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**Statement by Ms. Fionnuala Ní Aoláin
SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM**

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Honourable Chair, Excellencies, Distinguished delegates, Ladies and Gentlemen,

I am very pleased to be here to address the Global Counter-Terrorism Forum, the second time the mandate of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism has done so. My predecessor Ben Emmerson had the opportunity to address this Forum in 2012.

As many States know the mandate advances a complementary vision where rights and security are intrinsically integrated. Rights and security are reciprocal, interrelated and necessarily compatible.

Excellencies, Distinguished delegates

In my first Report to the General Assembly in October 2017, I laid out four specific priorities for the mandate including addressing the importance of advancing the rights and protection of civil society in parallel with the work that is done to regulate, counter and prevent terrorism. I presented a comprehensive report on that issue to the Human Rights Council last March (HRC/40/52). My report moves away from reporting on anecdotal examples of the negative use of counter-terrorism/CVE/PVE measures against civil society but rather is focused on the global (available evidence) on the use, mis-use and challenges to civil society from the use of these measures.

I stress that since 2001, civil society space has been shrinking. Civil society as a whole is stigmatised, sometimes discriminated against, its actors are subjected to smear campaigns, defamation, physical harassment, problematically charged and sentenced under various laws, its peaceful actions are criminalised. Its members are simply unable to carry out their work, either because they are detained, tried, or threatened or they are subject to various restrictions on their ability to express themselves, to meet, or to operate. The shrinking space for civil society has become a structural global challenge.

According to CIVICUS, civic space is closed, repressed or obstructed in 111 countries across the world, and only four per cent of the global population live in areas where civic space is open. This trend has been accelerating in the past few years, with the International Center for Not-for-Profit Law recording the adoption of 64 restrictive laws on civil society from 2015-2016 alone. According to Front Line Defenders, at least 321 HRDs were killed in 2018 only.

Framed by this broad context, between 2001 and 2018, at least 140 governments have adopted counter-terrorism legislation. To address new or perceived threats, or simply to comply with new international requirements, many governments have adopted multiple legislative and administrative measures to counter terrorism.¹

The clear link between impact on civil society space and enlargement of the security framework can be seen in the following trends and figures. I made a commitment to ensuring that robust well-defined data would be brought to the attention of States to ground the use and misuse of counter-terrorism law and practice. There has been a tendency to dismiss the sustained, systematic and global character of the assaults on civil society as a ‘bad-apple’ problem. This Report indisputably rejects that assertion. Instead, it grounds and meticulously documents the scope, form and substance of the onslaught on civil society around the world.

Since its inception, **66 per cent of all relevant communications sent by the mandate of the Special Rapporteur related to the use of counter-terrorism, preventing and countering violent extremism (PCVE) or broadly defined security-related measures on civil society. For the last two years, the number is slightly higher, at 68 percent.** This is an extraordinarily high figure, which underscores the abuse and misuse of counter-terrorism measures against civil society and human rights defenders over a decade and a half. This robust empirical finding measured from 2005-2018 affirms that targeting civil society is not a random or incidental aspect of counter-terrorism law and practice. It suggests the hard-wiring of misuse into the use of counter-terrorism measures by states around the globe.

This upward trend tallies with the findings of Mapping Media Freedom that the misuse of security legislation to silence government critics is growing, with 67 of the 269 cases it dealt with in a four-year period happening in 2018, and only 10 in 2014. Front Line Defenders documented that of the cases it dealt with in 2018; 58 percent of the HRDs charged were charged under security legislation. **The mandate of the Special Rapporteur, for its part, finds that over 67 percent of all communications concerning civil society in 2018 related to alleged proceedings under counter terrorism or other broad security-related charges.** Such a finding demands fundamental review of the use (and misuse)

¹ According to Human Rights Watch, at least 47 countries have passed laws relating to foreign terrorist fighters since 2013—the largest wave of counterterrorism measures since the immediate aftermath of the September 11, 2001 attacks.

of counter-terrorism law and practice around the globe, and the implementation of robust oversight and accountability for the attendant human rights violations.

Excellencies, Distinguished delegates

Let me address the consequences of these human rights violations committed in the name of countering terrorism or solidifying security. As revealed by the percentages of communications sent by the Special Rapporteur's mandate, broad invocations of the need to counter terrorism, PCVE and protect national security have been abused by a number of States to close civic space and target civil society activists and Human Rights Defenders. How are the statistics experienced on the ground? As my Report shows, increasingly, any form of expression that articulates a view contrary to the official position of the state, addresses human rights violations or opines on ways to do things better in accordance with international human rights obligations, constitutes a form of terrorist activity, violent extremism, or a very broad "threat to national security", which often encompasses both terrorism and extremism. Some States now routinely abuse security legislation as a shortcut for cracking down on civil society, arresting and detaining its peaceful representatives, accusing them under spurious charges, and placing them under the exceptional procedural regimes that are often linked to these qualifications. No region of the world is immune from this trend. In some regions, the instrumentalisation of counter-terrorism, PCVE and national security is brutal, with members of civil society arrested and detained on spurious grounds, with some States even using counter-terrorism laws to silence LGBTI rights defenders, and others investigating individuals involved in peaceful protests against climate change as a form of terrorism or branded as "eco-terrorists". Journalists have also been particularly targeted by counter-terrorism and other broad security legislation.

Targeting civil society actors is wholly inconsistent with meaningfully attending to genuine terrorist threats. Civil society is critical in both channelling discontent and allowing for constructive engagement with States. Civil society is also essential in directly undermining the factors that lead an individual to be drawn to terrorism and violent extremism, the conditions conducive to terrorism as identified by the UN Global Counter-Terrorism Strategy, and in the United Nations' new agenda on preventing and countering violent extremism. Even though States often justify measures against civil society through broad

invocations of countering terrorism, PCVE, or national security, it is abundantly clear that targeting civil society actors is wholly inconsistent with meaningfully attending to these genuine threats. Sustained research shows that there is no evidence that legal restrictions on civil society reduces the number of terrorist attacks within a country. Civil society restrictions do not work to make a country safe from terrorist attacks; the security rhetoric does not achieve the expected outcomes, in fact we increasingly recognise that it leads to polar results.

Excellencies, Distinguished delegates

How did we get here? The contemporary imperative to counter terrorism was set in motion through global matrixes developed post 9/11 that have taken a blanket approach to regulation, without any consultation or engagement with civil society in the development of the rules. As my Report notes, consistent with my findings presented to the General Assembly, the Global Counter-Terrorism architecture itself shoulders part of the institutional responsibility for this state of affairs.

In a world where terms like “terrorism”, “violent extremism”, and “extremism”, are used as the basis to mandate national regulation, but lack agreed definition, States are left to do what they like in regulating the actions of those who simply disagree with them, or point out their human rights failures as “terrorists” or “extremists”. There is a neat and comfortable consensus of not calling out the use and abuse of counter-terrorism law, a no-go zone on accountability particularly by the Counter-Terrorism Committee and other oversight bodies

The very serious impact of the combined measures to counter terrorism, prevent and counter violent extremism, and more broadly address threats to national security have complex, manifold and often under-examined negative impacts on civil society actors and on civic space. Restricting civic space and targeting civil society actors, including human rights defenders and activists, humanitarian actors, academics, journalists, bloggers, lawyers, artists, members and representatives of minority and indigenous groups, women activists, religious leaders, and trade unionists, and subjecting them to sustained and overlapping forms of physical and judicial harassment and smear campaigns to silence them, discredit and delegitimise their work, is unreservedly inconsistent with genuinely and effectively countering the threat of terrorism and violent extremism. It is also undisputedly counterproductive as civil society plays an essential role in preventing and countering terrorism and violent extremism.

Civil society's existence and vibrancy is itself a manifestation of a robust democracy that shows resilience to threats of terrorism and violent extremism.

Excellencies and Ladies and Gentlemen

My report provides a typology of national measures and trends as they impact civil society. Let me briefly outline some of the trends and patterns to be discerned globally.

Security legislation

- (a) Overly broad and vague definitions
- (b) Legislation that criminalises the legitimate exercise of fundamental freedoms
- (c) Legislation that strictly regulates the existence of civil society
- (d) Measures that limit various forms of support to "terrorism"
- (e) Indiscriminate legislation that chokes civil society
- (f) Increased use of administrative measures largely devoid of judicial oversight and remedies
- (g) Devolution of regulation and/or implementation to private actors
- (h) Overlapping, cumulative and sustained forms of harassment
- (i) Media campaigns
- (j) Physical harassment
- (k) Judicial harassment
- (l) Persecution of groups

The effects of these measures on civil society are sustained, measurable and highly pejorative. They include:

- (a) Chilling effects
- (b) Stigmatisation
- (c) Financial marginalisation
- (d) Co-optation into discriminatory government agendas
- (e) Securitisation
- (f) Exclusion

My Human Rights Council report confirms these effects not only affect the targeted individuals but often directly impinge on the rights of their families and communities. I also point out the disproportionate effects felt by Muslim communities and persons of the Muslim faith in many countries as a result of the application of CT/CVE laws and practices. The sum of these effects does not

strengthen the global fight against terrorism, rather they weaken us in the short, medium and long term. We can and should do better.

Excellencies, Distinguished delegates,

How do we address this state of affairs? First, States must commit to open and transparent processes to monitor and evaluate the use of counter-terrorism and countering violent extremism measures, which are justified on the grounds of Security Council and Treaty imperatives. If we mandate the use of counter-terrorism measures domestically then we must correspondingly provide the balancing oversight and review of those powers.

A number of practical steps can be taken to advance such oversight. I start by calling for greater transparency in the Counter-Terrorism Committee's work to narrow the information gap that currently exists between human rights bodies and counter-terrorism bodies, so that governments that over-report or overstate the effectiveness of their counter-terrorism legislation can be held accountable for the misuse of counter-terrorism legislation against civil society.

Excellencies, Ladies and Gentlemen

I make the following recommendations and note that many of them are burden-free, conform to obligations that States are already committed to, and reflect not only good human rights practice but practice that is efficient and effective in countering terrorism itself, and the conditions that produce it.

(1) Collect Data: The Special Rapporteur has virtually no resources. I am a full-time academic largely and primarily supported by my Universities in Belfast and the United States to do this work. We need robust, empirically solid, peer-review based data collection on a national and regional basis to fully understand precisely how and against whom laws and practices are being used. As we are all committed to addressing the scourge of terrorism, we would logically recognize that mis-use is counter-productive to that end.

(2) Engage Independent Civil Society meaningfully and consistently in the Global UN CT Architecture: Given its critical role in the development of the international counter-terrorism framework, the United Nations, particularly the Security Council, the CTC, CTED, UNOCT and the Global Compact, as well as the General Assembly and the Human Rights Council,

must genuinely, proactively, meaningfully and constructively engage with a cross-representation of local and international diverse and independent civil society actors on issues related to counter-terrorism and PCVE. International institutions and entities cannot exhort States to include civil society when they fail to do so meaningfully themselves. In particular:

- a. The input of civil society must be actively sought in the development of thematic and country-specific Security Council resolutions on counter-terrorism and PCVE to offer views on policy development and assess strategy and to inform on possible adverse impacts of the envisaged measures on civil society, including in the pending Security Council Resolution being drafted on Terrorism Financing.
- b. The Counter-Terrorism Committee should consider regular briefings by civil society actors on counter-terrorism and PCVE thematic items and on geographic agenda items using the Aria formula, where a better understanding of the local dynamics could assist in preventing undermining efforts done at local level. If the Security Council can meet regularly with civil society representatives in the Aria formula there can be no objective reason why the Counter-Terrorism Committee cannot.
- c. The Counter-Terrorism Committee is strongly encouraged to undertake regular briefings by civil society on thematic items and on geographic agenda items, in the Aria formula used by the Security Council for other security-related inputs by civil society.
- d. Given the close working relationship between civil society and UN human rights mechanisms, formal and transparent cooperation between UN counter-terrorism bodies and UN human rights mechanisms on substantive thematic and country issues must be enhanced. The Special Rapporteur on human rights and counter terrorism and other Special Procedures mandate holders should be invited on a regular basis to brief the CTC and CTED, not as a favour to them but rather as a commitment to integrating the 4th human rights pillar of the global counter-terrorism strategy in practice.
- e. I recommend a yearly open debate in the General Assembly convene on the fourth Pillar of the UN Global Counter-Terrorism Strategy once a year, in which civil society is fully and meaningfully included.

- f. The UN, in all of its components, must lead the way in ensuring that it remains a safe, secure and inclusive space for civil society. Care must be had that international procedures, including those for accreditation of civil society at the UN, are not instrumentalised by unchecked overly broad national counter-terrorism and emergency measures, and by the spurious use of terrorism claims as a basis to undermine participation by civil society in UN fora.
- g. The Security Council should unambiguously exempt humanitarian action from its counter-terrorism measures and expressly clarify that humanitarian protection and assistance must never be conceptualised as support to terrorism and suppressed and criminalised on that basis.

(3) Engage Independent Civil Society meaningfully and consistently in the New Entities developed and entrenched outside the CT Architecture. My pending autumn report to the General Assembly examines ‘soft law’ and new institutions in the CT space and makes a number of concrete recommendations both on the increasing work of ‘soft law’ norms in the CT sphere, and the meaningful engagement of civil society in these increasingly important spaces including the Global Counter-Terrorism Forum. This Report tracks the work of a range of external subsidiary entities in the counter-terrorism sphere including the FATF and the Global Counter-Terrorism Forum. These are not inclusive space either for all states or for civils society and a rigorous review of their work and practices is overdue. The establishment of these specialised counter-terrorism should be subject to the same form and depth of human rights compliance and oversight requirements as global and regional bodies established by treaty to regulate peace and security globally. The OCT and Global Compact should ensure, prior to any formal cooperation with outsource entities, that they fully comply with human rights norms and standards, including the UN due diligence policy.

Excellencies and Ladies and Gentlemen

In terms of State practice in this area I make the following recommendations:

(4) States must ensure that their measures to address the threats of terrorism and violent extremism and to protect national security do not negatively impact on civil society. In particular:

- a. States are encouraged to establish independent mechanisms to review and oversee the exercise of emergency powers, terrorism legislation, administrative measures related to terrorism, and legislation addressing violent extremism. The mandates of such independent mechanisms should specifically include the effects of such legal measures on the functioning and capacity of civil society.
- b. **Definitions of terrorism and of violent extremism in national laws must not be overly-broad and vague.** They must be precise and sufficiently clear to avoid including members of civil society, or non-violent acts carried out in the exercise of fundamental freedoms. The protection of national security must be narrowly construed. Emergency measures must be strictly limited, and not be used to crackdown on civil society actors and stifle freedom of expression
- c. Legitimate expression of opinions or thought must never be criminalised. Non-violent forms of dissent, criticism of the State and of government action, are at the core of freedom of expression. Reporting on, documenting or publishing information about terrorist acts or counter-terrorism measures, are an essential aspect of transparency and accountability.
- d. Measures that aim to regulate the existence and control and limit the funding of civil society must comply with the requirements of proportionality, necessity and non-discrimination. The failure to comply with administrative requirements must never be criminalised.
- e. Humanitarian actors should be protected from any forms of harassment, sanctions or punishment resulting from measures to counter terrorism or violent extremism. Humanitarian action must be clearly exempt from measures that criminalise various forms of support to terrorism.
- f. Judicial access and remedies must be available to all civil society actors impacted by terrorism sanctions regimes.

(5) All national and institutional actors involved in countering terrorism and PCVE:

- a. Must be conscious of the serious indirect impact that overlapping, sustained and cumulative measures have on civil society, notably in creating a chilling effect that will affect all actors even without direct targeting. Particular care must also be had to avoid the

stigmatisation, marginalisation, co-optation, and exclusion of civil society, as well as securitisation of its work.

- b. Are encouraged to pay greater attention to the impact of the increased regulation of the 'pre-' and 'post-' criminal space and its effects on civil society actors, notably through the development and use of various lists of broad categories of vaguely-defined individuals such as "terrorists" and "foreign terrorist fighters" that are shared between jurisdictions.

Excellencies and Ladies and Gentlemen

I thank you for your attention.