**Webinar Briefing**

# The impact of national and global security measures on civic space

## Summary Report

On 15 July 2021, the OECD Observatory of Civic Space held a high-level dialogue with security, finance, technology, human rights, and governance experts to discuss the impact of national and global security measures on civic space.

## 1. Background

National security and counterterrorism laws have had a tangible impact on civic space over the last two decades. In the aftermath of the 9/11 attacks on the US, between 2001 and 2018, more than 140 governments worldwide adopted counterterrorism legislation. While the intended aims of these laws are to ensure security, they increasingly also include provisions that affect rights related to civil society and civic participation, such as freedom of expression, freedom of association, freedom of peaceful assembly, freedom of religion, and the right to privacy. UN special rapporteurs have detailed the effects of such laws on a range of groups, including human rights defenders, migrants, refugees, religious and ethnic minorities, political activists, civil society organisations (CSOs), and the media. In 2018, the UN special rapporteur on counterterrorism and human rights wrote of the "ongoing misuse of counterterrorism laws and administrative practices to quell legitimate dissent and limit freedom of expression". That same year, over two thirds of communications received by her office concerned the use of security and counterterrorism legislation on human rights defenders, CSOs, and activists.

The United Nations Office of the High Commissioner for Human Rights (OHCHR) has noted that while terrorism itself poses a grave threat to human rights, the measures adopted by states in the wake of recent security threats "raise serious human rights concerns". A number of specific challenges have been documented in recent years. According to OHCHR, freedom of expression has been threatened by overly broad legal national security or counterterrorism frameworks, leading to restrictions on legitimate reporting by journalists. The increased use of digital tools for government surveillance has prompted related concerns about privacy from the UN Special Rapporteur on the right to privacy.

Concerns about discriminatory profiling based on ethnicity, birthplace, and religion have been voiced by international human rights mechanisms such as the European Union Agency for Fundamental Rights (FRA). Furthermore, according to Civicus, many countries have adopted restrictions on the CSO sector that go well beyond the standards on preventing money laundering and financing of terrorism set out by the Financial Action Task Force (FATF). In a separate but related trend, civil society actors such as the European Center for Not-for-Profit Law have stressed the importance of including sunset clauses to once-needed but now lingering COVID-19 emergency measures, which have limited the rights of peaceful assembly, association and privacy, as part of a securitised response to the health crisis.

Many security-related restrictions on civic space may be the unintended by-products of well-intentioned security policies and laws in the context of the counterterrorism obligations placed on all members of the UN. The UN Special Rapporteur on counterterrorism and human rights has noted a "formidable" expansion of institutional and legal frameworks, policies and practices in this area. As their impact on civic space and democratic norms gains wider global recognition, there are recent signs of remedial innovation and action.

Mindful of how its standards have been adopted in ways that undermine its broader counterterrorism goals, the FATF recently introduced a new and "potentially transformative" work stream to counter such consequences. Some governments are holding consultations with the public and civil society when developing security policies and counterterrorism frameworks, thereby increasing transparency and accountability, as well as protection. In March 2021, the European Commission launched a public consultation on the EU Directive on Combatting Terrorism, asking whether its implementation had raised any fundamental rights issues. These and other new approaches to engaging the public in counterterrorism initiatives can help to protect civic space in the context of heightened concerns regarding security.

## 2. Key Results

Reflection on how global security and counter-terrorism frameworks contribute to the closure of civic spaces;

Knowledge sharing on the dilemmas and trade-offs faced by governments legislating in this area;

Identification of good practices and concrete actions that governments can take at the national and international levels to protect civic space, including on how OECD member countries and international institutions can lead by example.

## 3. Key messages

The rich discussions and debate during the webinar helped to frame a number of policy orientations that governments, multilateral organisations, and civil society organisations may wish to consider to better align national security policies with the protection of civic space.

### For governments

- Seek to strike a balance between responding to threats – whether from terrorism, a health crisis such as COVID-19, a climate disaster, or any other – and maintaining core democratic norms by consistently applying a human rights lens to initiatives to understand their potential impact.

- Ensure that the defence of human rights and civic space remains at the heart of national security and counterterrorism policies, legal frameworks, and measures, including those governing the financing of terrorist activities.

- Ensure that emergency powers or measures introduced as a response to COVID-19, or any other crisis, do not become the norm; ensure that they are temporary, adhere to sunset clauses, and meet the minimum requirements of legality, necessity, and proportionality, including by being scrutinised by parliament and the public.

- Increase accountability and oversight of institutions with national security responsibilities; foster transparency by routinely including citizens and CSOs in policy- and law-making in the areas of national security and counterterrorism to ensure more inclusive and responsive legal frameworks, using a variety of suitable tools (e.g. digital tools in the context of the COVID-19 crisis).

- Restore civic rights that were restricted as a result of the COVID-19 pandemic as a priority as a means of strengthening – rather than undermining – democratic systems.

- Begin a process of defining new international or regional regulatory frameworks that ensure the protection of civic freedoms when algorithms, artificial intelligence, and other new technologies are used and engage civil society in the process. Ban the use of facial and biometric recognition and other technologies that enable mass and discriminatory surveillance (e.g. of protests, public spaces, minorities) by both the public and private sectors.

- Ensure a "privacy by design" approach to the use and storage of data to avoid its massive and uncontrolled use in violation of fundamental rights.

## For multilateral organisations (and their members)

- Seek continuous engagement with civil society to clarify and adapt counterterrorism measures in line with feedback and ensure that they do not discourage or disrupt non-profit activities.

- Ensure there are exemptions in counterterrorism measures adopted at the UN level to avoid the criminalisation of humanitarian activities.

- Use international fora to continuously raise awareness and discuss standards around protecting civic freedoms and civic space as part of security and counterterrorism measures.

## For civil society (and the public)

- Request governments to routinely consult and engage with civil society as part of their risk assessments undertaken in the framework of FATF recommendations and as they develop and implement counterterrorism measures.

- Be more proactive in reaching out to national security agencies and request them to engage on the protection of civic space and civic freedoms in order for their internal culture of secrecy to evolve.

- Make a stronger and clearer case for the protection of civic space so that governments and multilateral organisations understand the risks associated with restricting it.

- Request that governments routinely consult with civil society in the development of new regulatory frameworks on emerging technologies.

## 4. Opening remarks



### Lysa John (moderator)

**Secretary General, Civicus**

There is a need for an open and dynamic conversation around how different sectors (government, international bodies, civil society) should play their respective roles in ensuring a balance between protecting communities and countries from terrorism and other threats, and the responsibility to protect people's right to exercise their civic freedoms.

## Elsa Pilichowski

### Director, OECD Public Governance Directorate

- The OECD's core purpose, under its [Convention](#), is to preserve individual liberty and to increase the economic and social well-being of people. It shares a commitment to reinforcing democracy, to human rights and the rule of law.

- Economic frustration, anxiety about rapid societal changes, perceptions of individual rights being trampled on, and anger at elites are fuelling political dissatisfaction globally.  Low voter turnout, widespread mistrust in government – down to around 45% in OECD countries before the COVID-19 pandemic – a crisis of leadership, and greater polarisation are the result. Even with a boost in trust in government sparked by the pandemic in 2020, only 51% of people in OECD countries trusted their government.

- With widespread emergency measures in place for more than a year, and fundamental norms and institutions under pressure in some countries, the health of our democracies, including well established ones, is a concern for every one of us.

- The evolution of the risk landscape has led to governments taking exceptional measures to protect their populations in recent years. But protecting the core of our democratic lives must be a priority for us all given the shift towards autocracy in many countries in recent years.

- We need to strike a balance between responding to threats and maintaining and reinventing our democratic way of life, strengthening our resilience, and reinforcing our social capital, for current and future generations.

## Mark Malloch-Brown

### President, Open Society Foundations

- 170 countries have passed emergency legislation as a result of the COVID-19 pandemic, of which 126 restricted freedom of peaceful assembly. Some 40 also introduced new surveillance powers or new tracking mechanisms to identify and follow citizens, and 44 introduced new laws or decrees to arrest journalists or medical professionals or others who criticised government performance in handling the pandemic.

- The pandemic has widened economic inequality within nations and between nations, disproportionately affecting poor and marginalised communities and workers. This is building up a great momentum for further demonstrations and peaceful assemblies – the only means available for people to express themselves in imperfect democracies.

- As a champion of healthy economic and social states, the OECD should embrace the protection of civic space as a critical part of its agenda going forward, as a core part of what makes societies grow and adapt to change.

- OECD members have a critical role to play in different international fora, regional assemblies, and bilateral conversations to show that protected civic space is part of the "universal DNA" of what makes a successful state in today's world.

# 5. Panel discussion

## Martín Abregú
### Vice President for International Programs, Ford Foundation

- There are four interconnected challenges at play:
  - All-inclusive, vague, and ambiguous definitions of security threats and terrorism causing collateral damage and leading to long-term problems;
  - A similar broad-stroke, catch-all approach to responding to terrorism that targets particular groups of people in a discriminatory manner;
  - The use of terrorism or security threats as an "opportunity" to introduce authoritarian measures, including to crack down on civil society and opposition groups, or particular ethnic or racial minorities; and
  - The replication of the national security approach to socio-economic challenges including migration, the criminalisation of poverty, and the criminalisation of social protest.
- Civil society needs to understand the problems at play in this area as being interrelated but different, and devise a battery of related responses to counter them.

## Clément Nyaletsossi Voule

### Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association

- There was a global trend of closing civic space and the repression of freedom of assembly before COVID-19 that has been accelerated during the pandemic.

- Many of the assembly-banning clauses introduced through emergency measures have been absolute, with no exceptions for socially distanced assemblies. In addition, in several cases bans on peaceful assemblies were heavily enforced during opposition protest movements, but not for protests that supported a ruling party.

- Curfews have kept CSOs from delivering lifesaving services and states have conducted surveillance and employed excessive force and sanctions to apply such restrictions.

- There is a danger of such practices becoming normalised in a world facing multiple challenges, including climate change and the rise of global poverty.

- Civil society should be viewed as a partner in facing the pandemic and states should respect fundamental freedoms of assembly and association even during a crisis [see here for the Special Rapporteur's guidelines in this area].

- International cooperation and solidarity is more important than ever. There is a need to ensure that vaccines reach the Global South so that repressive governments will not have the excuse of keeping emergency measures in place as a necessary response to the health crisis.

## Agnès Callamard

### Secretary General, Amnesty International

- There has been a decline in civic space as a result of security and counterterrorism for 20 years, spreading from just a few states to becoming a global phenomenon.

- There is a danger of emergency measures taken during the COVID-19 pandemic becoming normalised in penal codes and administrative laws.

- Not all members of society are affected in the same way due to discrimination. Vulnerable groups are most affected by the new measures – including the extra powers given to police forces – which have created further vulnerability and inequality.

- Discriminatory practices such as identity checks by law enforcement officials with a strong racial profiling dimension have been exacerbated by new technologies used in policing, such as biometric forms of surveillance and facial recognition in public spaces.

- These systems are often incompatible with the right to privacy and have turned peaceful protestors into suspects while also violating freedoms of expression and peaceful assembly.

# Good practices from Canada

## Matthew Mayer

### Director of National Security Policy, Public Safety Canada

Two areas where Canada has achieved better outcomes by enhancing its coordination and consultation with civil society:

- **Public engagement that led to the 2017 National Security Act.** In 2015 the Anti-Terrorism Act made extensive changes to counterterrorism, national security, and privacy law in Canada. Following these changes, many Canadians expressed concerns about potential infringements on their personal rights under Canada's Charter of Rights and Freedoms, given the enhanced powers granted to some national security and intelligence agencies and the lack of a centralised review body to oversee their work. In 2016, the public reaction to the Anti-Terrorism Act led the Government of Canada to conduct extensive public consultations (with close to 59,000 responses) with national security stakeholders, academics, experts, the public, and parliamentarians on a range of national security issues, including accountability and information sharing, as well as a review of national security institutions. The consultations revealed that Canadians wanted increased accountability and oversight of institutions with national security responsibilities, as well as increased transparency on national security matters. The following year, the Government of Canada put forward key measures including legislative changes, new oversight and review bodies, and the National Security Transparency Commitment , which has six principles that all national security actors have to implement.

- **Change of terminology.** Canada changed the use of certain terminology related to terrorism, notably in public threat reports and communications, after listening to concerns from various groups and communities. Partially based on public feedback, the government changed how it refers to violent extremism in general, characterising it based on ideologically, politically, or religiously motivated violent extremism as opposed to a specific group or religion (e.g. avoiding terms such as "Sikh extremism", "Sunni extremism").

> " There is little doubt that making real efforts to engage and to listen to diverse stakeholders makes our national security work more effective, and keeps our citizens safer.

# Good practices from an intergovernmental body

**David Lewis,**

**Executive Secretary, Financial Action Task Force (FATF)**

- Many countries are not taking the risk-based approach advocated by the FATF and are not effectively consulting and engaging civil society as they go about developing and implementing measures to tackle terrorist financing.

- This is a very real problem that too few member delegations recognise, using the excuse that the FATF is not a human rights organisation.

- The FATF does not promote or endorse draconian means to tackle money laundering and terrorist financing and is committed to promoting proportionate and measured responses to help prevent the financing of serious organised crime and terrorism.

- It is in direct contradiction of the FATF standards when measures are exploited and used to oppress human rights under the pretext of counterterrorism.

- Four years ago, the FATF engaged extensively with non-profit organisations and civil society sectors to revise its standards and to protect them from misuse. These changes:

  ‣ clarified that not all non-profit organisations represent the same level of terrorist financing risks, as some present no risk at all; and

  ‣ explicitly state that it is important for such measures to be implemented in a manner that respects countries' obligations under the Charter of the United Nations and international human rights law.

*In February 2021, the FATF launched a project to review the impact and unintended consequences of its standards and explore how to systematically mitigate them, and now also has a forum to engage with the non-profit sector.*

**" We recognise that civil society is at the frontline for countering terrorism. Its experience and knowledge are essential in informing effective counterterrorist financing measures.**

### Jean-Michel Mis
#### Member of the National Assembly, France

- We are faced with the use of many new technologies, which sometimes bring opportunities but also new sources of concern. These technologies, such as artificial intelligence, are increasingly sophisticated, which can translate into automated recognition systems and mass surveillance.

- We are seeing new attacks on public freedoms, as we change scale and move from individual to automated control that potentially makes it possible to put entire sections of the population under surveillance.

- Decision-making by these technologies through algorithms can be problematic as democratic control cannot be exercised.

- It is important to find a balance in line with the following:

  ‣ The principles of the defence of public freedoms must remain at the heart of the system. Exceptional measures must remain under the control of parliament.

  ‣ Proportionality is essential between actions taken and the harms they aim to combat. Trust can be created with fellow citizens through new institutions (e.g. independent administrative authorities in France) but also third sector associations, which can oversee government actions.

### Rafael Zanatta
#### Executive Director, Data Privacy Brazil

- The pandemic brought a set of new problems such as the roll-out of new surveillance technologies coupled with an increase in data collection in order to allow for more COVID-19 control mechanisms.

- In Latin America, there are three troubling trends in counterterrorism that impact civic space:

  1. **The attempt to link data protection and terrorism**. There is a concerning militarisation of the field of personal data protection, coupled with attempts to conceptualise attacks on critical infrastructure as terrorism issues. This trend shifts the meaning of personal data protection – which is about people, freedoms and abusive discrimination – to focus on sovereignty and national security.

  2. **The attempt to link financial crimes and ransomware attacks and terrorism.** Traditional financial institutions have exerted considerable pressure to redefine criminal law to focus on financial scams and device hacking. There are risks for journalism and data activism when system and device intrusions can be considered terrorist acts.

  3. **Vague definitions of key terms such as "terrorism" and "extreme violence".** These lead to harassment and threats against CSOs and the removal of legitimate content by civil society from online spaces, thereby violating freedom of expression and the right to information.

*The webinar discussion will inform a forthcoming OECD global report on civic space and future Civic Space Scans from the Observatory of Civic Space. The first of these, the Civic Space Scan of Finland was published in June 2021.*