"Weaponising Counter-Terrorism and National Security to Imprison MENA Human Rights Defenders"

The Church Center, 777 UN Plaza, 11th Floor
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Remarks of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul

Friends, distinguished guests

I thank the International Service for Human Rights, Front Line Defenders, CIVICUS, Middle East Democrary Center, Gulf Centre for Human Rights, and Human Rights Watch for co-hosting this event and pay tribute to their vital work in documenting and raising awareness about human rights violations, particularly in the Middle East and North Africa (MENA) region, all of which has been of great assistance to me in my work as Special Rapporteur.

I wish to highlight four key concerns regarding the use of counter-terrorism and national security measures to target human rights defenders working in the region, which are evident from the mandate's communications, country visits, and its *Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space*. The misuse of counter-terrorism laws is facilitated by the prevalence of non-democratic political cultures in the region, and has been enabled by the Security Council requiring all countries to implement counter-terrorism laws regardless of whether particular countries respect the rule of law, independent judiciaries, and fair trial safeguards.

The first is that States use broad and vague legal definitions of terrorism and extremism to restrict civic space and human rights. Some examples include:

- The UAE's Federal Law No. 7/2014, which depends upon imprecise and uncertain definitions of "terrorist offence" and "terrorist purpose" in Article 1. This has been a consistent focus of international concern, as in relation to the "UAE 87" trial and the "UAE 94" trial[1] and the suppression of democracy activism during the Arab Spring.
- Algeria's Ordinance No. 21-08 modifying its Penal Code, which defines as terrorist "any act aimed at the security of the state, national unity, and the stability and normal functioning of institutions". This law has been ripe for misuse against legitimate protest, free expression, and human rights defenders.[2]
- The Egyptian Anti-Terrorism Law, which similarly adopts a broad definition of terrorist acts, including "harms to national unity, social peace, or national security" or

[1] AL ARE 1/2024.
[2] The amended Article 87 bis of the Code Pénal: "tout acte visant la sûreté de l'Etat, l'unité nationale et la stabilité et le fonctionnement normal des institutions". See OL DZA 12/2021.

"preventing or hindering public authorities, judicial bodies, government facilities, and others".[3] These concepts encompass a range of activities protected by the freedoms of opinion, expression, association, and political participation, and the law has been used to suppress broad-based political movements.

- The Turkish Anti-Terror Law, which displays the same problematic over-breadth of scope, defining terrorist conduct to include any act done with the aim of changing the characteristics of the Republic by means of "pressure, force and violence … oppression or threat".[4] While the definition catches some genuinely terrorist activity, its broad scope allows for arbitrary abuse and targeting against those human rights defenders, journalists, lawyers, political opponents, and other activists who seek to reform the country through the pressure of public opinion, non-violent industrial action, or political change. The law has been used to suppress human rights defenders, the Gülen political movement, and Kurdish minority political activism.
- Tunisia's Organic Law No. 2015-26, as amended by Organic Law No. 2019-9, which criminalizes acts such as "undermining food security and the environment", "causing damage to public or private property, vital resources, infrastructure, means of transport or communication" as well as "accusing or calling for apostasy, or inciting or advocating hatred or animosity between races, doctrines and religions". Tunisian counter-terrorism law has even been used against lawyers to disrupt the rule of law.[5]

In many of the these and other MENA countries, over-broad terrorism definitions are compounded by vague and over-broad offences relating to preparation for terrorism, terrorist organizations, and speech-related terrorism offences. National strategies to prevent and counter "violent extremism" can also be based on undefined or over-broad concepts which risk infringing on fundamental rights.

My mandate has long argued that the definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,[6] the definition found in Security Council resolution 1566 (2004), and that endorsed by the General Assembly. It is a matter of continuing concern that, despite the model definition of terrorism advocated in 2010 by one of my predecessors in this mandate, Professor Martin Scheinin,[7] so many States, including in the MENA region, persist with overbroad definitions of terrorism which grant excessive discretion to state officials, not only allowing for misuse, but the very uncertainty of which creates a chilling effect on freedom of expression and civic participation.

A second concern is the growing pattern of abusively designating or listing individuals as terrorists for the purpose of travels bans and assets freezes. Such measures are often based on broad underlying definitions of terrorism, coupled with low thresholds of proof and a lack of due process and judicial safeguards. Counter-terrorism legislation in Israel, for instance,

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3 OL EGY 4/2020.
4 OL TUR 13/2020.
5 AL TUN 2/2024.
6 See, e.g. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); International Convention on the Taking of Hostages (Hostages Convention) of 1979; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents of 1973.
7 A/HRC/16/51, para. 28.

allows for the designation of persons and organizations as terrorist entities without appeal.[8] Lack of clarity with respect to terrorist financing laws in particular has led to draconian treatment of civil society organizations and actors, especially those in receipt of funds from overseas or political groups. Targets of this sort of action include BBC Persian,[9] the Egyptian Initiative for Personal Rights,[10] and CSOs and human rights defenders in Egypt,[11] Palestine,[12] Tunisia,[13] Libya[14] and elsewhere. Terrorist listing also have adverse impacts on the right to reputation, family life and property rights. Such measures are part of a wider pattern of transnational repression, which in some cases has also involved violence or threats of violence, as in attacks on Iran International journalists in London.

A third concern is the lack of independent judiciaries and fair trials in the context of countering terrorism. Irregularities are rife in the region, including false charges, forced confessions and torture; the use of irregular military, ad hoc or emergency courts, and political interference in the judiciary; excessive pre-trial detention;[15] holding suspects in arguably cruel or inhuman conditions;[16] the denial of access to legal counsel and the right to confidentially communicate with legal counsel; reprisals against and imprisonment of lawyers for doing their jobs defending activists or political opponents; and trials in absentia as a technique of transnational repression of exiles.[17] In Turkey, human rights defenders and political activists have been detained in custody on terrorism charges far beyond statutory limits,[18] and have been barred from contacting their lawyers.[19] Thousands of people there have been subject to legal purges in relation to the Gülen movement. The UAE 87 and UAE 94 experienced similar violations.[20] In Egypt, the phenomenon of "case recycling" has seen individuals suffer double jeopardy when new but similar charges are brought in relation to conduct which has already been subject to charges or convictions.

A final concerning development is the way that new technologies are making 'old' methods of curtailing and harassing civil society cheaper and easier. The weaponization of new technologies, including spyware, facial recognition software, and personal data collection and sharing at borders, to unmask, track, and target human rights defenders is of real concern. As my mandate identified in its 2023 position paper, spyware technology used by States for purported counter-terrorist purposes has led to credible reports of torture, unlawful arrest, and physical violence against human rights defenders, including in Bahrain, Egypt, and Saudi Arabia, as well as widespread interferences with rights to privacy, freedom of expression and association, and particular gender harms like gender-based defamation, blackmail using intimate images, and doxing. There is an urgent need for effective global regulation. Most recently I am concerned about the human rights implications of the draft Cybercrime Convention, which could become another tool for tracking dissidents in the region.

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8 OL ISR 6/2022.
9 AL IRN 7/2024.
10 AL EGY 2/2022.
11 AL EGY 2/2022; AL EGY 2/2023; AL EGY7/2023.
12 AL ISR 11/2022.
13 Al TUN 2/2024.
14 OL LBY 3/2023.
15 OL BHR 2/2023.
16 AL ISR 15/2022.
17 AL TUR 5/2024.
18 AL TUR 6/2022.
19 AL TUR 2/2023.
20 AL ARE 1/2024.

In conclusion, in light of the grave threats posed by the weaponization and bad faith misuse of counter-terrorism legislation and practice, including against human rights defenders in the MENA region, I reiterate my commitment to work with civil society actors, particularly those in MENA countries, and to advocate for their concerns in UN counter-terrorism discussions and initiatives here in New York, in Geneva, and internationally during my work with regional organizations and individual countries. My recent annual report the General Assembly identifies how regional organizations can present risks to human rights, in the MENA region including the League of Arab States and its Arab Interior Ministers Council, the Gulf Cooperation Council, and the Organization of Islamic Cooperation. However, regional organizations can also be vehicles to strengthen and disseminate human rights norms throughout member states, and there are opportunities to work with them. The persistent misuse of CT to cloak human rights abuses must be stopped. It undermines individuals' human rights, as well as human rights protections globally and it does a disservice to victims of terrorism – I commend the important work that you do to address this problem and commit to continuing to support your work.

Thank you.