Special Rapporteur on the Promotion and
Protection of Human Rights and Fundamental
Freedoms while Countering Terrorism,
Palais des Nations, CH-1211 Geneva 10; Switzerland.
By email: srct@ohchr.org

30 June 2021

The Rule of Law and Counter-Terrorism

Re: Thematic Report to GA76 on the Human Rights Dimensions of Technical Assistance and Capacity Building in the Counter-Terrorism and Countering / Preventing Violent Extremism Arenas

Dear Special Rapporteur,

Thank you for the opportunity to make a submission to this inquiry. We do so in a private capacity as scholars of law and technology at UNSW Law and Justice in Sydney, Australia. The views expressed here are own, and not of UNSW Sydney or any other organisation. Our submission concerns the rule of law implications of technical assistance and capacity building in counter-terrorism strategies. In particular, we invite the Special Rapporteur to:

♦ Emphasize the significance of core rule of law values, such as transparency, accountability, predictability and consistency, and equality before the law in the context of technical assistance and capacity building in counter-terrorism efforts. The adherence to the rule of law values is particularly important as decisions involving individual liberty are increasingly automated, often providing little to no recourse to those impacted.[1] We have written about automation of government decision-making, including in the law enforcement and national security context, and the implications of various automation techniques on the core values of the rule of law.[2] We have analysed in detail how various automation techniques, using machine learning and/or expert systems, can undermine rule of law values. We also asked whether new technologies, such as blockchain, can promote the

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[1] Monika Zalnieriute, Lyria Bennett Moses and George Williams, 'The Rule of Law and Automation of Government Decision-Making' (2019) 82 The Modern Law Review 425.

[2] Monika Zalnieriute and others, 'From Rule of Law to Statute Drafting: Legal Issues for Algorithms in Government Decision-Making' in Woodrow Barfield (ed), *Cambridge Handbook on the Law of Algorithms* (1st edn, Cambridge University Press 2021); Monika Zalnieriute, Lyria Bennett Moses and George Williams, 'Automating Government Decision-Making: Implications for the Rule of Law' in Sebastian de Souza and Maximillian Spohr (eds), *The Future of Law: Technology, Innovation and Access to Justice* (Edinburgh University Press 2021).

rule of law values.[3] We believe our analysis can be helpful when considering rule of law and human rights implications in the context of technical assistance and capacity building in counter-terrorism.

- Consider a high set of high-level principles for the appropriate use of data for defence, national security and law enforcement purposes.[4] These principles were developed in a research project working with Australian agencies through the *Data to Decisions Co-operative Research Centre*. This drew on rule of law principles such as accountability, as well as principles of good governance, and articulated how agencies ought to conform to these expectations without compromising operational secrecy. We encourage the Special Rapporteur to consider the set of high-level principles for this Thematic Report and how it might prove useful more broadly in the Rapporteur's work.

Sincerely Yours,

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Prof. Lyria Bennett Moses
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[3]   Monika Zalnieriute, Lyria Bennett Moses and George Williams, 'Rule of Law "by Design"?' (2021) 95 Tulane Law Review Forthcoming.

[4]   Lyria Bennett Moses, Louis de Koker and Sarah Logan, 'Policy Report: High Level Principles' for Data to Decisions Co-operative Research Centre Project D: Articulating Law and Policy Principles for Guiding Big Data Usage for Defence, National Security and Law Enforcement Purposes, 2019. Attached as separate document.

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