human Rights Council resolution 49/10.

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

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| *Summary*  |
|  In the present report, the Special Rapporteur presents the core analysis and findings of the mandate’s 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. Data was collected and collated through a participatory, civil society-engaged-and-led process. This comprised 13 civil society consultations across regions, 110 written inputs, of which 78 from civil society, and 2 civil society surveys.  |
|  The Global Study documents unrelenting restrictions on civic space across every region and finds a direct link to the regulatory and institutional practices of counter-terrorism and P/CVE. This Report makes five key findings regarding the conditions, features, and consequences of such systemic misuse.  First, it finds that civil society experiences complex and compounding misuse of counter-terrorism and P/CVE measures and practices, with connections to an ever-growing national, regional and global counter-terrorism, P/CVE and security architecture. Second, the multiplicity of measures described are consistent and constant. Moreover, certain regionally concentrated features of counter-terrorism and P/CVE stem from regional partnerships, donor relations, and multilateral technical assistance and capacity-building programs. Third, when States deploy counter-terrorism or P/CVE 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. The Study finds that misuse is often discriminatory, directed against religious, ethnic and cultural minorities, women, girls and LGBT and gender-diverse persons, indigenous communities, and other historically discriminated against groups in society. Finally, the Study finds limited monitoring and evaluation and/or independent oversight of countering terrorism or P/CVE laws and programming**.** Overall, accountability for violations of counter-terrorism related human rights abuses is either absent or deficient**.**  |
|  The Special Rapporteur further shares findings from her technical visits to the United States and the detention facility at the U.S. Naval Station, Guantanamo Bay, Cuba, and to the Northeast 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 Northeast of Syria. The gross and systematic human rights violations, potentially implicating core crimes experienced by children are particularly highlighted. |
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 I. Introduction

1. The present report is submitted by the Special Rapporteur pursuant to General Assembly resolution 72/180 and Human Rights Council resolution 49/10. The report 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 Report also includes the full scope of activities of the Special Rapporteur and concludes by addressing responsibility for serious violations of international law arising from the continued mass arbitrary detention, primarily of children, in various detention facilities in the Northeast of the Syrian Arab Republic.

 II. Activities of the Special Rapporteur

1. The SR prioritized sustained engagement with diverse Member States and regional groups. She conducted a country visit to Bosnia-Herzegovina (13–20 January 2023), and a joint thematic country visit to Germany and North-Macedonia (3-12 July 2023) addressing the repatriation, reintegration and prosecution of person returning from the Northeast of the Syrian Arab Republic.
2. The SR addressed issues related to the interface between 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 P/CVE (A/HRC/52/39), and her position paper on the Global Regulation of the Counter-Terrorism Spyware Technology Trade.[[3]](#footnote-3) She attended RightsCon Costa Rica and affirmed the necessity of global and binding regulation of the Spyware industry (June 2023).
3. The SR issued several position papers and multiple communications regarding human rights violations engaged while countering terrorism finance. These include the position paper addressing Counter-Terrorism Financing Regulation of Crowdfunding, Virtual Assets and New Payment Technologies. She continued to engage closely with the FATF attending the Private Sector Consultative Forum in Vienna (May 2023).
4. The SR undertook a technical visit to the United States and the detention facility at the U.S. Naval Station Guantánamo Bay), marking the first official UN expert visit to the site. The visit took place over a three-month period as it comprised three parts: (i) the rights of victims of the 11 September 2001 terrorist attacks; (ii) the rights of detainees at the Guantánamo Bay detention facility; and (iii) the rights of former detainees. The Special Rapporteur met with victims, survivors, and families of the 11 September 2001 terrorist attacks. She welcomed the open and constructive engagement of the US Government to facilitate the technical visit affirming the fundamental importance of access to all places of detention without exception.
5. The SR held that the terrorist attacks of September 11 constitute a crime against humanity. She commended the significant legislative, social, symbolic and financial support to the victims of terrorism, but found that gaps remain. Such gaps include the right to reparations including comprehensive legislative provision 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 fulfilment of the victims’ rights to justice and accountability was the use of torture. Torture was a betrayal of the rights of victims.
6. During the visit, the Special Rapporteur was given all requested access to detention facilities and detainees, including “high-value” and “non-high value”. She also met with military and civilian personnel, military commission personnel, and defense lawyers. Every detainee she met with continues to live with the unrelenting harm of rendition, torture, and arbitrary detention. Despite 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 pervades their day-to-day life, bringing severe insecurity, suffering, and anxiety to all, without exception. She concluded that the totality of practices and omissions have cumulative and compounding effects on detainees’ dignity and fundamental rights and amounts 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. For former detainees repatriated or resettled the Special Rapporteur remains intensely concerned that the vast majority lack the means and support to live a dignified life realised 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 through 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 underscores the obligations of receiving States as well as the continued obligation of the United States government in respect of persons who were tortured and arbitrarily detained by it. She underscores that there is no statute of limitations for torture as 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 & civic space[[4]](#footnote-4)

 A. Introduction

1. 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.
2. Despite 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% of the world’s population lives in countries with open civic space, 11.3% lived in countries where civic space has narrowed, 14.9% in countries where civic space is obstructed, 42.2% in countries where civic space is repressed, and 28.5% where civic space is closed.[[5]](#footnote-5) Building on her 2019 HRC report, the SR explored the interface between the proliferation of counter-terrorism norms, institutions post 9/11, and the constriction of civic space, affirming the resilience, capacity, and innovation of civil society in the face of immense challenges.[[6]](#footnote-6)
3. The Study begins with a close examination of the ever-expanding counter-terrorism and P/CVE architecture and provides observations on critical topics that underpin the range of impacts that counter-terrorism and P/CVE measures have on civil society and civic space. It goes on to detail the “playbook of misuse.” This includes 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 presents unique findings and data specific to the trends observed by Governments, civil society, the international community, including UN SPs mechanisms, as well as original research. While all topics addressed in the Global Study are presented in this report, detailed findings and observations can be found in the full report.[[7]](#footnote-7)

 B. The playbook of misuse

 (a) Judicial Harassment and Fair Trial Violations

1. Counter-terrorism and P/CVE 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% concerned judicial harassment.
2. Global Study respondents 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 are notably gendered. Children, as young as 13, have 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.
3. UN 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 subject to torture, ill-treatment and/or extrajudicial killings. Thirty-five per cent of Global Study inputs identified instances of alleged arbitrary detention in the counter-terrorism context, 27% of inputs alleged torture, and ill-treatment in counter-terrorism and/or P/CVE related detention, and 16% identified instances of extrajudicial killings.
4. 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 courts and often marked by the absence of or reduced powers for specialized human rights mechanisms.
5. Disproportionate sentencing based on the purportedly exceptional nature of terrorism, P/CVE and/or national security more broadly is also common, with prison sentences ranging upwards of 15 years or life or involving use of the death penalty.[[8]](#footnote-8) Global Study respondents also identified multiple situations involving children facing adult sentences under terrorism or violent extremism charges, and children detained because of their “association” with adults suspected of terrorism. Some identified individuals were also subjected to prolonged detention after serving their already disproportionate sentences.
6. Notwithstanding rule of law and governance challenges in many settings, there have been promising examples of judiciaries resisting misuse. For instance, in Niger, Honduras, India, Tunisia and Kenya, human rights defenders were freed or acquitted after being unfairly accused.

 (b) Overlapping Administrative Measures without Procedural Safeguards

1. 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. First, procedural administrative requirements which may appear to be facially neutral (they affect all non-profits or civil society actors equally), but in practice have a disproportionate impact on small grassroots organizations, women-led civil society, and civil society located in or representative of historically marginalized communities (often viewed as inherently ‘suspect’ by authorities). Second, specific administrative counter-terrorism or P/CVE measures which 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 is unavailable.
2. On 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 shows how increased proceduralism in administrative measures across regions has operated in unduly burdensome and discriminatory ways impacting 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 for failing 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 absent procedural and substantive due process rights. 57.6% of the CEDAW communication cases of undue regulation and registration of civil society reviewed pertained to restrictions based on countering terrorism.
3. Information provided to the Study demonstrate 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 impacting humanitarian actors, 53% of the impacts catalogued were operational, likely posing immediate barriers to the delivery of humanitarian assistance.[[9]](#footnote-9)
4. Travel bans and restrictions and border screening processes in the name of counter-terrorism have been documented by UN 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 these actions highlight vulnerability, create stigma, and open civil society actors up to greater scrutiny and other forms of rights interference. Notably, 33.3% of the HRC and CEDAW communications involving bans pertained to travel bans against women in the name of counter-terrorism. Remedies for such bans are poor and inaccessible.
5. States have also resorted to measures like expulsion, deportation and revocation of permanent residency status, and citizenship stripping—where the withdrawal is initiated by the authorities of the State—on counter-terrorism and P/CVE grounds. 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.
6. Some States have also initiated employment bans or restrictions, as well as public benefit restrictions on counter-terrorism and P/CVE grounds 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.
7. The use of any of these 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 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.

 (c) Misuse and Misapplication of Counter-Terrorism Financing Standards

1. Across regions, human rights defenders, humanitarians, political dissidents, journalists, lawyers, religious leaders, environmentalists, migrants and other civil society actors have been subject to countering the financing of terrorism (CFT) measures. These come in the forms of non-profit registration and reporting requirements, and a range of preventive, disciplinary, and enforcement measures like dissolution, surveillance, office raids, asset freezing, bank de-risking, and prosecutorial action. State implementation of CFT measures is often incentivized by global compliance pressures, including pursuant to the soft-law Financial Action Task Force Standards (FATF).
2. Whether intentionally or not, many stakeholders have erred towards a zero-risk approach to CFT, 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 CFT measures, not only to CSOs 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.
3. The starting point for the design of any CFT measure must be an assessment of terrorist financing risk. Risk assessments are the prerequisite for ensuring a necessary, proportionate CFT measure in line with both international human rights law and the FATF risk-based approach. In practice, risk assessments are rarely undertaken with sufficient regularity, specificity, and 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 identified the existence of a non-profit risk assessment, they commonly expressed concern that there was little to no public consultation, resulting in some cases with a shadow risk assessment undertaken by civil society and coming to completely different findings; for example, that existing regulatory requirements and non-profit self-governance measures were not taken into account. As of November 2021, out of 118 Mutual Evaluations, just six jurisdictions were found Compliant with FATF Recommendation 8, which requires a risk-based approach to terrorist financing risks in the non-profit sector.
4. Many States have focused their CFT efforts on restricting funding, typically foreign funding, to local civil society organizations, which can be especially debilitating for CSOs 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 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 CFT. Notably, successful appeals and/or judicial review of these registration and reporting requirements are rare though emerging, including in France and Nigeria.
5. Banks and financial intermediaries have played a central role in implementing CFT measures that affect civil society, particularly in adopting de-risking measures that terminate or otherwise restrict banking and other business relationships with civil society “to avoid, rather than manage, risk.”[[10]](#footnote-10) 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.

 (d) Human Rights and Humanitarian Harms of Sanctions and Listing

1. CSOs face cross-cutting challenges in the use of sanctions and listing related to terrorism, including through domestic implementation of UN 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 UN Security Council resolutions. The SR 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.[[11]](#footnote-11) Multiple submissions to the 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 SR welcomes the passage of UNSCR 2664 (2022) in response to civil society advocacy and human rights and humanitarian documentation, which established a limited, standing humanitarian-related “carve out” from Council agreed asset freezes. Member States must now, in line with operational paragraph 4, assess the compliance of their implementation of UN sanctions, including and for the purposes of this Study specifically counter-terrorism targeted sanctions regimes, with the exemption.

 (e) Weaponization of New Technologies Against Civil Society

1. 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 P/CVE, however, represent a fundamental threat to civil society and its meaningful participation.
2. Drawing on Global Study data, the present Report assesses how the development and deployment of new technologies for counter-terrorism and P/CVE purposes—namely surveillance, content moderation, internet shutdowns, biometrics and facial technology, and drones—have substantially limited the ability of civil society to exercise their fundamental rights and implement their core human rights, humanitarian, and other activities. The Global Study’s findings build upon the Special Rapporteur’s 2023 report to the Human Rights Council.[[12]](#footnote-12)
3. The ubiquity of sophisticated communications surveillance poses obvious threats to civil society actors and organizations’ rights to privacy and free expression, as well as related rights like the freedom of assembly and association, and freedom to manifest one’s religion.[[13]](#footnote-13) Many Global Study respondents reported experiences of digital surveillance and the transfer of their private data across Europe, the Middle East, Africa, Latin America,[[14]](#footnote-14) North America, and Asia & the Pacific, leading to deep concerns amongst 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 Mandate’s position paper 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.
4. The Global Study 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. Despite access to the Internet being widely recognized as an indispensable enabler of a broad range of human rights, there were at least 184 Internet shutdowns in 34 countries in 2021 according to Access Now (compared to 159 shutdowns in 29 countries in 2020).[[15]](#footnote-15) 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.
5. The Global Study further addresses how biometrics surveillance systems have been controversially used and underscored 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, UN Architecture, and the Role of UN Human Rights Mechanisms

1. The Global Study 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 UN engagement. It also draws on UN Human Rights Mechanisms’ documentation of the range and extent of violations to draw out data on the impact of counter-terrorism and P/CVE measures on civil society.

 (a) Meaningful Participation of Civil Society

1. 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 their 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.
2. Beyond these challenges, civil society is also faced with complex dynamics in their engagement with security actors. Security arenas, from intelligence services to interior ministries, are often places where civil society are not welcome. Participants reported that CSOs closely aligned with government are included to the exclusion of diverse and critical voices. Governments, and sometimes the UN, view civil society participation in many security contexts as a mostly cumbersome and unwelcome ‘box-ticking’ exercise.
3. 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 fora, and kill, injure, disappear, arbitrarily detain, and sanction them at home. Trust building requires confidence building-measures and must be sustained by concrete and consistent action.
4. Some areas of the UN system are practised in engaging civil society (such as UN Women whose mandate directly responds to feminist movements of civil society within the UN system). In contrast, counter-terrorism arenas at the UN have, been historically closed and inaccessible to civil society. There have been some positive developments assisted by the UNSG’s Office’s stated prioritisation of promoting civic space. One such example includes the formal recognition in the UN Global Counter-Terrorism Strategy of the value of civil society engagement. A few quarterly briefings to UN Member States from the UN Counter-Terrorism Coordination Compact have featured some civil society speakers, but civil society briefers to the UN Security Council, including women briefers, continue to face reprisal and threat from Member States. Greater ambition, consistency, and reorientation is needed to foster a meaningful and participatory space for civil society, if the UN is to lead by example.
5. The Study received numerous inputs which highlighted civil society’s frustrations with the lack of consistent, timely and meaningful engagement with the UN Security Council (specifically the Counter-Terrorism Committee), General Assembly and the CT entities specifically the special political mission of the UN CTED and UNOCT. The Security Council (including the CTC), as a prerequisite to the meaningful participation of civil society in counter-terrorism and P/CVE, must substantively address the misuse of counter-terrorism measures as a grave risk to peace and security. While the UN has robust procedures and policies on reprisals, including an Assistant Secretary-General level focal point within the system 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 PCVE at the national level.
6. The UNOCT’s lack of compliance with existing UN due diligence standards and related guidelines is a reality that civil society is closely attuned to, particularly given their experience of UNOCT as an increasingly programmatically engaged entity at the country level. While the UNCTED has increased its engagement with civil society since its establishment, including through country-visit discussions and additions to thematic meetings, civil society identified other challenges in the implementation of the UNCTED’s mandate. These 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.
7. If the UN 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 in the Financial Action Task Force’s engagement with the NPO Coalition on FATF 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.

 (b) The Role of UN Human Rights Mechanisms

1. The Global Study presented original research documenting how Human Rights and Treaty Bodies’ (HRTBs) concerns and recommendations relating to the use of counter-terrorism and C/PVE targeting civic space has increased over time, particularly since 2015.[[16]](#footnote-16) Following the terrorist attacks of September 11, 2001, and as expansive CT measures increased, UN human rights mechanisms began to address ways in which these measures conflicted with human rights standards. While these concerns were expressed generally, during the mid-2010s HRTBs began to turn their attention to the increasingly extensive use of security measures directed at civil society actors documenting a range of harms. Since 2013, HRTBs have begun to explicitly benchmark ongoing use of extreme security measures and/or 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, HRTBs remained concerned “that there is a risk that such emergency [CT] measures could, over time, become the norm rather than the exception.”[[17]](#footnote-17)
2. Given the human rights remit of the Human Rights Committee (HRC), it has understandably addressed a broader range of measures than has the CAT and CEDAW. All three committees, however, frequently address verbal and physical harassment, intimidation, and persecution, with CEDAW focusing predominantly on gender-based violence and harassment. HRC and CAT have further raised ongoing concerns about security legislation that is indiscriminate, overbroad, or that violates Convention rights compared to other types of measures. For both committees, half of all these concerns relate explicitly to the targeting of civic space. The following section details these concerns and subsequent HRTB recommendations for each type of measure or practice.
3. The UN HRTB system has widely documented trends across the categories of misuse documented in this report.[[18]](#footnote-18) 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 UN support to government-led action in this field. The HRC has thus taken a welcome lead in increasingly raising concerns about these trends and identifying such trends in granular and specific ways. The Study generally finds that the lack of integration of these trends in the risk and human rights analyses of the UN’s counter-terrorism architectures is rooted in a lack of political will to address these challenges in the UN Security Council and General Assembly, noting however, the positive call for such integration included in the 7th Review of the GCTS. The Study finds that increased integration of the CAT and CEDAW recommendations would advance the objectives of promoting and protecting civil society and civic space in these areas. In addition to the HRTBs, SPs 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 impact civil society running counter to international human rights standards. Nearly one hundred of the communications analyzed for this study contained detailed and nuanced analyses of provisions within national security, emergency, CT, P/CVE, immigration, and cybersecurity laws as well as measures regulating the existence and operation of civil society organizations. Special Procedure mandate holders use these communications to encourage 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 this guidance is implemented.
4. These communications frequently address one or more definitions (or lack thereof) for key terms or activities within security legislation, *inter alia*: “national security,”[[19]](#footnote-19) “religiously motivated extremist association,”[[20]](#footnote-20) “terrorist result,” “opposing the State” or “non-allegiance to its leadership,”[[21]](#footnote-21) “promoting terrorism,”[[22]](#footnote-22) “widespread terror through political extremism” and “serious social disturbance.”[[23]](#footnote-23) 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.[[24]](#footnote-24) 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.[[25]](#footnote-25) Some of the many trends identified by HRTBs, include the matter of 'permanent state[s] of emergency,’[[26]](#footnote-26) States use of overly broad actions as supporting terrorism or indirect support to terrorism provisions, may “capture a range of legitimate activities and that would restrict the work of civil society, lawyers, journalist, and human rights defenders in particular.”[[27]](#footnote-27) Also identified was the use of legislation to create unnecessary burdens, restrict financing, introduce bureaucratic hurdles, and even shut down CSOs which “has the effect of limiting, restricting and controlling civil society,”[[28]](#footnote-28) and expansive security surveillance powers which “creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders.”[[29]](#footnote-29) In regards to P/CVE, HRTBs have consistently held that employing 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,” particularly when it “is deployed, not part of a strategy to counter violent extremism, but as an offence in itself.”[[30]](#footnote-30)
5. As it relates to recommendations 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,”[[31]](#footnote-31) and that States “open a public space for discussion with civil society and experts to ensure conformity with international human rights standards.”[[32]](#footnote-32) Communications further call on governments to ensure that security legislation be subject to regular parliamentary process to ensure a robust, public debate, and not fast-tracked through urgent parliamentary processes.[[33]](#footnote-33)

 IV. Assessment of and Responsibility for Human Rights and Humanitarian Law Violations in Detention Facilities in Northeast Syria

 A. Violations of International Law

1. The SR conducted a technical visit to the Northeast of the Syrian Arab Republic from 15-20 July 2023, at the invitation of and with constructive facilitation by 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.[[34]](#footnote-34) The SR recognizes and acknowledges the grievous and scalar human rights abuses and violations of humanitarian law committed by Daesh in this territory and against its population, including core international crimes.[[35]](#footnote-35) She also recognizes the ongoing investigations of alleged serious international law violations in respect of the Syrian Arab Republic.[[36]](#footnote-36) She acknowledges the wide-ranging humanitarian challenges experienced by the population in the region, as a whole, and particularly highlights the challenges of access to water, electricity, food and medicine.
2. Based on figures made available to the SR, during and after the visit, and her own findings, over 70,000 men, women and children are currently detained in Northeast Syria. This includes over 65,000 in the two largest camps, Al-Hol and Al-Roj, of which over 31,000 are Iraqis and over 12,000 are third country nationals (TCNs). She notes that there are other closed camps in the region, including at least one that she has identified as under the control of a third State.[[37]](#footnote-37) In addition, 10,000 men are detained in twelve known detention centres throughout the territory of Northeast Syria, including over 1,000 detainees who were apprehended asboy-children and have since crossed the threshold into adulthood. Of these, approximately 3,000 are Iraqis and 2,000 are TCNs. The SR estimates that over 1,000 boy-children are detained in the region, either in prisons or in closed rehabilitation centres. She finds all of sites and procedures of detention in the territory to be mass, arbitrary and indefinite in nature and therefore all engage serious and systematic breaches of international law.[[38]](#footnote-38)
3. In this Report, the SR solely addresses 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;[[39]](#footnote-39) torture, cruel, inhuman and degrading treatment and punishment,[[40]](#footnote-40) sexual and gender-based violence and coercion;[[41]](#footnote-41) practices of trafficking and sexual exploitation;[[42]](#footnote-42) mass forced transfer and abduction of boy children[[43]](#footnote-43) and hostage taking;[[44]](#footnote-44) deliberate denial of access for humanitarian relief and deprivation of access to essential medical treatment, which can endanger the right to life;[[45]](#footnote-45) withholding of food (starvation) in detention;[[46]](#footnote-46); coercive interrogations;[[47]](#footnote-47) mass enforced disappearances;[[48]](#footnote-48) and trials lacking the “basic judicial guarantees which are recognized as essential by civilized peoples”.[[49]](#footnote-49)
4. She found all of 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 engage profound and systematic breaches of international law.[[50]](#footnote-50) She underscores that the vast majority of those detained are children, rendering Northeast Syria the largest site of detention of children for counter-terrorism purposes worldwide, and stresses that both under international human rights and humanitarian law children are entitled to special protection including during armed conflict,[[51]](#footnote-51) and that certain fundamental rights in respect of children constitute *erga omnes* obligations.[[52]](#footnote-52)
5. Torture, and other forms of ill-treatment, including of persons deprived of their liberty, irrespective of the charges or alleged rationale for their confinement, is 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.[[53]](#footnote-53) The prohibition of enforced disappearances is a *jus cogens* norm binding on both state and non-state actors.[[54]](#footnote-54) The failure to provide medical treatment to those hors de combat is a breach of treaty and customary law,[[55]](#footnote-55) obliging both state or non-state actors.[[56]](#footnote-56) 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 by 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 Northeast Syria and provoke alarm regarding the treatment of a majority child detainee population in multiple ‘camps’, prisons and ‘rehabilitation facilities.’ The SR recalls that not a single woman or girl child in these camps, nor any boy held in “rehabilitation centres” has been subject to any legal process, much less a human rights’ or IHL compliant one. She highlights the abject and abhorrent human rights conditions experienced by women and girls in Al-Hol and Al-Roj camp (housing, education, sanitary conditions) breaching a slew of fundamental both derogable and non-derogable norms.
6. The Special Rapporteur holds that the conditions of detention of children may amount to grave violations against children in times of conflict,[[57]](#footnote-57) including abduction of children, for those forcibly separated from their mothers, and use of children, particularly for intelligence gathering purposes,[[58]](#footnote-58) killing or maiming of children, including through torture/inhumane and degrading treatment and sexual violence against children, as well as the denial of humanitarian access.
7. The human rights and humanitarian law violations observed in places of detention in Northeast Syria, are not singular but systematic in nature. [[59]](#footnote-59) In respect of mass arbitrary detention[[60]](#footnote-60), 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 SR highlights the following elements of such crimes, noting that crimes against humanity[[61]](#footnote-61) 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 it may involve any form of violence against a civilian population”.[[62]](#footnote-62) 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**.[[63]](#footnote-63)** The SR highlights the cumulative nature of the human rights and humanitarian law violations engaged by detention, particularly of children, the vast majority under the age of 12 years. She notes that crimes against humanity requires by definition 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”.[[64]](#footnote-64) Notably, the mere presence of some combatants (non-civilians) among the population does not nullify the characterisation or status of the population as civilian. The term ‘civilian population’ means that the population must simply be **“**predominantly civilian in nature”.[[65]](#footnote-65)Crimes against humanity can also be committed not only against civilians in the strict sense but persons no longer taking part in hostilities, but against those *hors de combat*, in particular, due to their wounds or their being detained.[[66]](#footnote-66) The widespread nature of an attack on a civilian population can be quantitative or qualitative in nature; both requirements appear implicated in respect of the treatment of this detainee population.[[67]](#footnote-67) She highlights that policies that reach the threshold of crimes against humanity need not be disseminated, formalized or engage a pre-established plan.[[68]](#footnote-68) Knowledge of the conduct can be in general and not specific terms.[[69]](#footnote-69) 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 for Al Hol and Gweiran Sina’a (Panamora) prison

1. Augmenting the various human rights concerns pertaining to detention in the Northeast of Syria highlighted by the Special Rapporteur in her technical visit’s findings, she turns to particularly address the treatment of women in detention “camps”, particularly third country nationals, in addition to the treatment of men held in Gweiran Sina’a (Panamora) prison.
2. The Special Rapporteur has consistently communicated to governments on the situation of their nationals (women and girls) detained in Al-Hol and Al-Roj detention facilities.[[70]](#footnote-70) Her access to multiple sites of detention on this technical visit and complementary fact finding during others country visits affirm the following human rights abuses: (1) 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, 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 amount to mass enforced disappearance under international law;[[71]](#footnote-71) (2) 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; (3) evidence of coercive interrogation by both SDF and personnel of intelligence agencies of third countries in the context of regular interrogations;[[72]](#footnote-72) (5) evidence from former detainees concerning direct physical violence reaching the threshold of torture, inhuman and degrading treatment carried out by other detained persons and the Guard force; and (6) forced separation of children from their mothers causing extreme mental pain and suffering and further trauma;[[73]](#footnote-73) (7) 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 SR finds mass arbitrary detention of TCNs women and girls as engaged in Al-Hol Annex to constitute fundamental breaches of multiple international obligations, including *jus cogens* norms, and engaging the prohibition against core crimes.
3. The treatment and conditions of detention of women, girls and boys held in Al-Hol Annex, their extreme psychological suffering due 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. [[74]](#footnote-74) 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 to the extraterritorial implementation of their obligation to refrain from and prevent torture by taking positive measures to stop these serious violations. Failure to act, or acceptance to interview women, girls, and children held in these conditions may amount to acquiescence or complicity[[75]](#footnote-75) in the crime of torture, engaging both liability for torture practices and responsibility to grant compensation and redress to victims.
4. The SR 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 to ensure sustained, uninterrupted, and unhindered access by independent human rights experts and humanitarian agencies to that site by the detaining authority. 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 the SR visited in the region.[[76]](#footnote-76) She observed large holding rooms for detainees and medical facilities, though 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 this prison. The detaining authority confirmed the presence of widespread tuberculosis, then involving at least 50% of the prison population including the detained children, with no obvious quarantine or separation procedures in place. At that time, the detaining authority confirmed that no tuberculosis treatment program was in place and reported fatalities among prisoners and guards, without providing numbers. The SR recalls that untreated tuberculosis is a life-threatening condition estimated by the WHO to cause fatality in 50% 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 unforms of a brown hue. She found their physical condition to be of extreme concern, 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,[[77]](#footnote-77) and the absolute lack of the necessities for survival (food and essential medical treatment) to the detainee population.
5. The SR notes with concern the stated inability of the detaining authorities to provide information about the prison population, claiming that detainees often give contradictory identity details or were able to hide their identity, particularly after the January 2022 prison attack. This claim seems to lack credibility due to the information gathering exercise 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 happened 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 TB infection, and unreported fatalities.

 C. Considerations on the Question of Responsibility for Serious Human Rights Violations and Core International Crimes

1. The SR 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 rest with the detaining authority. She underscores that such serious violations can also implicate core international crimes[[78]](#footnote-78) through individual, including command criminal responsibility.
2. She highlights the following elements relevant to the question of responsibility. She recalls that under CA1 of the Geneva Conventions, States are bound to “ensure respect” for the provisions of IHL, including CA3 “in all circumstances”. She notes in particular the Nicaragua decision of the ICJ that States are “under an obligation not to encourage persons or groups (…) to act in violation of common Article 3 of the Geneva Conventions”.[[79]](#footnote-79) She notes that in addition to this negative component, there is a positive external component of CA1 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 CA3 of the Geneva Conventions.[[80]](#footnote-80) Failure to act diligently and take necessary measures may incur international responsibility, something, which can only be evaluated on a case-by-case basis.[[81]](#footnote-81)
3. She further highlights the obligations of Member States to prevent and suppress serious violation of international law, particularly regarding those obligations that are peremptory norms under international law (jus cogens),[[82]](#footnote-82) highlighting that a number of violations identified in this Report qualify as jus cogens.[[83]](#footnote-83) She recalls the general regime of state responsibility, particularly 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,[[84]](#footnote-84) including by knowingly providing an essential facility or financing the activity in question.[[85]](#footnote-85) The SR highlights that international core crimes may implicate Member States by omission or failure to act if situated to prevent serious violations of international law.
4. The Special Rapporteur underscores that the only international law compliant solution to the situation of mass arbitrary detention in Northeast Syria 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 repatriation, but many others have been regrettably unwilling to resolve the grievous situation of their nationals, particularly children.

 V. Conclusions

 A. Global study

1. **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 that took risks to give evidence to the Global Study, who take risks every day for the dignity and humanity of others deserve recognition, support, protection, defense, and care.**
2. **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 by 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 the goal of abusive State practice but rather its opposite, namely the continuance of instability, insecurity, and cultures of impunity and violence. The SR reiterates the full scope of 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 an implementation of these recommendations.**

 Recommendations for States

1. **Reorient militarized approaches to counter-terrorisms that respond to the deep evidence on strategies and investments that lead to successful prevention of violence advancing peace-making and peacebuilding alternatives.**
2. **Diligently pursue deliberate and intentional pruning of national, regional, and international counter-terrorism architectures that have bulged over the last twenty years to bring balance and human rights compliance in this arena.**
3. **Use the decades of documentation and implement recommendations by the HRTBs and SPs as a tool to achieve increased human rights and rule of law compliant responses to terrorism and violence.**
4. **Establish effective and transparent accountability mechanisms for violations of human rights resulting from the misuse of counter-terrorism and P/CVE measures.**
5. **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 strengthening of the rule of law, the institutionalization of human rights; advance accountability, mainstreaming anti-corruption and structural commitments to ensure prevention.**

 Recommendations for the United Nations

1. **Prioritize investments in rule of law-based approaches, throughout all UN entities, focused on addressing the conditions conducive to terrorism and violence rather than simple technocratically labelled counter-terrorism and P/CVE programming. This includes agencies, funds and programs that specialize in legal and security sector reform, good governance, gender equality and women’s peacebuilding, and broader community-based violence prevention to focus on those core areas of work rather than adapting programming to demands of counter-terrorism and P/CVE narratives.**
2. **Establish consistent, UN-wide public, principled, and official stances on the impact of counter-terrorism and P/CVE measures on civil society and civic space aimed at advancing their compliance with human rights and rule of law. This includes addressing the lack of visibility among senior UN officials as outspoken and clear on the documented impacts of counter-terrorism on civil society and civic space.**
3. **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 P/CVE measures in a sustained way utilizing the findings of this Study as a baseline.**
4. **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 UNOCT, in consultation with UN-Women and the Controller’s Office as suggested by the Secretary-General’s latest report (A/77/718) and adopt overdue procedures on the allocation of a minimum 15 per cent of all funds for counter-terrorism efforts to human rights and gender equality, as originally recommended in 2015 by the UN Secretary-General.**
5. **Implement all relevant recommendations of UN Women’s Global Digital Consultation and report on their implementation in appropriate forums.**

 B. Recommendations concerning Serious Violation of International Law in the Northeast of Syria

1. **Mass, arbitrary and indefinite detention of men, women and children in Northeast Syria must end. Repatriation of persons from all detention facilities must be advanced, in full observance of the absolute obligation to non-refoulement.**
2. **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 being committed against children in all places of detention.**
3. **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. 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.**
4. **The de-facto authorities in Northeast Syria are required under international humanitarian law to treat all detainees in their control humanely, without discrimination, and in respect of their inherent dignity.**
5. **Consideration should be given to addressing the grave violations against children in times of conflict through the CAAC agenda.**
6. **Impartial humanitarian actors must urgently have sustained and meaningful access to all places of detention especially those holding children in Northeast Syria.**

1. \* A/78/150. [↑](#footnote-ref-1)
2. \*\* The present report was submitted after the deadline in order to reflect the most recent information. [↑](#footnote-ref-2)
3. Global Regulation of the Counter-Terrorism Spyware Technology Trade: Scoping Proposals for a Human-Rights Compliant Approach (April 2023). [↑](#footnote-ref-3)
4. All citations unless otherwise noted are attributable to the Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space. [hereinafter Global Study] available at defendcivicspace.com. [↑](#footnote-ref-4)
5. Global Study, *citing* CIVICUS, “Civic Space in Numbers,” Civicus Monitor. Available at: [*https://monitor.civicus.org/facts/*](https://monitor.civicus.org/facts/)(accessed on 28 May 2023). [↑](#footnote-ref-5)
6. A/HRC/40/52. [↑](#footnote-ref-6)
7. Full text accessible at: defendcivicspace.com. [↑](#footnote-ref-7)
8. According to a review of Human Rights Committee Concluding Observations, there were 16 concerning application of the death penalty, with 18.8% of those cases involving counter-terrorism measures against civil society. [↑](#footnote-ref-8)
9. Global Study, *citing* Interaction (2021). [↑](#footnote-ref-9)
10. 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. [↑](#footnote-ref-10)
11. A/73/361, para. 19; A/65/258, see in particular paras 53-58; A/67/396; A/HRC/34/61, paras 17-20. [↑](#footnote-ref-11)
12. A/HRC/52/39. [↑](#footnote-ref-12)
13. *Position paper of the Special Rapporteur on the Global Regulation of the Counter-Terrorism Spyware Technology Trade* (Spyware Position Paper) (2023), paras. 36-47. [↑](#footnote-ref-13)
14. Consultation with respondents from Latin America & the Caribbean as part of the Global Study. [↑](#footnote-ref-14)
15. https://www.accessnow.org/keepiton.. [↑](#footnote-ref-15)
16. All reference to data, research briefs and findings in this section are available via the Global Study; See: https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT\_GlobalStudy\_Thematic-Brief\_UN-Human-Rights-Treaty-Bodies.pdf), Special Procedures & the Misuse of Counter-Terrorism and P/CVE (online: https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT\_Global\_Study\_Thematic-Brief\_CTHR-Policy-Report-SPs.pdf). [↑](#footnote-ref-16)
17. CCPR/C/AUS/CO/6, para. 15. [↑](#footnote-ref-17)
18. See full data set: https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT\_GlobalStudy\_Thematic-Brief\_UN-Human-Rights-Treaty-Bodies.pdf. [↑](#footnote-ref-18)
19. AUS 2/2018. [↑](#footnote-ref-19)
20. AUT 2/2021. [↑](#footnote-ref-20)
21. ARE 6/2020. [↑](#footnote-ref-21)
22. CAN 1/2015. [↑](#footnote-ref-22)
23. BRA 8/2015. [↑](#footnote-ref-23)
24. BRA 2/2014, p. 2. [↑](#footnote-ref-24)
25. ARE 6/2020;, DNK 3/2021. [↑](#footnote-ref-25)
26. FRA 2/2020, p. 4. [↑](#footnote-ref-26)
27. NZL 1/2021, p. 4-5; ZMB 1/2021, p. 4. [↑](#footnote-ref-27)
28. Ibid, pp. 6-7. [↑](#footnote-ref-28)
29. A/HRC/41/35, para. 26. [↑](#footnote-ref-29)
30. ETH 3/2019, p. 8; EGY 4/2020, p. 2. [↑](#footnote-ref-30)
31. ETH 3/2019, p. 3. [↑](#footnote-ref-31)
32. BLR 2/2021, p. 9. [↑](#footnote-ref-32)
33. BRA 6/2021, p. 4; EGY 6/2021, p. 5. [↑](#footnote-ref-33)
34. End of Mission Statement (EoM), access was provided to al-Hol and al-Roj camps, Gweiran Sina’a (Panamora), and Alaya prisons, and two places where boy-children/adolescent boys are detained (Houri and Orkesh). The SR was not given access to Al-Hol annex. [↑](#footnote-ref-34)
35. Special Rapporteur’s Position Paper on the 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 (2023). [↑](#footnote-ref-35)
36. International, Impartial and Independent Mechanism (IIIM) (2011); Commission of Inquiry on the Syrian Arab Republic (2011). [↑](#footnote-ref-36)
37. AL TUN 6/2021. [↑](#footnote-ref-37)
38. EoM, para 5 & 6. [↑](#footnote-ref-38)
39. GC III arts 21; AP I art. 75; AP II arts. 4, 5, CA3, GCs (1949); Rule 99 ICRC Customary International Law Study (2003), Art. 9 ICCPR; CCPR/C/GC/35 (2014); Art. 9 of UDHR, Art. 37 CRC, Art. 7(1)(e) ICC Statute, Prosecutor v. Milorad Krnojelac case no. IT-97-25-T, Trial Chamber, 15 March 2002, (“Judgment”), para. 105. [↑](#footnote-ref-39)
40. CA3, GCs (1949); GC III art. 13, Rule 90 ICRC, Art. 1, 2, and 16 CAT; Art. 7 of the ICCPR; Art. 5 of the UDHR; Art. 37 CRC; art.7(1)(f) of the ICC Statute. [↑](#footnote-ref-40)
41. CA3, GCs (1949); GC III art. 14(2) Rule 93 ICRC; Art. 7(1)(g) ICC Statute. [↑](#footnote-ref-41)
42. GA resolution 55/25 (Nov. 2000). [↑](#footnote-ref-42)
43. Rules 93, 105, 131 and 135 ICRC; CRC, Art. 2,9, and 35. [↑](#footnote-ref-43)
44. CA3 (GCs), Rule 96, ICRC. [↑](#footnote-ref-44)
45. CA3, (GCs); Rule 55, ICRC; Art. 6 ICCPR; Art. 7(1) ICC Statute. [↑](#footnote-ref-45)
46. Art. 17, Lieber Code (1863); Amended art. 8 of ICC Statute, Art. 14 GC Additional Protocol II, ; Military Manuals (cf. Australia, France, USA, USSR); Rules 53, 54 and 118 ICRC . [↑](#footnote-ref-46)
47. See footnote 38 on prohibition of torture. [↑](#footnote-ref-47)
48. Convention for the Protection of all Persons from Enforced Disappearance (2006), art. 1 and 2; Rules 98, 116, 117, and 123 ICRC, Art. 7(1)(i) ICC Statute. [↑](#footnote-ref-48)
49. CA3 (GCs); noting the ICJ decision in Nicaragua v. US (1986) para 218, Principle V, Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (1950); rules 100 and 103 ICRC, art. 9 and 14 ICCPR. [↑](#footnote-ref-49)
50. EoM para 5 & 6. [↑](#footnote-ref-50)
51. ICRC, Rule 135; Art. 3, Geneva Declaration of the Rights of the Child (1924); ICC Statute 1998, art. 68(1). [↑](#footnote-ref-51)
52. Geraldine Van Burren, The International Law on the Rights of the Child (1995); Legal Status and Human Rights of the Child Advisory Op IAmCHR (2002), paras 57-61. [↑](#footnote-ref-52)
53. Art. 5, 1948 UDHR; Art. 7 ICCPR; Art. 37(a) CRC; see generally CAT; Prosecutor v. Anto Furundzija, IT-95-17/1-T, ICTY, paras 155-157; Brothers Gomez Paquiyauri v Peru, IACtHR, 8 July 2004, para 112. [↑](#footnote-ref-53)
54. CED (2010); Chapman Blake v Guatemala, IACtHR, (1998). [↑](#footnote-ref-54)
55. CA3 (GC), CA2 (GC). [↑](#footnote-ref-55)
56. Articles 1, 3(1)(a) (GC). [↑](#footnote-ref-56)
57. UNSCR 1261 (1999) [↑](#footnote-ref-57)
58. S/2021/398, paras 15 and 16. [↑](#footnote-ref-58)
59. ICC, Prosecutor v. Bosco Ntaganda, 8 July 2019, para. 692; Katanga, Decision on the Confirmation of Charges, 30 September 2008, para. 397; Ntaganda, Trial Judgement paras. 692-693. [↑](#footnote-ref-59)
60. Imprisonment, Torture, enforced disappearances of persons, forcible transfer of population, other inhumane acts which would constitute a violation of Article 7(1) ICC. See Prosecutor v. Milorad Krnojelac, ICTY (2002), paras 113-115. [↑](#footnote-ref-60)
61. Article 7(1) ICC Statute. [↑](#footnote-ref-61)
62. ICC Katanga, Trial Chamber II, 7 March 2014, para. 1101; ICTY, Prosecutor v. Dragoljub Kunarac, et al. IT-96-23-T & IT-96-23/1-T, ICTY, (2001), para. 419. [↑](#footnote-ref-62)
63. Prosecutor v. Laurent Gbagbo, ICC, (2014), No. ICC-02/11-01/11, para 209. [↑](#footnote-ref-63)
64. *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T & IT-96-23/1-T, ICTY, 22 February 2001, para. 426. [↑](#footnote-ref-64)
65. Prosecutor v. Dario Kordic, Mario Cerkez IT-95-14/2-T, ICTY, (2001), para. 180. [↑](#footnote-ref-65)
66. Rule 47, ICRC Customary International Law Study; Prosecutor v. Tihomir Blaskic, IT-95-14-T, ICTY, (2000), para. 214; The Prosecutor v Bosco Ntaganda, ICC Appeals Chamber, (2022), No. ICC-01/04-02/06 A4-AB, para 424. [↑](#footnote-ref-66)
67. Ntaganda, para 691; Kunarac, para 428; Prosecutor v Jean-Pierre Bemba Gombo, ICC,(2016), No. ICC-01/05-01/08, para 163. [↑](#footnote-ref-67)
68. Bemba (21 March 2016), para 160; Katanga (ICC-01/04-01/07) 7 March 2014, para. 1109. [↑](#footnote-ref-68)
69. Gbagbo para 214. [↑](#footnote-ref-69)
70. [Return and Repatriation of Foreign Fighters and their families |OHCHR](https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families). [↑](#footnote-ref-70)
71. ICRC, Rule 98. EOM evidence appears to confirm that intelligence services of third countries have regular and sustained access for interrogation purposes to this population. [↑](#footnote-ref-71)
72. Interrogations confirmed by interviews with former detainees during multiple country visits by the Special Rapporteur in the past 3 years. [↑](#footnote-ref-72)
73. ICC (OTP) *Policy on Children* (2016) at 21–22 paras. 44–47; Children and Armed Conflict – Report of Secretary-General, at 1 para. 1, June 5, 2023, U.N. Doc. A/77/895-S/2023/363. [↑](#footnote-ref-73)
74. A/HRC/43/49, paras 66, 67 and 70. [↑](#footnote-ref-74)
75. ICC Statute, art. 25 (3) (b-d); CAT art. 1; A/HRC/14/46, para.23. [↑](#footnote-ref-75)
76. USA 2/2022; SWE 1/2022; GBR 1/2022; FRA 1/2022; DEU 1/2022; AUT 1/2022; AUS 1/2022 [↑](#footnote-ref-76)
77. Letter dated 12 July 2022, in response to the communication by SPs https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=37003. [↑](#footnote-ref-77)
78. Articles 7, ICC Statute (1988). [↑](#footnote-ref-78)
79. Nicaragua v. United States of America, ICJ, Merits, (1986), para 220; Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)) (provisional measures) Order of 8 April 1993 which ordered States Parties with influence over ‘miliary, paramilitary or irregular armed units which may be directed or supported by it” to refrain from illicit acts. [↑](#footnote-ref-79)
80. ICRC Updated Commentary to the Geneva Convention I, 2016, Article 1, paras 153 and ff [↑](#footnote-ref-80)
81. 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 723-24. [↑](#footnote-ref-81)
82. Draft articles on responsibility of States for internationally wrongful acts, with commentaries (2001) article 4; ILC Chapter IV Peremptory norms of general international law (jus cogens) Conclusion 19. [↑](#footnote-ref-82)
83. ILC Chapter IV (jus cogens) Conclusion 23. [↑](#footnote-ref-83)
84. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Art. 16. [↑](#footnote-ref-84)
85. Ibid. [↑](#footnote-ref-85)