



ARTICLE 19 Submission
**to OHCHR report on “best practices and lessons learned
on how protecting and promoting human rights contribute to preventing
and countering violent extremism”**

May 2016

ARTICLE 19 welcomes this opportunity to submit information to OHCHR to assist in the preparation of the report on “best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism”, pursuant to HRC resolution 30/15 (September 2015).

The submission focuses on the compliance of initiatives and programmes aimed at “preventing” or “countering violent extremism” (P/CVE) with international freedom of expression standards. In the Annexes to the submission also includes further materials issued by ARTICLE 19 on this issue.

International freedom of expression standards and P/CVE initiatives

HRC Resolution 30/15 provides assurances that P/CVE initiatives must comply with international human rights law, and includes positive references to protecting the right to freedom of expression in particular. ARTICLE 19 welcomes the reiteration of this in the UN Secretary General’s Plan of Action to prevent violent extremism.

The right to freedom of expression is protected in Article 19 of the Universal Declaration of Human Rights (UDHR),¹ which is elaborated upon and given legal force in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).² These guarantees are replicated in many other international human rights instruments, as well as in regional counterparts.

In General Comment No. 34, the UN Human Rights Committee (HR Committee) affirmed that the right to freedom of expression has a broad scope, covering information and ideas of all kinds, as well as the means of dissemination.³ The Committee specifies that Article 19(2) ICCPR “embraces even expression that may be regarded as deeply offensive.”⁴

Though the right to freedom of expression is fundamental, it is not absolute. Article 19(3) ICCPR, for example, places the onus on states party to justify any limitations they place on the right are:

¹ UN General Assembly Resolution 217A(III), adopted 10 December 1948

² Article 2 of the ICCPR, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967)

³ UN Human Rights Committee, [General Comment No.34](#), CCPR/C/GC/3, at paras. 11- 12.

⁴ *Ibid.*, para. 11.

- Provided by law;
- Pursue a legitimate aim; and,
- Are necessary to the legitimate aim and proportionate.

International human rights law further requires limitations to not be discriminatory, for example on the basis of nationality, race, religion or migrant/refugee status.⁵

ARTICLE 19 is concerned that some P/CVE initiatives may restrict the right to freedom of expression as well as other human rights. ARTICLE 19 is also considered that HRC Resolution 30/15 fails to give sufficient and specific protection to the right to freedom of expression (see analysis, Annex III).

A. Provided for by law: issues of definition

“Violent extremism” is not defined under international human rights law. The UN Security Council, UN Secretariat, and General Assembly employ the language routinely.⁶ At the same time, none of these documents provide a working definition of ‘extremism’ or ‘violent extremism’, or what the difference between these concepts might be.

HRC resolution 30/15, at Operation Paragraph 1, comes close to an attempted (but not binding) definition in its description of “*acts, methods and practices of violent extremism*” as:

Activities that aim to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threaten territorial integrity and the security of States, and destabilize legitimately constituted Governments.

This closely resembles the United Kingdom’s definition of “extremism” (without the “violent”), the breadth of which has been criticised by the UK independent reviewer of terrorism legislation, including for its potential impact on freedom of expression.⁷ Elsewhere, the resolution references “extremist” conduct without connecting it to violence, and in others implies that the term describes an ideology supportive of (violent) “extremist” conduct, but that does not necessarily reach the threshold of incitement to acts of violence.⁸ (For a deeper textual analysis of the resolution, see Annex III.)

The implication of HRC 30/15 is that “violent extremism” is a broader phenomenon than “terrorism;” it captures both an ideology and conduct presumed indicative of a future propensity to violence, but falls (an undetermined distance) short of preparatory acts for terrorism, material support for terrorism, or incitement to terrorist acts.

This problem is acknowledged though not addressed in the UN Secretary General’s Plan of Action to prevent violent extremism, where he warns that the potential conflation of “violent

⁵ ICCPR, Articles 2(1) and 26.

⁶ See, for example, UN Security Council Resolution 2178 (2014).

⁷ UK Counter-Extremism Strategy, October 2015, para.: “the vocal or active opposition to fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs, as well as calls for the death of UK armed forces at home or abroad.”

⁸ The resolution makes sporadic use of ambiguous phrases, such as “extremist ideologies or intolerance” (without mentioning “violence”), “violent extremists and their supporters” (implying one can support violent extremists without being a violent extremist), “radicalization”, and “narratives that incite violent extremism” (which presumably covers incitement to an ideology, in addition to incitement to acts of violence).

extremism” with “terrorism” may “lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts”.⁹

In his March 2016 report to the 31st Session of the HRC, the UN Special Rapporteur on protecting and promoting human rights while countering terrorism raised a range of concerns regarding definitions, questioning how “violent extremism” or “extremism” differ from concepts such as “terrorism” or “incitement to terrorism”.¹⁰ The UN itself has struggled to reach even a unanimous view of the definition of “terrorism.”¹¹

This is becoming an increasingly pressing concern for freedom of expression advocates. In their 2016 Joint Declaration, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information (“the free expression mandates”) raised concerns regarding the lack of any definition for “violent extremism.” They noted that P/CVE programmes and initiatives “generally offer insufficiently clear definitions of ‘extremism’ or ‘radicalisation’ and that some governments target journalists, bloggers, political dissidents, activists and/or human rights defenders as ‘extremists’ or ‘terrorists’.”

The free expression mandates recommended to States that:

The concepts of ‘violent extremism’ and ‘extremism’ should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.

ARTICLE 19 shares these concerns: what is “extremism” is intrinsically vague and subjective, relative to each individual’s determination of what is “moderate”, “reasonable”, or “normal.” Whether “extremism” or “violent extremism” can be defined with sufficient precision to meet the requirement of legality under Article 19(3) ICCPR is doubtful without duplicating the concepts of “terrorism” or “incitement to terrorism.”

Given the lack of clarity around these notions, ARTICLE 19 believes that “extremism” is best understood as a socio-political – rather than legal – concept used to describe an ideology (i.e. opinions) or actions, including the dissemination of opinions, which fall short of acts of terrorism or incitement to terrorism and may therefore be lawful both from a domestic law and international law perspective. In general, however, we note that to characterise a point of view as ‘extreme’ is merely pejorative without saying anything about the content of those views.

⁹ *Ibid.*, para. 4, p. 2.

¹⁰ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/31/65, 22 February 2016, para 11. For an insightful analysis of Emerson’s report, see Faiza Patel, [Human rights risks to countering violent extremism programs](#).

¹¹ See e.g. UNODC, [Frequently Asked Questions on International Law Aspects of Countering Terrorism](#), 2009, p. 4, or UNODC, [The Use of the Internet for Terrorist Purposes](#), 2012, para 49.

“Violent extremism” is equally undefined as a legal concept. It may be described as a subset of “extremism,” i.e. any view regarded as exceptional to what “extremism” already contains *and* involving the use or promotion of violence, including the use of force. In that sense, it is closely related to terrorism or “incitement to terrorism.” In the absence of a definition of “extremism,” however, merely qualifying “extremism” of being ‘violent’ does not really help clarify what “violent extremism” is intended to cover.

For this reason, ARTICLE 19 believes that using the term “violent extremism” is unhelpful. Moreover, given the difficulties in defining “terrorism” and “incitement to violence” internationally, ARTICLE 19 believes that a positive case would have to be made as to why the use of the term “violent extremism” adds anything useful to the terms “terrorism” or “incitement to violence.” If nothing else, it is merely broader and less defined concept and more likely to create confusion, particularly when it comes to the adoption of initiatives to deal with this phenomenon.

B. Legitimate aim

Any limitation on freedom of expression must be in pursuit of a legitimate aim, listed exhaustively in Article 19(3) of the ICCPR.

The Johannesburg Principles do not define “national security”, but provide at Principle 2a guidance on identifying legitimate national security interests:

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use of threat of force.¹²

The Johannesburg Principles 2a and 7b further provide guidance on what does not constitute a legitimate national security objective for limitations on freedom of expression. This includes any limitation:

To protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

They specify that states should guarantee that:

No one may be punished for criticising or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

The HR Committee reflects many of these concerns. In relation to limitations for the purpose of the protection of national security, they warn that:

Extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws

¹² See also, Principles on the Limitation and Derogation Provisions in the ICCPR (UN Economic and Social Council) 1985, “The Siracusa Principles”, paras 29 – 32.

or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.¹³

In ARTICLE 19's experience, in the light of the lack of definition (mentioned above), the application of term "violent extremism" in the domestic laws is extremely broad and amounts to in breach of the legality requirement under international human rights law. In particular, it can cover anything from actual terrorist activities, to any potential threat to national security, to incitement to discrimination, hatred and violence on various discrimination grounds to other types of speech. As such, it may be used to silence not only terrorist groups but also a broad range of opinions and activities which are perfectly legitimate. These include abuse of laws that go beyond prohibitions of incitement permissible under Article 20 para 2 of the ICCPR. In particular, as demonstrated in previous section, legislation often broadens these kinds of content-based restrictions on apology of terrorism, without clear showing of intent to incite violence or a causal connection between the expression and likely/imminent violence.

The restrictions are more prominent for the online speech, including blocking of entire websites under "extremism" and blacklisting powers.¹⁴ We are also concerned by PVE proposals that prohibit targeted individuals' access to the Internet or specific online platforms, measures for the blocking of lawful online content, and blanket restrictions on access to specific platforms or encryption services. We increasingly see governments seeking to enlist private companies to "voluntarily" monitor or remove lawful content on the basis of its alleged connections to "violent extremism", where governments themselves lack these powers. These measures often lack proper procedural safeguards and pose a serious danger to the rights to freedom of expression and privacy online. Governments and inter-governmental bodies too often overlook the enormous potential of a free and open Internet to enable robust debate and make a positive contribution to P/CVE.¹⁵

C. Necessity and proportionality

The HR Committee is clear that it is for the State party to demonstrate "in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."

The Johannesburg Principles on freedom of expression and national security provide at Principle 6 that demonstrating expression actually threatens national security requires:

- The expression is intended to incite imminent violence;
- It is likely to incite such violence; and
- There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence

¹³ General Comment No. 34, *op. cit.*, at para. 30.

¹⁴ See for example, ARTICLE 19, [Russia: Increased Internet regulation poses serious challenge to online expression](#), 4 March 2016.

¹⁵ We appreciate that the Secretary General notes in his Plan of Action that "thousands of young activists and artists are fighting back against violent extremism online through music, art, film, comics and humour", *op. cit.*, para 55.

The HR Committee has raised specific concerns on formulations such as “extremist activity” to restrict freedom of expression in ways that are unnecessary and disproportionate:

States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offences of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities.¹⁶

Since the adoption of General Comment No.34, the HR Committee has continued to be critical of overbroad national laws. In its Concluding Observations on France, adopted in 2015, the Committee expressed concerns with Act No. 2014-1353 of 13 November 2014, which amended anti-terrorism provisions; it said that in particular the provisions on “*apologie*” and “*incitement*” are “*hard to reconcile with the rights set out in the Covenant.*” In particular, they found the terms of the law vague and inaccurate, and also indicated that their scope was not compatible with the requirements of necessity.¹⁷ They also questioned the expedited criminal procedure available for these offences, and its compatibility with ICCPR Article 14. In relation to the United Kingdom, the HR Committee also ruled that its definition of “terrorism” in the Terrorism Act 2000 is “unduly restrictive of political expression.”¹⁸

At the regional level, the Venice Commission (responding to a Russian “extremism” law) has expressed reservations regarding the broadening of criminal liability:

Expanding the criminal liability to mere expressions of adherence to terrorist ideologies conflicts with the principle that only acts may be punished, and not also declarations of thought, intention or sympathy, as long as the latter do not amount to speech by the person ... that amounts to incitement to violence or hatred.¹⁹

That it is only necessary to limit expression that (i) intends to incite violence, and (ii) is likely to cause a risk of violence, finds support in the Council of Europe’s 2005 Convention on the Prevention of Terrorism (at Article 5).²⁰

When it comes to limitations on electronic forms of communication or expression disseminated over the Internet, the HR Committee has specified in relation to the consideration of necessity and proportionality:

¹⁶ General Comment No. 34, *op. cit.*, at para 46.

¹⁷ HR Committee, Concluding observations on the fifth periodic report of France, CCPR/C/FRA/CO/5, 17 August 2015, para 10.

¹⁸ HR Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/8, 17 August 2015, para 14.

¹⁹ Venice Commission, Report on Counter-Terrorism Measures and Human Rights, CDL-AD(2010)022, adopted on 4 June 2010, para 33.

²⁰ Article 5 requires making the “Public provocation to commit terrorist offences” a criminal offence, defined as “the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.”

Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.²¹

ARTICLE 19 has consistently advocated that the most effective and least restrictive means to promote equality and non-discrimination, as well as to advance legitimate national security objectives, is to safeguard civic space and enable free and open debate. We welcome that this is recognised in the Secretary General's Plan of Action to Prevent Violent Extremism, in particular through its positive reference to the Rabat Plan of Action.

At the same time, we agree with the UN Special Rapporteur on promoting and protecting human rights while countering terrorism that a security framing to otherwise positive and rights-based initiatives can be counter-productive. This is particularly the case if they target one particular group on assumptions that their identity, beliefs or socio-economic status predisposes them to violence, are or are perceived as being forms of surveillance.

²¹ General Comment No. 34, *op. cit.*, para 43.

Annex I: Joint Civil Society Oral Statement to Panel on the Human Rights Dimensions of Preventing Violent Extremism (PVE)

17 March 2016

Mr. President,

23 organisations support this statement.²² We have serious concerns regarding the potential impact of initiatives to prevent violent extremism (PVE) on the enjoyment of human rights.

The lack of an agreed definition of what constitutes “violent extremism”, or a shared understanding of its causes, can open the door to human rights abuses when it comes to its “prevention”. This is compounded by conflation of the concept with “terrorism”. In many contexts dissent has become the target of PVE. Independent voices, whom are frequently the targets of violence by non-State actors, are also persecuted by their governments, who routinely label them as “extremists”: political opponents, journalists, and human rights defenders are arbitrarily detained, intimidated, attacked or worse, often with impunity.

Even well intentioned PVE initiatives can discriminate against and alienate the communities they seek to help, not only raising human rights concerns but also being potentially counterproductive to security.

Supposedly ‘soft’ interventions to ‘prevent’ ‘violent extremism’ are premised on assumptions of the vulnerabilities of particular groups to follow a ‘pathway’ of ‘radicalisation’ to committing violent acts that is not evidence-based. Interventions often require active collaboration between national security, law enforcement agencies and service providers in the fields of education, social services and health, turning the latter into agents of surveillance and securitising ever-broader areas of public and private life. Protected expression or religious practice, in particular by young people, can trigger security-based responses that may violate human rights and protections against discrimination.

Though other programmes target much-needed resources at the presumed economic or social causes of “violent extremism”, including in the context of development, their national security framing can reinforce negative and false stereotypes, and further marginalisation of targeted groups.

There are serious concerns that PVE increasingly targets the free flow of information online: to block access to the Internet or broad categories of content, as well as to target anonymity and weaken encryption. This is often without procedural safeguards for users, with pressure building on private companies be complicit in government censorship and surveillance. Short-term national security imperatives are threatening to compromise the open and free Internet that is essential to the enjoyment of human rights.

²² In addition to ARTICLE 19: Access Now, American Civil Liberties Union, Asian Forum for Human Rights and Development, Association for Progressive Communications, Bahrain Centre for Human Rights, Bill of Rights Defence Committee and Defending Dissent Foundation, Brennan Centre for Justice, Canadian Journalists for Free Expression, Centre for Inquiry, Charity and Security Network, Committee to Protect Journalists (CPJ), Human Rights Network for Journalist (Uganda), Human Rights Watch, Independent Journalism Center – Moldova, International Centre for Not-for-Profit Law (ICNL), International Federation for Human Rights (FIDH), International Humanist and Ethical Union (IHEU), PEN International, Privacy International.

Annex II: Joint Written submission to HRC31 on CVE

“Initiatives to ‘counter and prevent violent extremism’ raise serious human rights concerns”

This joint written submission raises serious concerns regarding the potential impact of initiatives to counter and prevent “violent extremism” (PVE) on the enjoyment of human rights and fundamental freedoms.²³ This relates specifically to the planned Panel Discussion on “human rights and preventing and countering violent extremism” at the 31st Session of the UN Human Rights Council (HRC).

At the outset, we recognise that PVE initiatives that are based on a clear definition of the phenomenon being addressed, have a proper evidential basis for harm reduction, and that respect human rights and civil society space, can play a potentially positive role.

We welcome that the Secretary General’s recently launched “Plan of Action to Prevent Violent Extremism” acknowledges the negative impact of violence on the enjoyment of human rights and the rule of law.²⁴ We note that the Plan of Action recognises that the absence of an agreed definition of what constitutes “violent extremism” poses a danger of its conflation with “terrorism.” As the Secretary General further notes, this conflation of “violent extremism” with “terrorism” may “lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts”.²⁵ As we have seen in the last decade and a half, the overly broad application of counter-terrorism measures has had a profoundly detrimental impact on the enjoyment of human rights. As discussed below, these concerns are heightened when, as the Plan of Action indicates, states individually define and apply the terms “violent extremism” and “terrorism.”²⁶ Moreover, criminalising or otherwise prohibiting or sanctioning conduct without a clear definition is incompatible with the principle of legality, a basic rule of law precept.

²³ The following organisations with ECOSOC status endorsed the written submission: ARTICLE 19, Association for Progressive Communications (APC), American Civil Liberties Union, Amnesty International, Asian Forum for Human Rights and Development, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights Leagues, International Humanist and Ethical Union, International PEN, International Press Institute, International Service for Human Rights, Privacy International, World Association of Newspapers. The following organisations without ECOSOC status also endorsed the written statement: Access Now; Active Watch Romania; Afghanistan Journalists Center; Australian Privacy Foundation; Bahrain Centre for Human Rights; Brazilian Association of Investigative Journalism – ABRAJI; Cambodia Center for Independent Media – CCIM; Canadian Journalists for Free Expression; Cartoonist Rights Network; International Center for Media Freedom and Responsibility – CMFR; Charity & Security Network; Committee to Protect Journalists – CPJ; Council on American-Islamic Relations – CAIR; English PEN; European Digital Rights – EDRI; Federation of Nepali Journalists – FNJ; Free Media Movement (Sri Lanka); Freedom Forum Fundamendios; Globe International Center (Mongolia); Gulf Centre for Human Rights; Human Rights Network for Journalists (Uganda); Independent Journalism Center -IJC (Moldova); Index on Censorship; International Federation of Journalists - IFJ (Asia-Pacific); La Quadrature du Net; March Lebanon; Media Foundation for West Africa; Media Institute of Southern Africa; Media Rights Agenda ; Media Watch; Media Entertainment & Arts Alliance (Australia); Mizzima News; Muslims for Progressive Values; National Union of Somali Journalism – NUSOJ; Palestinian Center for Development and Media Freedoms- MADA; PEN America; PEN Canada; Social Media Exchange - SMEX (Beirut); South East European Network for Professionalization of Media Southeast Asian Press Alliance – SEAPA; Vigilance for Democracy and the Civic State; West African Human Rights Defenders’ Network – WAHRDN; World Association of Community Radio Broadcasters-AMARC;

²⁴ Report of the Secretary General, “Plan of Action to Prevent Violent Extremism”, 24 December 2015, U.N. GA, 70th Sess., A/70/674

²⁵ Ibid., para. 4, p. 2.

²⁶ Ibid., para. 5, p. 2.

We are concerned that HRC resolution 30/15 on “Human Rights and Preventing and Countering Violent Extremism”,²⁷ as adopted by vote after substantial oral revisions, fails to properly capture the danger for abuse of PVE initiatives, and that it provides inadequate language aimed to protect human rights. We encourage all delegations to the Human Rights Council to ensure these deficiencies are addressed through contributions to the upcoming panel discussion and through future initiatives on this topic.

While framed in the language of promoting human rights, the push to encourage PVE initiatives as a response to terrorism ignores the risk of serious adverse human rights consequences of some of these programmes. “Violent extremism” and related terminology such as “radicalisation” are poorly defined concepts, which open the door to human rights and other abuses.²⁸ Several governments already routinely label political opponents, journalists, and human rights defenders as “extremists” or “terrorists”. Identifying “violent extremism” as the problem only provides these governments more grounds to stifle freedom of expression and crush dissent. Moreover, some states are now promoting another category, that of “non-violent extremism,” adding to the definitional confusion – and potentially resulting in the criminalisation of conduct that is not linked in any way with acts of violence.

In many parts of the world, PVE initiatives may compromise the human rights and fundamental freedoms of the communities they target, undermine the work of human rights defenders as well as the independence of civil society. While packaged as positive measures, many PVE initiatives have a significant potential to threaten the human rights to equality and freedom from discrimination, the right to privacy, and the freedoms of expression, association, and religion or belief.

Moreover, the evidential basis for PVE initiatives achieving their intended effect is often questionable, as they may alienate the very people they are meant to help. Such initiatives are often perceived as stigmatising, discriminatory and as a form of “soft surveillance” by members of the communities they target.²⁹ Indeed, many of them have voiced concern that the security and intelligence services, in league with law enforcement agencies, may use PVE programmes to attempt to recruit informers, creating fear and distrust. Moreover, while PVE initiatives are often framed as not addressing a particular ideology or religion, the communities and individuals currently targeted are overwhelmingly Muslim, with some programmes specifically targeting and stigmatising Muslim women.³⁰

Some PVE initiatives may be welcomed on the basis of their bringing much-needed resources to communities to address economic and social issues assumed to be connected to the causes of

²⁷ Human Rights Council Res. 30/15, [Human Rights and Preventing and Countering Violent Extremism](#), 30th Sess., Sept. 14- Oct. 2, 2015, U.N. GAOR, 70th Sess., A/30/15 (Oct. 12, 2015).

²⁸ The absence of a definition for the term “violent extremism” is acknowledged by the Secretary General. He notes, however, that “Violent extremism encompasses a wider category of manifestations [than terrorism] and there is a risk that a conflation of the two terms may lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts.” (*Ibid.*). It is difficult to foresee how, for example, PVE measures that limit freedom of expression will be “clearly and narrowly defined and meet the three-part test of legality, proportionality and necessity” when “violent extremism” and analogous concepts are not defined (*Ibid.* At para. 50(k)).

²⁹ See Dilly Hussain, “The Serious Way Forward to ‘Prevent’ Terror in Britain,” Middle East Eye, 27 January 2016; available at <http://www.middleeasteye.net/columns/beginning-end-prevent-716599408>

³⁰ See, for example, “David Cameron Stigmatising Muslim Women With Learn English Language Policy”, The Guardian, January 18 2016; available at: <http://www.theguardian.com/politics/2016/jan/18/david-cameron-stigmatising-muslim-women-learn-english-language-policy>

violent extremism. However, where situated in the framework of safeguarding national security, these initiatives can prove divisive and counterproductive, as they are often perceived as being premised on and reinforcing of negative and false stereotypes of a unique association among Muslims, terrorism and violence.

Other PVE initiatives promote particular forms of intervention to divert or disrupt individuals from an alleged pathway to “violent extremism”. These often target individuals, again overwhelmingly Muslims, on the basis of misconceived assumptions about the ease with which individuals susceptible to acts of violence can be profiled and with little or no evidence for the efficacy of interventions. They often require the active collaboration of public service providers (such as in social services, health or education) and security or law enforcement agencies, with interventions often triggered by lawful behaviour.³¹ In the context of education, for example, we have observed such mechanisms being mobilised in response to protected forms of expression or religious practice, including by young children, infringing on the rights to education and expression, and further exacerbating distrust and marginalisation.

We are also concerned by PVE proposals that prohibit targeted individuals’ access to the Internet or specific online platforms, measures for the blocking of lawful online content, and blanket restrictions on access to specific platforms or encryption services. We increasingly see governments seeking to enlist private companies to “voluntarily” monitor or remove lawful content on the basis of its alleged connections to “violent extremism”, where governments themselves lack these powers. These measures often lack proper procedural safeguards and pose a serious danger to the rights to freedom of expression and privacy online. Governments and inter-governmental bodies too often overlook the enormous potential of a free and open Internet to enable robust debate and make a positive contribution to PVE.³²

We call on all delegations to carefully consider these concerns in their contributions to the panel discussion of PVE at the 31st Session of the Human Rights Council, and in relation to any follow-up initiatives.

³¹ See, for example, Michelle Boorstein, [Muslim Activists Alarmed by the FBI’s New Game-Like Counterterrorism Program for Kids](#), Washington Post 2 November 2015; Diane Taylor, [Schools Monitoring Pupils’ Web Use With ‘Anti-Radicalisation’ Software](#), Guardian, 10 June 2015.

³² We appreciate that the Secretary General notes in his Plan of Action that “thousands of young activists and artists are fighting back against violent extremism online through music, art, film, comics and humour”, *op. cit.*, at para. 55.

Annex III: Resolution on “violent extremism” undermines clarity in Human Rights Council standards
ARTICLE 19 Briefing
8 October 2015

ARTICLE 19 expresses strong reservations regarding a UN Human Rights Council resolution on “human rights and preventing and countering violent extremism”, adopted at its 30th Session on 2nd October 2015.³³ The resolution, which was voted following last-minute oral revisions, introduces ambiguous language on “violent extremism” without sufficient safeguards for fundamental human rights, including the right to freedom of expression, and undermines existing standards in this area.

The resolution comes in the wake of numerous incidents in which we see governments in all parts of the world restricting civic space and targeting legitimate dissent in the name of combating “extremism” or “violent extremism”. ARTICLE 19 acknowledges that there are serious and legitimate threats to national security in the world, but this is a missed opportunity for the Human Rights Council to consolidate agreement on the key principles that must underpin these debates, in particular to ensure that any efforts to safeguard security do not come at the expense of the protection of all human rights.

A large cross-regional core group tabled the resolution comprised of Albania, Bangladesh, Cameroon, Colombia, France, Iraq, Mali, Morocco, Peru, Turkey, Tunisia, and the United States of America. It is the first resolution on “human rights and preventing and countering violent extremism” the Human Rights Council has considered; its adoption calls for a panel discussion at the 31st Session in March 2016, and an OHCHR compilation of “best practices” which will be presented next September. The resolution follows a UN General Assembly high-level event on this issue, as well as various intergovernmental initiatives on the same theme, and precedes a UN “Plan of Action to Prevent Violent Extremism”, which is expected soon.

The resolution was voted following extensive debate, with the core sponsors failing to secure consensus, exposing significant divisions among States’ understandings of and approaches to preventing and countering “violent extremism”. Of the 47 Human Rights Council member states, 37 voted in favour of the resolution, including Ethiopia and Saudi Arabia,³⁴ 3 voted against,³⁵ and 7 abstained.³⁶

Hostile amendments proposed by Russia were rejected by vote though partially accommodated through oral revisions to the resolution, and further hostile amendments proposed by China were withdrawn, though only after the core group largely accommodated the Chinese government’s concerns through additional oral revisions. Egypt, a Human Rights Council observer State, joined the resolution as a co-sponsor and in its closing remarks at the Session welcomed the efforts of the core group to accommodate its various concerns. Following adoption, the United Kingdom of

³³ The reference to the draft resolution is: A/HRC/30/L.25/Rev.1 (Oral Revision 02/10).

³⁴ Albania, Algeria, Argentina, Bangladesh, Botswana, Brazil, Congo, Cote d’Ivoire, Estonia, Ethiopia, France, Gabon, Germany, Ghana, India, Indonesia, Ireland, Japan, Kenya, Latvia, Maldives, Mexico, Montenegro, Morocco, Netherlands, Nigeria, Paraguay, Portugal, Qatar, Republic of Korea, Saudi Arabia, Sierra Leone, The Former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Greater Britain and Northern Ireland, United States of America, and Vietnam.

³⁵ South Africa, the Russian Federation, and Venezuela.

³⁶ China, Pakistan, Bolivia, Cuba, El Salvador, Kazakhstan, and Namibia.

Great Britain and Northern Ireland, Norway and the Netherlands withdrew their co-sponsorship of the resolution.

What is “violent extremism”?

ARTICLE 19 is concerned that the meaning of “violent extremism” in the resolution, as well as in broader discussions outside of the Human Rights Council, is not clear, creating significant ambiguity around which actions to “counter” or “prevent” this phenomenon are compatible with international human rights law, in particular the right to freedom of expression.

The core group behind the resolution failed to distinguish “violent extremism” from “terrorism”, other than to imply the former is a broader concept; making the rationale for this new Human Rights Council initiative in an already crowded agenda unclear. By taking an issue as sensitive as human rights in the context of national security to a vote, the resolution not only duplicates but potentially undermines parallel consensus-based resolutions on the “protection of human rights and fundamental freedoms while countering terrorism”.³⁷

This lack of clarity in the resolution is compounded by the sporadic use of additional ambiguous phrases, such as “extremist ideologies or intolerance” (without mentioning ‘violence’), “violent extremists and their supporters”, “radicalization”, and “narratives that incite violent extremism”. States’ interventions in the debate revealed a lack of common agreement on whether the resolution should address ideology or action, or both, and how either would be defined, and whether “violence” was even a necessary element. ARTICLE 19 is concerned that the introduction of the new terminology of “violent extremism” is unnecessary given the on-going work to define “terrorism” in a human rights context, and that the resolution disregards the concerns and guidance of relevant Human Rights Council special procedures in this regard.³⁸

In its first operational paragraph, the resolution describes “acts, methods and practices of violent extremism” as “activities that aim to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threaten territorial integrity and the security of States, and destabilize legitimately constituted Governments”. This description is excessively broad, and could potentially capture non-violent actions that challenge governments during or between elections through critical commentary, investigative journalism, or protest. Such legitimate expression is often framed by repressive governments as ‘extremist’ simply because it questions and thereby ‘destabilizes’ the status quo.

The debate on the resolution also revealed significant divisions in States’ views on the causes of “violent extremism”. Several delegations expressed disappointment that insufficient focus was given to racism and religious intolerance as causative factors, notwithstanding the introduction of a paragraph addressing this in preambular paragraph 21. This threatens to upset what is already a very fragile consensus on Human Rights Council resolution 16/18 “on combatting religious

³⁷ See, for example: “Protection of human rights and fundamental freedoms while countering terrorism”, A/HRC/Res/29/9, adopted without a vote on 2 July 2015, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/9

³⁸ See, for example, the analysis of the problems with over-broad definitions of “terrorism” and “incitement to terrorism”, as well as the proposed model definition of “terrorism”, advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his annual report of 22 December 2010, A/HRC/16/51, at para. 28.

intolerance”, which is referenced in the resolution alongside the Rabat Plan of Action. ARTICLE 19 is concerned that HRC initiatives primarily intended to address discrimination are now being situated within a ‘national security’ framework, in particular where security measures are often discriminatory and a source of stigmatisation. Other interventions in the debate sought to ensure non-interference in States’ internal affairs - the usual trump-card for evading criticism of domestic human rights records while categorizing all real and imagined “threats to national security” as attributable to “foreign” elements. This is an argument often employed by governments seeking to justify increasing restrictions on civil society space.

Creating and maintaining civil society space

ARTICLE 19 shares concerns expressed by Ireland on behalf of a group of States that the resolution undermines existing standards on creating and maintaining a safe and enabling environment for civil society.³⁹

Operational paragraph 9 of the resolution, while recognizing the important role of civil society in countering “violent extremism”, qualifies this freedom by referencing that civil society should act “in accordance with national strategies”. Last-minute revisions to operational paragraph 2 deleted specific reference to ensuring that counter-terrorism laws comply with international human rights law, leaving this paragraph more ambiguous and further weakening the resolution.

In HRC resolution 27/31 “on civil society space”, adopted by consensus in September 2014, the Human Rights Council recognised the importance of an “*independent*, diverse and pluralistic civil society”. At the same time, it expresses deep concerns at the abuse of national security legislation to restrict civil society’s access to resources, and to hinder their work and endanger their safety. It calls on all States to create, in law and in practice, a safe and enabling environment for civil society, and calls for specific action to ensure the compatibility of legal frameworks with international human rights law. Similar calls are made on States in Human Rights Council resolutions “on human rights defenders” res 22/6 (2013), and resolutions “on the right to freedom of opinion and expression” HRC res 12/16 (2009).

The resolution on “violent extremism” fails to specifically pinpoint the reality of the shrinking space for civil society, and how legal frameworks are often abused to silence minority and dissenting voices, including in the name of “national security” and increasingly in the name of combatting “extremism”. It fails to recognize the right of all people, in particular civil society actors, to publicly speak out against and disagree with government policies and actions in all fields, and the constructive role and right of civil society to participate in public decision-making and take positions adverse to governments in those processes. The resolution seemingly endorses, contrary to agreed Human Rights Council language, that civil society should be subordinate to the agendas of governments – which is a significant and concerning retreat.

The importance of human rights online

³⁹ The statement, delivered by Ireland, was supported by Belgium, Denmark, Estonia, Iceland, Mexico, Poland, Sweden and Switzerland. The Czech Republic separately put on record its disapproval of oral revisions to the resolution, but remained a co-sponsor of the resolution as a whole.

ARTICLE 19 is concerned that the resolution on “violent extremism” fails to defend a core principle long recognized by the Human Rights Council that human rights that apply offline, also apply online (see, for example, A/HRC/20/8 on “the promotion, protection and enjoyment of human rights on the Internet”, and A/HRC/28/16 on “the right to privacy in the digital age”).

There is no sufficiently strong and positive reference in the resolution to the essential role of the Internet in the promotion and protection of human rights, or to transparency and good governance, including in the context of addressing genuine national security concerns. This failure overlooks the various governmental efforts around the world to limit the enjoyment of human rights online by increasing controls over the Internet in the name of ‘national security’, in particular through greater surveillance and censorship powers and seeking the ‘cooperation’ of internet intermediaries in this regard. These measures disproportionately target and further marginalize minority and vulnerable groups.

A last-minute amendment to the resolution to add a new additional paragraph was particularly concerning, accommodating almost in full a proposed hostile amendment by China (A/HRC/30/L.41), based in part on agreed Security Council language concerning countering terrorism, on the negative role of the Internet in relation to countering “violent extremism”. The new paragraph reads, in full:

“OP7bis. *Expresses* concern over the increased use by terrorists and violent extremists and their supporters of communications technology for the purpose of radicalizing to terrorism or violent extremism, recruiting and inciting others to commit acts of terrorism or violent extremism, including through the Internet.”

As the Irish-led joint statement following the adoption of the resolution also highlights, the added paragraph not only introduces dangerously ambiguous language, it also departs from the focus of the Human Rights Council’s mandate to protect and promote human rights. The resolution’s primary focus in relation to the Internet is therefore one framed in a wholly negative manner, doing much to undo hard-won albeit slow progress at the Human Rights Council on the protection of human rights online.

The core group’s concession to China and others in making this addition, while still failing to get consensus support for the resolution, threatens to significantly undermine Human Rights Council standards on the right to freedom of expression online and the protection of civil society space.

What next?

ARTICLE 19 recommends that at the panel discussion to take place at the Human Rights Council at its 31st Session in March 2016, States must:

- Make strong statements in favour of maintaining a safe and enabling environment for civil society and in defence of promoting and protecting human rights online as well as offline;
- Robustly condemn those that abuse national security frameworks to close civil society space, including through laws and practices that enable surveillance and silence critical voices online as well as offline;
- Ensure the full and effective participation of civil society voices in the panel discussion.

In formulating its compilation report on “best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism”, ARTICLE 19 encourages the OHCHR to:

- Proactively seek the input of civil society to the report as a primary stakeholder;
- Explore the various meanings given to “violent extremism” and related concepts, and the potential impact of ambiguity in this area on the promotion and protection of human rights, drawing upon lessons learned through parallel Human Rights Council initiatives on promoting and protecting human rights while countering terrorism.

Annex IV: Joint Declaration on Freedom of Expression and countering violent extremism

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression **and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

Having discussed these issues together with the assistance of ARTICLE 19 and the Centre for Law and Democracy (CLD);

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013, 6 May 2014 and 4 May 2015;

Taking note of the global attention paid to programmes and initiatives under the umbrella of “countering and preventing violent extremism” (CVE/PVE), including by the United Nations and national governments;

Acknowledging the importance of frameworks for countering violence and incitement to violence and encouraging participation in political life based on respect for principles of human rights, purposes shared by many CVE/PVE programmes;

Highlighting that CVE/PVE programmes and initiatives that restrict freedom of expression must be based on evidence of their effectiveness and a legal framework to support their necessity and proportionality to achieve legitimate objectives;

Deploring the violence and terrorism that CVE/PVE initiatives aim to address and the impact of such acts on the enjoyment of human rights, including the rights to life and freedom of expression, highlighted dramatically by recent attacks on journalists, bloggers and media outlets;

Reaffirming the critical role that freedom of expression can play in promoting equality and in combating intolerance, and the essential role that the media and the Internet and other digital technologies play in keeping society informed, and stressing that limiting the space for freedom of expression and restricting civic space advances the goals of those promoting, threatening and using terrorism and violence;

Stressing in particular the need to promote media diversity and to ensure that members of all groups in society have access to a range of means of communication so as to be able to express themselves and engage in public debate;

Expressing concerns that some CVE/PVE initiatives negatively impact human rights and specifically the right to freedom of expression, even if inadvertently, including by “balancing” freedom of expression and the prevention of violence rather than assessing restrictions on

expression based on legality, necessity and legitimacy of objective, and that in some cases CVE/PVE programmes and initiatives have not been adopted in a transparent manner and with the effective participation of impacted communities;

Mindful that in some cases CVE/PVE initiatives which aim to target incitement to violence or 'hate speech' online risk undermining the potential of digital technologies to foster freedom of expression and access to information and to provide avenues for counter-speech;

Noting that CVE/PVE programmes and initiatives generally offer insufficiently clear definitions of "extremism" or "radicalisation" and that some governments target journalists, bloggers, political dissidents, activists and/or human rights defenders as "extremists" or "terrorists";

Alarmed at the proliferation in national legal systems of broad and unclear offences that criminalise expression by reference to CVE/PVE, including offences "against social cohesion", "justification of extremism", "agitation of social enmity", "propaganda of religious superiority", "accusations of extremism against public officials", "provision of information services to extremists", "hooliganism", "material support for terrorism", "glorification of terrorism" and "apology for terrorism";

Highlighting that CVE/PVE initiatives are used increasingly to justify profiling, surveillance and other activities that treat certain communities as de facto suspects, promoting a climate of intolerance and alienating members of these communities by scapegoating, thereby deterring robust debate and information-sharing;

Emphasising that CVE/PVE initiatives have in some cases impacted negatively on academic freedom and open debate in schools and universities, undermining the freedom of expression rights of children and young people;

Concerned about pressure on private companies, and especially social media networks, to "cooperate" in reporting on those whom they suspect of radicalization and the fact that CVE/PVE is increasingly being used by companies to justify measures restricting content, sometimes without being transparent or consistent about the rules and the kinds of expression that are being limited;

Aware that in some cases politicians and other leadership figures in society have, under the umbrella of CVE/PVE, made statements which can have the effect of encouraging or promoting discrimination against minorities;

Recalling statements in our previous Joint Declarations which have addressed some of the issues raised here;

Adopt, in Helsinki, on 4 May 2016, the following Joint Declaration on Freedom of Expression and Countering Violent Extremism:

1. General Principles:

- a) Everyone has the right to seek, receive and impart information and ideas of all kinds, especially on matters of public concern, including issues relating to violence and terrorism, as well as to comment on and criticise the manner in which States and politicians respond to these phenomena.
- b) States have an obligation to ensure that the media are able to keep society informed, particularly in times of heightened social or political tensions, including by creating an environment in which a free, independent and diverse media can flourish.
- c) Any restrictions on freedom of expression should comply with the standards for such restrictions recognised under international human rights law. In compliance with those standards, States must set out clearly in validly enacted law any restrictions on expression and demonstrate that such restrictions are necessary and proportionate to protect a legitimate interest.
- d) Restrictions on freedom of expression must also respect the prohibition of discrimination, both on their face and in their application.
- e) Restrictions on freedom of expression must be subject to independent judicial oversight.
- f) A key part of any strategy to combat terrorism and violence should be to support independent media and communications diversity.

2. Specific Recommendations:

- a) Public authorities should respect robust standards of transparency and engagement with all interested stakeholders, in particular affected communities, if they are proposing to adopt CVE/PVE initiatives.
- b) All CVE/PVE programmes and initiatives should respect human rights and the rule of law, and contain specific safeguards against abuse in this regard. They should be independently reviewed on a regular basis to determine their impact on human rights, including the right to freedom of expression, and these reviews should be made public.
- c) The concepts of “violent extremism” and “extremism” should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.
- d) States should not restrict reporting on acts, threats or promotion of terrorism and other violent activities unless the reporting itself is intended to incite imminent violence, it is likely to incite such violence and there is a direct and immediate connection between the reporting and the

likelihood or occurrence of such violence. States should also, in this context, respect the right of journalists not to reveal the identity of their confidential sources of information and to operate as independent observers rather than witnesses. Criticism of political, ideological or religious associations, or of ethnic or religious traditions and practices, should not be restricted unless it involves advocacy of hatred that constitutes incitement to hostility, violence and/or discrimination. States should review their laws and policies to ensure that any restrictions on freedom of expression which are claimed to be justified by reference to CVE/PVE robustly meet these standards.

e) States should not subject Internet intermediaries to mandatory orders to remove or otherwise restrict content except where the content is lawfully restricted in accordance with the standards outlined above. States should refrain from pressuring, punishing or rewarding intermediaries with the aim of restricting lawful content.

f) States and public officials should encourage open debate and access to information about all topics, including where they touch upon issues such as ethnicity, religion, nationality or migration, in schools and universities, and in academic, scholarly or historical texts. Academic institutions should respect pluralism, promote intercultural understanding, and support the ability of members of all communities, and particularly marginalised groups, to voice their perspectives and concerns.

g) States should never base surveillance on ethnic or religious profiling or target whole communities, as opposed to specific individuals, and they should put in place appropriate legal, procedural and oversight systems to prevent abuse of surveillance powers.

h) Politicians and other leadership figures in society should refrain from making statements which encourage or promote racism or intolerance against individuals on the basis of protected characteristics, including race, nationality or ethnicity.

i) Private enterprise initiatives, including those online, that limit expression in support of CVE/PVE goals should be robustly transparent so that individuals can reasonably foresee whether content they generate or transmit is likely to be edited, removed or otherwise affected, or user data is likely to be collected, retained or passed to law enforcement authorities.

j) States should not adopt, or should revise, laws and policies which involve the following:

- i. Blanket prohibitions on encryption and anonymity, which are inherently unnecessary and disproportionate, and hence not legitimate as restrictions on freedom of expression, including as part of States' responses to terrorism and other forms of violence.
- ii. Measures that weaken available digital security tools, such as backdoors and key escrows, since these disproportionately restrict freedom of expression and privacy and render communications networks more vulnerable to attack.