

Summary

Friend not Foe: Civil Society's Role in Countering Violent Extremism

David Cortright, with Alistair Millar, Linda Gerber-Stellingwerf, George A. Lopez, Eliot Fackler and Joshua Weaver.

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Many civil society organizations (CSOs) perform work that is essential to the challenge of countering violent extremism. Groups that advance development, human rights, and conflict prevention are helping to “address the conditions conducive to the spread of terrorism,” as specified in the first pillar of the 2006 *UN Global Counter-Terrorism Strategy*. Through their direct experience in conflict zones and among marginalized communities, many civil society actors have important knowledge about the causes and cures of armed violence. They can speak with authority about the importance of development, human rights and conflict transformation strategies in overcoming the conditions that cause armed violence.¹

Civil society groups often have a wealth of knowledge concerning the human rights and development situations in specific countries and may be better informed than governments and intelligence agencies about conditions on the ground that cause armed conflict. They can provide early warning of potential conflict and in many settings have served as election observers and human rights monitors. Civil society groups are often the eyes and ears of the international community in monitoring human rights and human development conditions. Some governments lack effective mechanisms for addressing these issues and may be loath to consider policy changes that can lead to more representative governance and greater economic and political equity. These are precisely the areas where CSOs can be most helpful. Development and human rights groups can prevent violent extremism by pursuing their core mission of rights-based development.

Some citizen movements and NGOs participate in public advocacy on behalf of development and human rights. They help to articulate norms that in some cases have crystallized into policy. Civil society groups have been prime movers of some of the most innovative initiatives for dealing with emerging global challenges.² Examples of significant civil society movements include the Nobel Prize–winning campaign to ban land mines and efforts to advance the role of women in international peacemaking through the implementation of UN Security Council Resolution 1325.

Negative impacts of counterterrorism measures on charity, peacebuilding, and mediation

Counterterrorism measures (CTMs) and governmental distrust of CSOs have had adverse impacts on civil society groups. In December 2009 the UN Special Rapporteur on the situation of human rights defenders reported that states “systematically invoke national security and public safety to restrict the scope” of civil society activities.³ In many countries special legislative and regulatory measures have been used to crack down on NGOs and activists who criticize government policies. These measures make it more difficult for civil society actors to operate freely and effectively. Negative impacts have been especially noticeable in conflict zones and among groups that challenge government policies through their work in peace building, democratization, and human rights. CTMs, counterinsurgency operations, emergency measures, and repressive actions have combined, with the distinctions often blurred, to create hardships for those who contest unequal power relations.

In a number of countries the creation of special security forces and intensified operations against insurgents and alleged criminals and terrorists have led to a sharp rise in the number of extrajudicial killings and abductions of human rights workers and political activists. The Commonwealth Human Rights Initiative expressed concern in 2009 that human rights defenders are “being spied on or defamed . . . or being subject to arbitrary arrest, physical violence and death.”⁴ The UN High Commissioner for Human Rights noted in September 2010 that “human

rights defenders, journalists, and civil society activists in all regions of the world face threats to their lives and security because of their work.”⁵ In Pakistan intelligence agencies have infiltrated humanitarian organizations for security operations, causing major disruption in the provision of vital health services to vulnerable populations.⁶

Civil society groups working for peace and reconciliation are sometimes falsely accused of sympathizing with or supporting terrorism. The Office of Foreign Assets Control of the U.S. Treasury Department has established a Risk Matrix that stigmatizes and labels as “high risk” any charity that “engages in work in conflict zones or in countries/regions known to have a concentration of terrorist activity.”⁷ Prohibitions on engaging with armed actors have led to reduced support for track two diplomacy and informal peace processes in conflict zones.⁸ They have impeded dialogue and mediation efforts to help resolve armed conflict.

Governments have tightened controls over civil society groups by imposing onerous registration requirements and in some cases denying organizations the right to operate. Governments have established new requirements for CSO reporting on finances, governance structures, and the identities of partner organizations and clients.⁹ In some countries fear-based rhetoric has had a chilling effect that hinders the operational freedom of nongovernmental groups.

An overemphasis on security measures may be contributing to a general erosion of civil liberties and human rights. The nongovernmental monitoring organization Freedom House has reported an alarming erosion of global political freedom in recent years. In its 2010 annual survey the organization noted “intensified repression against human rights defenders and civic activists” and reported declines for political freedom in forty countries representing twenty percent of the world’s total polities.¹⁰ Recent decades have witnessed the longest continuous period of decline for global freedom in the organization’s nearly forty year history of publishing annual ratings. The Freedom House reports do not attribute the observed pattern of declining freedom to any particular policy development, but it is

at least plausible that the global trend toward restrictive CTMs and tighter controls on civil society actors may be contributing to the global decline of political freedom.

Material support laws

In the United States laws against ‘material support’ for terrorism prohibit aiding or engaging with groups that are designated as ‘foreign terrorist organizations.’ Under the *Holder v. Humanitarian Law Project* ruling, charities could be convicted under the law for providing ‘material support’ to a group that the government determines has diverted funds for terrorist purposes, even if the group in question has not been officially designated as terrorist-related and the charity has no knowledge of or intent to support the alleged diversion. Such an expansive definition of ‘material support’ creates legal jeopardy for organizations involved in humanitarian assistance and conflict mediation efforts. It places roadblocks in the way of delivering aid to designated groups or the communities they control.¹¹

Restrictions on international financial transactions carried out in the name of counterterrorism have had the effect of hindering the work of foundations and charitable agencies that support humanitarian and peacemaking activities. Legislation designed to prevent support for terrorism has contributed to a climate of suspicion toward NGOs, especially Muslim charities, which have found it more difficult to operate.¹² The new rules have had a chilling effect on donors and charities and have left vulnerable populations underserved. They have also negative impacts on organizations working for gender equality, including women’s rights organizations.

Some governments take a cooperative approach to addressing the risks of terrorist financing. The European Commission has issued guidelines and a draft code of conduct for engaging with civil society groups.¹³ Accountability and transparency are “at the heart of donor confidence,” according to the EU Justice and Home Affairs Council. The challenge of preventing terrorist finance requires “effective, proportionate measures of oversight,” which are best achieved through cooperation rather than accusation.¹⁴

Protecting Civil Society

In response to the repressive restrictions that have been imposed on civil society groups and their supporters, NGOs have established a set of core principles for protecting the ability of civil society groups to promote development, good governance, and conflict prevention. The International Center for Not-for-Profit Law and the World Movement for Democracy spelled out these principles in their landmark report, *Defending Civil Society*. The principles, based on universal human rights conventions and declarations, are as follows:

- the right to entry, defined as the freedom to associate and form organizations;
- the right to operate without unwanted state interference;
- the right to free expression;
- the right to communicate and cooperate freely internally and externally;
- the right to seek and secure resources; and
- the right to have these freedoms protected by the state.¹⁵

As UN Secretary-General, Ban Ki-moon emphasized in his December 2010 Human Rights Day message, states “bear the primary responsibility to protect human rights advocates.”¹⁶ When they take actions to limit the exercise of these freedoms, states are violating international law and acting contrary to covenants and legal agreements they themselves have adopted. They are also undermining the essential work of countering violent extremism.

Through their efforts for development, human rights and conflict prevention, civil society groups are working to dry up the wells of extremism from which violence springs. They work to address political grievances, socio-economic injustices, and

power imbalances that are among the roots causes of armed conflict. This work is not labeled counterterrorism, nor should it be, but it is exactly what is needed to counter violent extremism. International policymakers must recognize and protect this vital civil society mission and take action to eliminate counterproductive CTMs. The nonprofit sector of a country is a force for good, according to the World Bank study; it should be “protected, rather than unnecessarily curtailed.”¹⁷ In the global struggle against terrorism civil society groups should be welcomed as friends, not hounded as foes.

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- ¹ See OSCE Office for Democratic Institutions and Human Rights, “The Role of Civil Society in Preventing Terrorism,” Informal Working Level Meeting report (Barcelona: OSCE, 2007), 6, par. 14, http://www.osce.org/documents/odihr/2007/05/24495_en.pdf (accessed 29 October 2010).
 - ² Fernando Henrique Cardoso, “Transmittal letter dated 7 June 2004 from the Chair of the Panel of Eminent Persons on United Nations-Civil Society Relations addressed to the Secretary-General,” United Nations General Assembly, *We the Peoples*, 3.
 - ³ United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/13/22, New York, 30 December 2009, par. 27, 32.
 - ⁴ Commonwealth Human Rights Initiative, *Silencing the Defenders: Human Rights Defenders in the Commonwealth 18* (Maja Daruwala ed., 2009) available at http://www.humanrightsinitiative.org/publications/chogm/chogm_2009/silencing_the_defenders_chogm_2009_report.pdf.
 - ⁵ Navanethem Pillay, U.N. High Commissioner for Human Rights, Opening Statement at Human Rights Council 15th Sess., (Sept. 13, 2010), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10319&LangID=e>.
 - ⁶ Declan Walsh, “Fallout of Bin Laden Raid: Aid Groups in Pakistan are Suspect,” *New York Times*, May 3, 2012, A1.
 - ⁷ U.S. Department of the Treasury, Office of Foreign Assets Control, “Risk Matrix for the Charitable Sector” (2007): 3, http://www.ustreas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf (accessed 1 December 2010).
 - ⁸ USAID, “World Wide Anti-Terrorism Certification,” <http://www.usaid.gov/press/factsheets/2004/fs040623.html> (accessed 31 October 2010); see also Jude Howell and Jeremy Lind, “Securing the World and Challenging Civil Society: Before and After the ‘War on Terror,’” *Development and Change* 41, no. 2 (Summer 2010): 283; Guinane, Dick, and Adams, *Collateral Damage*, 48.
 - ⁹ See Mark Sidel, Counter-Terrorism and the Enabling Legal and Political Environment for Civil Society: A Comparative Analysis of “War on Terror” States, 10 *Int’l J. Not-for-Profit L.* 7, 10 (2008).
 - ¹⁰ See *Freedom in the World 2010: Global Erosion of Freedom*, Freedom House, <http://www.freedomhouse.org/article/freedom-world-2010-global-erosion-freedom>, (last visited Feb. 22, 2012).
 - ¹¹ See *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010); Oxfam, “Whose Aid is it Anyway?: Politicizing aid in conflicts and crises,” Oxfam Briefing Paper 145, 10 February 2011, 21, http://www.oxfam.org/sites/www.oxfam.org/files/bp145-whose-aid-anyway-100211-en_0.pdf (accessed 20 February 2011).
 - ¹² Lind and Howell, *Aid, Civil Society and the State in Kenya since 9/11*, 22-28; Jude Howell and Jeremy Lind, “Security and subterfuge: Civil society, aid and the state in Kenya in wake of the ‘Global War on Terror,’” 2, http://www.lse.ac.uk/collections/GWOT/pdf/Kenya_Fullsm1.pdf (accessed 13 December 2010).
 - ¹³ Commission of the European Communities, *Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of and Fight against Terrorist*

Financing through enhanced national level coordination and greater transparency of the non-profit sector, COM(2005) 620 final, Brussels, 29 November 2005.

- ¹⁴ Council of the European Union, "Press Release: 2696th Council Meeting, Justice and Home Affairs," 14390/05 (Presse 296), Brussels, 1-2 December 2005, 32, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/87292.pdf (accessed 10 October 2008).
- ¹⁵ International Center for Not-for-Profit Law and World Movement for Democracy, "Defending Civil Society," *The International Journal of Not-for-Profit Law*, 10, no. 2 (April 2008): 31-33.
- ¹⁶ Ban Ki-moon, "Secretary-General's Message," United Nations Human Rights Day, 10 December 2010, <http://www.un.org/en/events/humanrightsday/2010/sg.shtml> (accessed 4 April 2011).
- ¹⁷ Emile van der Does de Willebois, "Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportionate Response," 20 at n. 1.