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Friend, Not Foe:
The Role of Civil Society in Preventing Violent Extremism

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

Introduction

This paper examines the contradiction of counterterrorism measures (CTMs) that hinder the work of countering terror. It is written from the perspective of independent non-governmental organizations (NGOs) that seek to advance economic development and prevent armed conflict, but whose work is hindered by overly restrictive counterterrorism policies. The paper is based on a series of workshops and consultations conducted over the course of three years on behalf of the Dutch development agency Cordaid, based in The Hague, in cooperation with the Fourth Freedom Forum, a private research foundation based in Goshen, Indiana. The paper draws from the work of dozens of civil society groups in Europe, Asia, Latin America, and Africa and is based on interviews and meetings with hundreds of representatives of civil society organizations (CSOs), donor agencies, research centers, and governments. It benefits especially from the work of CIVICUS based in South Africa and the International Center for Not-for-Profit Law and the Charity and Security Network based in Washington, D.C.

The paper begins with a critical examination of the impact of CTMs on civil society development and peace building activities. It reviews the harmful impact on charities of measures intended to prevent the financing of terrorism. The paper concludes with a critique of overly repressive and militarized counterterrorism strategies and identifies alternative policies based on comprehensive approaches that are likely to be more effective in preventing violent extremism and to which civil society can contribute constructively.

I.   Restrictions on Civil Society

In the name of fighting terrorism governments have curtailed political freedoms and imposed restrictive measures against human rights defenders and civil society activists in many countries. Repressive CTMs have undermined civil liberties and contributed to a climate of suspicion and hostility toward nongovernmental groups. Many of the organizations that work against violent extremism by promoting human rights and sustainable development are themselves being labeled extremist and are facing constraints on their ability to operate. The positive work of civil society to alleviate social and political marginalization helps to reduce grievances that can lead to political violence. Measures taken in the name of counterterrorism that limit the political space of such groups have the ironic result of inhibiting work on the ground to address conditions that fuel terrorism.

In December 2009 the UN Special Rapporteur on the situation of human rights defenders reported "worrying trends" globally in the stigmatization of human rights defenders and their "growing categorization as 'terrorists,' 'enemies of the State' or 'political opponents.'"[1] States "systematically invoke national security and public safety to restrict the scope" of civil society activities.[2] 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.

Governments have tightened controls over civil society groups by imposing onerous registration requirements and in some cases denying organizations the right to operate. CIVICUS reported in December 2010 a pattern of "arbitrary denials of registration for many organizations" in the Euro-Mediterranean region.[3] Governments have established new requirements for CSO reporting on finances, governance structures, and the identities of partner organizations and clients.[4] In some countries fear-based rhetoric has had a chilling effect that hinders the operational freedom of nongovernmental groups.

In the United States laws against "material support" for terrorism prohibit aiding or engaging with groups that are designated as "foreign terrorist

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[1] *See* Special Rapporteur on the Situation of Human Rights Defenders, *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders*, U.N. Human Rights Council, ¶ 27, U.N. Doc. A/HRC/13/22, (Dec. 30, 2009) (by Margaret Sekaggya).

[2] *See id.* ¶ 32.

[3] *See* MANDEEP TIWANA & NETSANET BELAY, CIVICUS, CIVIL SOCIETY: THE CLAMPDOWN IS REAL 6 (Dec. 2010), *available at* https://www.civicus.org/content/CIVICUS-Global_trends_in_Civil_Society_ Space_ 2009-2010.pdf.

[4] *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).

organizations."[5] Under *Holder v. Humanitarian Law Project*,[6] 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.[7] 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.[8]

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."[9] 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."[10]

Counterterrorism measures are usually weighted toward the executive branch of government, with little attention to enhancing judicial independence, legislative oversight, and citizen involvement. Emergency measures passed in the name of fighting terrorism have had the effect of undermining civil liberties, restricting the ability of civil society groups to operate, and impeding development and relief activities in marginalized communities. Repressive CTMs have reversed progress achieved in recent years toward the integration of human rights and accountable governance into development policy. Individual rights and political freedoms have eroded as states have accumulated greater security powers.

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

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[5] *See* U.S. Congressional Research Service. "Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B," (R41333; July 19, 2010) by Charles Doyle.

[6] *See* 130 S. Ct. 2705 (2010).

[7] *See id.* at 2717.

[8] *See* OXFAM, WHOSE AID IS IT ANYWAY?: POLITICIZING AID IN CONFLICTS AND CRISES, BRIEFING   PAPER   NO.   145,   21   (2011),   available   at http://www.oxfam.org/sites/www.oxfam.org/files/bp145-whose-aid-anyway-100211-en_0.pdf.

[9] 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_defende rs_chogm_2009_report.pdf.

[10] 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/Display News.aspx?NewsID=10319&LangID=e.

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.[11] The last few years have witnessed the longest continuous period of decline for global freedom in the organization's nearly forty year history of publishing annual ratings.[12] In 2011, Freedom House noted a further decline in political freedom and a reduction in the number of countries defined as politically free. The report highlighted the continued poor performance of countries in the Middle East and North Africa, although this trend may be partially reversed if the democratic revolutions in Egypt and Tunisia produce freer societies and more representative governments. The Freedom House report does not link the erosion of liberty to counterterrorism policies. It makes no attempt to attribute the observed pattern 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.

II.   GENDER IMPACTS

Women suffer directly from counterterrorism pressures when they are unlawfully detained or ill-treated to gain information about a male family member. They often face harassment because of their attempts to win freedom for those imprisoned men or gain information about the disappeared. As noted by the UN Working Group on Enforced or Involuntary Disappearances, women are often at the forefront of efforts to resolve abductions and deportations of family members, and as a result they are themselves "susceptible to intimidation, persecution and reprisals."[13]

Extremist groups have targeted women by restricting their public mobility and imposing harsh codes of behavior in the regions they control. Women faced restrictions on their movement and participation in public life during the period of Taliban rule in Afghanistan and still do today in some communities in Afghanistan and Pakistan. The West's support of women's rights in Afghanistan since 2001 has created a backlash against Afghan women's rights defenders. In Afghanistan, as in other countries, human rights defenders are often caught between militant group pressures and government counterterrorism measures.

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[11] *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).

[12] *See id.*

[13] *See* HUMAN RIGHTS COUNCIL, PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT, REP. OF THE WORKING GROUP ON ENFORCED AND INVOLUNTARY DISAPPEARANCES, A/HRC/10/9, Feb. 25, 2009, ¶ 455, *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/111/84/PDF/ G0911184.pdf?OpenElement.

Abusive interrogation methods have a gendered dimension. At Abu Ghraib and other prisons, US contractors and soldiers manipulated gender and cultural stereotypes as a means of coercive interrogation, including the use of female interrogators to torment and question naked male Arab prisoners. In some countries—that are allies of the United States—where prisoners are rendered, officials have resorted to the threat or use of violence and sexual abuse against prisoners and their relatives as a means of extracting information. In the United States and other countries hyper-masculine imagery and language may play a role in motivating overly aggressive military and counterterrorism actions.[14]

In some countries women who wear visible religious garb are subjected to discrimination and profiling. France has banned the wearing of the hijab in schools, and government officials in other countries have adopted or are considering similar measures to restrict the wearing of religious clothing and symbols in public places.[15] Political and social pressures against Muslim immigrants have increased in Europe and other regions in recent years. So have misconceptions and stereotypes falsely equating the wearing of the hijab with terrorist sympathies. In some instances, anti-terrorism posters have included images of veiled women.[16] Populist politicians have exploited such distortions to fan the flames of intolerance and gain electoral advantages. As a result, Muslim women are often stigmatized for following their religious and cultural traditions. This can generate feelings of humiliation and anger among the affected women and their family members and may exacerbate tensions between social communities.

Women have important contributions to make in combating violent extremism. In some of the world's most dangerous settings they have proven to be courageous and effective advocates for peace. Yet women often are not heard or adequately represented in policy-making bodies. The denial of women's voices in counterterrorism policy is contrary to the intent of UN Security Council Resolution 1325 and related measures, including Resolution 1960 (2010), which emphasized the importance of female participation in conflict prevention and peacemaking. The active involvement of women is essential to the crafting of effective and balanced means of countering armed violence.

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[14] *See The United States and Gender, National Security and Counterterrorism Concept Note*, N.Y.U. CTR. FOR HUM. RTS. & GLOBAL JUSTICE, April 14, 2010, http://www.chrgj.org/projects/docs/ConceptNote.pdf.

[15] *See* BBC News, *The Islamic Veil Across Europe* (Sept. 22, 2011, updated June 15, 2010), *available at* http://news.bbc.co.uk/ 2/hi/5414098.stm (last visited Mar. 25, 2012).

[16] *See* Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, G.A. Res. A/61/267, U.N. Doc. A/61/267 para. 38–39 (Aug. 16, 2006), *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/477/03/PDF/N0647703.pdf?OpenElement (last visited Mar. 25, 2012).

III.   SECURITIZING AID

The recent global focus on counterterrorism and multilateral counterinsurgency operations has accelerated a trend toward using aid and development funding for security-related purposes.

This approach subordinates traditional goals of mitigating poverty to the agenda of counterterrorism and defeating insurgency. It blurs the analytic boundaries between security and development while politicizing both and detracting from efforts to improve the lives of the world's most disadvantaged communities.

The process works in two ways: a growing proportion of aid funding is channeled directly through military institutions, and development programs are increasingly implemented in support of military operations. The percentage of US aid funding allocated through the Pentagon has increased in recent years from 3.5% in 1998 to approximately 25% ten years later.[17] Aid budgets have increased around the world, but two-fifths of the increase since 2002 has gone to just two countries—Iraq and Afghanistan.[18] Major recipients of US development assistance are countries central to security and counterterrorism objectives. In some of the countries where foreign assistance is provided, police forces are highly repressive and unaccountable. Assistance provided to such forces in the absence of needed structural reforms may simply reinforce repressive tendencies and undermine civil society efforts to defend human rights and establish democratic oversight.[19]

In October 2010, the British Department for International Development announced a 35% increase in development funding over a four year period, with a major boost in spending in countries affected by conflict, especially Afghanistan and Pakistan.[20] Over the four year period, funding to support overseas development in fragile and conflict-affected states will increase from 22% to 30%.[21] British development advocates welcomed the increased commitment to development assistance but questioned the greater prioritization of security concerns. Labor Member of Parliament (MP) Joan Ruddock asked how the aid budget would be able to maintain its focus on helping women and children and reducing poverty if a third of the budget is

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[17] *See* Stewart Patrick & Kaysie Brown, *The Pentagon and Global Development: Making Sense of the DoD's Expanding Role* 1, 4 (Ctr. for Global Dev., Working Paper No. 131, 2007); *see also* Amy B. Frumin, *Equipping USAID for Success: A Field Perspective*, PCR Special project briefing, CTR. FOR STRATEGIC & INT'L STUDS. (June 2009).

[18] *See* OXFAM, *supra* note 8, at 2, 9.

[19] *See* Alice Hills, *Trojan Horses? USAID, Counter-terrorism and Africa's Police*, 27 THIRD WORLD Q. 629, 630 (2006).

[20] *See Spending Review 2010: Press Release*, UNITED KINGDOM DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (Oct. 20, 2010), *available at* http://www.dfid.gov.uk/Media-Room/Press-releases/2010/ Spending-Review-2010/ (last visited Mar. 9, 2012).

[21] *See id.*

reallocated to conflict zones.[22] Similarly, one aid group said, "[a]id money should go toward poor nations rather than countries that present a security threat."[23]

In a February 2011 report, Oxfam argued that aid is being politicized to the detriment of people with the greatest need.[24] The report provides that "lifesaving humanitarian assistance and long-term efforts to reduce poverty are being damaged where aid is used primarily to pursue donors' own narrow political and security objectives."[25] While huge sums are devoted to countries where Western nations have direct security interests, "equally poor and conflict-afflicted countries from the Democratic Republic of Congo to the Central African Republic have received far smaller shares of aid relative to their needs."[26] Aid provided through a security lens overlooks the plight of some of the world's most marginalized populations.[27]

The securitization of aid has generated deep concerns in the development community.[28] Development advocates have sought to shield aid programs from military encroachments, even as they recognize the deep and inexorable connections that exist between development and security.[29] Accepting the need for a more integrated and coherent approach to development and security does not justify the "slow bleeding of financing for development purposes into security-related military activities," declared a report for CIDSE, the coalition of Catholic development agencies in Europe and North America.[30] Nor does it mean that all development and security goals are compatible. The Association of World Council of Churches-related Development Organizations in Europe (APRODEV) acknowledged that development can contribute to security, but only if the integrity and autonomy of development activities are respected fully.[31]

Faith-based aid agencies emphasize their commitment to the preferential option for the poor and the powerless, and to the vision of a more just and peaceful world.[32] They support a holistic human security strategy that

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[22] *See* Nicholas Watt, *Anger as Billions in Aid is Diverted to War Zones*, THE GUARDIAN (Oct. 19, 2010, 9:44 AM), http://www.guardian.co.uk/politics/2010/oct/19/aid-billions-diverted-to-war-zones?utm_source=twitterfeed&utm_medium=twitter.

[23] Ivy Mungcal, *Praise and Criticism Greet UK Foreign Aid Budget Increase*, DEVEX (Oct. 27, 2010), http://www.devex.com/en/blogs/the-global-development-briefing/top-story-of-the-week-cheers-and-jeers-for-uk-foreign-aid-budget-increase.

[24] *See* OXFAM, *supra* note 8, at 1.

[25] *Id.* at 2.

[26] *Id.* at 9.

[27] *Id.* at 18.

[28] *See* COOPÉRATION INTERNATIONALE POUR LE DÉVELOPPEMENT ET LA SOLIDARITÉ, CIDSE STUDY ON SECURITY AND DEVELOPMENT 19 (2006).

[29] *See id.*

[30] *See id.*

[31] *See* Clive Robinson, *Whose Security? Integration and Integrity in EU Policies for Security and Development*, *in* NEW INTERFACES BETWEEN SECURITY AND DEVELOPMENT: CHANGING CONCEPTS AND APPROACHES 69, 81 (Stephan Klingebiel ed., 2006).

[32] *See id.*, at 69–70.

prioritizes the well-being of individuals and communities rather than a narrow approach that protects the interests of states.[33] They argue that human rights and development should be seen as ends in themselves, not as means to other purposes.[34] Development cooperation should not be subsumed to an idea of security based on defending the interests and preserving the way of life of states in the global North.[35] Peace cannot be imposed "from above."[36] For peace to be sustainable, it must grow "from below."[37]

IV.   MONEY AS A WEAPONS SYSTEM

The development aid that is provided in Afghanistan and other war zones is not for the purpose of alleviating poverty and supporting long-term sustainability.   Its strategic objective is to gain the sympathy of local populations and win political support for military missions. Aid programs from the US and other NATO countries generally flow to regions and communities where military and counterterrorism operations are taking place. In Afghanistan funding is concentrated in southern provinces where insurgency and counterinsurgency are most prevalent, while other previously less turbulent parts of the country receive fewer development resources. US military leaders are explicit in describing development assistance as an element of war. A US Army manual for Iraq and Afghanistan was entitled "A Commander's Guide to Money as a Weapons System." It described aid as "a nonlethal weapon"[38] utilized to "win the hearts and minds of the indigenous population to facilitate defeating the insurgents."[39]

US and allied military forces have established Provincial Reconstruction Teams (PRTs) as a major vehicle for providing humanitarian and development assistance in both Afghanistan and, previously, in Iraq. PRTs have been criticized by development experts as "overwhelmingly military in scope and operation," with a primary focus on force protection and security assistance. Problems identified with the PRTs include "generally poor development practice" and "relative lack of attention to promoting good governance and the rule of law."[40] A subcommittee of the House Armed Services Committee in the US Congress reported that PRTs tend to pursue "short-term, 'feelgood' projects . . . without consideration of larger strategic and capacity-building implications."[41] A January 2010 report by seven

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[33] *See id.*

[34] *Id.*

[35] *Id.* at 75.

[36] *Id.*

[37] *Id.*

[38] CENTER FOR ARMY LESSONS LEARNED, US ARMY COMBINED ARMS CENTER, COMMANDERS' GUIDE TO MONEY AS A WEAPONS SYSTEM: TACTICS, TECHNIQUES, AND PROCEDURES 13 (2009), *available at* http://usacac.army.mil/cac2/call/docs/09-27/09-27.pdf.

[39] *Id.* at 1.

[40] Patrick & Brown, *supra* note 17, at 5–6.

[41] U.S. HOUSE OF REPRESENTATIVES COMM. ON ARMED SERVICES, SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, AGENCY STOVEPIPES VERSUS STRATEGIC AGILITY: LESSONS

humanitarian agencies in Afghanistan argued that PRTs often "lack the capacity to manage effective development initiatives."[42] In many cases, PRTs rely on wasteful and corrupt contractors with limited capacities and have weak links to local communities.[43] PRTs are unable to gain the trust of local populations and thus cannot foster the sense of community ownership and local empowerment that are needed to achieve sustainable development. Many Afghans are afraid to work with the PRTs for fear of insurgent attacks directed against these foreign-run military institutions.[44]

The US military has also established the Commander's Emergency Response Program (CERP), which allows field commanders to dispense payments of tens of thousands of dollars or more on projects intended to generate goodwill among local populations. CERP spending in Afghanistan increased sharply over the years, from $40 million in 2004 to $1 billion in 2010.[45] The program has been criticized by the US Government Accountability Office for a lack of management and oversight and for the absence of metrics for evaluating the impact of local projects.[46] A report of the Committee on Appropriations of the US House of Representatives described CERP as a program with "few limits and little management."[47]

Military forces are not appropriate providers of development assistance. Military service members do not have the mandate and are not trained or equipped to address problems of "underdevelopment, alienation, and instability" in marginalized communities.[48] "Few soldiers possess [the needed] expertise in matters of governance, development, and the rule of law."[49]

WE NEED TO LEARN FROM PROVINCIAL RECONSTRUCTION TEAMS IN IRAQ AND AFGHANISTAN 72 (2008), *available at https://transnet.act.nato.int/WISE/SCDSM/Links/Forms/PRT_Report.*

[42] ACTION AID ET AL., QUICK IMPACT, QUICK COLLAPSE: THE DANGERS OF MILITARIZED AID IN AFGHANISTAN 1 (2010), *available at* http://www.oxfam.org/sites/www.oxfam.org/files/quick-impact-quick-collapse-jan-2010.pdf. The seven organizations contributing to this report include ActionAid, Afghanaid, CARE, Christian Aid, Concern, Oxfam, and Trócaire.

[43] *Id.*

[44] *Id.* at 3.

[45] Frank Oliveri & Emily Cadei, *Afghanistan: Mission Uncertain*, 2010 CQ WEEKLY 2382, *available at* http://library.cqpress.com.proxy.library.nd.edu/cqweekly/weeklyreport111-000003752697.

[46] US GOV'T ACCOUNTABILITY OFFICE, GAO-08-736R, MILITARY OPERATIONS: ACTIONS NEEDED TO BETTER GUIDE PROJECT SELECTION FOR COMMANDER'S EMERGENCY RESPONSE PROGRAM AND IMPROVE OVERSIGHT IN IRAQ (2008), *available at* http://www.gao.gov/new.items/d08736r.pdf; US GOV'T ACCOUNTABILITY OFFICE, GAO-09-615, MILITARY OPERATIONS: ACTIONS NEEDED TO IMPROVE OVERSIGHT AND INTERAGENCY COORDINATION FOR THE COMMANDER'S EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN (2009), *available at* http://www.gao.gov/new.items/d09615.pdf.

[47] H.R. REP. NO. 111-230, pt. 9, at 349 (2010), *reprinted in* 2010 USCCAN 2487, *available at* http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr230&dbname=111&.

[48] Patrick & Brown, *supra* note 17, at 12.

[49] *See* Stewart Patrick and Kaysie Brown, "The Pentagon and Global Development: Making Sense of the DoD's Expanding Role," Center for Global Development Working Paper 131, November 2007, 12.

Assigning these tasks to military rather than civilian actors displaces the role of civil society and undermines the principles of local self-reliance and grassroots empowerment that are vital to genuine development and democratic governance.

The January 2010 report by humanitarian agencies in Afghanistan summarized the dire consequences of militarizing aid:

> More and more assistance is being channeled through military actors to "win hearts and minds" while efforts to address the underlying causes of poverty and repair the destruction wrought by three decades of conflict and disorder are being sidelined. Development projects implemented with military money or through military-dominated structures aim to achieve fast results but are often poorly executed, inappropriate[,] and do not have sufficient community involvement to make them sustainable. There is little evidence this approach is generating stability and, in some cases, military involvement in development activities is, paradoxically, putting Afghan lives further at risk as these projects quickly become targeted by anti-government elements.[50]

Direct attacks on aid workers have increased in recent years. A comprehensive database maintained by US, Canadian and Irish government agencies shows a pattern of increased attacks on aid workers: total aid worker victims, including those killed, kidnapped, or injured, was 242 in 2010, compared to eighty-five in 2002.[51] The trend reflects a greater number of aid workers operating in insecure areas, but also results from an apparent rise in politically motivated attacks, which account for nearly half the total.[52]

The Director of Operations for the International Committee of the Red Cross (ICRC) warned recently that linking humanitarian action and security operations endangers aid agencies and diminishes their ability to serve populations in need.[53] Subordinating humanitarian assistance to military purposes is a violation of the ICRC Code of Conduct, which provides for a strict separation of humanitarian assistance from any military or political agenda.[54] Separation is necessary to safeguard aid workers and the communities they serve and to uphold the principle of prioritizing humanitarian assistance according to need.[55]

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[50] ACTION AID ET AL., *supra* note 42, at 1.

[51] *Major Attacks on Aid Workers: Summary Statistics (2000–2010)*, THE AID WORKER SECURITY DATABASE, HUMANITARIAN OUTCOMES (Feb. 5, 2012), https://aidworkersecurity.org/incidents/report/ summary.

[52] OXFAM, *supra* note 8, at 20.

[53] *See Pierre Krähenbühl, The Militarization of Aid is Perilous, STARS AND STRIPES, Jan. 15, 2011;* The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (Geneva: ICRC, 1994), *available at* www.icrc.org/web/eng/siteeng0.nsf/htmlall/code-of-conduct-290296.

[54] *Id.*

[55] *Id.*

V.   TARGETING CHARITIES

Tighter restrictions on international financial transactions are a central element of international counterterrorism policy. The intended purpose is to prevent the financing of terrorism, but these measures have the effect of hindering the work of foundations, nongovernmental groups, and charitable agencies that support humanitarian and peacemaking activities.[56] Some donors have become risk averse and reluctant to fund initiatives that address controversial issues or challenge inequalities. The new rules have had a chilling effect on donors and charities, and have left vulnerable populations underserved. Allegations of wrongdoing and restrictions on nonprofit financing have eroded trust and cooperative relations between donors and overseas partners in many countries.[57] They have created a "cloud of suspicion" over the entire nonprofit sector.[58]

Islamic NGOs have experienced particular difficulties because of CTMs and tighter restrictions on transnational funding. The Oxford-based International NGO Training and Research Centre (INTRAC) has reported that Muslim NGOs "in the USA and elsewhere . . . are finding it harder to raise funds" and fulfill their religious duty of almsgiving, the Zakāt, which is one of the five pillars of Islam.[59] Since 2001, three of the largest Islamic organizations in the US—the Holy Land Foundation, Global Relief Foundation, and Benevolence International Foundation—have had their assets frozen.[60] Muslim charities and trusts in the UK also have been exposed to high levels of scrutiny under anti-terror legislation. The overall effect of such measures is a decline in giving to Islamic charities and challenges to the religious obligation to serve the needy.[61]

The targeting of civil society financing is rooted in the Special Recommendations against the Financing of Terrorism issued by the Financial

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[56] Kay Guinane et al., *Collateral Damage: How the War on Terror Hurts Charities, Foundations, and the People They Serve*, O.M.B. WATCH & GRANT MAKERS WITHOUT BORDERS 39 (2008) (citing William P. Fuller and Barnett F. Baron, *How the War on Terror Hits Charity*, CHRISTIAN SCIENCE MONITOR, July 27, 2003).

[57] *Id.*

[58] EMILE VAN DER DOES DE WILLEBOIS, NONPROFIT ORGANIZATIONS AND THE COMBATING OF TERRORISM FINANCING: A PROPORTIONATE RESPONSE, 20–21 (2010), *available at* http://issuu.com/ world.bank.publications/docs/9780821385470.

[59] *See* KASTURI SEN & TIM MORRIS, CIVIL SOCIETY AND THE WAR ON TERROR 45 (2008).

[60] *See* CNN, *Sources: Feds Raid Islamic Charity Groups* (Dec. 14, 2001), *available at* http://articles.cnn.com/2001-12-14/us/inv.raid.charity_1_freeze-assets-holy-land-foundation-financial-assets?_s=PM:US.

[61] *See* O.M.B. Watch, *Muslim Charities and the War on Terror: Top Ten Concerns and Status Update*, (Feb. 3, 2006), *available at* http://www.ombwatch.org/pdfs/muslim_charities.pdf; Mohammed R. Kroessin, *Islamic Charities and the 'War on Terror': Dispelling the Myths*, HUMANITARIAN EXCHANGE 38, 27 (June 2007) *available at* http://www.odihpn.org/documents/humanitarianexchange038.pdf.

Action Task Force (FATF).[62] Recommendation VIII instructs governments and financial institutions to "ensure that nonprofit organizations cannot be misused to finance terrorism."[63] In its Interpretive Note on Recommendation VIII, FATF claims, without supportive evidence, that nonprofit organizations are vulnerable to terrorist group manipulation and exploitation.[64]

Officials of foundations and charitable funding agencies contest these claims and refute assertions that charities are a significant source of funding for terrorist organizations. Rob Buchanan, Managing Director of International Programs at the US Council on Foundations, stated in a March 2009 presentation in Washington, D.C. that there is no evidence of US charitable funds falling into the hands of al-Qaida or other global terrorist groups.[65] Of the 1.8 million charitable organizations in the United States, Buchanan noted, only a handful have been alleged to have links with terrorism financing. To date, the Treasury Department has designated eight US charities for alleged terrorist financing, only four of these for connections to al-Qaida.[66] The most recent Treasury designations of US charities have been for alleged support of Hezbollah and Tamil organizations. No claims of US charitable support for al-Qaida have been registered since 2004.[67]

The Office of Foreign Assets Control of the US 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."[68] USAID has established a requirement dating from 2002 that all grantees obtain a worldwide Anti-Terrorism Certification, dissociating themselves from dealings with any entity designated by the US government as terrorist-related.[69] Prohibitions on

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[62] Financial Action Task Force, *FATF IX Special Recommendations*, 2 (2010), *available at* http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf.

[63] *Id*., at 20.

[64] Financial Action Task Force, *Interpretive Note to Special Recommendation VIII*, *available at* http://www.fatf gafi.org/dataoecd/43/5/38816530.pdf.

[65] *See* Charity and Security Network and Cordaid, "Friend not Foe: How the Work of Charities Counters Terror," Transcript of Panel Dicussion, March 20, 2009, *available at* http://www.charityandsecurity.org/ system/files/Complete_March_panel_transcript.pdf.

[66] *See* Daniel L. Glaser, Statement to the House, Committee on Financial Services Subcommittee on Oversight and Investigations. *Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities*, Hearing, May 26, 2010 (Serial 111-141), *available at* http://www.gpo.gov/fdsys/pkg/ CHRG-111hhrg58051/html/CHRG-111hhrg58051.htm, accessed April 4, 2012.

[67] US DEP'T OF TREASURY, US DEPARTMENT OF THE TREASURY: PROTECTING CHARITABLE GIVING, FREQUENTLY ASKED QUESTIONS (2010), *available at* http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf.

[68] US Dep't of Treasury, OFFICE OF FOREIGN ASSETS CONTROL, RISK MATRIX FOR THE CHARITABLE SECTOR 3 (2007), *available at* http://www.ustreas.gov/offices/enforcement/ofac/policy/charity_risk_ matrix.pdf.

[69] *See* USAID, *World Wide Anti-Terrorism Certification* (June 23, 2004), *available at* http://www.usaid.gov/ press/factsheets/2004/fs040623.html; *see also* Jude Howell & Jeremy

engaging with armed actors have led to reduced support for track two diplomacy and informal peace processes in conflict zones.[70]

In the United States, laws against "material support" for terrorism prohibit aiding or engaging with groups that are designated as "foreign terrorist organizations."[71]   Under the *Holder v. Humanitarian Law Project* ruling of 2010,[72] charities risk prosecution if they provide "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.[73]   Material support can be defined to include any form of engagement with designated individuals or entities designated as "terrorist" or "terrorist-supporting."   Such an expansive definition of "material support" creates legal jeopardy for organizations involved in humanitarian assistance and conflict mediation efforts.   It outlaws engaging with armed actors to facilitate conflict resolution.   It places roadblocks in the way of delivering aid to designated groups or the communities they control.[74]

In several countries, governments have adopted legislation and implemented regulations curbing remittances and imposing conditions on foreign funding.   In Bangladesh, the government notified NGOs that at least half of all foreign grants must be spent on visible development projects such as roads and canals.   In Jordan, government approval is needed to receive foreign funds.[75]   In some countries local groups are required to raise "counterpart funds" to match a percentage of the funding offered from external sources, a condition that is difficult to meet in low-income countries.   Hardest hit by such restrictions are communities in war-torn areas that depend upon the support of charitable agencies and funding from Diasporas and external donors.[76]

VI.   COOPTION OR PARTNERSHIP?

The US government has attempted to enlist foundations and charities in its war on terror.   The Treasury Department's *Anti-Terrorist Financing Guidelines* calls upon charities to collect information about their grantees, to investigate possible links with terrorism, and to report "suspicious

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Lind, *Securing the World and Challenging Civil Society: Before and After the 'War on Terror,'* 41 DEVELOP. & CHANGE 279, 283 (2010); GUINANE ET AL., *supra* note 56, at 48.

[70] *See* USAID, *World Wide Anti-Terrorism Certification*, *supra* note 69.

[71] 18 U.S.C. § 2339B(a)(1) (2009).

[72] Holder v. Humanitarian Law Project, 130 S. Ct. 2705 (2010).

[73] *Id*. at 2725–26.

[74] *See* OXFAM, *supra* note 8, at 21.

[75] KASTURI SEN & TIM MORRIS, CIVIL SOCIETY AND THE WAR ON TERROR 17 (Oxford: INTRAC ed., 2008); HUMAN RIGHTS WATCH, WORLD REPORT 2008, 245, 495–96 (2008).

[76] *See* Ahilan T. Arulanantham, *"A Hungry Child Knows No Politics:"* A Proposal for Reform of the Laws Governing Humanitarian Relief and 'Material Support' of Terrorism," American Constitution Society for Law and Policy Issue Brief (June 25, 2008), *available at* http://www.acslaw.org/sites/default/ files/Arulanantham_Issue_Brief.pdf.

information" to the Treasury Department or the FBI.[77] Foundation executives are highly critical of such provisions and have described them as "useless and embarrassing, damaging trust . . . with the very groups that could make a difference" in addressing conditions that lead to terrorism.[78] Requiring nonprofit groups to collect personal information on their partners puts them at risk of being perceived as law enforcement or intelligence agents. It attempts to turn philanthropists into spies.

A coalition of more than seventy US nonprofit agencies, led by the Council on Foundations, attempted for more than seven years to persuade Treasury officials to change the guidelines, without success. In November 2010, the coalition called off the talks and criticized the government for its "unwillingness to make any substantive changes to its approach—or to recognize the important role of global philanthropy in increasing national security through funding to address poverty, inequality, disease, and other pressing needs." The coalition has called for the withdrawal of the Guidelines and their replacement by the "Principles of International Charity" adopted voluntarily by the nonprofit sector in 2005 as an alternative means of assuring accountability.[79]

Charitable agencies have also sharply criticized USAID's proposed Partner Vetting System (PVS), which would require all USAID grant applicants to submit detailed personal information on key individuals within partner organizations. The information could be shared with intelligence agencies in the event of a "risk to national security," which is not defined. If implemented PVS would impose new data collection obligations on charities and divert staff and funding from grant making. It would compromise the independence of nonprofits operating in conflict zones and further endanger aid workers and their local partners. A major health care NGO warned that the new procedures "can only serve to incite animus and increase the likelihood of attacks" against donor agencies and their partners.[80] As of this writing the PVS proposal has not yet been implemented, but USAID is proceeding with preparations for its introduction.

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[77] US DEP'T OF TREASURY, ANTI-TERRORIST FINANCING GUIDELINES: VOLUNTARY BEST PRACTICES FOR US-BASED CHARITIES, (2006), *available at* http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf.

[78] Teresa Odendahl, Comments at the Panel Discussion: Safeguarding Charity in the War on Terror, Georgetown University, Center for Public & Nonprofit Leadership, (June 14, 2005), *available at* http://cpnl.georgetown.edu/doc_pool/Charity061405.pdf; GUINANE ET AL., *supra* note 53, at 44.

[79] Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors, Principles of International Charity (2005), *available at* http://www.usig.org/PDFs/Principles_Final.pdf.

[80] Letter from the Global Health Council to Philip M. Heneghan of USAID, (Aug. 23, 2007), *available at* http://www.interaction.org/files.cgi/5914_PVS_GHC_letter.pdf; GUINANE ET AL., *supra* note 42 at 58.

While many States follow the US model of establishing onerous vetting and registration requirements on charities, some governments take a more 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.[81] The EU Justice and Home Affairs Council seeks to safeguard the integrity of the nonprofit sector and assure greater dialogue among States, civil society groups, and relevant stakeholders. Accountability and transparency are "at the heart of donor confidence," according to the 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.[82]

The recent World Bank study on nonprofit organizations questioned whether government regulation is the best way of preventing the diversion of charitable funding to terrorist purposes. It noted the existence of self-regulatory mechanisms within the nonprofit sector that have the force of contract and can impose penalties on organizations that violate the law and agreed codes of conduct. Because they cannot succeed without public trust, nonprofit agencies are subject to peer pressure and have strong incentives to eliminate fraud and abuse within their sector. The World Bank study urges governments to "recognize the need felt in the sector to demonstrate its good governance . . . and use that aspiration to also address terrorism financing concerns," allowing nonprofits to take ownership of the problem through greater transparency.[83]

VII. HOW (NOT) TO PREVENT TERRORISM

Restrictions on civil society organizations and charities are rooted in a "war on terror" approach to preventing violent extremism. Since 2001, the United States has relied primarily on militarized policies in its attempts to suppress al Qaida and prevent future terrorist attacks. The Obama administration has discontinued war-on-terror rhetoric and banned the use of torture, but U.S. policies remain heavily militarized, and have become more so with recent troop increases in Afghanistan and the increasing use of drone strikes and cross border special forces operations in Pakistan. In the global fight against terrorism, the United States continues to rely on policies of targeted killing, lawless apprehension, rendition, warrantless surveillance, and indefinite detention. The language is changed but the means are the same; a war on terror by another name.

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[81] Comm. of the European Cmty., *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 (Nov. 29, 2005).

[82] Press Release, Council of the European Union, 2696th Council Meeting: Justice and Home Affairs, (Dec. 1, 2005), *available at* http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/87292.pdf.

[83] VAN DER DOES DE WILLEBOIS, *supra* note 58, at 20.

An over-reliance on military force is an inappropriate and ineffective strategy for countering terrorism. A 2008 RAND Corporation study, *How Terrorist Groups End*, shows that terrorist groups usually end through political processes and effective law enforcement, not the use of military force. An examination of 268 terrorist organizations that ended during a period of nearly forty years found that the primary factors accounting for their demise were participation in political processes (43 percent) and effective policing (40 percent). Military force accounted for the end of terrorist groups in only 7 percent of the cases examined. Terrorist groups end most often when they trade bombs for ballots and join a political process, or when they are suppressed by local law enforcement agencies. Policing works best when law enforcement officials are rooted in local communities, and have the confidence and trust of local residents that enables them to penetrate criminal networks.[84]

War policies are not only inappropriate, they are counterproductive. When Western nations invade and occupy Muslim countries, this has the unintended effect of validating the ideology of extremists who claim to be saving Islam from foreign infidels. Polls in Muslim countries have shown 80 percent agreement with the view that Western military interventions are directed against Islamic society; that they are at war against Islam itself.[85] As long as these attitudes prevail there will be no end of recruits willing to blow themselves up to kill foreign troops and their supporters.

Most governments and international officials have emphasized the necessity of cooperative law enforcement to counter transnational terrorism. Especially effective are programs that emphasize community policing and respect for the rule of law and the rights of citizens. International police cooperation and intelligence sharing have been successful in thwarting attacks, perhaps most dramatically in foiling an alleged plot to bomb flights from London to the United States in August 2006.[86] The head of the Crown Prosecution Service in the United Kingdom said, "The fight against terrorism on the streets of Britain is not a war. It is the prevention of crime, the

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[84] SETH G. JONES & MARTIN C. LIBICKI, HOW TERRORIST GROUPS END: LESSONS FOR COUNTERING AL Q'AIDA, xiii–xiv (RAND Corp. ed., 2008); *id* at 42–43.

[85] MICHAEL SCHEUER, MARCHING TOWARD HELL: AMERICA AND ISLAM AFTER IRAQ 155 (New York: Free Press ed., 2008); *see also*, *Negative Attitudes Toward the United States in the Muslim World: Do They Matter?: Testimony before House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight*, 110th Cong. 1 (2007) (statement of Steven Kull, Director, Program on International Policy Attitudes (PIPA)), *available   at* http://www.worldpublicopinion.org/pipa/articles/brmiddleeastnafricara/361.php?lb=btvoc&pnt =361&nid=&id=. Dr. Kull referenced a poll conducted by PIPA, which indicated that, among those polled in four Muslim countries, "8 in 10 believe that the US seeks to 'weaken and divide the Islamic world.'" *Id*.

[86] *See UK Foils Plane Bombing Plot with Liquid Explosives on US Bound Flights–21 Arrested–Red Terror Alert in US –Hand Luggage Banned*, MILITANT ISLAM MONITOR, Aug. 10, 2006, http://www.militantislammonitor.org/article/id/2221.

enforcement of our laws and the winning of justice for those damaged by their infringement."[87]

VIII. A HOLISTIC STRATEGY AGAINST VIOLENT EXTREMISM

Security protections are necessary but not sufficient to the strategy of preventing violent extremism and countering global terrorist threats.[88] A comprehensive approach is needed that balances security with the rule of law and the defense of human rights. In his March 2005 report, *In Larger Freedom*, UN Secretary-General Kofi Annan emphasized the need for a holistic strategy: "[D]evelopment, security, and human rights go hand in hand. . . . we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed."[89]

In 2006 the UN General Assembly unanimously adopted a *Global Counter-Terrorism Strategy* that embodies Annan's call for a more comprehensive and integrated approach. The *Strategy* transcends the narrow security-oriented focus of earlier Security Council resolutions and links the struggle against terrorism to a broader set of principles for avoiding violent conflict through development, democracy, and diplomacy. The *Strategy* identifies four pillars of international policy:

- I.   Measures to address the conditions conducive to the spread of terrorism;[90]
- II. Measures to prevent and combat terrorism;[91]
- III. Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard;[92] and
- IV. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.[93]

It is significant that the first of the pillars focuses on conditions conducive to the spread of terrorism. This places the primary emphasis on efforts to advance development and good governance, not on security measures. The *Strategy* defines "conditions conducive" as "prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms

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[87] Clare Dyer, *There is No War on Terror: Outspoken DPP Takes on Blair and Reid over Fear-driven Legal Response to Threat*, THE GUARDIAN, Jan. 24, 2007, at 1, (quoting Sir Ken Macdonald, Director of Public Prosecutions), *available at* http://www.guardian.co.uk/politics/2007/jan/24/uk.terrorism.

[88] U.N. High-level Panel on Threats, Challenges, and Change, *A More Secure World: Our shared responsibility*, transmitted by letter dated Dec. 1, 2004 from the Chairman of the High-level Panel on Threats, Challenges, and Change addressed to the Secretary-General, ¶ 148, U.N. Doc. A/59/565 (Dec. 2, 2004).

[89] U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, Rep. of the Secretary-General, ¶¶ 14, 17, U.N. Doc. A/59/2005, (March 21, 2005).

[90] The U.N. Counter-Terrorism Strategy, G.A. Res. 60/288, Annex pt. I, U.N. Doc. A/RES/60/288, at 4, (Sept., 20 2006).

[91] *Id.* Annex pt. II.

[92] *Id.* Annex pt. III.

[93] *Id.* Annex pt. IV.

and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance."[94] The way to fight terrorism, according to the *Strategy*, is not only to enhance security, through such measures as improving border controls, but to adopt preventive measures such as resolving conflict, ending foreign occupation, overcoming oppression, eradicating poverty, and promoting sustainable economic development and good governance.[95] The *Strategy* notes that success in realizing development objectives and improving human rights and governance, "could reduce marginalization and the subsequent sense of victimization that propels extremism and the recruitment of terrorists."[96]

The UN *Strategy* is important because it helps to shift the focus of international policy away from a narrow focus on security toward a more comprehensive approach that prioritizes development, human rights, and democratic governance. Because it is approved by all UN member states, the *Strategy* has enormous political legitimacy. It gives prominence to conflict prevention rather than security protection. Pillar I pays specific attention to the advancement of development, while Pillar IV emphasizes the promotion of human rights and the rule of law. The protection of human rights cuts across all four pillars of the *Strategy* with the instruction "that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law."[97] The *Strategy* provides opportunities for promoting these goals through the cooperation of states and the support of multiple stakeholders, including specific mention of civil society as having an important role to play when implementing the strategy.

Civil society groups play an indispensable role in advancing human rights. Repressive governments by their very nature lack effective mechanisms for considering these issues. They are 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. 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."[98]

Through their efforts for development, conflict transformation, and human rights, civil society groups are working to dry up the wells of extremism from which violence springs. Civic organizations address political grievances, socio-economic injustices, and power imbalances that are among the roots causes of armed conflict. This work is not labeled counterterrorism,

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[94] *Id.* ¶ 13.

[95] *Id.*

[96] *Id.* ¶ 13.

[97] *Id.* at Annex ¶ 3.

[98] VAN DER DOES DE WILLEBOIS, *supra* note 58, at n.1.

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. In the global struggle against terrorism civil society groups should be welcomed as friends, not hounded as foes.