



UNITED NATIONS  
HUMAN RIGHTS  
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

# GLOBAL STUDY ON THE IMPACT OF COUNTER-TERRORISM ON CIVIL SOCIETY & CIVIC SPACE

# TABLE OF CONTENTS

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## **Forewords | 4**

Mary Lawlor, United Nations Special Rapporteur on the situation of human rights defenders

Clément Nyaletsossi Voule, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association

## **Acknowledgements | 8**

## **Executive Summary | 10**

## **Introduction | 13**

## **Methodology | 17**

## **Chapter 1: Cross-Cutting Trends | 22**

Part 1: Overarching Thematic Issues | 23

Part 2: Vulnerabilities & Intersecting Forms of Discrimination | 25

Part 3: Gender Identity & Sexual Orientation | 29

Part 4: Victims of Terrorism & Victims' Associations | 35

## **Chapter 2: An Ever-Expanding Counter-Terrorism & Preventing/Countering Violent Extremism Architecture | 38**

Part 1: Counter-Terrorism Laws, Regulations, & Architecture | 38

Part 2: Preventing & Countering Violent Extremism Laws, Regulations, & Architecture | 47

## **Chapter 3: The Playbook For Misuse | 54**

Part 1: Judicial Harassment & Fair Trial Violations | 54

Part 2: Overlapping Administrative Measures Without Procedural Safeguards | 58

Part 3: Misuse & Misapplication of Counter-Terrorism Financing Standards | 63

Part 4: Human Rights & Humanitarian Harms of Sanctions & Listing | 71

Part 5: Weaponization of New Technologies Against Civil Society | 74

**Chapter 4: Meaningful Participation Of Civil Society | 81**

Part 1: Civil Society Speaks | 82

Part 2: Global Counter-Terrorism Architecture | 85

Part 3: The Role of United Nations Human Rights Mechanisms | 89

**Chapter 5: Conclusion & Cross-Cutting Recommendations | 99**

Member States | 100

United Nations | 101

Regional Organizations | 102

Private Sector & Other Stakeholders | 103

Civil Society | 104

**Appendices | 105**

Appendix 1: Data Sources | 106

Appendix 2: Codebook for Inputs | 108

Appendix 3: Codebook for Human Rights Treaty Bodies & Special  
Procedures Mechanisms | 111

# FOREWORD

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Human rights defenders (HRDs) are people who take peaceful action to promote and protect the rights of others. As members of civil society, grassroots groups or simply in their local communities, they are instrumental in building just, inclusive societies and in responding to crisis and situations of conflict.

The UN Declaration on Human Rights Defenders, adopted by consensus 25 years ago, recognised the rights and role of HRDs, and States created the mandate I currently hold to promote understanding of the Declaration and its effective implementation.

Yet in every region of the world, defenders are targeted with legislation and other measures purportedly designed to counter terrorism. Terrorism charges are brought against them, leaving them facing long-term imprisonment. Not only this, but the concepts of both terrorism and the fight against it are weaponised by States in their public discourse to smear defenders and undermine their work.

In the exercise of my mandate, I receive information on such retaliation on an extremely frequent basis, and the phenomenon has been documented and denounced by UN human rights experts, civil society, and defenders themselves over a long number of years.

What does this mean for human rights and what does it mean for counter-terrorism efforts?

Defenders most often emerge where rights are at risk or have been violated. The attacks they face are attempts to silence them when they seek to hold States to their obligations under international human rights law, notably when it comes to respecting rights and protecting against their violation. The use of counter-terrorism measures by States to intimidate, smear and sanction defenders in retaliation not only represents an attack on the defenders targeted, but the refusal of the State to assume these obligations. Its continued perpetration with impunity is a rejection of the inalienable nature of rights posited in the UDHR as the foundation of freedom, justice and peace.

In parallel, such retaliation reveals the complete dislocation of human rights from States' counter-terrorism efforts. At a minimum, it suggests a hostility towards human rights, and human rights defenders, among State authorities charged with developing and implementing counter-terrorism measures. The frequency of these attacks, however, would in many instances suggest the conscious instrumentalisation and design of counter-terrorism frameworks to repress human rights, protect entrenched power, facilitate corruption and avoid accountability.

If States are serious about countering terrorism, and if they are serious about their obligation to respect, protect and fulfil human rights, there has to be a change. Engaging in good faith with human rights defenders and civil society when developing policies and legislation concerning counter-terrorism should be a first step. It should go hand-in-hand with a renewed commitment to support those protecting and promoting human rights in society, including the dropping of all terrorism charges pending against HRDs and the release of those defenders who have been detained in the name of fighting terrorism.

I welcome this Global Study and call on States to consider its findings and recommendations closely.

*Mary Lawlor*

**Mary Lawlor**, United Nations Special Rapporteur  
on the situation of human rights defenders



# FOREWORD

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As the Special Rapporteur on the rights to peaceful assembly and of association, I welcome this Independent Global Study on the Impact of Counter-Terrorism Measures on Civil Society, produced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. This Global Study is greatly needed to shed a light on a very worrying trend we witness around the globe of States instrumentalizing counter-terrorism measures to repress, criminalize and stigmatize activists, civil society members and organisations, and entire protest movements. My mandate has alarmed that this has created a chilling effect and contributed to seriously shrinking of civic space across the world.

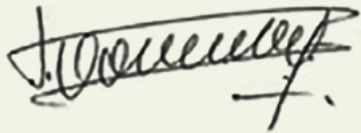
One of the key challenges is that counter-terrorism legislations and measures, include broad definitions of acts of terrorism, which allows for abuses of activists and dissidents. Since the creation of the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2010 until date, experts have raised serious concerns over the deliberate use of, or abuse and misuse of counter-terrorism measures by States to target with impunity individuals and groups for exercising their fundamental freedoms. Counter-terrorism measures and laws have been used by States on the pretext of national security or public safety to grant broad powers to law enforcement and security agencies to use excessive force to suppress peaceful protesters; to target with criminalization pro-democracy civil society and those critical for advancing accountability, with the aim to undermine and diminish their access to resources, including foreign funding. Environmental and climate justice activists have also been prosecuted based on counter-terrorism measures. My mandate further observed that these measures have also been misused by States to evade accountability for serious human rights violations committed against activists and protesters. This has left victims and aggrieved communities without support and remedy.

I would like to stress that the rights to freedom of peaceful assembly and of association provide vital avenues for communities and individuals, including marginalised groups, to raise their grievances, to demand justice for abuses, and to participate in public affairs. This is vital as we have seen around the world, that the disenfranchising of communities, and disregarding of individuals' and communities' grievances, can create an environment conducive to violent extremism and terrorism. Civil society and associations are also vital in providing spaces for dialogue and working towards addressing the root causes of discrimination or conflicts, which if left unaddressed, are often the drivers for individuals in joining violent extremist groups.

Member States and the United Nations should put in the centre the protection, promotion and the inclusion of civil society in their counterterrorism and countering violent extremism efforts.

The Member States, the international community and the United Nations, should take seriously into consideration the findings and recommendations of this Study to ensure that counter-terrorism measures, are no longer being used as a tool for repressions of civil society, but that such laws and measures enable, promote and protect the rights to freedom of peaceful assembly and of association in the context of countering terrorism.

Civil society and protest movements should be regarded and respected as partners in order to effectively prevent and tackle violent extremism and to design human right compliant and effective counter-terrorism measures.

A handwritten signature in black ink, appearing to read 'Clément Nyaletsossi Voule', with a stylized flourish at the end.

**Clément Nyaletsossi Voule**, United Nations  
Special Rapporteur on the rights to freedom of  
peaceful assembly and of association

# ACKNOWLEDGEMENTS

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The Global Study was made possible through the generous support of Member State contributions to the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Rapporteur), specifically the Government of Germany and the Government of Spain. The Global Study was further supported by the Friedrich Ebert-Stiftung Foundation and the International Center for Not-for-Profit Law. Each of these contributions enabled the full, equal, and meaningful participation of civil society across numerous regions and country-settings, ensuring the Global Study was rooted in a ‘bottom-up’ approach. The contributions from the Government of Germany further facilitated long-term investment in safeguarding and promoting and protecting civil society and civic space in the field of counter-terrorism and preventing and countering violent extremism. The Global Study was supported in all project management and facilitation by the Human Rights Center at the University of Minnesota Law School.

The Special Rapporteur extends her deep appreciation for the investment, trust, and contributions of civil society to the Global Study that have informed these data, findings, and ways forward to protect and promote civic space. Amidst closing civic space globally, evidenced by the trends presented throughout this Study, many of the civil society organizations engaged in the Global Study process took great risks as they offered their expertise and insights. The production of this Study would not have been possible without their meaningful participation. In addition, the Special Rapporteur wishes to thank the Member States, UN and other intergovernmental entities, and private sector stakeholders for their engagement over the course of the last year, through global, country-specific, and thematic consultations, as well as through written inputs submitted in response to the call for inputs issued by the Special Procedures Division of the Office of the High Commissioner for Human Rights (OHCHR). The diversity of stakeholders’ inputs and feedback have enriched the findings, recommendations, and ways forward for the international community, as well as at the regional, national, and local levels.

The Special Rapporteur would like to further thank our partners who facilitated and co-led regional civil society consultations, including the Centre for Human Rights and Policy Studies, Initiatives for International Dialogue, People’s Empowerment Foundation, Association Konekt, MENA Rights Group, the International Center for Not-for-Profit Law, and Charity and Security Network. She expresses her deep gratitude to all of the civil society organizations and individual representatives that have submitted written inputs in response to the call for proposals and civil society surveys. Finally, she expresses her grat-



itude to the Human Rights, Rule of Law, and Victims of Terrorism Working Group on the UN Global Counter-Terrorism Coordination Compact, chaired by OHCHR and the United Nations Office of Counter-Terrorism (UNOCT), for hosting an internal UN consultation.

The Global Study was written by Fionnuala Ní Aoláin, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, with Megan L. Manion and Alyssa T. Yamamoto. Further research and writing support provided by Adriana Edmeades Jones and Professor Cosette Creamer. The Human Rights Center at the University of Minnesota Law School, under the leadership of Amanda Lyons (Executive Director), provided critical institutional and programmatic assistance, supported by Abby Nelson and Sarah Thune. Megan L. Manion served as Principal Investigator, supported by Alyssa T. Yamamoto. The Global Study benefited from the efforts of the Special Rapporteur's team, including Dr. Anne Charbord, Michelle Erazo, Karen Reyes Tolosa, Maria Paola Tranchino, and Yasmine Ashraf. Overall data collection and analysis was led by Miray Philips and Professor Cosette Creamer, supported by University of Minnesota law students Marine Loison, Sierra Paulsen, and Natalie Wendland. The Study further benefited from the support of the International Human Rights Law Clinic at Berkeley Law School. The Global Study digital experience was brought to life in collaboration between Scotty Gunderson at Matter Level and Shawn Burtis at Lunar Shift. Scotty Gunderson designed the Global Study's digital narrative and report.

# EXECUTIVE SUMMARY

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The Global Study centers the daily, lived experiences for civil society from across the globe operating amidst closing civic space and the widespread misuse of counter-terrorism and preventing and countering violent extremism (P/CVE) measures to restrict their exercise of human rights and fundamental freedoms and curb their legitimate activities. The Study builds from the ground-up in the collection and collation of data driven by civil society, including through a participatory, civil society-engaged-and-led process—comprising 13 civil society consultations across regions, 108 written inputs, including 76 by civil society, and 2 civil society surveys—alongside a commitment to mainstream gender equality and women’s rights from its inception.

For decades, civil society organizations and UN human rights mechanisms have communicated the persistence and challenge of the misuse of counter-terrorism and P/CVE measures, but in truth such information has remained at the margins of counter-terrorism and security conversations. Previous data points have been dismissed and argued to be a ‘bad-apple’ problem, not a systemic association of counter-terrorism measures with the abuse of human rights and evidenced costs to civil society. The Study is intended to bring together the vast research and evidence bases on the interface of counter-terrorism and P/CVE practice with civil society and civic space, and to draw normative and policy conclusions and recommendations from that collective evidence. The Special Rapporteur understood that bringing together multiple data sources to ground the analysis provided was a sine qua non to force a reckoning in global, regional, and national conversations about the nature, form, and consequences of human rights abuses perpetrated in the name of ‘fighting’ terrorism and/or (violent) extremism. The Study is grounded in recognizing the enormous benefits that an active, diverse, functional, and vibrant civil society brings to communities and societies. Societies where civil society is absent, afraid, cowed, and unable to emerge are societies made weaker, less participatory, and vulnerable to the conditions conducive to terrorism and violence. Despite the virtues and benefits of fostering civil society and the civic space that accompanies it, both have experienced significant challenges across the globe in recent decades. The Study provides a comprehensive assessment of these co-relational trends and seeks to understand the full consequences of increasingly layered and cumulative counter-terrorism and P/CVE measures and practices, including the compounded effects when such measures are experienced together or sequentially by civil society actors. The Study also demonstrates the resilience, capacity, and innovation of civil society and their myriad contributions to societies premised on the dignity and equality of the human person despite the immense pressures they face.

## **The goals of the Global Study are three-fold:**

To amplify the far-reaching and diverse evidence and findings of local, national, regional, and international civil society organizations, United Nations (UN) entities, Member States, and other sources on the impacts of counter-terrorism and P/CVE measures on civil society and civic space— and link them together into a comprehensive evidence base;

To identify the challenges as well as progress made on the meaningful participation and leadership of civil society in efforts to counter terrorism and violent extremism at the local, national, regional, and international levels; and

To provide insights and recommendations to Member States, the UN, and other stakeholders on how counter-terrorism and P/CVE programming and practice can integrate stronger human rights due diligence safeguards to foster participatory, inclusive, and vibrant civic space in compliance with international law and in direct response to the concrete challenges faced by civil society today.

## **Global Study Findings**

The Global Study documents the restrictions on civic space across every region, and finds they are directly linked to the regulatory and institutional practices of counter-terrorism and P/CVE. It makes the following findings with regard to the conditions, features, and consequences of such systemic misuse:

- Civil society **experiences complex and compounding misuse of counter-terrorism and P/CVE measures and practices**, with connection to an ever-growing counter-terrorism, P/CVE, and security architecture and the expansion of related criminalization into the pre-criminal space. Most Global Study respondents do not experience singular direct or indirect counter-terrorism or P/CVE measures in isolation. Rather the Study underscores the layered and multi-dimensional consequences for civil society actors being subject to what the Study finds to be a ‘playbook’ of counter-terrorism and P/CVE misuse, including through judicial harassment, administrative measures, counter-terrorism financing restrictions, listing and sanctions, and the weaponization of new technologies such as spyware and drones. The Study finds that misuse of multiple measures sequentially or together compounds the scale of human rights violations experienced by individuals, their families, and the communities to which they belong.
- While the precise matrix of harm varies by community and country, **the Study finds that the multiplicity of measures described are consistent**

**and constant.** Moreover, as indicated throughout the Study, certain features of counter-terrorism and P/CVE are regionally concentrated, often stemming from regional partnerships, donor relations, and multilateral technical assistance and capacity-building. These features both build on and repurpose historical regimes of exceptional power including martial law, État de Siège, colonialism, and entrenched legislative, executive, and administrative emergency powers.

- The Study finds that **when States deploy counter-terrorism or P/CVE measures they enter a realm of exceptionality where human rights deficits pervade and the normal rules of due process and procedural protections generally do not apply**, creating a host of vulnerabilities to further and layered human rights violations. Counter-terrorism is an exceptional legal regime accompanied by exceptional national security rules and practices including secret evidence, surveillance, limits on due process, limited access to legal representation, lack of access to family, extended detention, no access to bail or release prior to trial, exceptional courts, and lengthier prison sentences. Impunity and reprisals are common and often transnational in this regard.
- **Counter-terrorism and P/CVE misuse have pervasive and evidenced discriminatory aspects**, specifically the misuse of counter-terrorism measures against religious, ethnic and cultural minorities, women, girls, and LGBT and gender-diverse persons,<sup>1</sup> indigenous communities, and historically discriminated against groups in society. For many countries, this finding leads to a presumption of discrimination in the exercise of national counter-terrorism and/or P/CVE policy and practice.
- Widespread and systematic practices of abuse of counter-terrorism and P/CVE measures have direct consequence for both derogable and non-derogable rights of civil society actors, yet few adequate remedies exist nationally, regionally, or internationally for such abuse. **The Study finds that monitoring and evaluation as well as independent oversight of human rights abuses perpetrated in the name of countering terrorism and/or (violent) extremism remain limited.**

General recommendations addressing these findings, tailored to relevant stakeholders are set out in Chapter 5 (Conclusion & Cross-Cutting Recommendations). Detailed technical recommendations are also included at the end of each Part with particular relevance to the specific themes covered.

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<sup>1</sup> For the purposes of the Global Study, the Special Rapporteur relies on the use of the term “LGBT and gender diverse” persons in line with the language and rationale used by the Independent Expert on Sexual Orientation and Gender Identity. See, A/77/235, para. 4. The Special Rapporteur encourages all human rights experts to advance inclusive language in line with the Independent Expert, recognizing that some UN entities use the language of LGBTQI+, LGBTQ, or LGBT.

# INTRODUCTION

Civil society plays an extraordinarily important role in the well-being, vibrancy, diversity, and functionality of all societies. As the Special Rapporteur has documented, undue legal restrictions on civil society undermine long-term counter-terrorism and prevention of violence strategies, as well as governance, sustainable development, peacebuilding, gender equality, and conflict resolution priorities.<sup>2</sup> Civil society is an enormously diverse group of actors, including human rights defenders, non-profit organizations, bar associations, trade unions, academics, religious organizations, humanitarians, political dissidents, media workers, and many more working at the local, national, regional, and international levels. Civil society is fundamentally associational in nature, and while structures differ across geographies, political systems, and cultures, civil society has bound people together in community in matters of common interest with varying degrees of formality for centuries. Civil society's human-centric approaches and community-directed commitments are layered into their work often which then seamlessly promote and protect human rights, rule of law, advocacy for communities they belong to or serve, advance peace, justice, and security, and even resolve conflict.

This Study starts from a well-accepted premise that the full, equal, and meaningful participation of civil society is a net positive for achieving peaceful, just, gender-equal, and inclusive societies.<sup>3</sup> Societies where civil society is absent, afraid, cowed, and unable to emerge are societies made weaker, less participatory, and vulnerable to the conditions conducive to terrorism and violence.

The right to associate is a foundational human right, correlated to the human need to live in community and to organize in groups, affirmed in article 20 of the Universal Declaration as the right of every human to gather with others publicly or privately and collectively express, promote, pursue, and defend common interests.<sup>4</sup>

Despite the virtues and benefits of fostering civil society and the civic space that accompanies it, both have experienced significant challenges across the globe in recent decades. **Today, just 3.2 per cent of the world's population live in countries with open civic space, 11.3 per cent live in countries where civic space has narrowed, 14.9 per cent in countries where civic space is obstructed, 42.2 per cent in countries where civic space is repressed, and 28.5 per cent where civic space is closed.**<sup>5</sup> As of March 2023, the Civicus Monitor,<sup>6</sup> had rated just 38 countries and territories as open, 40 with obstructed civic space, 42 with narrowed civic space, 27 with closed civic space (an increase from 23 in 2020), and 50 with repressed civic space (an increase from 44 in 2020).<sup>7</sup> This means that there are "severe" attacks on civil society in 117 countries and territories.<sup>8</sup> In a 2019 report to the Human Rights Council, the Special Rapporteur explored the interface between the proliferation of counter-terrorism norms and institutions post 9/11 and the constriction of civic space.<sup>9</sup> The Global Study builds on the 2019 report.<sup>10</sup> It provides a comprehensive assessment of these co-relational trends, and also demonstrates the resilience, capacity, and innovation of civil society and their myriad contributions to societies premised on the dignity

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2 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders (A/HRC/40/52).

3 Our Common Agenda – Report of the United Nations Secretary-General. (United Nations (UN) publication, 2021); and UN Guidance Note on the Protection and Promotion of Civic Space (UN publication, 2020).

4 Universal Declaration of Human Rights, A/RES/217A (III), A/810 at 71 (1948); International Covenant on Civil and Political Rights (ICCPR), A/RES/2200A(XXI).

5 CIVICUS, "Civic Space in Numbers," Civicus Monitor. Available at: <https://monitor.civicus.org/facts/> (accessed on 28 May 2023).

6 CIVICUS, Civic Space on a Downward Spiral (2020).

7 CIVICUS, Civicus Monitor.

8 CIVICUS, Civicus Monitor.

9 A/HRC/40/52.

10 Ibid. See also, A/HRC/70/371; and A/HRC/RES/27/21.

and equality of the human person despite the immense pressures they face.

## Structure of the Study

The Study is unique because it is built from the ground-up in the collection, collation, and use of multiple comprehensive data sources from around the globe (see Methodology section *infra*). For decades, UN Special Procedure mechanisms, Human Rights Treaty Bodies, and civil society organizations have communicated the persistence and challenge of the misuse of counter-terrorism measures, but in truth such information has remained at the margins of counter-terrorism conversations. Previous data points have been dismissed and argued to be a ‘bad-apple’ problem not a systemic association of counter-terrorism measures with the abuse of human rights with evidenced costs to civil society. Civil society has struggled to make their voices heard globally outside of human rights fora when naming their experienced harms including both direct and structural violence. This Study is intended to bring together all that is known about the state of counter-terrorism and P/CVE practice and to draw normative and policy conclusions from that collective evidence. The Special Rapporteur decided that bringing together multiple data sources to ground the analysis provided was a *sine qua non* to force a reckoning in global and national conversations about the nature, form, and consequences of counter-terrorism and P/CVE abuses in the name of ‘fighting’ terrorism. To that end, the Global Study is sub-divided in seven chapters.

Chapter 1 opens with a presentation of cross-cutting trends. This is designed to provide a snapshot of the overarching themes and patterns that have emerged from the data. Three additional constituent parts are contained in this chapter, reflecting on particularly vulnerable civil society actors, namely those groups and individuals manifesting intersectional forms of discrimination (Part 1), gender identity and sexual orientation (Part 2), as well as victims of terrorism and victims’ associations (Part 3).


Chapter 2 traces and explains the growth of national, regional, and global counter-terrorism and P/CVE architectures. This analysis highlights an eruption of growth in counter-terrorism’s normative and institutional scope over the past two decades. The chapter augments and deepens its focus on the structures and rules that enforce counter-terrorism (Part 1) and then turns to a detailed analysis of P/CVE law and practice (Part 2).

Chapter 3 uses the wealth of empirical data generated by the Study to illuminate the ‘playbook’ of counter-terrorism and P/CVE misuse against civil society. By using the term ‘playbook’ the Study takes the position that there is an evidenced degree of predictability in the form and outworking of counter-terrorism and P/CVE misuse against civil society. The trends and patterns illuminated in the chapter are cross-regional and while the precise matrix of harm differs from country to country, the multiplicity of measures described are consistent and constant. Moreover, the playbook is illuminated by the central insight that these measures are not singular, and that civil society actors experience the misuse of multiple measures sequentially or together, compounding the scale of human rights violations experienced by individuals, their families, and the communities to which they belong. The playbook’s core elements include judicial harassment and fair trial violations (Part 1), overlapping administrative measures without procedural safeguards (Part 2), the misuse and misapplication of counter-terrorism financing standards (Part 3), the humanitarian harms of sanctions and listing (Part 4), and the accelerating pace in the weaponization of new technologies against civil society (Part 5).

Chapter 4 addresses the resounding core of the Global Study, namely what it would require to ensure the meaningful participation of civil society in counter-terrorism and P/CVE. This chapter is imbued with the fundamental understanding that only in partnership with civil society is it feasible and realistic to address the conditions conducive to the production of terrorism and violent extremism conducive to terrorism. Including civil society meaningfully is both

principled and pragmatic. To this end, the chapter categorically elevates what civil society actors themselves view as meaningful participation, providing a thoughtful 'how to' and 'how not to' analysis for stakeholders (Part 1). The chapter then directly addresses the global counter-terrorism architecture and names its obligations and shortcomings, and spotlights some nascent developments to remedy current deficits (Part 2). The analysis makes clear that superficial reform and box-ticking will not solve the crisis of misuse and the dearth of civil society participation in counter-terrorism spaces. The chapter concludes by showcasing what the Study has learned from a comprehensive analysis of relevant Human Rights Treaty Body jurisprudence and recommendations, as well as Special Procedures communications (Part 3). All these recommendations and data point in one direction, namely the urgent need for collective, corrective action at the highest levels nationally and internationally.

Chapter 5 concludes with a series of cross-cutting global recommendations to Member States, international and regional organizations, private actors, civil society, and other stakeholders. These are actionable recommendations that seize the vast knowledge garnered by the Global Study as a means to action and a call to do better as we protect and advance the rights of civil society not just as a utilitarian matter to produce functional and effective counter-terrorism, but because our societies will be more just, equitable, and fair as a result.



## PEOPLE WISH TO BE HEARD AND TO PARTICIPATE IN THE DECISIONS THAT AFFECT THEM.

Institutions could establish better ways of listening to people whom they are meant to serve and taking their views into account, especially groups that are frequently overlooked, such as women, young people, minority groups or persons with disabilities.

**António Guterres**, Secretary-General of the United Nations  
*Our Common Agenda*



# METHODOLOGY

The Global Study was undertaken through a participatory, civil society-engaged-and-led process as a testament to the importance of building on the expertise and experience of civil society members. It was grounded in long-term relationships and partnerships of trust and support to civil society that have been at the heart of the Special Rapporteur's mandate. The process involved a diverse and expansive range of civil society impacted by counter-terrorism, P/CVE, and security measures, including human rights organizations, humanitarian organizations, refugee organizations, faith-based organizations, women's rights organizations, lawyers, journalists, and other individuals or organizations who are targets of the misuse of counter-terrorism measures, organizations working on counter-terrorism and P/CVE measures, as well as victims of terrorism. Significant efforts were made to include grassroots organizations, women human rights defenders, LGBT and gender diverse activists, indigenous communities, and minority groups and the organizations that represent them.

The Special Rapporteur is committed to understanding the impacts of counter-terrorism and P/CVE measures on civil society and civic space on a global scale. Attending to international, regional, and national level trends, the project highlights the diffusion and proliferation of counter-terrorism measures that impact civil society. An analysis that is global in scope also illustrates how far governments work with and learn from one another in institutionalizing the misuse of counter-terrorism measures to suppress civil society.

The Special Rapporteur also integrated a critical feminist analysis in her approach to the Global Study, attending to the intersectional experiences of marginalized groups, including members of ethnic, national, religious, indigenous, sexual, and gender groups. Adopting a broad understanding of gender as it manifests and functions in society, the Global Study analyzes the specific ways that counter-terrorism measures target women, men, girls, and boys and is experienced first-hand by gender minorities. The Study reflects a grounded

theory approach to data collection and analysis and a commitment to illuminating the experience of those most affected, including at the political, civil, social, economic, and cultural levels.

## Data Collection

The Special Rapporteur collected the following data (see Appendix 1: Data Sources):

## Consultations, Surveys, and Inputs

- 6 preliminary e-consultations and 1 Civil Society Workshop in Malaga, Spain with civil society, representing 90 organizations from 43 countries across 5 continents (April-May 2022);
- 7 regional consultations including 181 people representing civil society from South Asia and Asia and Pacific, Sub-Saharan Africa, Central and Eastern Europe, Latin America and Caribbean, Middle East & North Africa; and North America;
- 2 United Nations consultations on counter-terrorism and civil society;
- 5 major events and large-scale consultations on counter-terrorism and civil society;
- 108 inputs, including 76 by civil society, 16 by Member States, 2 by regional organizations, 5 by UN entities, and 9 other stakeholder inputs;
- 2 multilingual surveys targeting civil society organizations that received 66 responses; and
- 271 inputs by civil society, Member States, regional organizations, UN entities, and other stakeholders to regular reports, covering themes including gender, technology, capacity building and technical assistance, international humanitarian law, and counter-terrorism and civil society.

## Original Research & Thematic Briefs

- The Role of United Nations Human Rights Treaty Bodies in Addressing the Misuse of Counter-Terrorism and Preventing/Countering Violent Extremism Measures on Civil Society & Civic Space;
- The Role of the Special Procedures of the UN Human Rights Council in Addressing the Misuse of Counter-Terrorism and Preventing & Countering Violent Extremism Measures;
- United Nations Treaty Body database of individual communications decisions across all 9 core treaty bodies and 861 States Party reviews and Concluding Observations from three treaty bodies (Human Rights Committee, Committee Against Torture, and the Committee on the Elimination of Discrimination against Women);
- The Impact of the Use of New Technologies in the Field of Counter-Terrorism on Civil Society; and
- The Impact of the Use of Counter-Terrorism and Preventing & Countering Violent Extremism Measures on Women Human Rights Defenders.

## Other Meetings

- Meetings with high-level officials at global, regional, and national levels to discuss the challenges and opportunities faced by civil society; and
- Meetings with civil society actors in the context of regular country and technical visits conducted by the mandate.

## Data Analysis of Inputs

The Global Study relies on a qualitative analysis of 108 inputs, including 76 submitted by civil society organizations, 16 by member states, 5 by the United Nations, 2 by regional organizations, and 9 other stakeholder inputs. A qualitative coding procedure was developed and applied to 100 inputs (see Appendix 2: Codebook for Inputs). Using NVivo, a qualitative analysis software, the data were analyzed along the following categories of interest: 1) general information, including the names of organizations or individuals, the country and region of focus, and the source of data; 2) counterterrorism-related mechanisms through laws, regulations, and harassment; 3) the impact of these mechanisms on civil society, including direct physical harms, organizational costs, psycho-social impact, physical health, chilling effects on civic space, and stigmatization; 4) civil society involvement in counter-terrorism whether through participation in policymaking or through the delivery of programming; and 5) recommendations.

## Data Analysis of UN Special Procedures and Human Rights Treaty Bodies

Communications from the UN Special Procedures Communications database were collected using a search procedure that returned all communications for which the summary included the terms terrorism, extremism, or security and keyword variants, in English, French, and Spanish. For the purposes of this Study, the list was narrowed to communications joined by one of several other thematic mandates that attend to fundamental rights and freedoms essential to secure a vibrant and functioning civil society.<sup>11</sup> In total, 477 Special Procedures communications to States and 9 Special Procedures communications to other actors from 2011 to 2022 were synthesized and analyzed for trends and patterns.

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<sup>11</sup> These included the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; the right to privacy; summary and arbitrary executions; the situation of human rights defenders; the rights of indigenous peoples; the rights of migrants; minority issues; the rights of persons with disabilities; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; protection against violence and discrimination based on sexual orientation and gender identity; violence against women and girls; and discrimination against women and girls.

All concluding observations adopted by the Human Rights Committee (CCPR) and the Committee Against Torture (CAT) between 2002 and 2022 and the Committee on the Elimination of Discrimination Against Women (CEDAW) between 2010 and 2022 were collected. The Study extracted treaty body concerns regarding measures or practices relating to countering terrorism, preventing/countering violent extremism, national security, or public order. A qualitative coding procedure was developed and applied that assigned each concern and accompanying recommendation to one or more categories, based on the type(s) of measure or practice at issue (see Appendix 3: Codebook for HRTB). Treaty body concerns were further narrowed down to counter-terrorism and preventing/countering violent extremism measures or practices that (a) explicitly (by their terms or as noted by the treaty body) target civil society directly; and/or (b) are used in practice as noted by the treaty body to target civil society. A qualitative and jurisprudential analysis of recommendations relevant to the Global Study was then conducted to identify trends and patterns.

## Limitations

In an effort to conduct a global study to understand the scope of the impacts of counter-terrorism and P/CVE measures on civil society, data were collected on an international, regional, national, and sub-national/local level. At each of these levels of engagement, there remain increasingly high and distinct risks for civil society organizations and individuals, which limited the ability of civil society to engage, as well as to identify and present complex sub-national and local trends that may be identifying. Moreover, the breadth of highly complex and context-specific dynamics unfolding on a sub-national or local level are inherently limited in a global study, although illustrative examples can provide further nuance and context. Throughout the Study, although certain regional observations are provided, they are not intended to be totalizing, and occlude the commonalities found across all settings where misuse of counter-terrorism and P/CVE

norms and practices is found.

The Study primarily focused on government misuse of counterterrorism measures, whether through legal measures, regulation, or policy, or by law enforcement or other state-representatives. This approach also revealed how governments misuse counter-terrorism to suppress civil society nationally, through transnational repression, and in collaboration with other governments bilaterally, regionally, and internationally. Although a handful of respondents identified counter-terrorism misuse by the private sector and other non-state actors, further research should be dedicated to private sector activities and impact. Relatedly, the Global Study recognizes grave and systematic human rights abuses and violence committed by non-state armed groups designated as terrorist organizations by the UN, among others. While the Study does not focus on these violations, rich research and data are available on the impacts and trends associated with the harms committed by these groups, such as the Global Terrorism Index, among others.

As mentioned above, the Global Study focused on understanding the experiences of the widest range possible of civil society actors, relying on a broad definition of civil society in line with UN practice. This approach sheds light on the experiences of communities directly targeted by counter-terrorism and P/CVE measures, with the opportunity to explore specific case studies and examples in context. While the research methodology intentionally included as many targeted groups as possible, some may be underrepresented in a study that is global in scope. Further intersectional research can and must be undertaken to understand the disparate and magnified impacts of these measures. The Global Study was limited by general resources constraints, including human and programmatic resources. For the purposes of the Study, it was not possible to meet all civil society partners in-person and in-region. Some consultations were therefore held virtually to maximize the inclusion of civil society.



# CHAPTER 1

## CROSS-CUTTING TRENDS

The Global Study explores the cumulative impacts posed by overlapping and intertwined practices, including vague and imprecise counter-terrorism and P/CVE laws and regulations, physical, digital, and judicial harassment in tandem with administrative measures including financial tools and sanctions, as well as reprisals and intimidation. Organizations and individuals experience the effects of counter-terrorism regulation in multiple dimensions and not just as singular actions related to one sphere.

This Chapter highlights overarching themes and patterns that have emerged across the chapters to follow, acknowledging in particular how specific counter-terrorism and P/CVE measures and practices are layered with related/adjacent measures tak-

en by States that produce reciprocally constructing phenomena operating to stymie both individual and collective rights, as well as their compounded effects when such measures are experienced together or sequentially by civil society actors.

## Part 1: Overarching Thematic Issues

Across the chapters of the Study, the following cross-cutting and intertwined thematic issues, patterns, and challenges come to the fore.

“Old-fashioned” methods of curtailing and harassing civil society actors continue to thrive but have been exacerbated by the weaponization of new technologies like spyware, biometrics, and drones (Chapter 3, Parts 1, 5). Impunity blossoms for the killing, injury, maiming, torture, detention, and disappearance of civil society actors, often in a widespread and systematic manner<sup>12</sup> (Chapter 3, Part 1). Reprisals are common,<sup>13</sup> and while the UN has generally effective methods to “name” reprisals, the pecuniary or negative consequences for reprisals against civil society actors are limited to non-existent for Member States. This creates a culture of impunity for such violence and harm. Such impunity, reprisals, and harm are often transnational and cooperative in nature.<sup>14</sup>

Criminalization of civil society actors and their work remains a consistent challenge,<sup>15</sup> but is increasingly compounded by an array of administrative measures too. The range of acts subject to criminal sanction appears to be expanding and moving into the pre-criminal space—justified on perceived or actual counter-terrorism and P/CVE dictates from the UN

Security Council and soft law standards<sup>16</sup> (Chapter 2, Part 1). The extension of criminal penalties for a range of terrorism offences in multiple national contexts,<sup>17</sup> including particularly for inchoate acts now deemed as ‘terrorism,’ has the practical effect of imprisoning civil society actors for extended periods, a form of carceral reckoning for civil society (Chapter 3, Part 1). The procedural protections that generally accompany criminal charges are absent, weakened, or ignored in terrorism cases creating a host of vulnerabilities to further and layered human rights violations. The Study highlights practices of cumulatively charging criminal offences, as well as examples of ‘release and catch’ patterns where civil society actors released on one set of ‘terrorism’ charges by courts are promptly rearrested and charged with different offences.<sup>18</sup> The use of an array of administrative measures against civil society actors and organizations, singularly and in tandem with these classically focused criminal measures further compounds these challenges (Chapter 3, Part 2). Such administrative measures have even fewer due process protections,<sup>19</sup> and can have extraordinary pernicious and negative effects.<sup>20</sup>

The Study identifies the revitalized deployment of counter-terrorism and security measures to address challenging social phenomena such as the perniciousness of organized crime,<sup>21</sup> or the management of the global pandemic<sup>22</sup> (Chapter 2, Part 1). Such measures have deeply gendered effects and are also co-related with other realities of social stig-

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12 Front Line Defenders (FLD) Input; FLD, “Global Chapter,” Global Analysis (2022).

13 See e.g., Annual reports of the UN Secretary-General on reprisals for cooperation with the UN.

14 BHR 1/2022; MAR 7/2021; AL TUR 11/2020; RUS 16/2018; AL SRB 2/2022.

15 FLD Inputs & Global Analysis reports that that 21.8% of their defenders have been subject to “other criminal charges”, 18% to national/state security/sedition charges, 12.8% to terrorism/membership or support of terrorist organization charges, 10.1% to defamation/insulting the state/damaging national unity charges and 9% to spreading fake news or propaganda charges.

16 A/74/335.

17 GBR 7/2020; FRA 2/2020.

18 EGY 12/2021; EGY 5/2021; EGY 2/2021; EGY 13/2020; EGY 4/2020; IND 19/2021.

19 This may include a posteriori rather than a priori judicial review and review through administrative rather than criminal law standards.

20 See e.g., A/HRC/40/52/Add.4 (Administrative measures include the delimitation of security perimeters, the closing of places of worship, placing individuals under house arrest, assigned residency and surveillance measures).

21 SLV 4/2022.

22 Fionnuala Ní Aoláin, Covid 19, Counter-Terrorism and Emergency Law (2023) (report prepared under the aegis of the UN Special Rapporteur).

matization and marginalization against communities with intersecting and unequal relationships of power and social capital viz-a-viz the State (Chapter 1, Part 2). Labelling and stigmatization of civil society remains ubiquitous. Moreover, the range of civil society actors caught by the reach of counter-terrorism and P/CVE misuse appears to be expanding, including trade unionists,<sup>23</sup> environmental activists,<sup>24</sup> indigenous peoples defending water and land rights,<sup>25</sup> advocates for migrants and refugees,<sup>26</sup> peace negotiators,<sup>27</sup> and beyond.

The Study acknowledges that complex cross-cutting global political developments have had sizable consequence for civil society. Specifically, the rise of populism; the strengthening of nationalistic politics tied to discourses of ‘othering’, xenophobia, and racism; the proliferation of coups and military-led governments (often using the tools and institutions of the security state to rise); the weakening of democracy and the emergence of governance forms that prioritize control, centralization of power, and lack of civilian oversight of the security sector have had both insidious and direct effects on the health and capacity of civil society. The Study also acknowledges the multifaceted consequences of climate change and the polycrisis on all national and global political systems.

Counter-terrorism and P/CVE regulation and implementation is deeply enmeshed with private enterprise. Banks and financial intermediaries, surveillance companies, social media platforms, media

enterprises and other businesses operate as lead actor, partner, sub-contractor and/or advocate in the perpetration and maintenance of counter-terrorism and P/CVE misuse and securitization narratives, without adequate human rights due diligence and mainstreaming.

Civil society actors operating in situations that meet the threshold for armed conflict under international law increasingly find themselves subject to counter-terrorism regulation,<sup>28</sup> and operating in high-risk environments where they are profoundly vulnerable to the violence of both State and non-state armed groups<sup>29</sup> (Chapter 2, Part 2; Chapter 3, Parts 3, 4). The use of lethal force in counter-terrorism operations poses grim and evidenced harms to civil society actors,<sup>30</sup> and investigations of death and injury in counter-terrorism operations suffer from acute procedural deficits (Chapter 3, Part 1). Moreover, impartial humanitarian action is mislabeled as “material support to terrorism,” and civil society actors working in high-risk areas of conflict are deliberately labeled as terrorists or their ‘fellow travelers.’

The disproportionate effect of counter-terrorism and P/CVE measures on minority groups, is a consistent finding of this Study (Chapter 1, Part 2; Chapter 2, Part 2; Chapter 3). Across regions, legal systems, and cultures, religious, ethnic, cultural, and linguistic minorities and those who represent or advocate for them find themselves facing the brunt of counter-terrorism measures. The social, legal, and political disadvantage often faced by these groups in

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teur on the promotion and protection of human rights and fundamental freedoms while countering terrorism).

23 Latin America & the Caribbean Consultation (Venezuela).

24 GTM 2/2022; EGY 9/2022; OTH 96/2022; NIC 2/2022; IND 2/2021.

25 North America Consultation (United States of America and Canada) (Standing Rock Sioux and Dakota Access Pipeline).

26 GBR 13/2018; Central & Eastern Europe Consultation.

27 UN Human Rights Experts, “Women’s full participation in Afghanistan’s public and political life as a guarantee of their fundamental human rights,” press release, 15 September 2021.

28 UN Human Rights Experts, “Afghanistan: UN experts call on US Government to unblock foreign assets of central bank to ease humanitarian impact,” press release, 25 April 2022; PHL 3/2021; PHL 1/2021; PHL 7/2019.

29 A/77/345.

30 UN Human Rights Experts, “Mali: UN experts call for independent investigation into possible international crimes committed by Government forces and ‘Wagner group,’” press release, 31 January 2023; EGY 5/2020.



society makes them easy targets for scapegoating and for their expression of difference to be deemed as a state security threat. The Study has heard that their very existence on their own terms is, in some national contexts, typified as a ‘threat to the social order,’ ‘undermining national cohesion,’ and/or ‘prejudicial’ to the security of the state.

The gendered nature of harm is evidenced throughout this Study. Women have historically been targeted and experienced significant costs for speaking out and for advocacy for their rights and the rights of others.<sup>31</sup> The Study evidences the scale and scope of harm to women and girls assisted and enabled by counter-terrorism and security discourses undergirded by new discourses of anti-gender ideologies, patriarchal reassertions, limitations on reproductive rights, and democratic backsliding seeking to undo hard-won gains of recent decades (Chapter 1, Part 3). Women and girls are harmed every day as they work in their communities, organizations, and families fighting for the most essential of their rights often in the name of security.

LGBT and gender-diverse persons, movements and organizations experience fierce global backlash under the same rubric of re-asserting family values, affirming moral orders, and push back against their rights gains<sup>32</sup> (Chapter 1, Part 3). The misuse of counter-terrorism and P/CVE strategies, institutions, and tactics is baked into such attacks. The Study further identifies exploitation of the language of extremism and terrorism in this regard in multiple countries and regions across laws, regulations, and

architectures (Chapter 2, Parts 1-2).

## Part 2: Vulnerabilities & Intersecting Forms of Discrimination

The misuse of counter-terrorism and P/CVE measures affects all of society and is experienced by individuals, as well as those engaged in civil society, non-profit, or collective work. While this Study acknowledges a broader societal challenge in the indiscriminate use of counter-terrorism measures against individuals and communities,<sup>33</sup> its pinpointed focus is on the use of counter-terrorism measures against civil society actors. Here, the data lay bare the kinds of targeting that result in distinct kinds of harm. Counter-terrorism practices and rhetoric are often directed at large groups of vulnerable people with tangible consequences for their collective human rights. For example, the identification of migrants as sheltering or facilitating terrorism makes society at large more hostile to welcoming and supporting refugee and asylum seekers.<sup>34</sup> Such rhetoric has made the work of representing and providing services to people seeking international protection (e.g., migrants, refugees, asylum seekers) fraught, criminalized, and difficult.<sup>35</sup> The extension of terror rhetoric from and the unrelenting gaze of the security state, often follows those seeking to adjust their immigration status upon entry into a country, and organizations who advocate for them.<sup>36</sup> The use of an emotionally searing terminology of terrorism to denigrate entire communities produces stigma,

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31 Report of the Under-Secretary-General/Executive Director of the UN Entity for Gender Equality and the Empowerment of Women: Normative aspects of the work of the UN Entity for Gender Equality and the Empowerment of Women (E/CN.6/2022/2), para. 42; E/CN.6/2022/3, para. 15; E/CN.6/2022/8, para. 28; Report of the Special Rapporteur on the situation of human rights defenders on the situation of women human rights defenders (A/HRC/40/60).

32 UN Human Rights Experts, “UN Expert warns LGBT rights being eroded, urges stronger safeguards,” press release, 30 August 2022.

33 MLI 3/2022; USA 26/2022; TJK 5/2022; KGZ 3/2020; ARE 6/2020; A/HRC/52/39, paras. 27-37.

34 USA 2/2017; Central & Eastern Europe Consultation; UN, Spokesperson for the UN High Commissioner for Human Rights Ravina Shamdasani (Hungary), press briefing, 3 May 2019; UN Human Rights Experts, “UN experts decry Hungary’s tough new measures against migrants and civil society,” press release, 11 September 2018.

35 UN, High Commissioner for Human Rights, Statement to the Commission on Human Rights, 58th session, 20 March 2002; UN Human Rights Experts, “UK must stop disproportionate use of security laws after conviction of Stansted 15,” press release, 6 Feb 2019; GBR 13/2018.

36 Asian Americans Advancing Justice - Asian Law Caucus (ALC) Input; A/62/263.

limits access for them to the public square and results in the over-regulation of particular communities who are both morally and substantively injured by the specter of terrorism being applied to them.

The Study recognizes that the methods and means of counter-terrorism and P/CVE are increasingly being used to regulate other marginal groups. For example, in Sri Lanka, counter-terrorism and counter-extremism were proposed to be legislatively co-mingled with compulsory rehabilitation for individuals affected by drug addiction.<sup>37</sup> During the Covid-19 pandemic counter-terrorism measures were applied to communities by military and police forces, as a means to ‘contain’ the health threat of the pandemic.<sup>38</sup> Given that illness and the death toll of the pandemic fell disproportionately on economically and socially marginal groups, the expansion of counter-terrorism to regulate health points to the comfortable pathways for exceptionality, and the ways in which counter-terrorism laws and practice are used against vulnerable or disempowered communities. Moreover, civil society that mobilized to address repressive responses during the pandemic faced immediate and lingering effects of the Covid-19 pandemic, particularly amidst lack of equal access to healthcare and vaccination. These challenges were ongoing for many civil society organizations while the Global Study was being completed.

Specific groups feel this stigma and harm more acutely than others. In the aftermath of 9/11, Muslim

communities— especially in the United States and the West— have experienced the unique burdens of being deemed ‘suspect’ by virtue of perceived or actual religious identity and belief.<sup>39</sup> Islamophobia has entrenched in multiple countries and Muslim communities and civil society actors have felt the consequences.<sup>40</sup> Numerous submissions to the Global Study identified the burden of prejudice and discrimination experienced by Muslims singularly and in community.<sup>41</sup> This includes monitoring of houses of worship (mosques), inclusion on terrorism lists, additional screening at airports, challenges with financial institutions including opening bank accounts, higher rates of charging and incarceration on counter-terrorism grounds, surveillance of homes, entrapment, navigating internal and external borders with difficulty, and targeting Muslim children in schools and educational settings<sup>42</sup> (Chapter 3, Part 2) as well as Muslim identity in public spaces (specifically for women) being subject to censure and monitoring.<sup>43</sup> For organizations serving and advocating on behalf of such communities, the challenges of operation and overcoming stigma have been significant.<sup>44</sup>

Civil society organizations advocating on behalf of minority religious, ethnic or linguistic groups face notable challenges and higher risks of being branded as ‘terrorists’, ‘extremists’ or ‘radicals’.<sup>45</sup> The language used by political elites in certain societies to describe individuals or groups, which legitimizes dehumanizing and demeaning their social and political positions clears the way for terms like

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37 LKA 4/2023.

38 Fionnuala Ni Aoláin, Covid 19, Counter-Terrorism and Emergency Law (2023).

39 A/HRC/46/30.

40 A/RES76/254.

41 North America Consultation.

42 Noting in particular the United Kingdom’s Prevent Strategy and the United Kingdom’s Prevent Duty guidance for England, Scotland and Wales; A/HRC/43/46, para. 32; Professor Charlotte Heath-Kelly University of Warwick (Heath-Kelly) Input (United Kingdom); Rights and Security International (RSI) Input (United Kingdom).

43 North America Consultation; Confidential Input (UK); Brennan Center for Justice (Brennan Center) Input (United States of America), Coalition for Civil Freedom (CCF) Input.

44 Action Droits Des Musulmans (ADM) Input (France).

45 Amnesty International Input (Cameroon); Confidential Input (Turkey); TUR 5/2020; TUR 6/2018; West, East, Central Africa Consultation.

‘terrorist’ to be widely deployed.<sup>46</sup> Groups and individuals that have faced historic discrimination, experience more persistent challenges in the misuse of counter-terrorism and P/CVE law and practice than others.<sup>47</sup> For instance, in North America, the linkage between the historical use of the coercive policing and intelligence capacity of the State<sup>48</sup> against black and brown communities and the post 9/11 use of counter-terrorism powers against these same communities cannot be understated. Patterns in the carceral responses to Muslim communities, the surveillance and over-policing of such communities, the patterns of charging particular kinds of offences and stigmatization of these communities, as well as the export of patterns of behavior in police, custodial and military settings overseas find connection with deeper challenges of racial injustice in both countries.<sup>49</sup> Across Asia and the Pacific, North America, and Latin America, indigenous communities have also borne the brunt of security measures as States seek to justify historic and/or ongoing land-grabbing, natural resource extraction, and environmental degradation.<sup>50</sup>

Dissenting citizens in some countries run unambiguous risks of being described as ‘terrorists’ or ‘extremists’, simply by virtue of disagreement with their governments.<sup>51</sup> Civil society actors living and working in situations where a democratically elected government has been overthrown and in conflict zones are at particular risk.<sup>52</sup> Some experience ‘red-tagging’ (their deliberate conflation with insurgent groups identified as communist by the state),<sup>53</sup> others find that any anti-military, anti-coup and pro-democracy sentiments to be particularly dangerous for both organizations and individuals,<sup>54</sup> and humanitarian actors operating in both context face unrelenting pressure and mis-labelling for undertaking clearly humanitarian action.<sup>55</sup>

Journalists increasingly run the risk of being targeted by counter-terrorism measures. Such targeting includes terrorist designations,<sup>56</sup> surveillance including the deployment of sophisticated spyware,<sup>57</sup> arrest and long-term detention,<sup>58</sup> and extra-judicial killings.<sup>59</sup> As critical voices in society exposing corruption, failures in the rule of law, and the opera-

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46 The Association for Human Rights (APRODEH) with the Episcopal Commission for Social Action (CEAS), the Study for the Defense of Women’s Rights (DEMUS), the Ecumenical Foundation for Development and Peace (FEDEPAZ), Peace and Hope Input, the Institute for Legal Defense (IDL) and the Center for Justice and International Law (CEJIL) Input; A/73/362.

47 Muslim Justice League (USA) Input; Confidential Input (Ecuador).

48 A/HRC/RES/47/21 (echoing the findings of other UN Human Rights entities).

49 North America Consultation.

50 See, e.g., Asia & the Pacific Consultation (Indonesia, Cambodia, Philippines); West, East, & Central Africa Consultation A/HRC/51/25, para. 49.

51 See, e.g., Asia & the Pacific Consultation (Cambodia, Laos, Vietnam, Myanmar); CIVICUS Input; Confidential Input (India); SHOOA for Human Rights Input (Algeria); Solidarity with Others (Turkey).

52wwSee, e.g., A/75/926-S/2021/570, para. 4; Chair of the Coordination Committee, “Afghanistan: Journalists at risk of persecution need urgent protection,” Statement at the 31st Special Session of the Human Rights Council, 24 August 2021.

53 PHL 3/2021; PHL 1/2021; PHL 7/2019; Report of the UN High Commissioner for Human Rights on the Situation of human rights in the Philippines (A/HRC/44/22).

54 People’s Empowerment Foundation (PEF) Input (Myanmar).

55 Confidential Input.

56 A/HRC/52/67, para. 49.

57 Fionnuala Ní Aoláin, Position paper of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Global Regulation of the Counter-Terrorism Spyware Technology Trade (2023); A/HRC/52/39; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents (A/HRC/41/36) and Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi (A/HRC/41/CRP.1); EuroMed Rights (EMR) Input, with Cairo Institute for Human Rights Studies (CIHRS), Committee for Justice (CFJ), and Egyptian Front for Human Rights (EFHR).

58 TUR 3/2022; TUR 4/2021; TUR 4/2020; TUR 14/2018; TUR 3/2011; DZA 1/2023; DZA 4/2021; ETH 3/2019; ETH 2/2014; ETH 4/2012; ETH 7/2011; ETH 4/2011; A/HRC/35/22/Add.2 (Tajikistan); UN, UN Secretary-General, “Secretary-General Notes Ongoing Protests in Pakistan after Former Prime Minister’s Arrest, Stresses Right to Peaceful Assembly, Due Process Must Be Respected,” press release, 10 May 2023 (SG/SM/21790).

59 A/HRC/41/CPR.1.

tion (or not) of government their necessity to the realization of freedom of expression regularly puts them in the direct crosshairs of the State. Subjecting journalists to counter-terrorism measures or defining them as terrorists or extremists is not merely personal targeting but more broadly aimed at undermining freedom of expression in society.<sup>60</sup> Targeting journalists has both retail and wholesale dimensions.

The evidence accumulated further shows that academics, judges, prosecutors, and lawyers may also be at significant risk. In some cases academics have been targeted utilizing private individuals sub-contracted to ‘spy’ and report on academic teaching and opinion from classrooms, and through the deployment of social media assets to demonize the views of scholars critical of the State or State policy.<sup>61</sup> Academics that have independently voiced scholarly or policy concerns may be at risk of being dismissed or disciplined by their universities.<sup>62</sup> Student associations are also at risk.<sup>63</sup> Independent judges and lawyers face particular challenges when counter-terrorism law and practice is directed to them, including reprisals.<sup>64</sup> Judges can be dismissed, accused of being ‘infiltrated’ by extremists,<sup>65</sup> lawyers can be accused of being in league

with their clients,<sup>66</sup> lacking security credentials to view relevant evidence, and are in many jurisdictions subject to death threats, intimidation, and direct harm when they represent individuals or organizations charged with terrorism or extremism.<sup>67</sup> Many face the risk of being charged with terrorism simply by virtue of providing legal services to their clients charged with terrorism.

Finally, in some countries, high-profile individuals are being singled out or tagged as terrorists,<sup>68</sup> with a slew of legal and political consequences including inter-state transfer,<sup>69</sup> terrorism charges for their political or legal work, lengthy imprisonment, concerns about torture, inhuman and degrading treatment or punishment, and a notable lack of access to and information about the conditions of confinement for such individuals<sup>70</sup> (Chapter 3, Part 1). High-profile targeting functions as a broader object lesson from the State. Such cases serve to communicate to civil society at large and the general public that dissent, advocacy for particular causes, and association with particular issues come at high costs. The bottom-line is that if those who appear to have protection by virtue of public standing, status or gender can be targeted, everyone is at risk and is cautioned against action or articulation.

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60 S/RES/1738 (2006) and S/RES/2222 (2015).

61 Confidential Input (Israel, a government affiliated organization Im Tirtzu published contact information of some 80 faculty members which it claims expressed ‘anti-Israeli’ opinions or refused to serve in the military).

62 TUR 2/2018; AL TUR 4/2017; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey (A/HRC/35/22/Add.3), para. 30.

63 See, e.g., A/HRC/43/51/Add.1, paras. 27, 54 (Colombia).

64 See, e.g., A/HRC/50/36, paras. 41-44, 59, 70, 76, 105, 116; A/HRC/48/55, paras. 47-48; Middle East & North Africa Consultation (Tunisia).

65 TUN 1/2015.

66 EGY 1/2022; EGY 12/2021; EGY 8/2021; EGY 5/2021; EGY 7/2020; EGY 7/2019; EGY 5/2019; AL EGY 14/2018.

67 CHN 1/2023; SAU 1/2023; ESP 11/2022; USA 26/2022; OTH 128/2022; OTH 126/2022; OTH 127/2022; OTH 125/2022; ISR 17/2022; IRQ 3/2022; IND 6/2022; SLV 2/2022; VEN 9/2021; JOR 1/2021; EGY 8/2021; TUR 10/2021; LKA 2/2021; EGY 5/2021; PHL 3/2021; TUR 9/2021; IRN 12/2021; VEN 3/2021; TUR 6/2021; PAK 3/2021; TUR 20/2020; TUR 18/2020; EGY 13/2020; CHN 16/2020; EGY 10/2020; USA 15/2020; IRQ 2/2020; BHR 2/2019; EGY 5/2019; SSD 1/2019; BHR 5/2018; EGY 14/2018; CHL 2/2018; ARE 1/2018.

68 RWA 1/2020; SAU 3/2021; PHL 3/2019; PHL 5/2018; UN Human Rights Experts, “The Philippines: Renewed allegations against UN expert are ‘clearly retaliation,’” press release, 1 May 2019.

69 MENA Rights Group Input; Amnesty International, “Algeria: Quash whistleblower’s death sentence: Mohamed Benhlima,” MDE 28/5608/2022, 16 May 2022.

70 USA 26/2022; USA 29/2020; USA 17/2020; USA 20/2013; EGY 11/2022; EGY 14/2021; EGY 10/2021; EGY 8/2021; EGY 5/2021; EGY 2/2021; EGY 15/2020; EGY 7/2020; EGY 4/2020; EGY 7/2019; EGY 14/2018; BHR 5/2018; BHR 2/2020; BHR 2/2021; TUR 9/2021; TUR 10/2021; TUR 7/2018; RUS 2/2020; RUS 17/2018; RUS 16/2018; CHN 8/2020; CHN 15/2018; SAU 3/2021; SAU 5/2020; SAU 3/2020; SAU 16/2019; SAU 14/2018; ARE 3/2020; ARE 1/2020; ARE 2/2019; SSD 1/2019; IRN 7/2019; IRN 14/2019; IRN 5/2020; IND 10/2020; LKA 4/2020.

## Part 3: Gender Identity & Sexual Orientation

Across regions, women and women-led civil society organizations not only face particularized challenges due to pre-existing discriminatory norms, laws, and policies, but are also uniquely targeted by the State through the full spectrum of counter-terrorism and P/CVE measures detailed in this Study. Often this corresponds to their defiance or perceived non-conformity with traditional gender norms or participating in social movements that enable such defiance.<sup>71</sup> Intersectional analyses reveal that sexual orientation compounds and exacerbates the risks of targeting both at the personal and professional levels within civil society, including but not limited to women-led civil society. LGBT and gender-diverse individuals and their organizations also experience such targeted misuse as a result of the work they undertake and their very identity. State reliance on the use of overly broad definitions of terrorism or extremism to stymie, criminalize, or prevent the exercise of legitimate rights and freedoms, and subsequently the work of civil society, including women's rights organizations, women-led civil society, and LGBT and gender diverse organizations and communities has drastically contributed to the realities seen in civic space today.<sup>72</sup>

This Part of the Study takes a critical and intersectional approach examining how the misuse of counter-terrorism and P/CVE is not only imbued with discriminatory practices pervading the whole of society but is leveraged as a tool to suppress critical voices advocating for rights linked to gender

identity and sexual orientation. This includes those speaking out against misogyny, patriarchy, or masculinity practices that validate violence and unequal distributions of power. The abuse of counter-terrorism measures is enabled by ongoing and prior power differentials that are context-specific. Misuse of counter-terrorism and P/CVE measures relies on "asymmetrical"<sup>73</sup> power dynamics and pre-existing forms of "domination"<sup>74</sup> over particular individuals and communities. The counter-terrorism playbook (Chapter 3) thus escalates or accelerates existing forms of marginalization under the cover of State responses to terrorism and violent extremism conducive to terrorism. When leveraged against already marginalized individuals and communities, including on the basis of gender identity and sexual orientation, they function to reinforce traditional notions and standards of heterosexual-patriarchal norms. These dynamics were observed to varying degrees and with particularities across all regional consultations undertaken for this Study and the impacts felt across women civil society members, women-led civil society organizations, and women's rights defenders. They are also felt within LGBT and gender diverse communities, their organizations, staff, and those who advocate for the rights of these individuals and communities.<sup>75</sup> The impact of counter-terrorism and P/CVE measures on women civil society and human rights defenders and LGBT and gender diverse rights defenders is mainstreamed throughout this Study.

Women civil society members and human rights defenders are targeted through the full range of counter-terrorism measures detailed throughout this Study.<sup>76</sup> This includes counter-terrorism financ-

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71 See e.g., Asia & the Pacific Consultation; West, East, Central Africa Consultation.

72 See e.g., C&SN Input (overly broad definitions of terrorism and impact on women's right organization, example of impeded access to foreign funding).

73 See e.g., Kvinna till Kvinna Foundation Input (highlighting how WHRDs are particularly vulnerable to the lack of a legally binding definition of terrorism and violent extremism, as States control who and what is considered terrorism without any due process, demonstrating asymmetrical power).

74 Bell Hooks, *Talking Back* (1989).

75 A/HRC/43/46/Add.1 para 2.

76 A/HRC/46/36.

# “IF YOU ARE AN ACTIVIST ON YOUR OWN, THEN YOU HAVE EVERY RIGHT TO BE SCARED.”

Human Rights Defender, In response to the Call for Inputs

ing measures (Chapter 3, Part 3), labeling or listing at the national level (Chapter 3, Part 4), arbitrary arrest and detention<sup>77</sup> and pre-trial detention without charge (Chapter 3, Part 1), unlawful surveillance, including through technology (Chapter 3, Part 5),<sup>78</sup> rape and other forms of sexual and gender-based violence, and more.<sup>79</sup> In addition, unique strategies of abuse have arisen in attempts to stifle women’s advocacy by directly operationalizing traditional gender norms and stigmatization within society — this includes physical assault, rape and other forms of sexual violence or threats thereof, including in custodial settings;<sup>80</sup> lack of adequate sexual and reproductive health care, including prenatal care in custodial settings;<sup>81</sup> destruction of reputations, and threats of rape and other forms of sexual violence

online;<sup>82</sup> further online harassment includes smear campaigns,<sup>83</sup> threats to expose private data and material (such as sexually explicit images), doxxing, and more.<sup>84</sup> For example, high profile women’s rights defenders have been listed and labeled as terrorists and subsequently experienced threats of rape online allegedly by military personnel,<sup>85</sup> and women human rights defenders have been accused of moral laxity or sexually promiscuous behavior online creating acute vulnerability to private violence.<sup>86</sup> False psychological diagnoses or forced institutionalization have affected some women human rights defenders.<sup>87</sup> 40.7 per cent of reviewed Communications on the use of security measures against human rights defenders addressed women human rights defenders. The Study also highlights

77 A/HRC/46/36; TUR 10/2021; TUR 20/2020; TUR 4/2020.

78 AL ISR 11/2021.

79 See e.g., Kvinna till Kvinna Foundation Input (labeling of feminist actors as terrorists and the use of listing without due process for women’s organizations, which in turn negatively impacts their ability to received funding in the places where it is needed most); NUPL inputs (chilling effect of the arbitrary arrest and detention of women civil society members, including women’s rights defenders/journalists/community organizers); S/2022/740 (2022), para. 63 (growing counterterrorism infrastructure and legislation and its use against women’s civil society organizations, human rights defenders and journalists); A/77/718 (2023), para. 61 routine misuse of counter-terrorism laws and measures and the particular impact on women’s rights organizations and women human rights defenders); A/HRC/52/39/Add.1, para. 31.

80 See e.g., Ambika Satkunanathan Input (Sri Lanka, violence against women protestors, as well as women police who come to aid women protesters; physical assault; as well as sexual bribery and economic harm when men family members are detained).

81 See e.g., NUPL Inputs (Philippines, documenting the lack of adequate provision of sexual and reproductive healthcare for women civil society in detention); see also AL CHN 12/2022; A/HRC/WGEID/98/2 para. 5; and the Bangkok Rules) adopted by the General Assembly in resolution 65/229, rule 10.

82 See e.g., the Kvinna till Kvinna Foundation Input, A/HRC/52/39/Add.1

83 EMR, CIHRS, CFJ, EFHR Input (detailing smear campaigns and the use their personal photos and information prior to arrest).

84 AL ISR 11/2021.

85 See e.g., NUPL Input (Philippines, documenting the misuse of red-tagging of civil society including women’s rights defenders and the environment of threats for women rights defenders online), see also Frontline Defenders.

86 A/HRC/52/39/Add.1 (Maldives).

87 S/2022/740, para 11; see also, Saiba Varma, *The Occupied Clinic: Militarism and Care in Kashmir*, (Duke University Press, 2020).

that those women at the frontlines in conflict societies, functioning as mediators and negotiators for their communities with both State and non-State actors, face extreme risks of physical harm compounded by the fears of being described as ‘touts,’ ‘traitors,’ or ‘terrorists’ for trying to keep communities safe.<sup>88</sup>

In addition to individualized direct targeting, women civil society organizations also face unique forms of attack and consequences.<sup>89</sup> Access to remedy for the use of any counter-terrorism or PCVE measure can be compounded by pre-existing legal inequalities. Women human rights defenders and their organizations have remarkably limited access to funding, which is exacerbated by situations of armed conflict, crisis, or emergency.<sup>90</sup> For example, in humanitarian settings, according to the latest UN data, only 9 per cent of all partners receiving funds from country-based pools went to women-led organizations.<sup>91</sup> From 2019-2020, bilateral funding to “support of feminist, women-led and women’s rights organizations” in fragile and conflict affected contexts decreased from 180 million USD in 2019 to 150 million USD in 2020.<sup>92</sup> Community based work is not only underfunded, but organizational capacities limited, leaving women rights defenders and civil society organizations unable to meet increasingly daunting requirements for their organizations related to preventing the financing of terrorism — outsourcing risk to local actors.<sup>93</sup> Funding is also often rigid, short-term, and uncertain, ineligible towards

core expenses, not on the scale of social or normative change, and unaligned with priorities, requiring local organizations to adapt to calls based on international or donor demands. This has led to women’s civil society (and civil society more broadly) around the world to call for increases in rapid and flexible funding for women’s organizations.<sup>94</sup>

Notably, counter-terrorism financing measures have stood out as a core tool used against civil society, including women civil society organizations, which exacerbate the pre-existing and extremely limited funding already reaching women civil society organizations, particularly in crisis contexts.<sup>95</sup> Without further due diligence, and specific safeguards and measures to protect women’s civic space and organizational sustainability, such measures will continue to heavily impact women’s civil society organizations.<sup>96</sup> Moreover, because of narrow understandings of violence prevention housed under the rubric of “P/CVE” programming objectives that remain State-centric, such funding does not regularly become available to address social norms and practices that perpetuate violence against women, or discrimination against people on the basis of sexual orientation or gender identity.<sup>97</sup>

Asymmetrical power dynamics between governments and women who do not conform to traditional gender roles through their activism are also institutionalized in the regulation and control of women civil society actors, women human rights defend-

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88 A/77/345, para. 40; Asia & the Pacific Consultation.

89 See e.g., Ch. 3, Part 1 (judicial harassment), Part 3 (CFT), Part 4 (sanctions and listing), Part 5 (new technologies); see also A/HRC/50/25 (2022), para. 41.

90 Gender, Justice and Security Hub, *Improving the funding of women’s peacebuilding activities (2021)*; S/2022/740, para. 13.

91 S/2022/740, para. 44.

92 S/2022/740, para. 89.

93 Confidential Input (Global).

94 See e.g., the work of the Women’s Peace & Humanitarian Fund on rapid and flexible funding for women human rights defenders; S/2022/740, para. 13.

95 See e.g., Confidential Input (Global); C&SN Input (Uganda, freezing of bank accounts of women’s organizations in advance of elections on the grounds of terrorism financing); Confidential Input (Occupied Palestinian Territory); S/2022/740.

96 UN Women, *Global Digital Consultation, Civil Society Voices on the Gendered Dimensions of Violent Extremism and Counter-Terrorism Responses (2020)*.

97 RSI Input.

ers, and women’s organizations. For women unaffiliated with an organization, public activism against patriarchal and sexist norms that confine women to the private sphere regularly result in both State and public hostility.<sup>98</sup>

Women activists have been subjected to national security charges for protest of and demonstration against veiling laws,<sup>99</sup> arbitrarily arrested and detained for their activism, organizing, and defying discriminatory restrictions on the rights of women, such as in Saudi Arabia related to restrictions on the rights of women to drive and the guardianship system,<sup>100</sup> subjected to targeting on terrorism charges along with charges of challenging “family values” for their social media presence, such as in Egypt,<sup>101</sup> and subjected to punishing forms of abuse during arrest and detention.<sup>102</sup> As noted above, online harassment and smear campaigns are prevalent for women human rights defenders and, in contexts of such asymmetries and both public and private expectations and restrictions on women’s bodies, such campaigns play an even greater role in mobilizing apathy or even vitriol in the public against women civil society and women human rights defenders prior to and during their arrest and detention.<sup>103</sup> The social and psychological costs for women are immense.<sup>104</sup> At the same time, counter-terrorism and corresponding emergency measures have implemented discriminatory controls of women and their freedom of religion and belief in overbroad prohibitions on women’s dress, particularly for Muslim women who wear

clothing that covers their face, as was the case in Sri Lanka where the regulation resulted in public attacks or harassment against Muslim women as evidenced in reports of the National Human Rights Commission.<sup>105</sup>

Asymmetrical power dynamics with the State and the challenges of women who do not conform to traditional gender roles or act in opposition or challenge to the State face unique challenges. Women are not just either perpetrators or victims as commonly referred to in “gendered” counter-terrorism literature.<sup>106</sup> They are also victimized by counter-terrorism and P/CVE measures that affect or target them individually, as well as their broader communities. In contexts where discriminatory practices against ethnic or religious minorities, such as Muslims in the United States, Canada, Australia, and elsewhere in the world, Muslim women whose communities are discriminately targeted, lose faith in and are unable to access basic services, including reliance on the police for well rooted fear of stereotyping or falling under the purview of the State. Moreover, such intersecting forms of discrimination against women on the basis of gender, as well as religious expression, create particular challenges for Muslim women in societies where Islam is discriminatorily represented and conflated with terrorism by governments and the media.<sup>107</sup>

When women’s civil society organizations are engaged in programming or donor supported work in the field of counter-terrorism or PCVE, civ-

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98 EMR, CIHRS, CFJ, and EFHR Input.

99 AL IRN 12/2021.

100 See e.g., Access Now Input; see also SAU 3/2021, A/HRC/WGAD/2020/33; see also Amnesty International (2022). Saudi Arabia: Quash 34-year prison sentence for student Salma al-Shehab.

101 EMR, CIHRS, CFJ, and EFHR Input.

102 EMR, CIHRS, CFJ, and EFHR Input (Egypt, arrest of female protestors).

103 EMR, CIHRS, CFJ, and EFHR Input.

104 Saiba Varma, *The Occupied Clinic* (2020).

105 Ambika Satkunanathan Input (Sri Lanka).

106 See, e.g., North Atlantic Treaty Organization (NATO), *Women in Terrorism and Counterterrorism Workshop* (2019).

107 See, e.g., Australia Muslim Women’s Centre for Human Rights (AMWCHR) Input; Report of the Special Rapporteur on freedom of religion or belief on countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (A/HRC/46/30), para. 49; CCPR/C/123/D/2747/2016 (France); CCPR/C/123/D/2807/2016 (France).



# ISSUE IN FOCUS

## Misuse of Counter-Terrorism Measures Against Women Civil Society

There are national examples associated with the misuse of counter-terrorism measures against women's civil society, women human rights defenders, and activists that utilize pre-existing discriminatory control over women's bodies, gender norms and inequalities, and the intersections of gender equality, women's rights, freedom of opinion and expression and freedom of religion and belief. Counter-terrorism measures have been misused against women activists and civil society for defying traditional gender roles and norms. Such measures, justified on the basis of counter-terrorism and national security, have been found to violate or impact women's rights, including:

- In the case of France, where, the Human Rights Committee found criminal bans on wearing of a full-face veil to constitute a form of intersectional discrimination based on gender and religion, in violation of article 26 and article 19 of the ICCPR (See e.g., CCPR/C/123/D/2747/2016; CCPR/C/123/D/2807/2016).
- In the case of Iran, where the Working Group found arbitrary deprivation of liberty of women rights defenders, including lawyers "acting against national security," for advocating against the compulsory veil (A/HRC/WGAD/2011/21; AL IRN 12/2021).
- In the case of Saudi Arabia, where the Working Group also found arbitrary deprivation of liberty for women's rights activists who were charged, convicted and sentenced under national security and counter-terrorism legislation for challenging male guardianship and the ban against women driving (A/HRC/WGAD/2020/33).

il society have reported, and as documented by UN Women, frequent examples of securitizing the gender equality agenda (Chapter 4). Women can often be portrayed as existing on a binary of victims or perpetrators,<sup>108</sup> where women and their organizations are disregarded as equal partners in

co-creating or in fact leading efforts towards peaceful and just societies. These dynamics are not only prevalent in the exclusion of women, women civil society and women's rights defenders in developing and creating counter-terrorism laws and policies, or in the lack of consideration of gender and

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108 See, e.g., Global Center for Cooperative Security (Global Center) Input.

women's rights in such laws, policies, and plans,<sup>109</sup> but also in PCVE policies and practice, which frequently compound stereotypical gender roles.<sup>110</sup> Even when such expertise is offered and organizations prepare inputs, the integration of gender and women's rights issues is often lacking or unintegrated.<sup>111</sup> As the women, peace and security agenda has addressed, adding the language of women and only "stirring" across all peace and security areas, including counter-terrorism is insufficient. As civil society have put pressure on governments, regional organizations, and the UN to improve their approach to women's meaningful participation in this field, however, some improvements have been made.<sup>112</sup> But existing gender analysis or gender-based monitoring of State responses to terrorism reveal concerning trends. For example, the United Nations Development Programme's (UNDP) Human Rights Observatory project in Cameroon was able to document 543 cases of human rights violations committed by security forces in the context of the State's response to violent extremism, including 60 gender-based violence cases.<sup>113</sup>

For LGBT and gender diverse civil society actors and organizations, there remains limited evidence on how counter-terrorism measures are being used to target and negatively impact their lives and work.<sup>114</sup> Documentation efforts remain extremely dangerous

and challenging given the strategic use by security actors of personal information about individuals' sexual orientation and gender identity corresponding stigmatization within the societies these individuals work, and the risks of challenging government security actors. Examples of extortion, bribery, and threats to expose individuals' sexual orientation and gender identity to the public or their community and family have led to the exploitation, cooption, and rights violations of civil society in many contexts.<sup>115</sup> Dismissals of legitimate cases by ombudspersons and domestic human rights institutions have also been documented.<sup>116</sup> The vulnerabilities inherent in societal stigmatization lead to a compounded inability to safely seek redress for rights violations. Broader legislative frameworks, such as in Russia, also widely categorize LGBT and gender diverse activists, as well as feminists, as extremist.<sup>117</sup> The registry of undesirable organizations, which includes civil society, among others, includes over 80 groups.<sup>118</sup> Registration of organizations or designations of civil society as foreign agents or extremist are closely tied in this context and have resulted in LGBT and gender diverse organizations being targeted.<sup>119</sup> In addition, LGBT and gender diverse activists and organizations that have recognized and are advocating against overly broad counter-terrorism measures at a domestic level have experienced distinct rights violations, including sexual harassment and assault during protest, detention without

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109 See, e.g., CIVICUS and Innovation for Change South Asia Hub (Kenya) (lack of integration of gender); A/HRC/43/46.

110 See, e.g., Global Center Input; C&SN Input (Cameroon) (organizations who advocate for gender equality are often cut out or overlooked in counter-terrorism and in disarmament, demobilization, and reintegration (DDR) efforts).

111 See, e.g., CIVICUS and Innovation for Change South Asia Hub.

112 See, e.g., Global Network of Women Peacebuilders (GNWP), *Transforming Counter-Terrorism: From Securitization to Women-led Peace* (2020); Mariam Safi, UN Security Council Briefing on Afghanistan, statement, March 2022; Kaavya Asoka, UN Security Council Open Debate on Women, Peace and Security, statement, January 2022).

113 See, e.g., United Nations Development Programme (UNDP) Input (Cameroon).

114 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on peace and security (A/77/235), paras. 33-34; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family (A/HRC/46/36), para. 3.

115 See, e.g., Confidential Input (Occupied Palestinian Territory).

116 See, e.g., NUPL Input (Philippines).

117 See, e.g., A/HRC/40/53/Add.1 (Malaysia); Asia & the Pacific Consultation.

118 Coming Out Input (Russia); see also, Tanya Lokshina, *Russia Bans Key Platform for Civil Society Cooperation: The EU-Russia Civil Society Forum Designated "Undesirable*, Human Rights Watch, 13 April 2023.

119 RUS 5/2012; RUS 7/2022; Coming Out Input.

charge, and, for transgender women, detention with men.<sup>120</sup> Moreover, beyond seeking redress, individual civil society members subjected to violence and rights violations on the basis of their sexual orientation or gender identity may also face challenges in accessing appropriate and adequate medical and psycho-social support for these harms.<sup>121</sup>

In addition, the challenges to the meaningful participation and inclusion of LGBT and gender diverse communities in counter-terrorism and P/CVE spaces are immense.<sup>122</sup> The risk to civil society given the lack of safe space to express their views at a community level makes engagement by the UN and other stakeholders challenging from a human rights due diligence and risk standard. Nonetheless, documentation within such frameworks of human rights due diligence and confidentiality should not only be required but is necessary. One area where discriminatory practices have widely benefitted from engagement with LGBT and gender diverse civil society is in identifying the emerging human rights challenges with biometrics—which can assign algorithmically-determined gender totally contradicting one’s identified gender<sup>123</sup> (Chapter 2, Part 3)—and the classification of individuals into gender binary categories without consent.

## Part 4: Victims of Terrorism & Victims’ Associations

Victims of terrorism and their associations are an in-

tegral part of civil society<sup>124</sup> Victims associations often address key State obligations, particularly related to the State obligation to positively protect the right to life<sup>125</sup> and obligations consistent with the protection of the rights of victims of terrorism and human rights more broadly.<sup>126</sup> The diversity of survivors and victims of terrorism and their organizations are just as unique as those civil society groups outlined above. Survivors may belong to communities or groups that experience marginalization and other forms of discrimination, including ethnic, religious, and linguistic minorities, or experience intersecting forms of discrimination in their personal lives and advocacy on the basis of gender, sexual orientation, ability, age, and more. Although, terrorism is a global challenge, not only are terrorist attacks more frequent in countries experiencing conflict, but they are also consistently deadlier, setting the scene for lack of access to justice and accountability, redress and repair, or immediate and long-term needs for health care and medical treatment for victims/survivors in these contexts.<sup>127</sup> In addition, a correlation is found between the impact of terrorism and countries where civilian victimization or State violence against civilians is high.<sup>128</sup> For example, in the context of Afghanistan, the historic persecution of the Hazara-Shia community includes grave legacies of violence, devastating death counts, and targeting by designated terrorist groups amidst a lack of State response. These realities have resulted in the highest numbers of casualties across all segments of communities, including targeting of girls’ schools, maternity wards, and more.<sup>129</sup> The levels of violence and subsequent harm, paired with pre-existing

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120 NUPL Input (Philippines).

121 Asia & the Pacific Consultation.

122 Confidential Input.

123 Trilateral Research Input.

124 A/66/310, paras. 20-28.

125 UN Human Rights Committee, General Comment No. 36 on article 6: right to life (2018) (CCPR/C/GC/36).

126 A/66/310, para. 20.

127 Institute for Economics & Peace, “Figure 2.5: Lethality rate, conflict and non-conflict countries 2007-2022,” the Global Terrorism Index (GTI) (2023) (last accessed 28 May 2023).

128 GTI, “Figure 2.6,” (2023).

129 See e.g., Ali Yawar, *A Community Under Attack: How successive governments failed west Kabul and the Hazaras who live there*, Afghan

forms of discrimination have resulted in no access to justice or accountability. Those civil society organizations advocating for transitional justice and accountability in the context of the State response to such attacks and the attacks themselves, find their work consistently undermined.

Victims, survivors, and their organizations play an essential and vibrant role through testimony, advocacy, and the provision of direct services to others, including through lobbying and litigation to advance the human rights of those injured or killed by acts of terrorism. The Study also observes divide and conquer strategies deployed by States to separate and place barriers between victims of terrorism and victims of counter-terrorism. The Special Rapporteur has cautioned against such practices among Member States and UN and regional counter-terrorism entities and urged the adoption of a human rights-based approach that avoids creating hierarchies of victimhood and places the equality, dignity, and rights of all victims equally at the heart of government policy. Protecting civic space for all victims is essential.<sup>130</sup> These false distinctions have resulted in political spaces where States express greater comfort in publicly addressing the harms experienced by victims, but fail to implement meaningful policy. States frequently treat victims of terrorism as objects of compassion or commodification, but few have demonstrably taken a human right-based approach to the advancement of victims' rights and treated victims and communities as autonomous rights bearers entitled to equality and dignity under law or as associational groups with rights to organize and advocate as one.<sup>131</sup> There are some notable exceptions to this assessment, including through aspects of national legal systems in France and Spain, along with international exam-

ples, such as the role of the UN Group of Friends for Victims of Terrorism led by Iraq (previously Afghanistan) and Spain.<sup>132</sup>

The eco-system of civil society cannot be selectively disturbed, or effects limited to some non-profit organizations and civil society actors, and not others. The broader diminution of civil society capacity can have paralyzing effects on organizations, associations, and individuals representing victims of terrorism. If civil society as a whole is viewed as inherently suspicious, victims/survivors of terrorism attacks do not easily escape the categorization that they are meddlesome, critical, unhelpful and operating contrary to a governments' political interests.<sup>133</sup> This may be a particular risk in societies where the line between State and non-state actor violence is porous, and where diversion of military and other assets from State to non-State actors contributes to the scale of terrorism threats and violence. In particular, issues of State responsibility for terrorism contribute to the perceived threat that victims of terrorism pose to governments when they request information, transparency and accountability for acts of terrorism.

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Analysts Network (2020); A/HRC/51/6, paras. 65-67; A/HRC/52/84; OTH 108/2022.

130 UN Human Rights Experts, "UN expert affirms the rights of child victims of terrorism, urges human rights-based approach," press release, 23 August 2022.

131 A/HRC/52/39 para. 51-53; A/HRC/46/36, paras. 32-38.

132 A/HRC/40/52/Add.4; "Launch of the Group of Friends of Victims of Terrorism," UN publication (2019).

133 West, East, Central Africa consultation (Mali).



# CHAPTER 2

## AN EVER-EXPANDING COUNTER-TERRORISM & PREVENTING/COUNTERING VIOLENT EXTREMISM ARCHITECTURE

### Part 1: Counter-Terrorism Laws, Regulations, & Architecture

The operation of counter-terrorism law, policy, and practice predominantly occurs in national settings. The implementation of counter-terrorism law and policy is generally undertaken by national institutions, generally those entrusted with the security and safeguarding of the State (broadly police, interior ministries, military, intelligence services and prison services). The primacy of national counter-terrorism regulation is consistent with the UN Charter, as well as the International Covenant on Civil and Political Rights, which recognizes the sovereignty and territorial integrity of UN Member States and in general the territorial

responsibility for the protection of national security and the enforcement of human rights.<sup>134</sup>

As the Special Rapporteur set out in her 2018 report to the General Assembly, in the immediate aftermath of 11 September 2001, the UN Security Council adopted resolution 1373 under Chapter VII of the UN Charter, requiring States to, among other things, criminalize terrorist activities, ban the financing of terrorists, and bring terrorists to justice. The resolution lacked any temporal or geographic time limits, and any specific or comprehensive reference to the need for States to comply with international human rights law when implementing the resolution. Security Council resolution 1373 also established a new mechanism in the form of the Counter-Terrorism Committee to monitor the implementation of the resolution by Member

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<sup>134</sup> UN Charter, art. 2(4); ICCPR, art. 2. But see, Olivier De Schutter, and others, Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, vol. 34, 1084–1169, Human Rights Quarterly (Johns Hopkins University Press 2012).

States. In turn, Member States speedily enacted national counter-terrorism legislation based on the compulsory nature of Security Council resolution 1373—with many States borrowing legislative text from one another.<sup>135</sup> The vast majority of Member States passed foundational counter-terrorism legislation setting out terrorism as a domestic legal offence and establishing core and associated crime(s).

In the years that followed, the Security Council adopted multiple additional resolutions under Chapter VII imposing further legal duties on States to introduce specific kinds of domestic counter-terrorism laws, sanctions, and other measures.<sup>136</sup> Although the Security Council began to recognize in subsequent resolutions the need for national counter-terrorism laws and measures to comply with all existing international law obligations—including under international human rights law, international humanitarian law, and international refugee law—none of these resolutions provided clear and explicit human rights guidance.<sup>137</sup> Moreover, none of the resolutions stipulated a precise definition of terrorism to be applied across all counter-terrorism resolutions.<sup>138</sup> A veritable explosion of counter-terrorism regulation has followed, with at least 140 States adopting counter-terrorism legislation between 2001 and 2018.<sup>139</sup> Notably, the determination with which the international community took swift, draconian measures to counter-terrorism after 11 September 2001, facilitated a blanket, zero-risk ap-

proach to counter-terrorism legislation, which left no room for a determination of the necessity and proportionality of the measures. Expansive counter-terrorism law is now ordinary law in many States with severe consequences for the health and viability of civil society.<sup>140</sup>

The remainder of this chapter considers the specific characteristics and idiosyncrasies of counter-terrorism lawmaking at the national, regional, and international levels.

## National Counter-Terrorism Lawmaking

According to the Global Study data, most national counter-terrorism laws share certain salient features.

**First**, they are generally exceptional in nature, produced in short and rushed timeframes, and open dialogue, debate and participation by multiple stakeholders including civil society is exceedingly rare (Chapter 4).<sup>141</sup> As the Special Rapporteur painstakingly demonstrated in her 2018 Report to the Human Rights Council, counter-terrorism law largely functions as a form of exceptional legal regime grafted onto national legal systems.<sup>142</sup> States tend to pass, *ab initio*, counter-terrorism legislation that is exceptional in character and scope, premised on the fact or threat of a terrorist attack or perceived threat.<sup>143</sup> Exceptional counter-terrorism legislation and architectures are not necessarily new. They are

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135 A/73/361; see, e.g., Kerian Hardy and George Williams, Two Decades of Australian Counterterrorism Laws, 46 Melbourne University Law Review (2022), pp. 34 (Australia adopted 92 counter-terrorism laws (5,559 pages of legislation) from 2001-2021).

136 A/73/361.

137 A/73/361, paras. 33-38.

138 But see, S/RES/1566 (2004).

139 Lana Baydas and Shannon N. Green, Counterterrorism Measures and Civil Society: Changing the Will, Finding the Way, Center for Strategic and International Studies (CSIS) (2018).

140 BHR 2/2023; LKA 4/2023; MOZ 2/2023; TUN 8/2022; TJK 5/2022; BLR 9/2022; SLV 4/2022; IRL 3/2022; GBR 9/2022; BLR 3/2022; NIC 1/2022; ISR 6/2022; CHN 3/2022; QAT 1/2022; NZL 1/2021; DZA 12/2021; LKA 7/2021; VEN 8/2021; OTH 229/2021; THA 5/2021; AUT 2/2021; LKA 3/2021; HTI 2/2021; FRA 5/2021; LKA 7/2021; UZB 4/2021; BRA 6/2021; DNK 3/2021; NLD 2/2021; BLR 2/2021; TUR 3/2021; NIC 4/2020; SAU 12/2020; NIC 3/2020; ARE 6/2020; FRA 4/2020; OTH 73/2020; BFA 2/2020; CHN 17/2020; TUR 13/2020; PER 3/2020; GBR 7/2020; PHL 4/2020; FRA 2/2020; CHN 13/2020; CHE 1/2020; IND 7/2020; KGZ 3/2020; CHN 7/2020; KHM 1/2020 LKA 2/2020; EGY 4/2020; CHN 18/2019; TUN 4/2019; TEH 3/2019; AUS 5/2019; LKA 1/2019; OTH 41/2018; LKA 5/2018; GBR 7/2018; GBR 6/2018; AUS 2/2018; RUS 2/2018; FRA 6/2017.

141 Confidential Input (Turkey).

142 A/HRC/37/52, para 3.

143 /HRC/37/52, para 31; GBR 7/2020; A/HRC/40/52/Add.4 (France).

rooted in long-standing regimes of exceptional power including martial law, *État de Siège*, and legislative or executive emergency powers.<sup>144</sup> As multiple Global Study participants underscored, many current counter-terrorism enactments have their roots in legislation and practice directed at native and indigenous peoples by colonial powers.<sup>145</sup> Although their passage is generally exceptional, with the rhetoric of exceptional and short-term existence, counter-terrorism laws and regulations have the tendency to persist and move from exceptional to regular use over time, committing the State to long-term exceptionality. Such exceptionality is one of the primary causes of states of emergency in securitized national settings—as further exacerbated by emergency powers and exceptional measures adopted throughout the Covid-19 pandemic<sup>146</sup>—and is consistently correlated with severe and systematic human rights violations.<sup>147</sup> Recent cross-cutting social challenges in Latin America especially have accentuated the reflexive use of and return to counter-terrorism power and pathways. Viewing counter-terrorism law as a form of exceptional legal regime underscores the risk and challenges faced by civil society when it is used and normalized in society.

**Second**, counter-terrorism laws use the word “terrorism,” with limited articulation and almost without exception, contain overly broad and ambiguous definitions. The term “terrorism” is also increasingly

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144 A/HRC/37/52; A/72/495; Oren Gross & Fionnuala Ní Aoláin, *Law in Times of Crisis* (Cambridge, UK, Cambridge University Press 2006); Theodor Meron, *Extraterritoriality of Human Rights Treaties*, vol. 89, no. 1, *American Journal of International Law* 78-82, 1995).

145 North America Consultation; West, East, Central Africa Consultation; Asia & the Pacific Consultation (Singapore, Philippines, Indonesia); ISR 6/2022; Center for Legal and Social Studies (CELS) (Argentina); Fatemah Alzubairi, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge, UK, Cambridge University Press, 2019).

146 Fionnuala Ní Aoláin, *Covid 19, Counter-Terrorism and Emergency Law* (2023); Asia & the Pacific Consultation (Hong Kong, Myanmar, Malaysia).

147 UN Human Rights Experts, “El Salvador: Extended state of emergency undermines right to fair trial,” press release 16 May 2023); International Commission of Jurists, *States of Emergency — Their Impact on Human Rights: A Comparative Study* by the International Commission of Jurists (1983); Gross & Ní Aoláin, *Law in Times of Crisis* (2006); Jaime Oraá, *Human Rights in States of Emergency in International Law* (Oxford, UK, Clarendon Press, 1992); UN Human Rights Committee general comment No. 29 (2001) on states of emergency.

“**A SINGLE-MINDED  
FOCUS ONLY  
ON SECURITY  
MEASURES AND AN  
UTTER DISREGARD  
FOR HUMAN RIGHTS  
HAVE OFTEN MADE  
THINGS WORSE.**”

Former UN Secretary-General,  
**Ban Ki-moon**, when launching his  
Plan of Action to Prevent Violent  
Extremism, 2016



coupled with terms such as “violent extremism” and “radicalization”, which are also offered without definitions and further complicate the regulatory landscape for civil society (Chapter 2, Part 2). In every Global Study consultation held by the Special Rapporteur, participants identified wide-ranging and vague terminologies related to terrorism in their country settings. This reality poses a direct challenge for the international law requirement of legal certainty. Multiple Global Study respondents stressed that overbroad counter-terrorism laws operate definitionally to impinge on the principles of legality, freedom of expression and opinion, freedom of thought, conscience and religion, freedom of association, and other fundamental rights and freedoms.<sup>148</sup> Definitional overbreadth can also function to squeeze civil society: among the Human Rights Treaty Bodies communications assessed, approximately 75 per cent pertained to the definition of terrorism or extremism and misuse against civil society. Many domestic legislative enactments are also characterized by definitions that constrain both the valid application of international humanitarian law to conflicts covered by the provisions of common article 3 of the 1949 Geneva Conventions and Additional Protocol II threshold conflicts as well as the recognition of legitimate self-determination claims under human rights treaties.

In addition to core anti-terrorism legislation States have passed other complimentary counter-terrorism legislation posing cumulative challenges for civil society. Premised on the obligations contained in the International Convention for the Suppression of the Financing of Terrorism (1999), UN Security Council resolution 1373, allied with the implementation of the Financial Action Task Force Standards,

many States have passed counter-terrorism financing legislation (Chapter 3, Part 3) and sanctions laws and frameworks in the name of countering terrorism (Chapter 3, Part 4). In the shadow of Security Council mandates<sup>149</sup> some States have also incorporated new forms of ‘indirect incitement’ into hastily passed domestic legislation, while others have subjected pre-existing laws to expansive interpretations. The result is a broad spectrum of offences, and prosecutions, based on diverse forms of ‘dangerous’ expression, such as encouragement, glorification, justification, apology, possession, dissemination or making available prohibited information or materials, or professing to be a member of or associated with prohibited organizations. Civil society organizations have felt the consequences of this widened consensus on “association” and “incitement”. These kinds of offences move State action into a pre-criminal space with clear consequences for the integrity of the rule of law and legal

## DATA HIGHLIGHTS

**According to an assessment of counter-terrorism laws from 11 September 2001 to 2012:**

- **140 countries enacted or revised one or more counter-terrorism laws (compared with 51 countries prior to 9/11);**
- **More than 130 counter-terrorism laws included one or more vague terms like “public order” and “public safety” without defining them; and**
- **At least 5 laws failed to define a “terrorist act.”**

Source: Human Rights Watch, *In the Name of Security: Counterterrorism Laws Worldwide since September 11, 29 June 2012.*

148 See, e.g., Latin America and the Caribbean Consultation (Venezuela); AccessNow Input (Egypt); The Legal Center for Arab Minority Rights in Israel (Adalah) Input (Israel); Alkarama Foundation Input (Algeria); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/72/287), para. 35-36.

149 S/RES/2178 (related to addressing “Foreign Terrorist Fighters” through travel regulations, prosecution, information sharing and other means, including introduction of new language on CVE and the use of the internet and technology).

# ISSUE IN FOCUS

## Regional and Global Legislative Cross-Fertilization

Addressing the connection between regional and global legislative cross-fertilization is essential. Tracking the connections and sharing of counter-terrorism norms between States, particularly those in close proximity and/or with longer relationships of exceptionality through colonialism can expose the complexity and challenges related to misuse and reuse of security measures. For example, in Morocco, the codification of the act “*fermer des yeux*” / crime of “apology for terrorism” followed earlier legislative adoption in France.

Source: Middle East & North Africa Consultation; A/HRC/40/52/Add.4 (France), paras. 14, 26 and 29.

certainty. Multiple submissions to the Study emphasized that Muslim minority communities in Western countries, have faced extraordinary challenges as a result of the implementation of discriminatory enforcement of counter-terrorism legislation which is both overt and covert.<sup>150</sup>

Submissions from Muslim majority countries highlighted that counter-terrorism and countering violent extremism legislation is used to target religious minorities,<sup>151</sup> secular groups and individuals,<sup>152</sup> as well as groups advocating for women’s equality and the rights of LGBT and gender diverse (Chapter 2, Part 2).

**Third**, many governments rely predominantly or exclusively on executive powers to regulate terrorism and enable counter-terrorism responses.<sup>153</sup> Such regulation constitutes an acute form of de facto emergency practice.<sup>154</sup> National counter-terrorism legislative enactments as well as security driven management of critical infrastructure and public arenas are often directly focused on protecting the executive and dampening the capacity of organic social movements and protests to emerge in public space.<sup>155</sup> The harms to civil society are heightened in such contexts, as judicial safeguards and parliamentary processes may be absolutely ineffective or

150 North America Consultation; C&SN Input, Institute for Social Policy and Understanding (ISPU) Input, Muslim Advocates Input, Brennan Center Input, see also, e.g., A/HRC/40/52, para. 19; A/72/287.

151 Confidential Inputs (India); A/HRC/49/45/Add.1 (Uzbekistan); A/HRC/43/46/Add.1 (Kazakhstan).

152 A/HRC/52/39/Add.1 (Maldives) (concerning secularism regulation and extremism law).

153 UN Human Rights Experts, US travel ban: “New policy breaches Washington’s human rights obligations,” press release 1 February 2017; MLI 3/2022; BFA 2/2020; BFA 2/2019.

154 A/HRC/37/52, para 34.

155 A/HRC/50/42; Rede Justica Criminal Input (Brazil); A/HRC/40/52/Add.4, para. 24; SLV 2/2022; PER 1/2023; BLR 1/2012; OL CHN 7/2020; UN Human Rights Experts, “Hong Kong: Arrests under security law are serious concern, UN experts call for review,” press release, 12 October 2021; Asia & the Pacific Consultation (“Terrorist tagging” in Thailand, Philippines, Indonesia, Laos and Vietnam used to suppress criticism of domestic policies, including security enactments).

discarded.<sup>156</sup> Democratic or independent oversight of the exercise of such powers is limited, and the usual rights pertaining to legal interference (e.g. access to information, right of access to lawyers) are frequently and extensively limited. Judicial oversight of such powers is also significantly impaired or restricted. Even when it is not, judiciaries tend to be highly deferential to the exercise of counter-terrorism and security powers and judges may fear retribution if they overrule security prerogatives exercised by the State.<sup>157</sup> The opposite is also true as independent judiciaries are a bulwark against exceptionalism.

**Fourth**, counter-terrorism legislation stipulates a wide and overlapping array of criminal, civil, and administrative measures (Chapter 3, Part 1). Preventative and enforcement measures for the non-profit sector increasingly disable the capacity of civil society actors and organizations to work easily and effectively.<sup>158</sup> In fact, a majority of all Human Rights Treaty Body communications on the application or use of security legislation—as reviewed for the Global Study—pertained specifically to the application of counter-terrorism legislation.<sup>159</sup> In addition to criminalization, a range of civil and administrative counter-terrorism practices in national contexts create significant hardship for civil society. One obvious and extensively used practice across all regions is the use of sanctions, listing, or designation of individuals and groups justified on the grounds of countering terrorism or countering vi-

olent extremism. The Special Rapporteur recognizes that targeted sanctions can be useful to address terrorism financing, but such practices can also severely hamper the work of humanitarian and other civil society organizations or be used to maliciously target them (Chapter 3, Part 4).

**Lastly**, it is important to note that national counter-terrorism institutions are highly closed and inaccessible legal spaces to civil society. They are defined by a lack of transparency and openness (Chapter 4), with unique gender dimensions (Chapter 1, Part 3). Women have historically struggled to have due and adequate representation in the security sectors that inform and dominate counter-terrorism law-making.<sup>160</sup> Elite counter-terrorism and security spaces remain dominated by men,<sup>161</sup> particularly affluent men, without ethnic, religious, and cultural diversity in many States, and there is no evidence of a “tipping point” in the near future.<sup>162</sup>

Notwithstanding the challenges and vulnerabilities set out above, certain States have introduced importance mechanisms for assessing the human rights impacts of draft counter-terrorism laws. It is worth noting that the Attorneys General of New Zealand and Canada have reporting obligations to Parliament when pending legislation appears to be inconsistent with the country’s domestic human rights obligations.<sup>163</sup> Other States have adopted valuable oversight mechanisms taking various shapes tasked to review counter-terrorism laws,

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156 EGY 4/2020; TUR 3/2021; TUR 13/2020.

157 West, East, Central Africa Consultation.

158 ADM (France).

159 57.8% of Human Rights Committee communications; 61.5% of Committee against Torture communications; and 78.6% of Committee on the Elimination of Discrimination against Women communications.

160 Micah Zenko and Amelia Mae Wolf, *Leaning from Behind: The troubling lack of women in the world of foreign-policy making and media*, Foreign Policy (2015); Tickner, J. Ann, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (Columbia, New York, Columbia University, 1992).

161 Asia & the Pacific Consultation; Emilie Hafner-Burton, *Elite decision making and international law: Promises and Perils of the Behavioral Revolution*, 115 *American Journal of International Law*, 242-247 (2021).

162 Christine Chinkin, Shelley Wright, and Hilary Charlesworth, *Feminist Approaches to International Law: Reflections from Another Century*, 17, ed. Doris Buss and Ambreena Manji, *International Law: Modern Feminist Approaches* (Portland: Hart Publishing 2005).

163 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/72/287), para. 63.

# REGIONAL TRENDS

While recognizing the wide-ranging and varying counter-terrorism regulatory responses that have been adopted both within and across regions, a couple of micro developments are worth noting in specific regions. For instance, several Latin American States treat gang criminality as terrorism under domestic law. While structured and sustained criminal violence no doubt poses deep challenges to society, terrorism is a distinct and exceptional crime, and it is not the same as even abhorrent group criminality. In Southeast Asia, State counter-terrorism and counter-insurgency laws, designations, and campaigns are increasingly overlapping and intertwined—further exacerbating human rights and rule of law deficits. As the tentacles of counter-terrorism expand in society in these and other ways, civil society inevitably feels the squeeze and negative consequences.

Source: Latin America and the Caribbean Consultation (El Salvador, Guatemala, Honduras); Asia & the Pacific Consultation (Philippines, Myanmar, Indonesia, Thailand); Marc Batac, Counterinsurgency, Red-tagging & the 'War on terror': A War against Deliberation and Dis-

practices, and powers.<sup>164</sup>

## Regional Counter-Terrorism Architecture

In tandem with the rise in national counter-terrorism laws and regulations, regional counter-terrorism regulatory responses have also increased.<sup>165</sup> Traditional regional organizations like the African Union, Association of Southeast Asian Nations, and Organization of Islamic Cooperation, have played a key role in this regard, as have specialized regional bodies like the Financial Action Task Force-Style Regional Bodies, Latin American and Caribbean Community of Police Intelligence, and Trilateral Interagency Maritime Law Enforcement Working Group.<sup>166</sup> The increased regionalization and sectoral

approach to counter-terrorism practice poses particular challenges to advancing a holistic and integrated human-rights based approach as a number of the regions concerned lack corresponding human rights regional bodies or enforcement mechanisms, and sectoral regulation is marked by its human rights 'lite' identity.

Regional Trends: While recognizing the wide-ranging and varying counter-terrorism regulatory responses that have been adopted both within and across regions, a couple of micro developments are worth noting in specific regions. For instance, several Latin American States treat gang criminality as terrorism under domestic law.<sup>167</sup> While structured and sustained criminal violence no doubt poses

<sup>164</sup> See, e.g., Independent Reviewer of Terrorism in the UK and the Counter-Terrorism Human Rights Protection Officer in the Republic of Korea.

<sup>165</sup> West, East, Central Africa Consultation; Asia & the Pacific Consultation; Central & Eastern Europe Consultation; Middle East & North Africa Consultation; Latin America & the Caribbean Consultation; North America Consultation; A/76/261; A/73/361, para. 10.

<sup>166</sup> Harvard, University, Index of International Counter-Terrorism Efforts, Program on International Law and Armed Conflict (index of regional and multi-regional efforts). Available from: <https://pilac.law.harvard.edu/international-counterterrorism-efforts-index>.

<sup>167</sup> Latin America and the Caribbean Consultation (El Salvador, Guatemala, Honduras).

# ISSUE IN FOCUS

## UN Counter-Terrorism Architecture

UN counter-terrorism has rapidly expanded since 11 September 2001, including through the creation of the following entities:

- **2001:** Security Council creates the Counter-Terrorism Committee to oversee implementation of resolution 1373
- **2004:** Security Council establishes the Counter-Terrorism Committee Executive Directorate through resolution 1535
- **2005:** Secretary-General establishes the Counter-Terrorism Implementation Task Force to enhance coordination in UN counter-terrorism activities
- **2006:** General Assembly adopts the Global Counter-Terrorism Strategy, with biennial review
- **2016:** General Assembly establishes the Office of Counter-Terrorism through resolution 71/291
- **2018:** Secretary-General signs the Global Counter-Terrorism Coordination Compact

deep challenges to society, terrorism is a distinct and exceptional crime, and it is not the same as even abhorrent group criminality. In Southeast Asia, State counter-terrorism and counter-insurgency laws, designations, and campaigns are increasingly overlapping and intertwined—further exacerbating human rights and rule of law deficits.<sup>168</sup> As the tentacles of counter-terrorism expand in society in these and other ways, civil society inevitably feels the squeeze and negative consequences.

## International Counter-Terrorism Architecture

The relationship between local, national, regional, and international counter-terrorism spaces is bi-directional and mutually reinforcing, with developments and priorities at each level feeding into the other. The effect is both crisscrossing and web-like with molecular effects on the experiences of individuals confronting specific counter-terrorism measures. Local through international counter-terrorism assemblages provide cover and support to one another.<sup>169</sup> The global counter-terrorism architecture plays a key role catalyzing this cross-pollination, in large part due to its dual roles in counter-terrorism regulation and technical assistance to States and regional bodies.<sup>170</sup> The UN counter-terrorism architecture has undergone extraordinary expansion since 9/11, and as of April 2023 included the Security Council, the Counter-Terrorism Committee, the Counter-Terrorism Committee Executive Directorate, the Office of Counter-Terrorism and the Global Counter-Terrorism Coordination Compact, which includes 41 UN entities, as well as INTERPOL, the World Customs Organization, the Inter-Parliamentary Union and the Financial Action Task Force.<sup>171</sup>

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168 Asia & the Pacific Consultation (Philippines, Myanmar, Indonesia, Thailand); Marc Batac, *Counterinsurgency, Red-tagging & the 'War on terror': A War against Deliberation and Dissent, A War with No End*, Civic Futures, pp. 7-8 (May 2023).

169 Fiona de Londras, *The Practice and Problems of Transnational Counter-Terrorism* (Cambridge, Cambridge University Press, Cambridge Studies in Law and Society, 2022).

170 A/76/261.

171 A/73/361.

The fast-paced adoption of international counter-terrorism laws and norms—both hard and soft in legal character—has been plagued by the exclusion of civil society actors, with limited examples of good practice.<sup>172</sup> (Chapter 4). The Study further identifies, as the Special Rapporteur has in the past, a number of opaque and inaccessible outsource entities lacking global legitimacy that have consolidated within the global counter-terrorism architecture. As these entities responded to the particular counter-terrorism interests of selected States, they developed a narrower set of perspectives and inputs. They are largely characterized by the development of “soft law” standards and practices, often uninformed by human rights law, and without input from civil society, which has generally no access to these highly influential security spaces.<sup>173</sup> The continued expansion of counter-terrorism laws, regulations, programming, and entities, and the transition of certain international soft law norms to hard law standards, pose an increased threat to the fundamental work and project of civil society.

## Recommendations

- Consistent review and assessment of national counter-terrorism laws and regulations should be undertaken by all UN entities engaged in counter-terrorism programming and technical assistance, such as the UN Office of Counter-Terrorism, including through review and integration of the recommendations and analysis of the Universal Periodic Review, UN Human Rights Treaty Body and Special Procedures Mechanisms, and the Office of the UN High Commissioner for Human Rights<sup>174</sup> Such analysis should also be consistently integrat-

ed into the counter-terrorism work of the UN Security Council and its subsidiary bodies, including the Counter-Terrorism Committee and its Executive Directorate.

- Establish independent oversight of the UN General Assembly counter-terrorism architecture, including the UN Office of Counter-Terrorism and the Global Counter-Terrorism Coordination Compact, in line with Member State discussions during the 7th and 8th Reviews of the Global Counter-Terrorism Strategy.
- Affirming that while treaty-making was dominant in the regulation of terrorism before 11 September 2001, and remains important today, it has been overtaken by the assertive role taken by the UN Security Council in regulating State responses to terrorism through the adoption of Chapter VII “legislative” resolutions.<sup>175</sup> Given the extensive human rights consequences of such resolutions, a highly restrained and cautionary approach to the adoption of any new counter-terrorism resolution is recommended.<sup>176</sup>
- Establish and sufficiently resource independent oversight of national counter-terrorism legislation and institutions, including with technical and technological capacity, to assess the conformity of government practice with its human rights obligations.
- Require intersectional human rights proofing in the drafting and development of counter-terrorism legislation, including through the requirements of sunset clauses, as well through adequate provision of open and inclusive public consultation.

<sup>172</sup> A/74/335.

<sup>173</sup> A/HRC/40/52, para. 30.

<sup>174</sup> In line with A/RES/75/29, para. 98.

<sup>175</sup> A/73/361, para. 10. (detailing the views of the UNSR on the negative effect on the meaningful participation of civil society and human rights in counter-terrorism and concern regarding the safeguarding of constitutional and domestic protections for human rights in national legal systems under new regulatory frameworks).

<sup>176</sup> Eric Rosand, Alistair Millar, and Naureen Chowdhury Fink, Counterterrorism and the United Nations Security Council Since 9/11: Moving Beyond the 2001 Paradigm, Securing the Future Initiative (September 2022).

## Part 2: Preventing & Countering Violent Extremism Laws, Regulations, & Architecture

As previewed in the previous section, preventing and countering violent extremism conducive to terrorism (P/CVE) has become a widely adopted extension of counter-terrorism architecture, laws, and policies both nationally and globally. The UN Secretary-General brought P/CVE to the forefront of the global policy agenda when launching the Plan of Action to Prevent Violent Extremism in 2015, finding violent extremism conducive to terrorism “an affront to the purposes and principles of the United Nations” which poses a significant threat, warning that “[n]o country or region is immune.”<sup>177</sup> He also cautioned that in tackling this global challenge, the international community must “be principled and strategic and must calibrate our response carefully,” and prevent conflation of violent extremism and terrorism, as that may trigger overly broad application of counter-terrorism measures.<sup>178</sup> Not all Member States have taken heed, however, with ever-expanding P/CVE being implemented, including through broad criminalization of “extremist” crimes without even the qualifier of “violent extremism conducive to terrorism”<sup>179</sup> and a blurring of the line between terrorism and extremism in legislation and enforcement.<sup>180</sup> At the same time, P/CVE policy and practice have grown embedded within the UN and

other intergovernmental organizations, with varying and often opaque definitions for “violent extremism” and a range of approaches,<sup>181</sup> with some facilitating an expansive and at times, security-first approach, others adopting a human rights and rule of law-based and civil society-engaged approach, and others still moving away from P/CVE framing and programming altogether.<sup>182</sup>

This chapter builds on the Special Rapporteur’s 2020 report to the Human Rights Council on the impacts of policies and practices aimed at preventing and countering violent extremism, which, inter alia, situated P/CVE discourse within the post 9/11 global counter-terrorism architecture and then noted the 400 P/CVE projects implemented by 18 UN entities, benefiting more than 90 Member States reported by the UN Office of Counter-Terrorism in 2020 (Chapter 2, Part 1).<sup>183</sup> Since that report, the UN General Assembly adopted resolution 75/291 calling on Member States “to take appropriate measures to address the new and emerging threats posed by the rise in terrorist attacks on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief, including through investigation, information exchange and cooperation,” and the Secretary-General issued a report on this “growing threat.”<sup>184</sup> Member States from across regions have since implemented new or expanded P/CVE laws, regulations, programming, listings, and networks in recent years, including in response to this perceived threat.<sup>185</sup>

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177 A/70/674, para. 1.

178 A/70/674, paras. 4, 7.

179 A/HRC/43/46, paras. 12-14.

180 A/HRC/43/46; SOVA Center for Information and Analysis (SOVA Center) Input (Russia).

181 A/HRC/43/46, paras. 11-12.

182 A/77/345, para. 22.

183 A/HRC/43/46, noting, however, that this figure was collated as 450 in 2021. Learn Better, Together Independent Meta-Synthesis under the Global Counter-Terrorism Strategy, UN Publication (2021) (cautioning that without a method for counting programs related to P/CVE, there is a risk of double counting and/or under-counting).

184 A/77/266.

185 See, e.g., West, East, Central Africa Consultation; Asia & the Pacific Consultation; Central & Eastern Europe Consultation; Middle East & North Africa Consultation; Latin America & the Caribbean Consultation; North America Consultation; Government of Portugal Input; United States of America (USA) Input; European Union (EU) Input; Commonwealth Secretariat Input; Switzerland Input; Brennan Center Input (USA); Muslim Advocates Input (USA); Holmwood Input (UK); AUT 2/2021; Counter-Terrorism Executive Directorate (CTED), Trends Alert, Member

As described in this chapter, many existing P/CVE measures share the following features increasingly vague, overbroad definitions of extremism; hyper-securitized and frequently decentralized implementation and related risks of civil society instrumentalization; and poor to non-existent monitoring or evaluation including on what counts as ‘success.’ Although the effectiveness of most existing P/CVE measures remains unproven at best,<sup>186</sup> the sizeable costs to civil society of these shortcomings are well documented, with marginalized individuals and groups—especially Muslim minorities and women—bearing the brunt.

### **Definitional Ambiguity of (Violent) Extremism**

Violent extremism and extremism mean different things to different people. The lack of definitional clarity and consensus renders many national P/CVE laws, regulations, and policies vulnerable to misuse. As there is no internationally agreed definition of “violent extremism,” States have regulated and criminalized the phenomenon as they like, often granting the executive unfettered discretion to define the “who” and “what” of extremism, without basic human rights safeguards and limitations. In recent years, States have revised (violent) extremism laws and policies to provide for further expansion of the scope of violent extremism and extremism, including through movement into the pre-criminal space and supportive or preparatory acts,<sup>187</sup> which as discussed in the prior chapter, raises serious challenges for the integrity of the rule of law and legal certainty. P/CVE legislation often regulates

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States Concerned by the Growing and Increasingly Transnational Threat of Extreme Right-Wing Terrorism, April 2020 (citing new Member State designations of extreme right-wing groups); Counter Extremism Project, *Violent Right-Wing Extremism and Terrorism – Transnational Connectivity, Definitions, Incidents, Structures and Countermeasures (2020)* pp. 32-35 (describing violent right-wing extremism responses of 6 Member States).

<sup>186</sup> A/HRC/43/46, para. 16.

<sup>187</sup> A/HRC/43/46; Islamic Human Rights Commission (IHRC) Input (UK) (2015 Act expanding the definition of extremism, including to include the pre-criminal space); Coming Out Input (Russia) (Anti-extremism law since 2002 has become increasingly vague); Confidential Input; A/HRC/35/28/Add.1 (UK).

## **REGIONAL TRENDS**

### **Spotlight of a Regional P/CVE Framework**

- The Shanghai Convention on Combating Terrorism, Separatism and Extremism defines extremism as “an act aimed at violent seizing or keeping power, and violently changing the constitutional system of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them.” Despite this qualification of violent conduct, the 2017 Convention of the Shanghai Cooperation Organization on Combating Extremism refers more broadly to “violent and other unconstitutional actions” when defining “extremism.”
- Multiple States Parties, including China, Kazakhstan, Russia, and Uzbekistan, have criminalized extremism without requiring a linkage to violent conduct, together with a broad range of preparatory or supporting acts.

Source: OSCE Opinion, “Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism,” 2020.



non-violent acts and increasingly forms of expression, risking undue impingement on the rights to freedom of opinion and expression, freedom of religion or belief, and other fundamental freedoms, as well as non-discrimination—some of which are non-derogable even in times of public emergency<sup>188</sup>

Second, State regulatory and policy changes in P/CVE sometimes stem from or extend beyond overarching intergovernmental regulatory frameworks and structures.<sup>189</sup> These include P/CVE initiatives like the Christchurch Call to Action, the Shanghai Convention on Combating Terrorism, Separatism and Extremism, the ASEAN

Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism, as well as other multi-stakeholder efforts to address the threats and broader counter-terrorism challenges relating to xenophobia, racism and other forms of intolerance or in the name of religion or belief, including in regional and international forums across Latin America, the Caribbean and Europe, and informal bodies like the Financial Action Task Force.<sup>190</sup> Often these initiatives are incentivized by donor States and international organization funding,<sup>191</sup> yet there is little to no monitoring and evaluation and independent oversight of these initiatives or public data on their effectiveness.<sup>192</sup> Notably, certain regions like Central Asia have shown particularly heavy reliance in law and practice on the “extremism” rather than “terrorism” frame.<sup>193</sup>

Although some of these expansions and/or re-branding of P/CVE laws, policies, and architecture have been justified on the basis of the “far-right” or “extreme right-wing” threat,<sup>194</sup> it is important to note, as the Secretary General has observed, that “further data is required as to the full scope and nature of that type of violence.”<sup>195</sup> Moreover, existing international law frameworks like the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Durban Declaration and Programme of Action, and Camden Principles on Freedom of Expression and Equality offer important guidance and rule-of-law safeguards when instituting responses to address discrimination and incitement to hatred.<sup>196</sup> These frameworks were expressly developed with inclusion and meaningful engagement by civil society. Under international human rights law, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights also impose strong limitations on the propagation of racist and xenophobic expression and outlaw advocacy of national, racial, or religious prejudice that amounts to incitement to discrimination, hostility, or violence.<sup>197</sup>

## Decentralized Implementation and the Risks of Instrumentalization

Among the P/CVE programs and policies identi-

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188 ICCPR, art. 4(2).

189 See, e.g., Asia & the Pacific Consultation.

190 See, e.g., A/HRC/43/46, n.25; A/77/266, paras. 18, 20; Asia & the Pacific Consultation (ASEAN); EU Input (Christchurch Call to Action); Commonwealth Secretariat Input; Financial Action Task Force (FATF), *Ethnically or Racially Motivated Terrorism Financing* (June 2021).

191 See, e.g., C&SN Input (“Partners also report that providing local organizations financial incentives to work on “violent extremism” is also driven by multilateral and bilateral donors, including the UN”).

192 See, e.g., Asia & the Pacific Input (ASEAN Plan of Action & Work Plan).

193 A/HRC/49/45/Add.1(Uzbekistan); A/HRC/43/46/Add.1 (Kazakhstan).

194 See, e.g., North America Consultation; Central & Eastern Europe Consultation; Brennan Center Input (USA); Muslim Advocates Input (USA); Muslim Justice League Input (USA).

195 A/77/266, para. 5.

196 A/77/266, para. 24.

197 Joint Input of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance; and the Special Rapporteur on freedom of religion and belief to the report of the Secretary-General on terrorism based on xenophobia, racism, and other forms of intolerance, or in the name of religion or belief (A/77/266).

fied by Global Study respondents, a decentralized, “whole of society” prevention strategy is common. Implementation of this strategy often engages local authorities, law enforcement, educators, commerce departments, social workers and social service providers, healthcare professionals, and religious and other community leaders,<sup>198</sup> all of whom may be delegated with the authority and discretion to detect and respond to perceived threats—sometimes through covert intelligence gathering and partnership with security agencies.<sup>199</sup> This decentralized, discretionary approach can be vulnerable to misuse, over-securitization, and human rights abuse. It foments mistrust in communities and often proves counterproductive. As UN Women’s Global Digital Consultation documented, many P/CVE programs create more problems than they solve, leading to human rights violations and further marginalization.<sup>200</sup>

Of course, the range of P/CVE definitional frameworks, enforcement approaches, and programming and policies are wide ranging—with civil society experiences varying in turn. Some Global Study respondents expressed positive experiences working in partnership with Member States and UN entities (Chapter 4). Indeed, multiple Member States have emphasized their civil society participatory approaches to P/CVE programming, and some have started to pave the path for human rights mainstreaming.<sup>201</sup> However, many Global Study civil so-

ciety respondents expressed concerns that State-led processes were in reality neither sufficiently inclusive nor participatory, and raised concerns of instrumentalization or commodification of civil society.<sup>202</sup> Women in particular play a frontline role in P/CVE programming, with women’s rights and participation seen as an instrumental tool for countering extremism and women implementing partners in turn raising concerns of being ‘used’ by the government.<sup>203</sup>

At the same time, assessment of the science behind such programming have been limited.<sup>204</sup> So has monitoring and evaluation of existing P/CVE programming.<sup>205</sup>

## Further Marginalization of the Marginalized

The costs of these shortcomings are well-documented. In practice, across regions, P/CVE architecture, laws, and policies have disproportionately impacted historically marginalized communities—society’s most vulnerable (Chapter 1, Parts 2-4). The disparate impacts and groups most impacted of course depend on the country and local context. In many circumstances, these downstream harms cannot be disaggregated from long, entrenched histories and structures of colonialism, slavery, and mistreatment of indigenous peoples and racial, eth-

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198 A/HRC/40/52/Add.5, paras. 26-28.

199 See, e.g., A/HRC/43/46, para. 32 (UK) (describing a “whole of society” approach, in which responsibilities to detect “signs of radicalization” fall upon various actors in society, including teachers, social workers, medical staff and other health-care professionals, prison staff, neighbors and family members, community leaders and members of faith-based groups); US Input (Strong Cities Network of 165 cities collaborating on P/CVE); North America Consultation (USA); Asia & the Pacific Consultation (Myanmar, Philippines, including education and commerce departments); ALC Input (US, describing the Joint Terrorism Task Forces and countering violent extremism (CVE) programs encompassing around 200 task forces); Brennan Center Input (US, ineffective, biased terrorism prevention programs and CVE); Muslim Justice League Input (US, Department of Justice (DOJ) and Department of Homeland Security (DHS) violence prevention initiatives through teachers, social service providers, health professionals, religious leaders, and other community members).

200 UN Women, Global Digital Consultation, (2020), pp. 14.

201 A/HRC/43/46, para. 18.

202 See, e.g., North America Consultation; Australian Muslim Advocacy Network Ltd Input (Australia, limitation of consultations to mostly academics); Asia & the Pacific Consultation; UN Women, Global Digital Consultation (2020) (identifying the inadequate inclusion of women and consideration of gender dynamics in State CT/PVE responses).

203 A/HRC/43/46, paras. 39-41.

204 A/HRC/43/46, paras. 16-22.

205 Muslim Advocates Input.

nic, or religious minorities.<sup>206</sup> Human rights and civil society “lite” P/CVE measures risk being particularly harmful to communities with intersecting minority identities.<sup>207</sup>

The disproportionate impacts on Muslim minorities stemming from both extremism and P/CVE is particularly striking and well documented,<sup>208</sup> including by Global Study respondents.<sup>209</sup> On the one hand, extremists threatening deadly violence targeting Muslim communities are growing concerns.<sup>210</sup> At the same time, States designing P/CVE programming sometimes exclusively focus—whether on paper or in practice—on Islamic extremism, further entrenching stigmatization and polarization.<sup>211</sup> Singular and selective P/CVE approaches raise significant human rights challenges. Indeed, respondents from both Muslim-minority and Muslim-majority countries have documented the discriminatory enforcement of P/CVE programming against religious or secular minorities,<sup>212</sup> in potential contravention of the funda-

mental freedoms of religion and belief, opinion and expression, peaceful assembly and association, and minority rights. Other religious and ethnic minorities have also been disproportionately impacted by P/CVE or broader preventing extremism measures.<sup>213</sup> These targeted and disparate measures are often solidified and entrenched through transnational cooperation by bilateral or regional State partners with shared political interests.<sup>214</sup>

Across regions, other vulnerable individuals and groups have also been unduly targeted and criminalized under the pretext of P/CVE, particularly women human rights defenders and peacebuilders.<sup>215</sup> The uniquely gendered harms of P/CVE laws, policies and programs are especially well documented (Chapter 1, Part 3),<sup>216</sup> and often stem directly from inadequate gender mainstreaming in the initial design of P/CVE programming.<sup>217</sup> LGBT and gender diverse individuals,<sup>218</sup> persons with disabilities,<sup>219</sup> political dissidents and government critics,<sup>220</sup> environmentalists,<sup>221</sup> mi-

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206 See, e.g., North America Consultation.

207 Muslim Advocates Input (US, documenting the targeting of Black and immigrant Muslim communities)

208 See, e.g., A/77/266; A/HRC/43/46; A/HRC/46/30.

209 See, e.g., RSI Input (UK, unique concerns for British Muslim communities in implementation of the Prevent Strategy); American Friends Service Committee Input (AFSC) (US, devastating impacts of DHS CVE program on American Muslim communities since 9/11); Muslim Advocates Input (USA) (rebranded CVE strategy has yet to rectify concerns about entrenchment of anti-Muslim beliefs).

210 See, e.g., A/HRC/46/30, para. 46 (India, Mali, Sri Lanka); Counter-Terrorism Committee (CTC), Virtual Open Briefing, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, statement, 2020) (citing South and Southeast Asia, North America, and Europe).

211 A/HRC/43/46, para 10.

212 See, e.g., North America Consultation, South Asia Consultation, C&SN Input, Muslim Advocates Input, Brennan Center Input; A/HRC/52/39/ Add.; CHN 17/2020; CHN 13/2020; CHN 7/2020; CHN 18/2019; CHN 21/2018; IND 7/2020; GBR 3/2022; NZL 1/2021.

213 See, e.g., A/HRC/49/44, paras. 32-33; SOVA Input (Russia) (Jehovah’s Witnesses and Crimean Tatars); Asia & the Pacific Consultation (Indonesia).

214 Asia & the Pacific Consultation (transnational support legitimizing the misuse of P/CVE measures against ethnic minorities).

215 Radhika Coomaraswamy, Preventing Conflict, Transforming Justice, Securing the Peace; A Global Study on the Implementation of United Nations Security Council Resolution 1325, UN Women (2015) (UN Women, Global Study on 1325); Asia & the Pacific Consultation (Myanmar, Thailand).

216 A/HRC/46/36.

217 C&SN Input (Kenya, lack of gender mainstreaming in national PVE plan).

218 Asia & the Pacific Consultation (Malaysia, Myanmar); Coming Out Input (Russia); Mandate interviews (El Salvador).

219 OL OTH 41/2019.

220 See, e.g., RSI Input (“While governments vary in how they define ‘extremism’, a central tenet is opposition to state activities or doctrines”); Holmwood Input (UK) (Under Prevent, critics of government policies are targeted for holding “extreme” opinions); Amnesty International Input.

221 C&SN Input (US, arrest warrants assert that the DHS had labeled the group organizing the protests in Georgia, Defend the Atlanta Forest (DTAF), as domestic violent extremists); see also Report of the UN Special Rapporteur on freedom of peaceful assembly and of association (A/76/222) paras. 22-23 (climate activists who have been labeled, among other things, as “extremists” and “green criminals” and portrayed as serving the interests of “militant”, “extremist left-wing”, “communist” and “terrorist” groups).

grants, asylum seekers and refugees,<sup>222</sup> and youth<sup>223</sup> have also problematically been labeled “(violent) extremists.”

Despite ample concerns having been lodged with regard to discrimination, freedom of religion, privacy, and other human rights challenges, independent oversight and successful judicial review have been limited in practice.<sup>224</sup> Still, some good practices of meaningful civil society participation in programming design, delivery, and oversight are gradually emerging on the global stage, focused on tackling the root causes of violent extremism through robust human rights mainstreaming, gender inclusivity, conflict sensitivity, and the safeguarding of mutual interests of peace, development and education.<sup>225</sup> Along these lines, the Special Rapporteur has interrogated the value of using the “extremism” lens at all, noting the importance of centering and investing further in programming in peace and security, human rights, community development, and good governance instead.

## P/CVE IMPACTS ON YOUTH

*“Suspicion and speculation about violent extremism, and the policy responses they spawn, often leave young people feeling ‘caught between a rock and a hard place,’ navigating a narrow corridor between the violence of extremist groups and randomized or indiscriminate repressive governmental responses.”*

**Progress Study on Youth, Peace and Security (2018)**

## Recommendations

- Repeal laws, regulations, and policies that regulate “extremism,” which as a criminal law category has no purchase in international law.
- Adopt measures to ensure domestic laws, regulations, policies, and efforts to prevent violent extremism comply with international human rights, humanitarian, and refugee law and meet the international law requirements of legality, non-discrimination, proportionality, and necessity.
- Incorporate existing international human rights law safeguards in efforts intended to prevent and suppress the promotion of doctrines of racial superiority, the incitement of racist violence, the promulgation of racist hate speech and the entrenchment of systemic racism, including the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Rabat Plan, Durban Declaration, and Camden Principles.
- Invest in comprehensive monitoring and evaluation of the effectiveness and impact on human rights of existing P/CVE interventions.
- Ensure that efforts to counter violent extremism do not instrumentalize or securitize women and girls, religious or ethnic minorities, and other civil society stakeholders, particularly those living with intersecting minority identities.<sup>226</sup>
- Encourage a human rights-based, gender-sensitive, and civil society-inclusive approach to preventing violent extremism, focused on centering fundamental peace and security, human rights, and community development.

222 See, e.g., Central & Eastern Europe Consultation (Croatia); Graeme Simpson, Progress Study on Youth, The Missing Piece: Independent Progress Study on Youth, Peace and Security, UNFPA and PBSO (YPS Study) (2018) p. 23.

223 See, e.g., West, East, Central Africa Consultation (Nigeria); YPS Study, p. 27 (Mogadishu).

224 A/HRC/43/46 para. 38; see, also, e.g., Heath-Kelly Input.

225 A/HRC/43/46, para 18.

226 See e.g., A/RES/75/29, para. 11.



# CHAPTER 3

## THE PLAYBOOK FOR MISUSE

### Part 1: Judicial Harassment & Fair Trial Violations

Counter-terrorism and P/CVE have been repeatedly invoked across jurisdictions to justify judicial harassment and a wide range of criminal, civil, and administrative measures unduly targeting civil society. In fact, among the Special Procedures communications reviewed for the Global Study, roughly 62% centered on the use of security measures and forces against civil society, including overlapping physical, verbal, and judicial forms of harassment. This part of the Study surveys different forms of judicial harassment and fair trial violations that civil society actors have been subjected to in the name

of counter-terrorism and/or P/CVE.

According to Front Line Defenders, of the 211 charges against human rights defenders documented in their casework in 2022, 44% related to counter-terrorism or broader national security claims.<sup>227</sup> Global Study respondents reported counter-terrorism related arrests and charges implicating a wide range of civil society actors, including humanitarians, environmentalists, religious leaders, LGBT and gender diverse activists, women human rights defenders, journalists, lawyers, doctors, academics, student organizations, pro-democracy advocates, political dissidents, indigenous land rights activists, trade unions, migrants, farmers, and environmentalists.<sup>228</sup> Judicial harassment measures have extend-

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227 FLD Input (13% terrorism/membership or support of terrorist org; 19% national/state security/sedition; 1% foreign agent law; 11% defamation/insulting state/damaging national unity).

228 See Regional Consultation Outcome Documents (human rights defenders, humanitarians, journalists, lawyers, migrants, religious leaders, land rights activists, environmentalists, students, trade unions); see also, e.g., SHOAA Input (Algeria, human rights defenders); Confidential (Turkey, academics, doctors); C&SN Input (US, environmentalists); Defend Panay Input (Philippines, human rights defenders, peace advo-

ed not only to civil society staff and their donors and partners, but also to beneficiaries, families, and other community members. Documented harms have been particularly gendered (Chapter 1, Part 3). Children have also borne the brunt, with children as young as 13 facing arbitrary arrests, detention, and prosecutions on the basis of counter-terrorism,<sup>229</sup> in potential contravention of the special status of children and minimal protections afforded to children under international law.<sup>230</sup>

As UN Special Procedures mandate-holders have found, in many cases, individuals are not even formally charged, but rather forcibly disappeared and arbitrarily detained in the context of countering terrorism, and then subject to torture, cruel, inhuman and/or degrading treatment and/or extrajudicial killings.<sup>231</sup> 32 per cent of Global Study inputs identified instances of alleged arbitrary detention in the counter-terrorism context,<sup>232</sup> 25 per cent of Global Study inputs alleged torture, cruel, inhuman, or degrading treatment violations in the counter-terrorism and/or P/CVE detention context,<sup>233</sup> and 16 per cent identified instances of extrajudicial killings.<sup>234</sup>

The scope of arbitrary detention is often widespread and systematic in nature, with hundreds to thousands of detainees—raising credible allegations of mass arbitrary detention under pretext of counter-terrorism and/or de-extremism.<sup>235</sup> People with disabilities are particularly vulnerable to cruel, inhuman and degrading treatment in counter-terrorism detention settings.<sup>236</sup>

Far from being isolated incidents, these and other documented cases frequently stem from compromised judiciaries and entrenched emergency and exceptional powers and procedures—sometimes codified through the creation of special courts on terrorism and an absence of or reduction in specialized human rights mechanisms.<sup>237</sup> These instances raise human rights challenges, including with regard to well-settled fair trial and due process safeguards, such as the right to review before an independent, impartial tribunal, presumption of innocence, and equality of arms.<sup>238</sup> According to these data, counter-terrorism and P/CVE criminal proceedings across jurisdictions have been riddled with documented instances of due process violations. Incidents in-

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cates, farmers indigenous peoples, environmentalists, journalists); Confidential Input (Kurdistan, journalists); Justice for All Input (India, activists, journalists, political dissidents and opponents, student protestors); A/HRC/52/67 (2023), para. 49.

229 See, e.g., Confidential Input (Israel); Asia & the Pacific Consultation (Thailand, 14 years old); Australian Muslim Advocacy Network Ltd Input (Muslim teenagers as young as 15 charged under terrorism laws); see also, Latin America and the Caribbean Consultation (El Salvador, minors being tried as adults); West, East, & Central Africa Consultation.

230 See, e.g., UN General Assembly, Convention on the Rights of the Child, 20 November 1989; UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (A/RES/40/33); UN Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/45/113).

231 See, e.g., A/HRC/13/42; A/HRC/49/45; UN Human Rights Experts, “El Salvador: Extended state of emergency undermines right to fair trial” press release, 22 May 2023; UN Human Rights Experts, “UN experts call for end to violence during demonstrations, urge respect for human rights,” press release, 6 March 2023; A/HRC/50/42, para. 53; A/HRC/44/49/Add.1; Office of the High Commissioner for Human Rights (OHCHR), Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China, 31 August 2022.

232 See, e.g., EMR, CIHRS, CFJ, and EFHR Input; Access Now Inputs (Egypt); Confidential Input; Solidarity with Others Input (Turkey); Confidential Input (El Salvador); Confidential Input (France); CEJIL Input (Peru); Confidential Input (Sri Lanka); Amnesty International Input (Cameroon); Middle East & North Africa Consultation (Bahrain, Egypt, Saudi Arabia, Israel); West, East & Central Africa Consultation (Cameroon, Rwanda, Mozambique); Latin America & the Caribbean Consultation (El Salvador, Venezuela).

233 See, e.g., FLD Input (incommunicado detention and other violations including torture or other forms of cruel, inhuman and degrading treatment across documented human rights defender cases); CIHRS Input (Egypt); CIVICUS Input (Pakistan); Solidarity with Others Input (Turkey); Amnesty International Input (Cameroon); Espacio Público Input (Venezuela); Middle East & North Africa Consultation (Egypt, Saudi Arabia, Libya); Latin America Consultation (Venezuela, El Salvador); Asia & the Pacific Consultation (Thailand, Papua).

234 See, e.g., NUPL Input (Philippines); West, East & Central Africa Consultation (Burkina Faso); Asia & the Pacific Consultation (Indonesia, Myanmar, Philippines, Thailand).

235 See, e.g., OHCHR, Xinjiang Assessment (2022).

236 USA 26/2022; GBR 13/2022; EGY 10/2021; MEX 2/2020; OTH 41/2019; ISR 1/2019.

237 See, e.g., FLD Input (describing compromised legal systems); CEJIL Input (Peru, rise in prosecutors specializing in terrorism and decrease in specialized human rights prosecutors); CIHRS (Egypt, terrorism circuits); EMR & CIHRS (Egypt, Emergency State Security Courts); CIVICUS Input (Pakistan, secret military courts); CIHRS (Libya, military courts); Confidential Input (Venezuela, anti-terrorism court); see also Middle East & North Africa Consultation.

238 ICCPR, art. 14.

# ISSUE IN FOCUS

## OHCHR Assessment of Mass Arbitrary Detention in Xinjiang

In August 2022, the Office of the United Nations High Commissioner for Human Rights found that a pattern of large-scale arbitrary detention had occurred in “Vocational Education and Training Centres” in the Xinjiang Uyghur Autonomous Region, affecting a significant proportion of the Uyghur and other predominantly Muslim ethnic minority community in region on the purported basis of countering terrorism and “extremism.”

Source: OHCHR, Xinjiang Assessment (2022), paras. 2, 57 (citing White Paper on “Vocational Education and Training in Xinjiang”); CHN 12/2022; A/HRC/WGEID/116/1; CERD/C/CHN/CO/14-17.

clude the prolonged and/or repeated incidents of pre-trial detention without charge, often justified due to the exceptional nature of counter-terrorism<sup>239</sup>; inadequate and monitored access to counsel<sup>240</sup>; incommunicado detention, without family

notifications or visits<sup>241</sup>; lowered evidentiary thresholds and the use of secret, torture-derived, and/or fabricated evidence and trials in absentia.<sup>242</sup> Extradition and transnational cooperation often facilitate such abuse, raising the possibility of State respon-

239 See, e.g., FLD (repeated short-term administrative detention in documented cases); Asia & the Pacific Consultation (Hong Kong, Pro-Democracy activists held in detention for almost two years; Indonesia, pre-trial detention under the Anti-Terrorism Law up to 221 days; Singapore, detention may be extended by two years where the minister views that the act at issue was “prejudicial to Singapore”); Cairo Institute (Egypt, pre-trial detention for almost three years and near automatic renewals of pre-trial detention terms; Israel/Occupied Palestinian Territory, six periods of imprisonment and arbitrary arrests documented in a single case; Libya, 18 months of pre-trial detention in a military prison in Benghazi); Ambika Satkunanathan Input (Sri Lanka, example of pre-trial detention for over 18 months); Omnium Cultural Input (Spain, 2 years in pre-trial detention for nine Catalan leaders arbitrarily detained); Alkarama Foundation Input (Saudi Arabia, extended administrative detention); Justice for All (India, prolonged arbitrary detention); see also Regional Consultation Outcome Documents.

240 See, e.g., CIHRS (Egypt, limited access to counsel and no right to communicate in full confidentiality); Confidential Input (El Salvador, denial of access to counsel); Espacio Público Input (Venezuela, denial of access to private counsel); Alkarama Foundation Input (Saudi Arabia, access to a lawyer only granted after 12-day period and only sporadically.); MENA Rights Group (UAE, numerous impediments to access lawyer); see also FLD Input (restricted recourse to bail and legal representation at the center of majority of HRD cases documented); West, East, & Central Africa Consultation (Burkina Faso, no access to lawyers for 160 people currently charged with terrorism); see also, e.g., A/HRC/46/26/Add.1, para. 27 (Maldives).

241 See, e.g., Asia & the Pacific Consultation; Latin America and the Caribbean Consultation; Libya; Broken Chalk Input (Turkey, Gulden Sayin arbitrary detention and separation from parents); Confidential Input (El Salvador, denial of access to family); Confidential Input (Sri Lanka, many in the group were detained for months without access to counsel or court hearings); ARE 1/2018; CHN 15/2018.

242 See, e.g., Confidential Input (Israel, Palestinian human rights defenders held without charge on the basis of “secret information” and under minimal evidentiary thresholds); Justice for All Input (India, numerous reported instances where people have been falsely accused of forced conversions, or arrested based on the mere act of interfaith marriage); NUPL Input (Philippines, false charges based on perjurious testimonies of military assets); Defend Panay Input (Philippines, charges based on fabricated evidence); SHOAA Input (Algeria, fabricated terrorism file with a list of names supposedly involved in a subversive organization was fabricated); Confidential Input (Turkey, trial relying on secret witnesses and “unknown sources”); Adalah Input (CT law authorizes the use of classified evidence and holding detention hearings, reviews, and appeal proceedings in the absence of the detainee, and refraining from informing the detainee of decisions made in his/her case); Confidential Input (Belarus, secret evidence); Omnium Cultural Input (Spain, Court has not given the attorneys access to the full content of the investigation); North America Consultation (Canadian academic tried in absentia by a French court); see also, e.g., A/HRC/46/26/Add.1 (Maldives, arrests without warrants on basis of “probable and reasonable grounds”); EGY 10/2020; ARE 1/2022; IRN 12/2021.



sibility and complicity, including in cases with substantiated non-refoulement concerns.<sup>243</sup>

Often charges are brought concurrently or consecutively under multiple laws and proceedings.<sup>244</sup> As Front Line Defenders found in its assessment of human rights defenders subject to counter-terrorism related charges, public authorities commonly filed multiple criminal cases using a combination of counter-terrorism, national security, and other criminal laws with the aim of prolonging detention, including in cases where bail had been granted in a separate case.<sup>245</sup>

Disproportionate sentencing on the basis of the purportedly exceptional nature of terrorism, violent extremism and/or national security more broadly is also common, with prison sentences ranging upwards of 150 years or life,<sup>246</sup> or invocation of the death penalty<sup>247</sup>—sometimes through mass death penalty sentences.<sup>248</sup> Global Study respondents also identified multiple situations involving children facing adult sentences under terrorism or violent extremism charges, as well as children detained because of their “association” with adults suspected of terrorism.<sup>249</sup> Some identified individuals were

also subjected to prolonged detention, even after serving their already-disproportionate sentence.<sup>250</sup>

At the same time, notwithstanding rule of law and governance challenges in many settings, there have been promising examples of judiciaries resisting misuse. For instance, in cases in Niger, Honduras, India, Tunisia, and Kenya, human rights defenders were freed or acquitted after being unfairly accused.<sup>251</sup> In Colombia, the Supreme Court cautioned against the stigmatizing narratives being used by the State to frame peaceful protestors as terrorists (as well as insurgents and narco-terrorists) and ordered the government to develop regulations to protect against the undue use of force by law enforcement and arbitrary detention and inhumane treatment.<sup>252</sup>

## Recommendations

- Institute strict regulations on law enforcement, security forces, and other governmental actors in the appropriate uses of force, coercive measures, equipment, and weapons, incorporating the principles of lawfulness, necessity, propor-

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243 See, e.g., Middle East & North Africa Consultation (Arab Interior Ministers Council).

244 See, e.g., EGY 12/2021, EGY 5/2021, EGY 2/2021, EGY 13/2020, EGY 4/2020; IND 19/2021.

245 FLD Input.

246 Confidential Input (Turkey, 125 years); PEF Input (Thailand, 150 years for protest activities); UN Human Rights Experts, “UN Experts decry US Rhetoric on Designation of Terrorist Groups,” press release, 19 June 2020).

247 According to a review of Human Rights Committee Concluding Observations, there were 16 concerning application of the death penalty, with 18.8% of those cases involving counter-terrorism measures against civil society. See also, BLR 3/2022; A/HRC/44/49/Add.1 (Ethiopia); CIV-ICUS input (Pakistan, death penalty for terrorism offenses); EMR & CIHRS Input (Egypt, amendments have expanded the definition of funding terrorism and added new crimes for which penalties range from a fine to the death sentence); SHOAA Input (Algeria, terrorist act charge is punishable by death); Asia & the Pacific Consultation (Myanmar).

248 UN Human Rights Experts, “Israel: UN experts alarmed by potential reinstatement of death penalty for ‘terrorism offences,’” press release, 24 February 2023; EMR & CIHRS Input (Egypt, mass death penalty and long-term prison sentences).

249 See, e.g., Australian Muslim Advocacy Network Ltd Input (Australia, alleging 15 year old Muslim teenagers being charged under terrorism laws and facing up to 15 years in prison under adult sentencing guidelines); EMR & CIHRS Input (ESSC under case No. 653/2021 verdicts including prison terms for 23 children); Confidential Input (Occupied Palestinian Territory, concerning children detained until reaching legal age under counter-terrorism laws); AUT 1/2023; TTO 3/2022; GBR 13/2022; AUS 4/2022; CAN 3/2022; GBR 7/2022; AUS 2/2022; AUS 1/2022; AUT 1/2022; FRA 1/2022; DEU 1/2022; SWE 1/2022; GBR 1/2022; USA 2/2022; NLD 4/2021; CAN 8/2021; TUN 6/2021; CHE 4/2021; FRA 1/2021; AFG 3/2020; ALB 1/2021; DZA 1/2021; AUT 1/2021; AZE 2/2021; BGD 1/2021; BEL 1/2021; BIH 1/2021; CAN 1/2021; EGY 1/2021; EST 1/2021; FIN 1/2021; FRA 6/2020; GEO 1/2021; DEU 3/2021; IDN 1/2021; IRN 30/2020; KAZ 2/2021; KGZ 1/2021; LBN 1/2021; LBY 1/2021; MYS 3/2020; MDV 1/2021; MAR 1/2021; NLD 1/2021; MKD 1/2021; NOR 1/2021; PAK 14/2020; PHL 2/2021; POL 1/2021; PRT 1/2021; ROU 2/2021; SAU 14/2020; SEN 1/2021; SRB 1/2021; SOM 2/2020; ESP 1/2021; PSE 1/2021; SDN 1/2021; SWE 1/2021; CHE 1/2021; TJK 1/2021; TTO 1/2021; TUN 1/2021; TUR 2/2021; UKR 1/2021; GBR 2/2021; USA 8/2021; UZB 1/2021; VNM 1/2021; YEM 4/2020; AUS 1/2021; CHN 1/2021; DNK 1/2021; IND 1/2021; RUS 1/2021; ZAF 1/2021.

250 Middle East & North Africa Consultation (UAE).

251 See e.g., Frontline Defenders database of cases (dismissed). Available from: <https://www.frontlinedefenders.org/en>; Kenyan case of Wilfred Olal v. the Attorney General, High Court permanent stay.

252 STC 7641-2020.

tionality, and the precautionary principle and consistent with the lawful use of force under international human rights law.

- Establish safeguards to prevent arbitrary detention, torture, cruel, inhuman or degrading treatment, extrajudicial killings, and other forms of state violence and judicial harassment. Investigate and provide full remedies where such allegations are sustained.
- Ensure further accountability including through establishing independent national and regional mechanisms, such as, national protection mechanisms established by law<sup>253</sup> and ensure they are adequately funded to respond to misuse of counter-terrorism and P/CVE misuse against civil society.
- Foreign donors and technical assistance providers to States' security sector apparatuses should perform ex ante impact assessments and human rights due diligence to protect against the dangerous legitimization of State misuse of counter-terrorism administrative measures.
- Non-abolitionist State Parties "should pursue an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*."<sup>254</sup>

## Part 2: Overlapping Administrative Measures Without Procedural Safeguards

Augmenting the challenges of judicial harassment measures, administrative measures like restrictions on movement, citizenship stripping, sanctions (Chapter 3, Part 4) and employment bans pose sizeable challenges for civil society including restricting capacity to function and operate within national laws. The cumulative effects of the multifaceted and layered criminal, civil, administrative, and other judicial and non-judicial counter-terrorism measures have been profound. There are two forms of administrative measures that come to the fore from the data. First, procedural administrative requirements which may appear to be facially neutral (i.e., appear to affect all non-profits or civil society actors equally)<sup>255</sup> but in practice have a disproportionate impact on small grassroots organizations, women-led civil society, and civil society placed in or representative of historically marginalized communities and seen as inherently 'suspect' by the authorities.<sup>256</sup> Second, specific administrative counter-terrorism or countering violent extremism measures which are directed against individuals alleged to be, associated with, or supportive of terrorism or (violent) extremism.<sup>257</sup> The use of administrative measures in both categories appears to be widespread and consolidating though reliable cross-national data is unavailable.<sup>258</sup>

On the proliferation of state and local administrative regulation of non-profits, there is no dispute that effective administration of the non-profit and civil society sectors can serve important transparency, accountability, and efficiency needs. However, the Global Study data shows how increased proceduralism of administrative measures across regions has operated in unduly burdensome ways that risk eliminating meaningful exercise of associational

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253 For example, States could rely upon the "Model Law to Recognize and Protect Human Rights Defenders," International Service for Human Rights (2016) (developed through vast consultation with civil society).

254 UN Human Rights Committee, General Comment No. 36 on article 6: right to life (2018) (CCPR/C/GC/36).

255 For example, administrative regulation deriving from compliance with FAFT standards.

256 ADM Input (France, inability to maintain a bank account); Confidential Input (Belarus, liquidation process failure to provide legal address and other information).

257 Legal administrative measures applied by France fall into this category (A/HRC/40/52/Add.4).

258 See e.g., Global Counter-Terrorism Forum (GCTF), Memorandum on the Use of Rule of Law-Based Administrative Measures in a Counter-terrorism Context (2019).

# ISSUE IN FOCUS

## Cumulative Counter-Terrorism Measures Affecting Civil Society in Jammu & Kashmir

UN Special Procedures have issued several communications raising concerns about multiple, overlapping judicial and administrative measures against human rights defenders, journalists, and other civil society actors in Jammu & Kashmir, pursuant to the Unlawful Activities (Prevention) Amendment Act and other legal bases. The allegations include intimidation, arbitrary arrest and detention, physical raids of homes and civil society organization offices, searches and confiscations—including of laptops, cell phones, documents like passports and salary strips, and hard drives with testimonies and highly sensitive data collected over decades of human rights investigations.

Source: See OL IND 7/2020; UA IND 4/2021 (after a judge ruled that the Unlawful Activities Prevention Act (UAPA) did not apply, the claimant was allegedly arrested and detained under a different charged related to terrorist financing); see, e.g., AL IND 20/2020; UA IND 19/2021; UA IND 4/2021; UN Human Rights Experts, “UN experts urge Indian authorities to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately,” press release, 22 December 2021.

life, including free speech, religious exercise, and the right to participate in public affairs and appear discriminatory.<sup>259</sup> Global Study respondents reported numerous instances of liquidation of organizations, the inability to operate for failing to provide adequate paperwork or filings, financial difficulties in opening and operating bank accounts, and asset freezing and targeted financial sanctions<sup>260</sup>—often lacking procedural and substantive due process rights. In one Central European country the num-

ber of signatures required to register and operate a mosque or religious community went up from 20,000 to 50,000, effectively precluding Muslims from being able to register due to their low population in the country.<sup>261</sup> The Special Rapporteur on freedom of association has systematically documented how national administrative requirements and restrictions for civil society organizations’ registration, tax audits, building inspections, and other reporting requirements have made it increasingly

259 Despite a rise in such administrative regulatory measures, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that “very few, if any, instances of terrorism financing have been detected as a result of [civil society organization]-specific supervisory measures.” (A/HRC/ 23/39) para. 25.

260. See, e.g., Confidential Input (Belarus); ADM Input (France); Confidential Input (Germany); Centre for Financial Crime and Security Studies (CFCS) RUSI Input (global); see also, e.g., A/HRC/50/23; AL CHE 2/2023.

261 A/HRC/46/30, para. 28.

**“THE REPERCUSSIONS ARE ENORMOUS. I HAVE NOT SEEN MY SISTER IN FIVE YEARS, AND OUR FAMILY IS IN A TRAVEL BAN. THIS IS COLLECTIVE PUNISHMENT.”**

**Woman Human Rights Defender, Middle East and North Africa Civil Society Consultation**

difficult to operate and discharge core responsibilities (Chapter 3, Part 3).<sup>262</sup> As a result, the financial and emotional costs of operation are often simply too high for many, particularly grassroots and women-led organizations.<sup>263</sup> In fact, 57.6 per cent of the Committee on the Elimination of Discrimination against Women’s cases of undue regulation and registration of civil society reviewed for the Global Study pertained to restrictions on the basis of counter-terrorism.

Regarding the use of administrative measures against specific individuals and groups, the Study observes that the ‘toolkit’ of counter-terrorism leans increasingly into such capacities. Their attractiveness is manifest.<sup>264</sup> Because such measures are not viewed as involving “liberty” deprivation the legal burdens of proof are lowered in their application (making use easier as a legal matter); the power to

exercise these measures can lie with a range of official actors (specifically they generally do not require judicial authorization); review is generally a posteriori not a priori; and the constraint on individual or group action is considerable. Information provided to this Study demonstrated the use of administrative measures applied to a variety of civil society actors from lawyers,<sup>265</sup> to religious institutions including churches and mosques,<sup>266</sup> to humanitarian organizations.<sup>267</sup> According to a 2020 literature review by InterAction of counter-terrorism measures impacting humanitarian actors, 53 per cent of the impacts catalogued were operational, likely posing immediate barriers to the delivery of humanitarian assistance.<sup>268</sup>

Travel bans and restrictions and border screening processes in the name of counter-terrorism have been documented by UN human rights mecha-

262 A/HRC/50/23; TGO 3/2021; GRC 1/2021; TUR 3/2021; AL KOR 5/2020; Espacio Publico Input (Venezuela).

263 UN Women, Global Digital Consultation (2020).

264 CFCS RUSI (commenting on the attractiveness of CFT for states with weak institutional safeguards); Confidential Input (“Within repressive countries where civil society operates at risk, it has spurred governments as well as banking institutions to impose disproportionate administrative burdens on civil society”).

265 Crimean Tartar Resource Centre Input; CIHRS, CFJ, and EFHR Input.

266 See, e.g., A/HRC/40/50/Add.4, para. 28 (France); NUPL Input (Philippines); Confidential Input (global).

267 Confidential Input.

268 InterAction Input.

nisms and Global Study respondents, both part and parcel of criminal powers, and separately as independent administrative powers.<sup>269</sup> In either form, intrusive border measures and travel restrictions raise human rights concerns and deep unease in particular of racial and religious profiling amounting to discriminatory use of discretionary powers against certain groups in society.<sup>270</sup> While at least initially, administrative procedures at border points may appear less intrusive than arrest—for example stop and search, extra screening and questioning at airports—all these actions highlight vulnerability, create stigma, and open civil society actors up to greater scrutiny and other forms of rights interference.<sup>271</sup> As one Global Study respondent explained, “harassment at the border has become a matter of common experience” for certain communities.<sup>272</sup> More extreme administrative measures include travel bans,<sup>273</sup> though in many contexts the individual will be unaware they have been subject to such a ban until they seek to travel.<sup>274</sup> In some settings, family members of designated or targeted individuals are also precluded from traveling.<sup>275</sup> Notably, 33.3 per cent of the Human Rights Committee and Committee on the Elimination of Discrimination against Women communications involving travel bans pertained to travel bans against women in the

name of counter-terrorism. Remedies for such bans are poor and hard to access.

States have also resorted to additional measures like expulsion, deportation and revocation of permanent residency status, and citizenship stripping or deprivation of nationality—where the withdrawal is initiated by the authorities of the State—on counter-terrorism and P/CVE grounds.<sup>276</sup> Citizenship stripping is an especially extreme measure facilitated variously and cumulatively by legislative measures, administrative means, policy decisions and institutional practices at the national level in multiple countries. The Special Rapporteur has previously documented the immense legal, political, social, and economic harms of citizenship stripping,<sup>277</sup> and the Committee on the Elimination of Discrimination Against Women has cautioned that citizenship stripping laws in the name of counter-terrorism or other national security interests create a high risk of statelessness for women and girls in particular.<sup>278</sup>

Some States have also initiated employment bans or restrictions, as well as public benefit restrictions on counter-terrorism and P/CVE grounds<sup>279</sup>--again with significant downstream harms. Government curfews, house arrests, and movement restrictions

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269 See, e.g., A/HRC/40/52 (travel bans against humanitarian workers, medical staff, peaceful activists, human rights defenders, members of political parties, youth activists, people associated with NGOs, and academics); A/HRC/48/55, paras. 47-48 (travel bans against human rights defenders); see also Occupied Palestinian Territory Consultation; Middle East & North Africa Consultation; North America Consultation; Confidential Input; IHRC Input (UK); PEF Input (Thailand); Access Now Input (Saudi Arabia); Adalah Input (Israel); Broken Chalk Input (Turkey).

270 See, e.g., ALC (USA, airport stop and search, laptop seizure, searching of all electronic devices at airports of Arab, Middle Eastern, Muslim and South Asian communities); Geneva Academy of International Humanitarian Law (Geneva Academy) Input (Israel, screening of Palestinians).

271 See, e.g., USA 2/2020; CIHRS (Libya, targeting of activists at airports).

272 Asian Law Caucus Input.

273 See, e.g., A/HRC/40/52/Add.4, para. 19 (France); see also BADIL Resource Centre for Palestinian Residency and Refugee Rights (BADIL) Input (Occupied Palestinian Territory); Broken Chalk Input (Turkey); Espacio Público Input (Venezuela); C&SN Input (global, in reprisal for UN engagement); ISR 11/2022; USA 8/2022; EGY 2/2022; EGY 15/2020.

274 Confidential Input.

275 Confidential Input (Sri Lanka); Broken Chalk Input (Turkey).

276 These include 11 communications on citizenship stripping and 34 on expulsion or deportation by the Human Rights Committee, and 12 communications on arbitrary deprivation of citizenship or revocation of nationality by Special Procedures; Access Now Input (Israel); IHRC Input (UK); Confidential Input; ALC Input (USA).

277 Fionnuala Ní Aoláin, Position Paper of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Human Rights Consequences of Citizenship Stripping in Counter-Terrorism Contexts with a particular emphasis on North-East Syria (February 2022).

278 CEDAW/C/KAZ/CO/5 (2019), paras 33-4.

279 See, e.g., ALC Input (USA); Confidential Input (Sri Lanka); UN Security Council Sanctions Regimes, Fact Sheet, 2023; OHCHR, Human Rights, Terrorism, and Counterterrorism Fact Sheet No. 32.

# ISSUE IN FOCUS

## Citizenship Stripping

In Bahrain, high rates of citizenship stripping remain of concern, including to the Committee on the Elimination of Racial Discrimination. Despite the restoration of some individuals' citizenship, a high number of persons remain stateless due to citizenship stripping based on national security rationales. Paired with the lack of national statistics, including of stateless persons, the number of human rights defenders, activists, and civil society deprived of citizenship is unknown.

Source: CERD/C/BHR/CO/8-14, para. 23; Middle East & North Africa Consultation; Amnesty International, "Bahrain: Citi-

are also used to forbid civil society entry into certain areas,<sup>280</sup> with significant consequences for family and professional life.<sup>281</sup> Land evictions and house demolitions have also been used as forms of targeted or collective punishment for residents suspected of supporting terrorist groups—with disproportionate impacts on people in vulnerable situations, including indigenous peoples and ethnic, religious and other minorities.<sup>282</sup> In other cases, certain designated individuals or households have been subject to mandatory guest-checks or other periodic meetings with security forces on the basis of counter-terrorism and/or P/CVE—at times subject to repeat and overlapping visits by different officers and security units with duplicative powers.<sup>283</sup>

The use of any of these administrative measures, or

a combination thereof, can be a gateway to a range of other legal interferences and is generally never experienced as a singular interaction with the State but builds on sustained points of intrusion. The evidence used for administrative measures is generally subject to national security restrictions meaning it will not be fully disclosed—limiting in turn the scope for lawyers to meaningfully review the intelligence basis for the measures and posing challenges for the right to full and meaningful legal representation. In some cases, undated or otherwise uncorroborated evidence is used to support administrative measures and restrictions,<sup>284</sup> exacerbating the risk of administrative abuse. The result is that the pernicious drag of an administrative measure can have extraordinary consequences for the targeted individual and resources may be stunted or entirely lacking.

280 West, East, & Central Africa Consultation (Mali & Niger); Confidential Input (global); Defend Panay Network Input (Philippines); Crimean Tatar Resource Center Input.

281 See, e.g., A/HRC/40/52/Add. 4, para. 24 (France).

282 A/HRC/6/17, para. 63.

283 See, e.g., Confidential Input (Sri Lanka); PEF Input (Thailand).

284 See, e.g., A/HRC/40/52/Add.4, para. 27 (France); ISR 11/2021.

## Recommendations

- Make broadly available and easily accessible national statistics—with gender identity, ethnicity, race, religion, and age disaggregated—pertaining to the application, use, and consequences of counter-terrorism administrative measures, including data on the effects on particular communities and groups.
- Judiciaries must play a full a priori role overseeing administrative counter-terrorism measures to determine the necessity, proportionality, legality and non-discriminatory application of such measures.
- Courts should address how the application of administrative measures may in fact amount to a de facto deprivation of liberty in respect of travel, measures of home or geographical confinement, or reporting requirements.
- States must provide safeguards against the arbitrary deprivation of nationality with a view to preventing statelessness, including the right to legal representation, access to relevant information, and to lodge an appeal.
- Address the gendered and familial impacts of administrative measures particularly their long term and cumulative use.
- Foreign donors and technical assistance providers to States' security sector apparatuses should perform ex ante impact assessments and human rights due diligence to protect against the dangerous legitimization of State misuse of counter-terrorism administrative measures.

## Part 3: Misuse & Misapplication of Counter-Terrorism Financing Standards

Across regions, human rights defenders, humanitarians, political dissidents, journalists, lawyers, religious leaders, environmentalists, migrants and other civil society actors have been subject to countering the financing of terrorism (CFT) measures. These come in the form of non-profit registration and reporting requirements, and a range of preventive, disciplinary, and enforcement measures like dissolution, surveillance, office raids, asset freezing, bank de-risking, and prosecutorial action (Chapter 3, Parts 1, 2). State implementation of CFT measures is often incentivized by global compliance pressures, including pursuant to the soft-law Financial Action Task Force Standards (FATF).<sup>285</sup>

This chapter builds on the Special Rapporteur's position paper on The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures<sup>286</sup> and enumerates trends in the design, delivery, and assessment of CFT measures. It takes stock of the cascading effects of the wide-ranging and overlapping CFT tools adopted by States, banks, financial intermediaries, and other stakeholders. Whether intentionally or not, many stakeholders have erred towards a zero-risk approach to terrorist financing, often presuming without evidence that the non-profit and charitable sector as a whole is at high-risk and adopting undue, disproportionate, and discriminatory measures. The legal, political, economic, social, and cultural impacts of undue CFT measures, not only to civil society organizations and their operations, but also their staff and families, beneficiaries, and

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285 A/74/335; Fionnuala Ní Aoláin, Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights and rule of law implications of countering the financing of terrorism (CFT) measures implemented pursuant to international CFT norms and standards (CFT Position Paper) (2022), p. 9; see also A/HRC/50/23, paras. 37-39; A/HRC/49/49, para. 46..

286 CFT Position Paper.

# ISSUE IN FOCUS

## Terrorist Financing Risk Assessments

In 2020, the North Macedonian civil society organization Konekt reached out to the Financial Intelligence Unit to update the national terrorist financing risk assessment before a FATF evaluation. The joint government-civil society terrorist financing risk assessment that followed downgraded civil society organizations from “high risk”—finding instead a subset (13 per cent) of civil society organizations at “low-medium” risk for terrorist financing, with the remainder “low risk.”

Source: European Center for Not-for-Profit Law (ECNL) Learning Center, Risk Rating for CSOs Reduced in Collaborative Process for Risk Assessment in North Macedonia (2020); see also Konekt & ECNL, Handbook for Non-Profit Organiza-

communities, is well documented<sup>287</sup> and raises serious human rights challenges, as well as practical questions of effectiveness, especially as civil society actors move into the informal economy or finds other workarounds as a result.<sup>288</sup>

### Lack of Sectoral Terrorist Financing Risk Assessments

The starting point for the design of any CFT measure must be an assessment of terrorist financing

risk. Risk assessments are the prerequisite for ensuring a necessary, proportionate CFT measure in line with both international human rights law<sup>289</sup> and the FATF risk-based approach.<sup>290</sup> In practice, risk assessments are rarely undertaken with sufficient regularity, specificity, and public consultation.<sup>291</sup> Although discrete good practices of collaborative and participatory multi-stakeholder risk assessments have begun to emerge (see text-box below), most Global Study civil society respondents claimed that no sectoral risk assessment had been performed in

287 See CFT Position Paper, pp. 23-25; see also, e.g., Confidential Input (Syria); Confidential Input (Hong Kong); BADIL input; Regional Consultation Outcome Documents.

288 See, e.g., Asia & the Pacific Consultation (Myanmar, Thailand, and the Philippines (resorting to transferring funds through MoneyGram, Western Union or remittances through foreign organizations and small grant and civil society support networks)); West, East, & Central Africa Consultation (finding many organizations prefer to register as societies or trust funds instead); Confidential Input (according to one survey of 30 partner organizations operating in Myanmar, 25 organizations reported using the informal banking system due to limited bank access, organizational dissolution, office raids, staff arrests, and other pressures).

289 Proportionality requirement under international human rights law. See, e.g., ICCPR, arts. 12(3), 18(3), 19(3), 21(3), 22(2); ICESCR, arts. 8(1); see also E/CN.4/1985/4 (Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights).

290 FATF Recommendation 1; see also FATF, Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures (2007).

291 See CFT Position Paper, pp. 19-21.



their country of operation.<sup>292</sup> Where respondents identified the existence of a non-profit risk assessment, they commonly expressed concern that there was little to no public consultation,<sup>293</sup> resulting in some cases with a shadow risk assessment undertaken by civil society and coming to completely different findings;<sup>294</sup> that existing regulatory requirements and non-profit self-governance measures were not taken into account;<sup>295</sup> that assessors relied upon unverified social media posts, inputs from government-organized non-governmental organizations, and automated algorithmic assessments<sup>296</sup>; and that the entire non-profit sector was identified as higher risk or otherwise treated by default as obliged or reporting entities without any granularity.<sup>297</sup> As of November 2021, out of 118 Mutual Evaluations, just six jurisdictions were found Compliant with FATF Recommendation 8, which requires a risk-based approach to terrorist financing risks in the non-profit sector.<sup>298</sup> In this regard, FATF's project to study and mitigate the unintended consequences resulting from the incorrect implementation of the FATF Standards, including the ongoing review of its Best Practices Paper on combatting the abuse of non-profit organizations, Recommendation 8, and assessment Methodology and Procedures may help to strengthen compliance and a more risk-based

approach.<sup>299</sup>

## Undue Non-Profit Registration, Reporting, and Funding Requirements

Tethered or not to a terrorist financing risk assessment, restrictive civil society requirements in the name of CFT are widespread and counting, and focus particularly on non-profit registration and reporting requirements—implicating in turn the rights to freedom of association and peaceful assembly, freedom of opinion and expression, and privacy, among others.<sup>300</sup> Global Study respondents documented an increase in these requirements for non-profit organizations, as well as religious groups, political parties and trade unions, often involving complex bureaucratic processes with procedural and substantive obstacles. According to one input, 90% of civil society organizations operating in their country of operation faced impediments to registering or maintaining their registrations, namely due to CFT restrictions.<sup>301</sup> UN Special Procedures mandate-holders have issued communications on restrictive CFT registration and reporting measures and proposals in Egypt, Nicaragua, Niger, Serbia, Thailand, Turkey, Venezuela, and Zimbabwe, among others.<sup>302</sup> Women civil society organizations are of-

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292 See, e.g., Asia & the Pacific Consultation (a large majority reported that they had not seen any risk assessment indicating the vulnerability of their sector to terrorist financing); Central & Eastern Europe Consultation (small majority similarly said they had not seen one); Barbados & El Salvador (no NPO risk assessment); see also C&SN Input (Latin America, lack of sectoral risk assessments).

293 Asia & the Pacific Consultation, including Indonesia; El Salvador (no NPO consultation); see also A/HRC/50/23, para. 39.

294 See, e.g., Serbia; see also Global NPO Coalition

295 Confidential Input (Belarus, claiming CFT financial reporting requirements were duplicative of existing measures); Asia & the Pacific Consultation (Indonesia, same). For self-governance features, see Serbia, Macedonia, Montenegro, Ukraine.

296 See also Solidarity with Others input.

297 Latin America and the Caribbean Consultation (Venezuela).

298 Ben Evans, "Supporting Member States in conducting periodic risk assessments of their non-profit sectors to inform the implementation of a risk-based approach."

299 FATF Input.

300 CFT Position Paper, pp. 21-25; see, e.g., OL QAT 1/2022; OL THA 7/2021; OL ZWE 3/2021; OL VEN 8/2021; OL BLR 2/2021; OL TUR 3/2021; see generally A/HRC/50/23.

301 Civilis Derechos Humanos Input (Venezuela, 58.3% due to obstacles or delays in processing; 25% for high registration costs; 23% due to lack of information on procedures and requirements; 21.3% for the rejection of applications for registration; 13.1% for additional requirements or not in accordance with the provisions of the laws; and 8.2% due to the suspension of registration acts in the offices that correspond to the organizations due to their legal domicile).

302 See, e.g., OL TUR 3/2021; OL NIC 3/2020; Press Release, Nicaragua: UN experts denounce arbitrary shutdown of civil society organizations (29 July 2022); AL EGY 6/2021; OL VEN 8/2021; OL ZWE 3/2021; OL THA 7/2021; A/HRC/48/59/Add.2 (Venezuela), para. 79; A/HRC/50/23/Add.2, paras. 70(c), 72 (Niger); A/HRC/50/23/Add.3, para. 65 (Zimbabwe).

ten especially affected.<sup>303</sup>

Restrictive registration and reporting requirements were typically enacted to comply with the FATF Standards—in some cases in advance of a mutual evaluation or follow-up assessment by the FATF or FATF-Style Regional Body.<sup>304</sup> They include the mandatory disclosure of all existing and intended beneficiaries;<sup>305</sup> past and present founders and beneficial owners;<sup>306</sup> all individual and institutional donors, including in some cases donations as marginal as 4 USD;<sup>307</sup> and underlying grant contracts and other project-related documents.<sup>308</sup> There is often confusion and a lack of clarity, including conflation of beneficiaries and beneficial owners, and increasingly the treatment of the philanthropic and foundations' sector as obliged entities.<sup>309</sup> In recent years, expansive registration and reporting restrictions on crowdfunding and the use of other new payment technologies have also become increasingly common.<sup>310</sup> These requirements are often disproportionate to any identified risk and leave

significant discretion to the government to deny applications,<sup>311</sup> raising significant rights concerns.<sup>312</sup> Registration processes can be cumbersome and resource and time-intensive, taking away vital resources from already resource-strapped organizations.<sup>313</sup> Fines and sanctions for non-compliance can also be debilitating.<sup>314</sup>

Many States have focused their CFT efforts on restricting funding, typically foreign funding, to local civil society organizations,<sup>315</sup> which can be especially debilitating for civil society organizations with missions focused on, inter alia, women, gender identity and sexual orientation, and ethnic and religious minorities, given their reliance on foreign donors. Restrictions range from banning or severely restricting non-profit organizations from receiving any foreign funds;<sup>316</sup> requiring registration as “foreign agents” or other prior governmental approval to receive foreign funds;<sup>317</sup> prohibiting transfers from specific foreign donors or otherwise directly targeting those donors (in stark contrast to the un-

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303 A/HRC/46/36, para. 13.

304 See, e.g., Central & Eastern Europe Consultation (Bosnia and Herzegovina, Albania); Asia & the Pacific Consultation (participants unanimously observed how the FATF Standards were invoked by their governments to justify new restrictive registration and reporting requirements); South Asia Consultation.

305 See, e.g., Philippines; West, East, & Central Africa Consultation (This also threatens advocate-client privilege since many of these CSOs also offer legal assistance).

306 See, e.g., Central & Eastern Europe Consultation (North Macedonia, Albania). requirements to the non-profit sector.

307 See, e.g., OL VEN 8/2021; see also See, e.g., CELS Argentina Input (Argentina).

308 See, e.g., Occupied Palestinian Territory Consultation; Asia & the Pacific Consultation (Philippines).

309 Philea et al., Urgent call to clarify and simplify AML beneficial ownership policy for public benefit foundations and NPOs in light of new proposals (Feb. 2023).

310 See, e.g., Central and Eastern Europe Consultation; Fionnuala Ní Aoláin, Position Paper of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on International Human Rights Law Considerations for Counter-Terrorism Financing Regulation of Crowdfunding, Virtual Assets, and New Payment Technologies (2023).

311 See, e.g., OL VEN 8/2021; Confidential Input (Belarus); Civilis Derechos Humanos (Venezuela); Confidential Input (Myanmar); Confidential Input (India); EMR & CIHRS Input (Egypt); Ambika Satkunanathan Input (Sri Lanka); ODIHR Input.

312 See CFT Position Paper, pp. 21-25.

313 See, e.g., the Kvinna till Kvinna Foundation.

314 See, e.g., Latin America & the Caribbean Consultation (Barbados, absolute fee that may be disproportionate to the operating budget of the organization); Central & Eastern Europe Consultation (Albania, fines based on operating costs); see also A/HRC/50/23, para. 44.

315 See, e.g., CFT Position Paper (citing, e.g., OL TUN 4/2022; OL VEN 8/2021; OL THA 7/2021; AL OTH 71/2020; OL BLR 2/2021); OL NIC 3/2020; A/HRC/50/23, paras. 33-45 (India, Egypt, Nicaragua, Russia, Hong Kong, Algeria, Egypt, Uganda); see also Transparency International, The Impact of Anti-Money Laundering and Counter Terrorist Financing Regulations on Civic Space and Human Rights (2021); A/HRC/23/39, paras. 8-18 (noting the right to seek, receive and use resources — human, material and financial — from domestic, foreign and international sources is also protected under international law, as part of the right to freedom of association).

316 See, e.g., Latin America and Caribbean Consultation (Venezuela, art. 5 of the Law for the Defense of Political Sovereignty and National Self-Determination); EMR & CIHR Input (Egypt); Justice for All Input (India); Asia & the Pacific Consultation (Thailand).

317 See, e.g., South Asia Consultation; Asia & the Pacific Consultation; Middle East & North Africa Consultation.

hampered access to foreign counter-terrorism donors<sup>318</sup>;<sup>319</sup> capping the amount of foreign funds that non-profit organizations may receive<sup>320</sup>; and taxing foreign funds.<sup>321</sup> State-instituted restrictions are further exacerbated by targeted financial sanctions and donor-instituted restrictions, such as no-contact policies in funding agreements prohibiting civil society organizations from contacting designated terrorist groups, often the de facto authorities in conflict regions where organizations seek to implement humanitarian and human rights projects.<sup>322</sup>

The information disclosed as part of these CFT registration and reporting measures may include sensitive information, including bank account information, photo identification, home addresses, and other personal information of founders, staff, and beneficiaries, who may be particularly vulnerable to reprisals or specific project activities and underlying travel and whereabouts. In some cases, States invoked further surveillance and oversight powers in order to obtain additional information such as specific banking and transactional information or otherwise investigate civil society.<sup>323</sup> The storage and potential transfer of such information<sup>324</sup>—including among public and private entities across borders—raise significant rights challenges, including with respect to the right to privacy (Chapter 3, Part 5).

Notably, successful appeals and/or judicial review of these registration and reporting requirements are rare though emerging, including in France and Nigeria.<sup>325</sup>

## Toolkit of CFT Disciplinary and Enforcement Measures

In the name of CFT, States have adopted a range of disciplinary and enforcement measures, often through administrative means (Chapter 3, Part 2). Many States enjoy the discretionary power to order asset freezing where individuals or organizations are under investigation for terrorist financing offences or otherwise affiliated with suspicious transactions—sometimes due to automated listing or notices.<sup>326</sup> States may also implement targeted financial sanctions (Chapter 3, Part 4). In some cases, there are no formal charges, no opportunity to appeal, and/or no time limits.<sup>327</sup> Sometimes the measures appear politically motivated, e.g., freezing assets of human rights defenders and democracy advocates only during elections.<sup>328</sup>

It is also well documented that civil society organizations have been subject to forced dissolution and de-registration on the basis of CFT.<sup>329</sup> These measures are often paired with physical harassment

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318 See, e.g., Asia & the Pacific Consultation.

319 See, e.g., C&SN Input (Hungary, India).

320 West, East, & Central Africa Consultation.

321 West, East, & Central Africa Consultation; Israel Consultation (proposed legislation regarding potential imposition of a tax on donations given by foreign governmental entities to nonprofit civil society organizations).

322 Confidential Input (Afghanistan); Confidential Input (Syria); Kvinna till Kvinna Foundation Input (follow-up administrative questioning based on national lists even if donor State uses another); Confidential Input (e.g., Gaza and Iran).

323 See, e.g., AL OTH 71/2020; see also OL SAU 12/2020; OL QAT 1/2022; OL TUR 3/2021; AL OTH 71/2020; A/HRC/52/66, paras. 28-30.

324 See, e.g., Asia & the Pacific Consultation (Philippines, information is shared with the Financial Intelligence Unit, the Anti-Money Laundering Council, and other government entities); Central & Eastern Europe Consultation.

325 Nigeria amended the Money Laundering Act in 2022 to de-list NPOs among Designated Non-Financial Institutions, thus lessening their reporting obligations; France's Conseil de'Etat decision rejected overburdensome screening requirements.

326 See, e.g., ADM input; Justice for All input (India); Regional Consultation Outcome Documents.

327 See, e.g., West, East, & Central Africa Consultation (Uganda).

328 See, e.g., West, East, & Central Africa Consultation (Uganda, leading up to the 2021 Presidential and Parliamentary elections in Uganda, the government froze bank accounts belonging to a women's network, citing reasons of terrorism financing); Tanzania (law enforcement ordering a commercial bank in Tanzania to freeze the accounts a human rights defenders coalition prior to elections); see also, Amnesty International, "India Should Stop Using Abusive Foreign Funding Law," 19 January 2022.

329 UN Human Rights Experts, "UN experts denounce arbitrary shutdown of civil society organizations" press release, 29 July 2022; FATF UIC

# ISSUE IN FOCUS

## A Bank's Call for a More Risk-Based Approach

The Dutch Central Bank has called for banks and supervisory authorities to adopt a more targeted, risk-based approach to CFT and anti-money laundering--as it would be more effective and “reduce the undesirable side effects of the gatekeeper role of banks and other financial institutions, such as the unnecessary refusal or exclusion (“de-risking”) of customers from payment systems.”

Source: Dutch Central Bank Input (citing De Nederlandsche Bank, *From Recovery to Balance: A Look Ahead to a More Risk-Based Approach to Preventing and Combating Money Laundering and Terrorist Financing*)

and intimidation. Indeed, Global Study respondents identified multiple raids of civil society organization offices and human rights defenders and their families' homes, sometimes without warrants and in phishing attempts for CFT-related inquiries and investigations.<sup>330</sup> Such harassment is often the precursor to arrests, prosecutions, and other judicial harassment of human rights defenders and civil society actors (Chapter 3, Part 1). As a result, individuals may be left stigmatized, unemployed and un-hirable, even upon acquittal.<sup>331</sup> Women often bear the

brunt of such cumulative practices (Chapter 2, Part 3; Chapter 3, Part 4) Families are also targeted due to mere association or otherwise face compounding social, financial, and other harms.<sup>332</sup>

### Banks De-risking Measures

Banks and financial intermediaries have played a central role in implementing CFT measures that affect civil society, particularly in adopting de-risk-

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Synopsis (documenting “forced dissolution, de-registration or expulsion of NPOs”); see also; Mozambique (judges have the authority to order the shutdown of NPOs ex parte); Confidential Input, (India, between 2019-2021, the registration of 1811 NGOs was canceled); ADM Input (mass closures of Muslim mosques and organizations); Confidential Input (Belarus, forcible liquidation of 700 civil society organizations since 2021); Confidential Input (Nicaragua, closure of more than 2,000 non-profit organizations); C&SN Input (Nicaragua and Venezuela non-profit closures); EMR & CIHRS Input (Closure decisions for 1607 associations); West, East, & Central Africa Consultation (in 2015, three civil society groups, Muslims for Human Rights (MUHURI), HAKI Africa and Agency for Peace and Development had their licenses revoked by the NGO Coordination Board because of an alleged connection to financing terrorism; 959 NGOs were deregistered for discrepancies in their financial reports); Confidential Input (India).

330 See, e.g., Confidential Input (India); Asia & the Pacific Consultation (Philippines); Central & Eastern Europe Consultation (Serbia); Middle East & North Africa Consultation (Egypt); West, East, & Central Africa Consultation (Uganda); CS&N (Nicaragua); Confidential Input (Myanmar); Adalah Input (Occupied Palestinian Territory).

331 See, e.g., A/HRC/35/28/Add.2 (USA, asset freezing of Muslim charities created the false impression of involvement in terrorist financing); Confidential Input (Turkey, academics affiliated with the Gulen Movement left unemployed and denied opportunity to work at other institutions).

332 CFT Position Paper, pp. 18-19.

ing measures that terminate or otherwise restrict banking and other business relationships with civil society “to avoid, rather than manage, risk.”<sup>333</sup> In every Global Study regional consultation, participants identified de-risking incidents, including blocked or significantly delayed money transfers<sup>334</sup> and bank account closures or the inability to open a bank account,<sup>335</sup> that significantly affected their ability to operate and deliver core activities.<sup>336</sup> In some cases banks were directly instructed by the State to implement restrictive measures against non-profit organizations.<sup>337</sup> Banks also place restrictive burdens on civil society clients in the form of prohibitive fees for applications or background checks, or open discouragement from opening an account.<sup>338</sup> Banks and financial intermediaries have the responsibility to respect and protect human rights, as laid out in the Guiding Principles on Business and Human Rights. Yet as a result of these bank de-risking and other restrictive measures, humanitarian, refugee, and human rights organizations have been precluded from delivering activities, particularly in conflict zones, ranging from humanitarian, medical, and development assistance to educational, legal, political and cultural awareness activities, and blocked from securing

future funding and public support.<sup>339</sup> Religious and other minorities are often disproportionately impacted by these measures<sup>340</sup> (Chapter 1, Parts 2-4). Moreover, de-risking measures enable increased surveillance of civil society organizations and actors, many of whom work with vulnerable groups like refugees and asylum seekers or project beneficiaries in humanitarian crises.<sup>341</sup>

De-risking measures are often implemented by banks, financial intermediaries, and other stakeholders upon the slightest suspicion that the entity or individual may fall into a suspect category like politically exposed persons or affiliates of designated organizations. Like States, financial institutions and financial technology companies frequently rely on listing databases such as World Check and Interpol Red Notices, as well as national lists.<sup>342</sup> Individuals and organizations were rarely notified in advance, and when they asked for the basis for the de-risking measure, informed that it was subject to bank confidentiality or internal compliance measures.<sup>343</sup>

## Recommendations

- Facilitate meaningful civil society participation in national and sector-specific terrorist financ-

333 FATF clarifies risk-based approach: case-by-case, not wholesale de-risking, October 2014. Available at: [www.fatf-gafi.org/documents/documents/rba-and-de-risking.html](http://www.fatf-gafi.org/documents/documents/rba-and-de-risking.html).

334 See, e.g., Regional Consultation Outcome Documents (Israel, Thailand, France; Lithuania); the Kvinna till Kvinna Foundation Input.

335 See, e.g., CIHRS Input (Egypt, citing banks unilaterally closing accounts); Regional Consultation Outcome Documents (Serbia, Macedonia, Lithuania, Cyprus, Kosovo, Ukraine, Kenya).

336 See Regional Consultation Outcome Documents; see also, CHE 2/2023 OTH 17/2023 OTH 16/2023.

337 A/HRC/50/23, para. 44.

338 Bulgarian Center for Not-for-Profit Law (BCNL) Input; Muslim Advocates Input.

339 See CFT Position Paper, pp. 33-34; see also, e.g., Confidential Input (Syria); BADIL Input; AFSC Input (Occupied Palestinian Territory); InterAction Input; Asia & the Pacific Consultation (Myanmar, Thailand); West, East, & Central Africa Consultation (Uganda, Kenya, Ghana); Central & Eastern Europe Consultation (Lithuania, Cyprus, Kosovo, Serbia, Macedonia).

340 See, e.g., Muslim Advocates Input; France ADM Input; North America Consultation (USA).

341 Confidential Input.

342 See, e.g., Confidential Input (citing an internal survey where 20% of the international non-governmental organization’s country programs had bank issues related to the fact that the organization was listed on World-Check); Confidential Input (citing an example where an individual even after the deletion of the Red Notice was still unable to transfer or receive money through Western Union); Muslim Advocates Input (noting how many financial technology companies, such as Venmo and WePay create automated filters that flag huge swaths of innocuous material); Solidarity with Others Input (Turkey, some banks refused to open accounts for decree-law victims, citing a blacklist).

343 See, e.g., ISAR Edannia Input (Ukraine, CSOs, particularly registered on the occupied or newly liberated territories, are facing difficulties with banking services, due to blocking of the funds’ transfers by intermediary banks to the CSOs in Ukraine (effect of application of counter-terrorism frameworks). Due to absence of communication regarding this issue by intermediary bank to CSOs in Ukraine, it is not clear what are the reason for such blocking); BCNL Input (Bulgaria).

ing risk assessments, the design, delivery, and oversight of CFT measures, and compliance assessments, including the FATF mutual evaluation review and follow-up processes. Such participation requires regular, fulsome, and reciprocal multi-stakeholder dialogue, including direct access to financial intelligence units and assessors.

- Refrain from using CFT registration and reporting regulations to restrict or dissolve groups for the legitimate exercise of their rights, especially the rights to freedom of association and expression. Funding restrictions on domestic civil society organizations should be reconsidered or lifted to ensure they are solely commensurate to the empirically validated, differentiated risks of terrorist financing, in accordance with the objective criteria of legality, proportionality, necessity, and non-discrimination.
- Issue clear guidance on the correct application of a risk-based and human rights and rule of law-based approach, including clarifying regulatory expectations of due diligence in correspondent banking and the requisite transparency of compliance policies and supporting guidance documentation.
- Ensure independent oversight and judicial review processes to tackle arbitrariness and human rights abuses in the implementation of CFT penalties, including appeal procedures for listing and designation procedures, asset seizures, non-profit dissolutions, and other sanctions and penalties. Over-regulation and human rights violations committed in the CFT context—particularly with respect to the disparate impacts on organizations representing the interest of women, as well as ethnic

## ISSUE IN FOCUS

### Humanitarian Exemptions

The Special Rapporteur has welcomed the passage of UN Security Council resolution 2664 (2022) in response to civil society advocacy and human rights and humanitarian documentation, which established a limited, standing humanitarian-related “carve out” from Council agreed asset freezes. The obligation arising from this resolution are complex and raise clear intricacies of how they will be implemented in national law, but tools are available. Member States must now, in line with operational paragraph 4, assess the compliance of their implementation of UN sanctions, including for the purposes of this Study counter-terrorism targeted sanctions, with the exemption. This is the next step in advancing meaningful protections in counter-terrorism and compliance with international humanitarian law. To date, the United States through U.S. Department of the Treasury’s Office of Foreign Assets Control issued general licenses to bring domestica sanctions towards compliance with international humanitarian law and the UN Security Council 2664 exemption (December 2022) and the Council of the European Union has also modified several of its acts towards compliance (March 2023).

Source: Harvard Law School, An Interpretive Note for U.N. Member States on Security Council Resolution 2664, Program on International Law and Armed

and religious minorities—should also be taken into account in mutual evaluation review and other CFT compliance efforts.

## Part 4: Human Rights & Humanitarian Harms of Sanctions & Listing

Civil society organizations face cross-cutting challenges in the use of sanctions and listing related to terrorism, including through domestic implementation of UN counter-terrorism targeted sanctions and the use of domestic regimes untethered to international regimes that create broad opportunities for misuse under the guise of counter-terrorism. Domestic level use is often tied to the cover provided by global focus on the obligation of States to address terrorism with rationales offered in responses to human rights mechanisms citing UN Security Council resolutions. The Special Rapporteur has previously noted how abusive designations have been made easier by the broadened criteria introduced by the Security Council in its resolution 1617 (2005) under the targeted terrorism sanction regime.<sup>344</sup>

While the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities has never listed an individual solely on the basis of the provision of

medical or humanitarian assistance, it is worrying that medical activities had been referenced as part of the basis for listing two individuals and two entities.<sup>345</sup> Multiple submissions to the Global Study emphasized the negative use of sanctions and listing to target humanitarian actors operating in conflict settings, with devastating consequences for access to food, medicine, shelter and the essential means for the civilian population to survive.<sup>346</sup> In addition, as the Special Rapporteur has previously raised, notwithstanding the fact that the Office of the Ombudsperson undertakes important and valuable work to delist, the process provides neither a fair process nor a fair remedy to those who are subject to it, as is required by international law.<sup>347</sup> Moreover, the burdens placed on civil society and non-profit organizations,<sup>348</sup> through resultant CFT measures has continued to impact their ability to function.<sup>349</sup>

The current practice of Member States in using (and sharing) national and regional terrorism sanctions lists, including through partnership with the private sector such as Thomson Reuters' World Check and lack of human rights due diligence, raise numerous challenges of legality (lack of precision and definition of offences), due process (no means to get off lists once on them), targeting protected groups (the inclusion of children on such lists). The consistent lack of an international law compliant definitions of terrorism allows for arbitrary or malicious designations of any individual or group, including civil society organizations on such lists.<sup>350</sup>

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344 A/73/361, para. 19; A/65/258; A/67/396; A/HRC/34/61.

345 Fionnuala Ní Aoláin, Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights and rule of law implications of the UN Security Council counter-terrorism sanctions regimes (Sanctions Position Paper), p. 13.

346 See e.g., Confidential Input (Myanmar, Israel/Occupied Palestinian Territory, Zimbabwe); A/HRC/52/66 (2022), paras. 28-30; Defend Panay Input (Philippines); InterAction Input (Global) (citing InterAction's Counter-Terrorism & Humanitarian Action Resource Library (April 2021); see also A/HRC/51/33, paras. 20, 30, 56-58, 79.

347 Sanctions Position Paper.

348 See further details in Chapter 3, Part 2.

349 See e.g., the Kvinna till Kvinna Foundation Input; International NGO Input (Confidential).

350 Confidential Input (global, expressing concern at the joint database World-Check that screens all stakeholders, including partners, donors and beneficiaries against the UN Security Council Consolidated Sanction list, the European Union Sanctions list, the National Sanctions list of the State of Qatar, and the US OFAC Sanctions list); EGY 1/2022; EGY 8/2021 on listing. A/HRC/WGAD/2016/6; A/HRC/WGAD/2021/45; A/HRC/WGAD/2021/1.

At the national level, the use of terrorism watchlists and their justification under global reliance on counter-terrorism targeted sanctions, which respondents to the Global Study survey and consultations have termed “pretext of international criminal cooperation in counterterrorism,” has closely linked the misuse of administrative measures with their implementation.<sup>351</sup> These restrictions on individuals rights that flow outward from domestic “listing” have cross-cutting impacts, such as restrictions on travel, internal movement, access to identity documentation, ability to seek meaningful employment and more. The gendered impacts of such listing and sanctions are echoed in this Study and were previously documented by the Special Rapporteur.<sup>352</sup> The lack of consistent and transparent data on which organizations and individuals are being listed, the ways in which the listing of individuals is shared across countries and within regional organizations,<sup>353</sup> often between countries with poor human rights records, have multiple consequences for the rights of human rights defenders from privacy intrusion, to limitations on travel to non-refoulement consequences when individuals are transferred between States under the legitimizing umbrella of the Security Council. The misuse of ‘red notices’ against human rights defenders and civil society activists based on their inclusion on defective lists, which operate to penalize their human rights-related activities and is not directed at genuine terrorist threats is a persistent issue.<sup>354</sup> Civil society respondents made a number of observations specific to cooperation with Interpol and related abuse and called for immediate due diligence measures, both immediate and long-term to stop

the misuse against civil society actors and human rights defenders.<sup>355</sup>

Violations under the guise of cooperation also apply to cases of non-refoulement, and include the listing and expulsion of peaceful political opponents.<sup>356</sup> These compounding harms result in and create conditions conducive to increased risk of arbitrary detention.<sup>357</sup> Moreover, civil society who advocate for the use of international sanctions regimes to address violations of international human rights and humanitarian law have been the target of abusive domestic listing regimes, undermining the ability for the UN to receive and support those advocating for human rights compliance domestically.<sup>358</sup> Such cyclical forms of repression of civil society that begin with the cover provided at the international level and subsequently prevent the UN and other international or regional bodies from carrying out human rights-based processes are of direct concern in the context of sanctions and their contribution to long-term peace and security.

Counter-terrorism targeted sanctions remain an area, particularly for the UN, where the risk of co-optation of civil society into State-led international and national security agendas is high. The international communities’ work in this area continue to promote limited engagement with civil society on specific issues, and among more narrow constituencies, including with subsequently high risks of co-optation and instrumentalization in the furtherance of a broader security agenda. Instead, the Security Council should positively promote civil society’s key role as a force for change and remind States of their obligations to respect and protect it, includ-

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351 See e.g., Alkarama Foundation Input; Chapter 3, Part 2.

352 A/HRC/22/52; A/HRC/46/36, para. 16; A/64/211.

353 Confidential Input (Regional, Shanghai Cooperation Organization); MENA Rights Group Input (Arab Interior Ministers’ Council).

354 USA 2/2020; BHR 1/2022; SRB 4/2022; SRB 2/2022; LBN 1/2022; MAR 7/2021; LBN 2/2021.

355 MENA Rights Group Input (Regional); Confidential Input (citing e.g., Council of Europe Parliamentary Assembly (PACE) Resolutions 2315, Interpol reform and extradition proceedings: building trust by fighting abuse”, 29 November 2019); Solidarity with Others Input; Confidential Input (China).

356 Alkarama Foundation Input (Algeria, Spain) and Solidarity with Others Input (Belgium).

357 Solidarity with Others Input (Belgium).

358 West, East, and Central Africa Consultation.



# ISSUE IN FOCUS

## Surveillance Misuse through Pegasus

In August 2021, Special Procedures mandate-holders issued communications to the cyber-intelligence company NSO Group and Israel regarding the reported use of Pegasus spyware developed by the NSO Group to surveil, intimidate, and harass at least 180 journalists, human rights defenders and political leaders from 20 countries. The Dutch Central Bank has called for banks and supervisory authorities to adopt a more targeted, risk-based approach to CFT and anti-money laundering--as it would be more effective and “reduce the undesirable side effects of the gatekeeper role of banks and other financial institutions, such as the unnecessary refusal or exclusion (“de-risking”) of customers from payment systems.”

Source: AL ISR 7/2021.

ing through overarching human rights reforms of counter-terrorism and P/CVE frameworks.

### Recommendations

- The Security Council should build greater transparency within the work of the Sanctions Committees for counter-terrorism regimes, including through engagement with civil society. Consistent inclusion of civil society in briefings and dialogue with Member States should be made possible to facilitate greater transparency and reflection of the impact of UN counter-terrorism sanctions on the ground and the downstream harms on individual rights, and civil society. This includes dedicated engagement of women civil society leaders and gender equality advocates in line with the Security Council’s commitments to women, peace, and security. This should also include greater transparency in the composition of the Monitoring Team to foster diversity.
- Address the lack of human rights safeguards in the implementation, sharing and reinforcement of domestic sanctions regimes that often transcend national borders and are integrated and replicated across regions. This includes addressing the immediate and long-term need for human rights due diligence and misuse facilitated through cooperation between Interpol and Member States.
- Implement human rights and rule of law reform, specifically to strengthen the role of the Ombudsperson in respect of UN counter-terrorism targeted sanctions regimes, which will only be effective once brought into human rights compliance and better able to contribute to solutions rather than fuel grievances, arbitrary deprivation, and rights violations that

perpetuate the production of violence.

- States should review and repeal terrorism watchlists that violate the principles of legality, necessity, proportionality, and non-discrimination, and conduct further reviews of underlying legislation.
- Research should be developed on the gendered impact of sanctions beyond the listed individual to document and understand the ways in which civil society organizations, families, and communities are affected by the process of listing and corresponding administrative effects.<sup>359</sup>

## Part 5: Weaponization of New Technologies Against Civil Society

The development of new technologies promises enormously positive benefits for civil society, providing new possibilities for deepening connection and communication, promoting new educational and professional opportunities, and offering heightened security and efficiency. Those benefits, when distributed equally, transparently, and without discrimination, can make technology a partner in the strengthening of civil society and the promotion and protection of civil, political, economic, social, and cultural rights for people worldwide. The various ways in which new technological capacities are being deployed in the name of counter-terrorism and P/CVE, however, represent a fundamental threat to civil society and meaningful civil society participation.

This chapter builds on the Special Rapporteur's 2023 report to the Human Rights Council on the development, use, and transfer of new technologies in the counter-terrorism and P/CVE context.<sup>360</sup> Drawing from the Global Study data, it surveys how the development and deployment of new technologies for counter-terrorism and P/CVE purposes—namely surveillance, content moderation, Internet shutdowns, biometrics and facial technology, and drones—have substantially limited the ability of civil society to exercise their fundamental rights and implement their core human rights, humanitarian, and other activities.

### Surveillance

The capacity for mass surveillance as the default tool for counter-terrorism investigation has been dramatically increased by a series of converging trends in recent years: the precipitous decline in the cost of technology and data storage; the ubiquity of digital devices and connectivity; and the exponential increase in the processing power of computers. Calls by multilateral organizations to implement routine surveillance and data collection for counter-terrorism investigations have further incentivized the use and transfer of a range of hardware and software tools.<sup>361</sup> Intrusion hardware takes many forms and functions to directly access physical communications infrastructure, such as the cables that carry worldwide Internet traffic, the servers of Internet service providers, or individual mobile devices.<sup>362</sup> Spyware software in particular infiltrates individual computers or mobile devices and can access and record video, audio, and text/email communications, including on supposedly secure platforms such as WhatsApp, as well as accessing calendars,

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359 For example, the SR has documented the following ripple effects for women, including difficulty in securing work; renting or purchasing a home; prohibitions on travel; accepting financial assistance; and more. A/HRC/46/36, para. 16, 39(e).

360 A/HRC/52/39.

361 See, e.g., Council of Europe Cybercrime Programme Office, Standard operating procedures for the collection, analysis and presentation of electronic evidence (September 2019); INTERPOL, Guidelines for Digital Forensics First Responders: Best practices for search and seizure of electronic and digital evidence (March 2021).

362 See, e.g., UK GCHQ Tempora program; US NSA XKeyscore and Upstream systems and Prism System; Russia System for Operative Investigative Activities. The operation of the Russian system was considered and held to constitute a breach of the European Convention right to privacy, by the Grand Chamber of the European Court of Human Rights in *Roman Zakharov v Russia* [2015] ECHR 1065; (2016) 63 EHRR 17.

contacts, and geolocation data. Spyware software has proliferated internationally and poses substantial risks to the promotion and protection of human rights. Such profound challenges have prompted inquiries and litigation worldwide.<sup>363</sup>

The ubiquity of sophisticated communications surveillance poses obvious threats to civil society actors' rights of privacy and free expression, as well as related rights like the freedom of assembly, freedom of association, and freedom to manifest one's religion.<sup>364</sup> Many Global Study respondents, including Amnesty International,<sup>365</sup> reported experiences of digital surveillance of operatives or associates and transfer of their private data across Europe,<sup>366</sup> the Middle East,<sup>367</sup> Africa,<sup>368</sup> Latin America,<sup>369</sup> North America, and Asia and the Pacific,<sup>370</sup> leading to concerns about covert data access, and, in a range of cases, to physical threats and violence facilitated by the pinpoint targeting spyware affords. In some cases, such surveillance has been entrenched or repurposed under cover of the Covid-19 pandemic and related regulations.<sup>371</sup> Such surveillance creates a chilling effect due to the 'very possibility'<sup>372</sup> of surveillance—leading those most likely to be targeted (e.g., whistleblowers, political dissidents, journalists, human rights defenders) to self-censorship.<sup>373</sup>

Multiple civil society organizations worldwide have opted to reduce or alter their strategies for communication and organizing so as to avert government scrutiny.<sup>374</sup>

The majority of surveillance tools have been obtained from private cybersecurity firms, including firms based in Israel, Germany, France, Italy, Hungary, North Macedonia, the United Kingdom, and the United Arab Emirates.<sup>375</sup> These businesses and multinational companies have benefitted from a dearth of regulation and due diligence, although the tide is shifting: for instance, in April 2022, Costa Rica became the first State to join the call for a moratorium on the trade in spyware technology,<sup>376</sup> while a broad coalition of civil society reiterated the demand for a moratorium at the World Economic Forum meeting, held in Davos, Switzerland, in May 2022.<sup>377</sup>

## Content Moderation

Alongside the development of surveillance of private content, monitoring of public online content has also become widespread, prominently facilitated by new algorithmic and machine learning tools that allow for the efficient collection and analysis of social media posts, photographs, and private and

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363 See, e.g., European Parliament, "Spyware: MEPs sound alarm on threat to democracy and demand reforms," press release committee of inquiry, 8 May 2023; European Parliament, Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware (2023); United States Federal Case No. 19-cv-07123-PJH, WhatsApp Inc. et al v. NSO Group Technologies Ltd et al.; A/HRC/51/16 (identifying additional hearings, investigations, criminal investigations, and civil lawsuits).

364 Fionnuala Ní Aoláin, Position paper of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Global Regulation of the Counter-Terrorism Spyware Technology Trade (Spyware Position Paper) (2023), paras. 36-47; see also, A/HRC/52/34 (2023), para 64.

365 Amnesty International Input.

366 See e.g., Central & Eastern Europe Consultation; Omnium Cultural Input; see also, e.g., A/HRC/52/34, para. 64; A/HRC/50/29, paras. 49-56.

367 See Middle East & North Africa Consultation; see also, e.g., Access Now Input; Confidential Input (Occupied Palestinian Territory).

368 See West, East, and Central Africa Consultation; see also, e.g., CIHRS Input.

369 See Latin America & the Caribbean Consultation.

370 See Asia & the Pacific Consultation.

371 See, e.g., Asia & the Pacific Consultation (Hong Kong).

372 David Kaye, 'The Spyware State and the Prospects for Accountability' (2021) 27(4) *Global Governance* 483-492, 489.

373 A/HRC/27/37, [20]; and A/HRC/32/38, [57].

374 C&SN Input; West, East, and Central Africa Civil Society Consultation; Privacy International Input.

375 A/HRC/52/39, para. 47.

376 Access Now, "Stop Pegasus: Costa Rica is the first country to call for a moratorium on spyware technology," press release, 13 April 2022.

377 Access Now, "Human rights leaders at Davos 2022: spyware is a weapon," press conference, 23 May 2022.

professional networks as disclosed on publicly-accessible communications platforms. Recognizing that online media have been used to promulgate terrorist propaganda and hate speech,<sup>378</sup> civil society organizations have reported many instances where State agencies have invoked vague content moderation powers, including to prevent the promotion/glorification of terrorism, instead to block the communications of civil society actors.<sup>379</sup> Such impacts have been particularly keenly felt by those advocating on behalf of minority communities<sup>380</sup> or disseminating information perceived as critical of government.<sup>381</sup> Some States have also established information operations on social media to target civil society and smear them as terrorists, extremists, or sympathizers thereof.<sup>382</sup>

Just because content monitoring looks at publicly-available information, does not prevent it from being unlawfully intrusive.<sup>383</sup> As has been noted by the High Commissioner on Human Rights, the protection of the right to privacy extends to public spaces and information that is publicly available.<sup>384</sup> The Human Rights Committee has rejected the notion that data gathered in public areas is automatically in the public domain and may be freely accessed.<sup>385</sup>

## Internet Shutdowns

States have also deployed the blunt instrument of intentional Internet disruption as a public order mechanism purportedly in response to unrest—often under the pretext of counter-terrorism and national security.<sup>386</sup> Despite access to the Internet being widely recognized as an indispensable enabler of a broad range of human rights,<sup>387</sup> there were at least 182 Internet shutdowns in 34 countries in 2021 according to Access Now (compared to 159 shutdowns in 29 countries in 2020).<sup>388</sup> A relatively small number of countries are responsible for the vast majority of such disruptions: in 2021, there were 85 Internet shutdowns in Jammu and Kashmir and 15 shutdowns in Myanmar. The longest shutdowns have been a period from 2016 to 2021 in Pakistan's Federally Administered Tribal Area and 18 months in the Tigray region in Ethiopia. Trends reveal widespread use of mobile Internet shutdowns during protests in Bangladesh, Burkina Faso, Chad, Cuba, Eswatini, India, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Myanmar, Pakistan, Senegal, South Sudan, Sudan, Turkmenistan, and Uganda, and during elections in 2021 in Chad, the Republic of Congo, Iran, Niger, Uganda, and Zambia.<sup>389</sup>

The practical impact of Internet shutdowns on civil

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378 UNDP Input.

379 See, e.g., Coming Out Input; Access Now Input; Middle East & North Africa Consultation; Central & Eastern Europe Consultation.

380 C&SN Input; Espacio Público Input; Access Now Input; Adalah (Israel) Input; EMR, CIHRS CFJ EFHR Input; NUPL Input.

381 See, e.g., Asia & the Pacific Input (Hong Kong, Myanmar, Indonesia; Singapore, Philippines, Vietnam, Thailand); Justice for All Input; MENA Rights Input

382 See, e.g., Asia & the Pacific Input (Thailand).

383 UNDP Input; ODIHR Input.

384 A/HRC/39/29, para 6.

385 CCPR/C/COL/CO/7 (Colombia), para. 32; European Court of Human Rights has also recognized that publicly available information may well fall within the scope of the right to privacy, especially when novel collection methods allow for the collation of a profile of an individual from disparate public sources, whereas each individual source of public information would not provide intrusive details. *Rotaru v Romania*, [43]; and *Vukota-Bojic v Switzerland*, [55].

386 A/HRC/43/46/Add.1 para. 27 (Kazakhstan).

387 A/HRC/RES/47/16; A/66/290, para. 12; A/HRC/50/55, paras. 7-14 (citing right to freedom of expression, the right to education, freedom of association and assembly, and the right to participate in social, cultural and political life, right to health, and the right to work and economic development).

388 Access Now Database, "An Overview of Global Internet Shutdowns in 2022," Keep It On Database. Available from: <https://www.accessnow.org/keepiton>.

389 The use of Internet shutdowns during election periods apparently to stymie opposition political organizing has previously been identified by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'Freedom of Expression and Elections in the Digital Age,' Research Paper 1/2019 (June 2019).

# ISSUE IN FOCUS

## Proliferation of Drone Technology

The Black Hornet drone— which weighs less than 20 grams, fits in one hand, flies virtually silently, and was developed by Prox Dynamics of Norway—is now officially used by approximately 20 military forces, including the United States Marines, the British Army and the armed forces of Australia, France, Germany, South Africa, Turkey and others. Current models can be equipped with cameras for motion and still images, with a 1.6 km range. Thousands of these micro-drones have been deployed by military forces in the past five years.

Source: See, FLIR Wins Additional \$15.4M Contract for Black Hornet Nano-UAV Systems for U.S. Army Soldier Borne Sensor Program, press release, 4 May 2021; FLIR Systems Awarded \$89 Million Contract from French Armed Forces to Deliver Black Hornet Personal Reconnaissance System, press release, 18 January 2019; Government of Norway, Norwegian-developed drone to Ukraine, press release, 24 August 2022.

society especially given the role civil society organizations play in the expression and protection of human rights is catastrophic. As the Office of the UN High Commissioner for Human Rights May 2022 Report on internet shutdowns recorded, shutdowns have disrupted essential and emergency services in the health, education, and social assistance sectors,<sup>390</sup> with particularly acute effects for vulnerable or remote communities disproportionately reliant upon online access to services. The economic impact is also catastrophic: the World Bank recently calculated that Internet shutdowns in Myanmar alone during 2021 cost that country's economy nearly \$2.8 billion.<sup>391</sup> Internet shutdowns also di-

rectly interfere with civil society organizations' primary channels of fundraising,<sup>392</sup> communication between staff, and dissemination of information to news outlets and the general public.<sup>393</sup>

## Biometrics and Facial Recognition Technology

Biometric surveillance technologies comprise a suite of tools including facial and gait recognition cameras and software which capture facial and/or movement characteristics, allowing for profiling of individuals on the basis of ethnicity, race, gender, and other apparent features, or even identify-

390 A/HRC/50/55, paras. 35-39.

391 World Bank Group, Myanmar Economic Monitor: Contending with Constraints, Special Focus: Digital Disruptions and Economic Impacts (2022).

392 See, EMR, CIHRS, CFJ, EFHR Input.

393 Coming Out Input.

ing specific individuals. Recognition technology is widely used to deal rapidly with large volumes of video footage and digital photographs, allowing users (typically law enforcement or security agencies) to process data efficiently and allocate resources away from initial identification. These systems have been controversially used for the profiling of persons as potential terrorist or extremist threats—using artificial intelligence algorithms which seek to predict individual behavior on the basis of datasets of previous behavior throughout the population. In addition, facial and gait recognition technologies are increasingly being integrated in counter-terrorism and P/CVE systems with artificial intelligence systems with the objective of identifying or inferring individual's intentions or emotions and, ultimately, predicting (and preventing) likely future conduct. Such recognition technologies are believed to have been used domestically in at least 64 countries,<sup>394</sup> and are particularly widespread in the United States,<sup>395</sup> United Kingdom,<sup>396</sup> and China.<sup>397</sup>

Biometric monitoring tools raise significant human rights concerns. A system which necessarily requires the harvesting of biometric data from a large crowd without any discrimination between potential persons of interest and those raising no law enforcement interest inevitably casts its net too widely. As the High Commissioner for Human Rights has recommended, States should “[r]efrain from recording footage of assembly participants, unless

there are concrete indications that participants are engaging in, or will engage in, serious criminal activity, and such recording is provided by law, with the necessary robust safeguards.”<sup>398</sup> Disproportionate use of biometric monitoring has an inevitable chilling effect by which the fear of intrusive monitoring disincentivizes participation in civic events, thus depopulating the public spaces that are the crucial tool of assembly, communications, protest movements, and democratic exchange.<sup>399</sup> That concern is particularly keenly felt by persons who already perceive themselves as targeted by State authority, including members of religious or ethnic minorities.<sup>400</sup>

## Drones

The application of drones for counter-terrorism purposes also poses substantial risks for civil society. Drone technology is proliferating at a remarkable speed and has followed the same well-worn path from battlefield to the home front, which has been observed in policing tactics and weaponry generally. This move from use justified in the context of conflict and counter-terrorism to ‘regular’ homeland use tracks a consistent pattern where the exceptionality of counter-terrorism consistently moves to the local, domestic, and ‘regular’ legal system.

Particularly following the adoption in 2016 by the

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394 Steven Feldstein, *The Global Expansion of AI Surveillance*, Carnegie Endowment for International Peace Working Paper (September 2019); see also, e.g., *Asia & the Pacific Consultation* (Vietnam); *Central & Eastern Europe Consultation* (Hungary, Serbia). IRL 3/2022; OTH 229/2021 (European Union legislation: “A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond” and the Proposal for Amending Regulation (EU) 2016/794” on the use of artificial intelligence). Dr. Krisztina Huszti-Orbán and Fionnuala Ní Aoláin, *Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?* (Report prepared under the aegis of the Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism).

395 Police departments and defence agencies have all used the Clearview AI tool – a system which matches faces to a database of more than three billion images harvested from the Internet, including from social media platforms. See Katie Canales, ‘Thousands of US Police Officers and Public Servants have Reportedly Used Clearview’s Controversial Facial Recognition Tech Without Approval,’ *Business Insider* (6 April 2021).

396 As demonstrated in the first legal challenge to police facial recognition technology, police forces in the UK have deployed automated systems in crowd settings pursuant to ongoing trials since 2017. See *The Queen (on the application of Bridges) v Chief Constable of South Wales Police and ors* (2020) 1 WLR 5037 (CA).

397 More than 100 cities operate such systems, and the central government is reported to be constructing the world’s largest facial recognition database. See Jeffrey Ding, *Deciphering China’s AI Dream*, Centre for the Governance of AI, Future Humanity Institute, University of Oxford (March 2018); CHN 18/2019 (collection of biometric data); CHN 14/2020.

398 A/HRC/44/24, para. 53(i).

399 Privacy International Input, referring to a forthcoming report from ECNL.

400 A/HRC/32/38, para. 57; and A/HRC/29/32.

U.S. Federal Aviation Authority of a rule permitting deployment of drones within domestic civilian airspace,<sup>401</sup> the use of drones by domestic law enforcement, first in the United States and then globally, has rapidly expanded<sup>402</sup> (including under the guise of enforcing the travel restrictions responding to the spread of the Covid-19 pandemic).<sup>403</sup> Police forces in the United States,<sup>404</sup> United Kingdom<sup>405</sup> and Europe, China, India, Israel, the Gulf, South America, and Australia are using these technologies.<sup>406</sup>

As drone technology becomes more sophisticated, it is likely that operators will shift to micro- or nano-drones, with profound human rights consequences resulting from their easier deployment and intrusion.

The use of drones to surveil protests, and the unremarkable manner in which drone technology—once the exclusive preserve of covert battlefield operations—has, without proper regulation or scrutiny, become an everyday aspect of counter-terrorism and ordinary law enforcement tactics pose significant challenges for civil society operations. In addition to the obvious implications for privacy, freedom of assembly, freedom of expression and the like, the use of drones coupled with the coercive power of the police also risks violations of the prohibition on arbitrary detention, as well as the rights to liberty and security of the person, and the right to life.

## Recommendations

- Address the development, use, and transfer of new technology to surveil and by

doing so curb civil society participation in communication, public discourse, and the exercise of their full human rights, including the right to privacy.

- Commit to exercise legal powers governing the regulation or restriction of information online in line with existing international human rights standards (including shutting down the Internet or blocking access to certain websites), exercising those powers only as necessary as part of a proportionate, necessary and non-discriminatory response to empirically identified terror or security threats.
- Ensure that, in their development, use, and transfer of biometric technologies, including in the context of border management, they observe principles of legality, necessity, proportionality, and non-discrimination.
- Subject any proposed deployment of drones in domestic law enforcement contexts to close legal and judicial scrutiny to ensure that the adverse human rights implications of widespread drone surveillance do not become normalized.
- Address the disparate and discriminatory impacts, including along race, age, and gender lines of the development, use and transfer of technologies for counter-terrorism purposes.

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401 See, Federal Aviation Administration, Timeline of Drone Integration.

402 See, e.g., Asia & the Pacific Input (Singapore); PEF Input; Central & Eastern Europe Consultation (Albania, Cyprus, Hungary).

403 Privacy International Input, referring to the litigation brought by two French civil society organizations, La Quadrature du Net and La Ligue des Droits de l'Homme to block the use of drones to monitor Covid-19 regulation compliance in Paris.

404 According to research, more than a thousand police departments in the United States are currently using drone technology. See Electronic Frontier Foundation, Atlas of Surveillance Documenting Police Tech in Our Communities with Open Source Research, Reynolds School of Journalism at the University of Nevada.

405 At least 40 out of 43 police forces in the United Kingdom use drones. See: Chris Cole and Jonathan Cole, Benchmarking police use of drones in the UK, Drone Wars (2 November 2020). Not all forces publish details regarding their use of drones. Those which do include: West Midlands Police; Dorset Police; Lancashire Police; Sussex Police; and Kent Police.

406 Christof Heyns, Presentation made at the informal expert meeting organized by the States Parties to the Convention on Certain Conventional Weapons 13-16 May 2014, Geneva, Switzerland, 13 May 2014.



Photo: Ryan Brown, UN Women



# CHAPTER 4

## MEANINGFUL PARTICIPATION OF CIVIL SOCIETY

The trends of misuse identified throughout this Study cannot be fully addressed without documenting what each of these areas of misuse mean for the fundamental rights of civil society to full, equal, and meaningful participation in their society's decision-making and governance, including in counter-terrorism and national security.<sup>407</sup> The grave targeting, reprisal and misuse of counter-terrorism and P/CVE measures against civil society have resulted in devastating outcomes for civil society actors and human rights defenders around the world. The current level of threat is an unacceptable status quo, and an absolute barrier to any participation. The level of risk assumed by civil society, even for participating in UN events, would be an unacceptable risk for most international actors, yet civil society partners continue to show up, com-

mitted, and trusting that the dial will move. Notably, in the process of producing the Global Study, very few countries or regions could be identified that met human rights due diligence parameters, where civil society consultations could safely be held without bona fide fear of surveillance, reprisals, or harm coming to interlocutors.

The meaningful inclusion of civil society in counter-terrorism policy making, in the fora (both national and international) where counter-terrorism and security policy is advanced and implemented has both a pragmatic and principled legal basis. Pragmatically, there is a plethora of evidence that civil society plays a fundamental role in channeling discontent and allowing for constructive engagement with States on security and policy issues broadly

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<sup>407</sup> The full, equal, and meaningful participation of civil society corresponds to the specific obligation of Member States to enable participation in public affairs, and functions as a foundation to support the totality of human rights obligations being implemented by States, across civil and political rights and economic, social and cultural rights. UNDHR, art. 21; ICCPR, art. 25.

defined.<sup>408</sup> Moreover, civil society plays an essential role in undermining the factors leading individuals to be drawn to terrorism and violent extremism, and can be a bulwark against the conditions conducive to terrorism as identified by the United Nations Global Counter-Terrorism Strategy, and in the agenda of the United Nations on preventing and countering violent extremism. Where civil society actors are present in areas where the State is unable or unwilling to govern, they often play an intermediary role, owing to their credibility and access to remote communities. In this regard, they are a knowledge source and intermediary to communities who may be the subject of counter-terrorism measures but whose engagement can end cycles of violence in fraught country settings.

## Part 1: Civil Society Speaks

### *Barriers to “Meaningful” Participation*

Civil society are documenting barriers from the ground up, including grave threats to their lives and safety, which function as complete barriers to their meaningful participation. For the purposes of the Study, discussions of meaningful participation refer to the extent to which civil society are able to engage at all levels, their safety, the extent to which their expertise is included/valued/implemented, and the ability to drive agendas from the ground up. Such references do not diminish the depth and scope of work that civil society contributes to amidst such threats to foster peaceful, inclusive, and just societies.<sup>409</sup> As noted by civil society throughout consultations and inputs, full, equal and

meaningful participation cannot take place at any level without commitment to fostering a diversity of voices, human rights due diligence safeguards, commitment to the safety and rights of civil, and protection against reprisal and adequate remedy and reparation if a reprisal occurs.<sup>410</sup>

The Study further reinforces findings from the UN, civil society, and others on the scope of issues affecting civil society and their organizations’ meaningful participation, including lack of funding, increased demand from donors regarding counter-terrorism financing requirements, outsourced risk related to conflict/terrorism, disinterest from donors to engage on local terms or through local priorities, and top-down and technocratic/hegemonic approaches to broad categories of challenges rather than context-specific and tailored responses.<sup>411</sup> Pre-existing discriminatory laws, norms, and practices as described earlier in this Study also contribute to the inadequate situation of participation.<sup>412</sup>

*“Participation comes at a cost to civil society. For advocates like me that come from countries designated as ‘third countries,’ the cost of participation is even higher.”*

**Civil Society Representative**, UN High-Level International Conference on Human Rights, Civil Society and Counter-Terrorism

Beyond these challenges, civil society is also faced

408 A/HRC/40/52, para. 12.

409 See, e.g., ISAR Edannia Input.

410 See e.g., C&SN Input.

411 See, e.g., A/HRC/51/47; UN Women, Outcome Report: Global Digital Consultation (2020), Civil Society Workshop Outcome Document, adopted in Malaga, Spain (2022); A/75/729, S/2019/800.

412 See also the findings of the UN Secretary-General on women’s meaningful participation in peace and security, which found the following challenges: “institutionalized gender bias and discrimination, continued and high prevalence of sexual and gender-based violence, lack of economic, social and cultural rights for women, low levels of political participation of women prior to conflict, and the continuing levels of poverty, food insecurity, disparity and deprivation experienced by women and girls;” Central & Eastern Europe Consultation; Latin America & the Caribbean Consultation (Barbados, noting the historically positive relationship with civil society and potential threat of increased counter-terrorism regulation).

# IN THEIR OWN WORDS

The Global Study heard from civil society actors around the world, each of whom have a clear view of how to action and improve the meaningful participation of civil society in the field of counter-terrorism and P/CVE. Their responses were tied to the pre-requisites of reckoning with long-term misuse, including discriminatory legacies, of counter-terrorism and P/CVE measures, and basic safeguards to promote and protect the rights of civil society to express their views, carry out basic service delivery, and advocate in line with their missions. The answers civil society provided largely did not differ from standards set by the UN, including as found in UN Guidance on Engagement with Civil Society, or expert reports such as UN Women’s Report on the Meaningful Participation of Women. However, in the field of counter-terrorism and P/CVE, these standards are unobserved, demonstrably absent, and or regarded with disdain or insignificance. Noticeably, civil society recognize the continued political ability of States to operate without sanction or admonishment for misuse in this field, even at the highest levels. The below quotes provide a snapshot of what meaningful participation means to civil society in the field of counter-terrorism:

*“A society where some citizens are not left behind, but able to trust their government and are willing to be active in governance to drive the social change in their communities the way they want to see it.”* – **Civil Society Survey Respondent**

*“That anyone can participate on their own terms and that those who provide evidence are not smeared or targeted as a result.”* – **Civil Society Survey Respondent**

*“Any meaningful engagement would need to start from a position of the government acknowledging the fundamentally discriminatory approach to counter-terrorism that has existed.”* – **Civil Society Survey Respondent**

*“Meaningful participation includes other subjective elements such as agency, responsibilities, decision-making, agenda- and standard-setting, narrative-framing, access to power and institutions, attitudes, beliefs, and so forth.”* – **Civil Society Survey Respondent**

*“It would involve engaging with the public and impacted communities prior to establishing new counter-terrorism activities, policies or laws, and take their concerns into consideration when drafting legislation or developing policies and programs. Meaningful consultation would also need to be based on a human rights-centered approach, and not solely based on the idea of “national security.” It would also need to take a holistic view to reducing violence that goes beyond state security and looks at approaches that address root causes of violence and division.”* – **Civil Society Survey Respondent**

*“For consultation to be meaningful, it would also need to be followed-up with clear and transparent reporting on the outcome of the consultations, and how it was integrated into any government action.”* – **Civil Society Survey Respondent**

with complex dynamics in their engagement with security actors. Security arenas, from intelligence services to interior ministries, are often places

where civil society are not welcome. Notably civil society organizations closely aligned with government are included at the exclusion of diverse and critical voices.<sup>413</sup> When invited to security arenas, international and domestic counter-terrorism actors generally start from the premise that the meaningful participation of civil society is “given” to civil society at the sole discretion of governments and can be accomplished by simply increasing the numbers of civil society participants.<sup>414</sup> Governments, and sometimes the UN, view participation in many security contexts as primarily a cumbersome and unwelcome ‘box-ticking’ exercise. In contexts where there is some tolerance, the Study finds increases in the frequency of presence,<sup>415</sup> although civil society are often distanced or segregated from other mainstream forms of participation, including through limited physical access to events and content, denial of participation due to lack of visa or time to process visas, physical signifiers (i.e., badges that connote affiliation/level of access) as secondary in status and inclusion, degrading experiences with security sector actors during travel, as well as through a lack of information, and last minute invitations.

At the national level there are no quick fixes to ‘meaningful participation.’<sup>416</sup> Trust must be built. The minimum requirements of trust involve addressing

human rights violations of the past by the security sector, promoting security sector reform,<sup>417</sup> and making concrete commitments to abide by human rights compliant practices in the future.<sup>418</sup> In order to meaningfully include civil society in the work of collective security, civil society must be safe. Positive examples were identified in countries where civil society had access to independent re

course, such as through an independent and strong national human rights institution or the function of an ombudsperson’s office.<sup>419</sup> Member States cannot on the one hand endorse civil society inclusion in international fora, and kill, injure, disappear, arbitrarily detain, and sanction civil society actors at home. Trust building is slow, requires confidence building-measures, must be sustained by concrete action, and consistency. Figure 1 provides a snapshot of the types of elements required to make meaningful participation a reality as developed by women’s civil society, international experts, and academics with UN Women in 2018.

“Ignoring or underplaying the vital contribution of human rights defenders increases the risks to them and their work.”

**Mary Lawlor**, UN Special Rapporteur on the situation of human rights defenders, 52nd Session of the Human Rights Council

413 Confidential Input (global); Highlighting concerns about civil society organizations who present as independent of government but that rely heavily on government funding and political largesse to conduct their work.

414 Confidential Input (global).

415 See, e.g., Report of the Secretary-General on the Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy (A/77/718), citing the Civil Society Workshop Outcome Document, adopted in Malaga, Spain (2022).

416 A meaningful example of civil society engagement in security planning and assessment is the role that victims of terrorism organizations play in France to assess the effectiveness of counter-terrorism responses for victims after an attack has occurred.

417 UN Peacekeeping, Security Sector Reform.

418 For a positive example of this kind of transformative change in the security sector noting the work engaged by the Police Service of Northern Ireland. See, Patton Commission Report, A New Beginning for Policing in Northern Ireland (1999).

419 See e.g., West, East, and Central Africa Consultation (Kenya, citing examples of findings in affirming reported violations under the guise of counter-terrorism by the National Commission on Human Rights in Kenya).

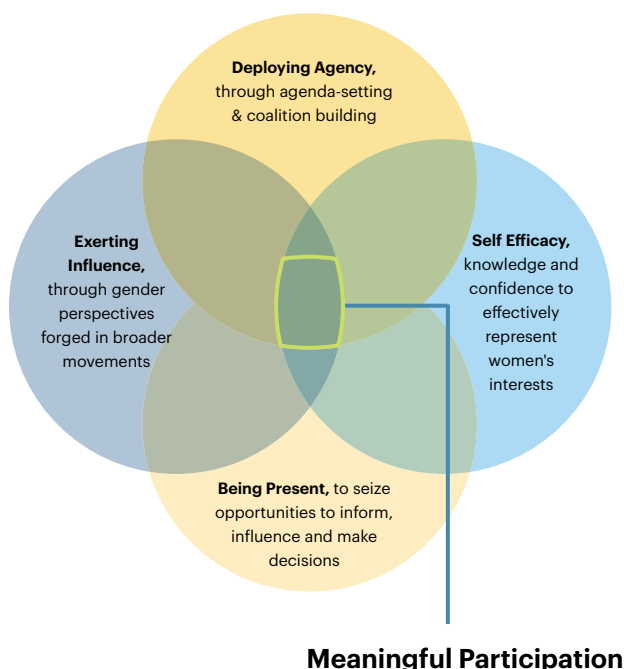
## Recommendations

Undertake trust and confidence building measures to address the impact of counter-terrorism and P/CVE measures on civil society to date, including reckoning with legacies of discriminatory misuse against particular groups as noted throughout this study.

- Ensure meaningful access to protection under the law, including through national, regional, and international protection mechanisms for civil society. These are pre-requisites to demonstrating good faith efforts to ensure engagement with the UN, regional bodies, and national governments is safe.
- Bring civil society into all relevant security and counter-terrorism processes from inception. The consistent practice of ticking the box for civil society participation rather than consulting with civil society as valued stakeholders and experts in their own right intentionally safeguards business as usual and prevents institutions from addressing the issues at the core of civil society priorities.
- Reflective exercises should be undertaken by Member States, civil society, and all stakeholders to action the above elements of “meaningful participation,” establishing required processes that facilitate the exertion of influence, the deployment of agency, self-efficacy, and the ability to influence and inform decision-making as developed by UN Women’s exercise related to women’s meaningful participation (Figure 1: UN Women).
- Reorient of policies and practices that ask how to bring counter-terrorism into compliance with human rights, peacebuilding, gender equality and other rights-based agendas, and instead center the alter priorities, moving away from militarized and securitized approaches to addressing societal violence.
- Scale up finding at all levels, from Member State donors to UN-country or thematic pools

to prioritize the funding of civil society and enable work to be designed, implemented and sustained at a local level. This includes addressing the deep discrepancies between funding flows to women-led civil society organizations and addressing the barriers to successful and prioritized resourcing of flexible funding.

**Figure 1. Elements of Meaningful Participation in Peace and Security Process (UN Women)**



## Part 2: Global Counter-Terrorism Architecture

The stark reality is that civil society has been showing up, to the UN—specifically its counter-terrorism bodies—to testify on counter-terrorism misuse for decades. They have reported the pressures, the direct violations, as well as solutions to addressing security challenges in line with human rights; pressing the value of promoting and protecting of civic space. Over ten years ago, for example, civil society presented to the Counter-Terrorism Committee. One participant noted that, ***“The toll they (civil society) pay is high, too high. They are liter-***

***ally sandwiched between the fire from below, the fire caused by violent extremists and the heat from above – these are counter-terrorism measures that cause more damage than they do good.***<sup>420</sup> These same remarks could very well be made today. And while there is often some valuable recognition, particularly within international fora, as to the broader value that civil society brings in addressing a range of social, economic, and political challenges – civil society often state that they do not want or need affirmation, and instead demand action. They are tired of supplication and instead reasonably require transformative change to the status quo.

While some areas of the UN system are further advanced in engaging civil society (such as UN Women whose mandate directly responds to feminist movements of civil society within the UN system),<sup>421</sup> counter-terrorism arenas at the UN have historically been closed and inaccessible to civil society. The Study takes positive note that there are some good examples of positive, model practice for meaningful participation in the UN system for counter-terrorism entities to draw,<sup>422</sup> but that improving civil society's meaningful participation is a task across the UN system.<sup>423</sup> In the counter-terrorism arena, the results are also mixed and lag significantly behind other areas of the UN, particularly given the lessons available and learned through the work of other UN entities, and the stated prioritization of the UN Secretary-General's Office on promoting civic space. One positive example includes the formal recognition in the UN Global Counter-Terrorism Strategy of the value of civil society engagement.<sup>424</sup> Notably, while a number of quarterly briefings to UN Member States from the UN Counter-Terrorism Coordination Compact have featured some civil society speakers,

civil society briefers to the UN Security Council, including women briefers, continue to face reprisal and threat from Member States. Some first steps have also been taken in counter-terrorism events and programmes. This includes for example, the World Congress for Victims of Terrorism in September 2022, which included diverse representatives from victims' communities and associations, as well as other civil society. In addition, donors have started investing in further efforts to address measures to increase human rights compliant counter-terrorism and civil society participation. For example, the Global Center for Cooperative Security and Rights and Security International are conducting an exploratory assessment of measures to increase civil society's meaningful participation in counter-terrorism and P/CVE at the United Nation supported by the Governments of the Netherlands, Germany, and the United Kingdom. In addition, OHCHR has is currently development tools for Member States through its project on 'model national human rights based counter-terrorism responses,' which may offer useful guidance on ensuring early and meaningful engagement of civil society and national human rights institutions in the development of counter-terrorism strategies. These are all positive developments, however greater ambition, consistency, and reorientation is needed to foster a meaningful and participatory space for civil society's engagement and to demonstrate that the UN is leading by example on civil society inclusion and participation.

The documented lag within the UN's counter-terrorism work can be highlighted through a juxtaposition of the UN's counter-terrorism work and its commitment and work on women, peace, and security. Addressing the core features of the women, peace,

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420 10th Anniversary of the adoption of UN Security Council resolution 1373, UN Security Council Counter-Terrorism Committee.

421 The advocacy aims of the women, peace and security agenda to demilitarize and de-securitize responses to conflict and violence form the basis of UN Women's advance understanding of prioritization of civil society and their meaningful participation.

422 The methodology of the Global Digital Consultation organized by UN Women provides one such example. See also, UNODC Inputs; UNDP Input; PBC/1/OC/12 (Provisional guidelines for the participation of civil society in meetings of the Peacebuilding Commission, submitted by the Chairperson on the basis of informal consultations); UN Community Engagement Guidelines on Peacebuilding and Sustaining Peace (2020); and the UN Guidance Note on the Protection and Promotion of Civic Space (2021).

423 See e.g., A/75/19, para. 144 on improving peacekeeping operations engagement with civil society in the context of protection of civilian mandates, for example.

424 A/RES/75/291.

and security agenda in counter-terrorism – towards de-militarization, de-securitization – remains entirely unaddressed by Member States, UN bodies, such as the Security Council and the General Assembly, as well as UN counter-terrorism entities. While attention to the intersections of counter-terrorism and women, peace, and security have increasingly been referred to in the work conducted by the UN’s counter-terrorism entities, this increased focus is often limited to integration of gender analysis detached from the critical roots of the agenda, which fundamentally challenge securitized responses to conflict and violence and elevate the voices of civil society, and risks instrumentalizing the agenda. UN Women’s increased documentation and stalwart work as the normative lead on women, peace, and security was observed as a positive safeguard in the UN system in need of increased support. These same dynamics and needs were observed as applied to mainstreaming of human rights in counter-terrorism and P/CVE and the important normative work of OHCHR.

The Study received numerous inputs which highlighted frustration with a lack of consistent, timely, and meaningful engagement with the UN Security Council (specifically the Counter-Terrorism Committee), as well as the special political mission of the UN Counter-Terrorism Executive Directorate and the UN Office of Counter-Terrorism.<sup>425</sup> It is essential that the UN Security Council take consistent action when it comes to the meaningful participation of civil society and their protection, yet it remains unclear how the continued, closed nature of the Council and its subsidiary mechanism of the Counter-Terrorism Committee is justified or in line with any possibilities for meaningful participation. For example, the first open debate within the UN Security Council on reprisals against women in the context of peace and security processes took place only in 2022.<sup>426</sup> The Council must provide consis-

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425 Global Study Regional Consultation Outcome Documents; C&SN Input; Confidential Input;

426 Megan L. Manion, Fionnuala Ní Aoláin, *Connecting the Dots: The Surge in Reprisals Against Women and the Rise of Counterter-*

“**MORE THAN EVER,  
THIS ISSUE SHOULD  
BE A PRIORITY  
AND A CORE  
RESPONSIBILITY OF  
THE ORGANIZATION.**”

I reiterate my call on all United Nations entities to be vigilant and engaged on this issue.”

**António Guterres**, Secretary-General of the United Nations, A/HRC/42/30, para. 93 (on reprisal)

tent, transparent, and representative opportunities for civil society to brief, engage, and dialogue. **The Security Council (including the Counter-Terrorism Committee), as a prerequisite to the meaningful participation of civil society in counter-terrorism and P/CVE, must substantively address the misuse of counter-terrorism measures as a grave risk to peace and security as such.** While the UN has robust procedures and policies on reprisals, including an Assistant Secretary-General level focal point within the system on acts of reprisal and intimidation, further systematized and dedicated approaches are necessary to capture the level of State targeting of civil society under the guise of counter-terrorism and P/CVE at the national level.

The UN and, particularly its counter-terrorism entities, must address that the realities for civil society on the ground impact the long-term credibility and partnership of the UN with civil society partners, which are central and essential to the work the UN undertakes. The chilling effects of the misuse of counter-terrorism and P/CVE mechanisms impact the ability of civil society to engage with the UN and their perception of the trustworthiness of the UN. Civil society has reported self-censorship and reduced engagement the UN to safeguard themselves and their organizations.<sup>427</sup>

The lack of human rights due diligence standards, or evidence of applied compliance with existing UN standards and guidelines on such due diligence is a reality that civil society is closely attuned to, particularly for the UNOCT as an increasingly programmatic entity at the country level, as well as UN members of the UN Global Counter-Terrorism Coordination Compact. While the UNCTED has increased its engagement with civil society since its establishment, including through country-visit discussions and addition to thematic meetings, civil society identified other challenges in the

implementation of the UNCTED's mandate, including continued lack of advance notification of country assessment in line with its revised mandate, as well as in the lack of transparency with how country assessments methodical integrate assessment of the impact of counter-terrorism measures on civil society and civic space.<sup>428</sup> Overall, the lack of transparency of the CTC's country assessments (the continued choice of assessed Member States) presents a great challenge to CTED's ability to meaningfully engage with civil society and undermines civil society's trust and faith in the capacity of the CTC to deliver inclusive security and counter-terrorism prevention that is human rights and international law compliant.

**For all UN counter-terrorism entities, the challenges are beyond the requirements of sustained trust building, communication, and consistency of interface with diverse civil society. A fundamental rethinking is required of what long-term peace and security objectives remain in the context of today's reality of counter-terrorism misuse and what UN support to States can remain against that backdrop.** A new level of political will is necessary to critically assess human rights due diligence factors that necessitate the withholding of particular forms of technical support and capacity building. If the UN counter-terrorism architecture is unable to model good practice in relation to civil society inclusion it will be hard to persuade Member States to do the same.

Outside of the UN, there are further examples, such as in the Financial Action Task Force's engagement with the Global NPO Coalition on FATF and its private sector consultative forum, as well as by the European Union in its formal process to adduce civil society input to legislative enactments and policy.<sup>429</sup> Given increasing regionalization of counter-terrorism approaches, regional organizations

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rorism, Just Security (2022).

427 FLD Input.

428 S/RES/2617 (2021), para. 12; C&SN Input.

429 Global NPO Coalition on FATF (Financial Action Task Force); European Citizens' Initiative.



are also playing an increased role that may change the role or influence of the UN in ensuring human rights based approaches to counter-terrorism are taking place, including through new venues where monitoring the implementation of treaty obligations must be observed.<sup>430</sup> Such mechanisms as the AICHR, which is also made up of government appointees, do not yet address human rights violations stemming from the misuse of counter-terrorism measures.<sup>431</sup> Because of these factors, the meaningful participation of civil society is limited across thematic issues, including women's rights, children, migrants, disability rights, some reported limitations on the freedom of civil society's open expression of views and challenges, particularly on issues of security.<sup>432</sup>

## Recommendations

- Address the double standards and lack of prioritization of concrete commitments to diverse civil society voices across the UN agendas, including within the UN Security Council and its subsidiary organs and the UN. The segregation of agendas allows Member States to safeguard hard security spaces from essential civil society voices, while proclaiming commitments to inclusivity, human rights, and rule of law in others.
- The Security Council (including the CTC), as a prerequisite to the meaningful participation of civil society in counter-terrorism and P/CVE, must substantively address the misuse of counter-terrorism measures as a grave risk to peace and security as such. The rhetoric of States on the protection of civil society and civic space, including their meaningful participation, will not be taken seriously until these items are regularly addressed on the agenda of the UN Security Council and its relevant sub-

sidary bodies.

- For all UN counter-terrorism entities, given continued misuse by States, a fundamental rethinking is required of what long-term peace and security objectives remain from a policy and programmatic perspective to prevent and counter-terrorism, including what measures of UN support to States can remain against the backdrop of misuse of counter-terrorism and P/CVE.
- Engage civil society across all thematic and country-specific UN Security Council meetings and meetings of counter-terrorism subsidiary bodies. The UN cannot address the challenges of peace and security without diversifying its perspectives to include civil society representatives.
- Establish standard compliance models for human rights due diligence developed through and consultative processes with civil society, within the UNOCT, CTED, UNODC, and all other UN entities providing capacity building and technical assistance to Member States on counter-terrorism and P/CVE.
- Build transparent practices of making internal strategies for compliance with standard UN policies and guidelines, such as the UN Guidance Note on the Protection and Promotion of Civic Space, and the UN Human Rights Due Diligence Policy.

## Part 3: The Role of United Nations Human Rights Mechanisms

As noted above, civil society has played a remarkable role in identifying and advancing their mean-

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430 See, e.g., Asia & the Pacific Consultation (discussing ASEAN).

431 See, e.g., Asia & the Pacific Consultation (discussing ASEAN and the AICHR).

432 See e.g., Asia & the Pacific Consultation.

ingful participation at all levels of society, including the local, national, regional and international levels. Civil society are relied upon partners to the UN human rights mechanisms in the UN system who are accountable to those who seek redress for human rights violations through their processes. Human rights mechanisms in the UN system, specifically Human Rights Treaty Bodies (HRTBs) and Special Procedures (SPB) have played a significant role through this partnership with civil society in addressing the use and misuse of counter-terrorism (CT) and P/CVE measures to target civil society over the last several decades. Amidst the growth of UN counter-terrorism architecture in New York since 2001,<sup>433</sup> including in providing technical assistance and capacity building to Member States, the UN’s human rights machinery has been engaging in a range of activities that have increasingly monitored State responses to terrorism and violent extremism as it impacts civil society.<sup>434</sup>

### **Treaty Body Concerns Regarding the Impact of Measures to Address Terrorism and Violent Extremism on Civic space**

The Global Study has documented that HRTB concerns and recommendations relating to the use of CT and P/CVE Measures targeting civic space has increased over time, particularly since 2015<sup>435</sup> Following the terrorist attacks of September 11, 2001, as expansive CT measures (CTMs) increased, the UN human rights mechanisms began to address ways in which these measures conflicted with human rights standards, particularly in their application to

**Table 2. Types of CT and CVE measures coded from treaty body concerns**

- Definition of terrorism and/or extremism
- Security legislation restricting fundamental freedoms
- Regulations on registration or operation of CSOs
- Measures limiting forms of “support to terrorism”
- Indiscriminate or overbroad security legislation
- Application or use of security legislation
- Administrative measures lacking judicial oversight & remedies
- Travel bans
- Revocation of citizenship
- Expulsion or deportation
- Media censorship
- Physical & verbal harassment or persecution
- States of emergency and/or derogations
- Application of the death penalty for terrorist offenses
- Surveillance
- Use of private security forces
- Repatriation of children of nationals from conflict zones

433 A/76/261.

434 In preparation of the Global Study, the mandate undertook original research to address the previous lack a comprehensive overview of the ways various UN Human Rights and Treaty Body mechanisms have addressed or have failed to address the misuse of these measures. See, The Role of United Nations Human Rights Treaty Bodies in Addressing the Misuse of Counter-Terrorism and Preventing/Countering Violent Extremism Measures on Civil Society & Civic Space; The Role of the Special Procedures of the UN Human Rights Council in Addressing the Misuse of Counter-Terrorism and Preventing & Countering Violent Extremism Measures; Forthcoming United Nations Treaty Body database of individual communications decisions across all 9 core treaty bodies and 861 States Party reviews and Concluding Observations from three treaty bodies (Human Rights Committee, Committee Against Torture, and the Committee on the Elimination of Discrimination against Women).

435 Figures 1-3. The years 2020 and 2021 represent outliers, due to the impact of the COVID-19 pandemic on the number of reviews conducted by HRTBs generally.

alleged terrorist groups. While these concerns were expressed generally, during the mid-2010s HRTBs began to turn their attention to the increasingly extensive use of security measures directed at civil society actors documenting a range of harms.<sup>436</sup> Over the past decade, the committees have begun to explicitly voice discomfort with either the ongoing use of extreme security measures or the ways in which rights restrictions for security purposes have begun to impinge on social and political life as well as civic space. Even in cases where security measures or prescribed powers have not been used or have been used only rarely as a last resort, the committees remain concerned “that there is a risk that such emergency [CT] measures could, over time, become the norm rather than the exception.”<sup>437</sup>

Figures 4-6 display the number of concerns each HRTB raised regarding distinct types of measures or practices. As noted previously, to address the fact that several concerns relate to measures and practices for which the committee does not explicitly indicate operating within the context of countering terrorism or preventing violent extremism, they were further disaggregated into one of three categories. The “CTMs x Civil Society” category<sup>438</sup> represents the number of times a treaty body explicitly referenced the use of security measures, P/CVE measures, or CTMs to target civil society. The “other areas” category includes concerns about: (a) the use of security measures generally that may violate Convention rights but with no explicit reference to their use against civil society actors; or (b) rights abuses that directly target civil society without the treaty body explicitly referencing a specific security or P/CVE measure.

Given the human rights remit of the HRC, it has understandably addressed a broader range of mea-

asures than the CAT and CEDAW. All three committees, however, frequently address verbal and physical harassment, intimidation, and persecution, with CEDAW focusing predominantly on gender-based violence and harassment. Aside from harassment, HRC and CAT have raised more concerns in relation to security legislation that is indiscriminate, overbroad, or that violates Convention rights compared to other types of measures, while the HRC has also addressed the arbitrary application of security legislation more frequently than CAT. For both committees, half of all these concerns relate explicitly to the targeting of civic space. In contrast, given its mandate, CEDAW rarely addresses general security or CT laws per se, apart from legislation that regulates the existence and operation of civil society organizations, in particular women’s rights organizations.

The UN Human Rights Treaty Body system has documented trends widely across the areas of misuse documented throughout this report.<sup>439</sup> While the treaty bodies did not begin until recently to systematically address and explicitly call out the effects that continued efforts to counter terrorism and new measures to prevent and counter violent extremism have had on civic space, it is clear that their increased documentation runs counter to the trends of increased UN support to government-led action in this field. The HRC has thus taken a welcome lead in increasingly raising concerns about these trends and identifying such trends in granular and specific ways. The Study generally finds that the lack of integration of these trends in the risk and human rights analyses of the UN’s counter-terrorism architectures continues to be rooted in a lack of political will to address these challenges in the UN Security Council and General Assembly, noting however, the positive call for such integration included in the 7th Review

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436 Documented within the Special Rapporteur’s 2020 Report, Human rights impact of policies and practices aimed at preventing and countering violent extremism (A/HRC/43/46). (Further, the Secretary General’s Plan of Action to Prevent Violent Extremism was not published until 2015 (A/70/67), after which governments began to enact national measures to counter and prevent violent extremism and the term acquired greater currency within the work of UN Human Rights Mechanisms)

437 CCPR/C/AUS/CO/6 (2017), para. 15.

438 Shaded light blue in Figures 4-6.

439 The full data set of HRTB recommendations and findings are available in the research prepared to inform the Global Study.

of the Global Counter-Terrorism Strategy. The Study further finds that increased documentation under the CAT and CEDAW would further advance the objectives of promoting and protecting civil society and civic space in these areas. In addition to the HRTBs, SPBs have also been taking an active role in calling attention to how proposed or enacted security legislation and other measures to counter terrorism and violent extremism may impact civil society in ways that run counter to international human rights standards. **Nearly one hundred of the communications analyzed for this Study contain detailed and nuanced analyses of provisions within national security, emergency, CT, P/CVE, immigration, and cybersecurity laws as well as measures regulating the existence and operation of civil society organizations.** Special Procedure mandate holders use these communications to encourage review and reconsideration of key aspects of a measure such that security legislation is brought into compliance with international human rights obligations, as well as to provide practical guidance to Member States on how to meet their international law obligations.

These communications frequently address one or more definitions (or lack thereof) for key terms or activities within security legislation, inter alia: “national security,”<sup>440</sup> “religiously motivated extremist association,”<sup>441</sup> “terrorist result,” “opposing the State” or “non-allegiance to its leadership,”<sup>442</sup> “promoting terrorism,”<sup>443</sup> “widespread terror through political

extremism,” and “serious social disturbance.”<sup>444</sup> Special Procedure mandate holders have noted that broad, vague, or subjective concepts and terminology may create ambiguity as to what the State deems a prohibited offence and be used to unlawfully restrict human rights.<sup>445</sup> Failure to use precise and unambiguous language in relation to terrorist or security offences may fundamentally affect the protection of several fundamental rights and freedoms.<sup>446</sup> The trends and misuse track alongside the challenges identified by HRTBs above, including addressing a ‘permanent state of emergency,’<sup>447</sup> measures regulating support for terrorism, cautioning States to avoid overly broad material support to terrorism or indirect support to terrorism provisions, that may “capture a range of legitimate activities and that would restrict the work of civil society, lawyers, journalist, and human rights defenders in particular;”<sup>448</sup> the use of legislation to create unnecessary burdens, restrict financing, introduce bureaucratic hurdles, and even shut down CSOs “has the effect of limiting, restricting and controlling civil society;”<sup>449</sup> expansive security surveillance powers which “creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders;”<sup>450</sup> and in regards to P/CVE, assess that employing the term ‘extremism’ as a criminal legal category is “irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights,” particu-

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440 AUS 2/2018.

441 AUT 2/2021.

442 ARE 6/2020

443 CAN 1/2015

444 BRA 8/2015

445 See, e.g., BRA 8/2015; CMR 2/2014, p. 2.

446 See, e.g., ARE 6/2020; DNK 3/2021.

447 FRA 2/2020, p. 4 (“De plus, l’importation dans le droit pénal de mesures exceptionnelles qui figuraient auparavant dans une loi d’urgence conduit à une normalisation et à une pérennisation de l’urgence, pouvant conduire à un « état d’urgence permanent »”).

448 NZL 1/2021, pp. 4-5; ZMB 1/2021, p. 4 (noting that overly broad material support to terrorism provisions “may encompass a range of activities that cannot be reasonably or fairly described as terrorist in nature or intent, i.e., “preparation of documents and information and providing technical, counselling or professional support.”).

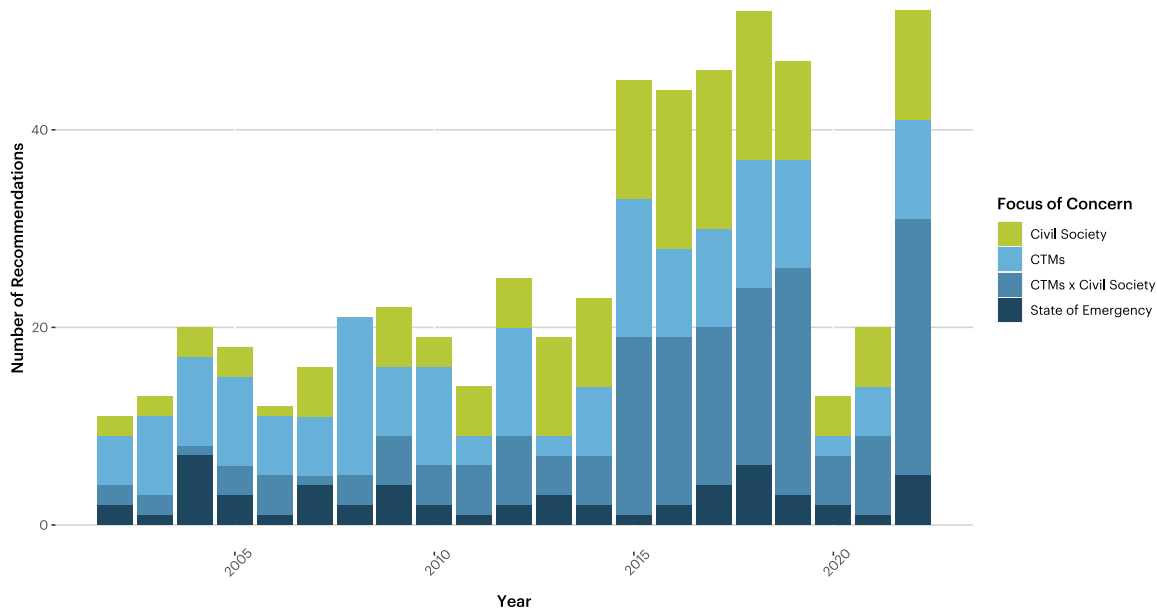
449 Ibid, pp. 6-7.

450 A/HRC/41/35, para. 26.

larly when it “is deployed, not part of a strategy to counter violent extremism, but as an offence in itself.”<sup>451</sup>

As it relates to recommendations specific to participation, Special Procedure mandate holders often recommend that the process of legislative revision be “transparent and accessible, inviting the widest possible engagement from stakeholders,”<sup>452</sup> and that States “open a public space for discussion with civil society and experts to ensure conformity with international human rights standards.”<sup>453</sup> Communications further call on governments to ensure that security legislation be subject to regular parliamentary process to ensure a robust, public debate, and not fast-tracked through urgent parliamentary processes.<sup>454</sup>

**Figure 1. Human Rights Committee (HRC) recommendations, by focus of concern (2002-2022).<sup>455</sup>**



451 ETH 3/2019, p. 8; EGY 4/2020, p. 2.

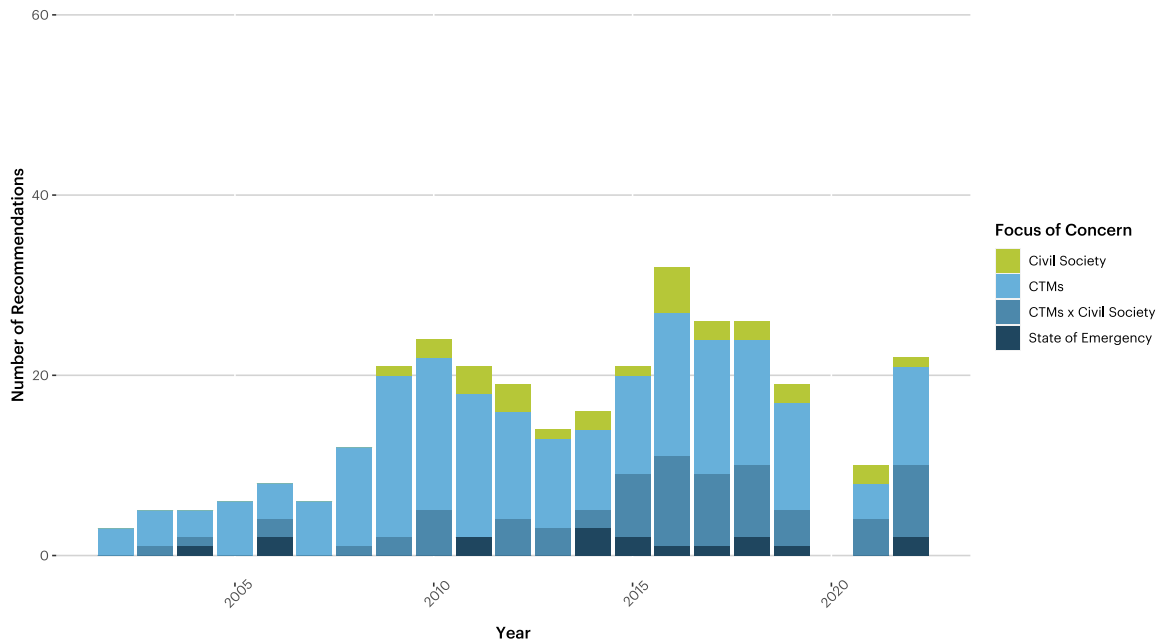
452 ETH 3/2019, p. 3.

453 BLR 2/2021, p. 9.

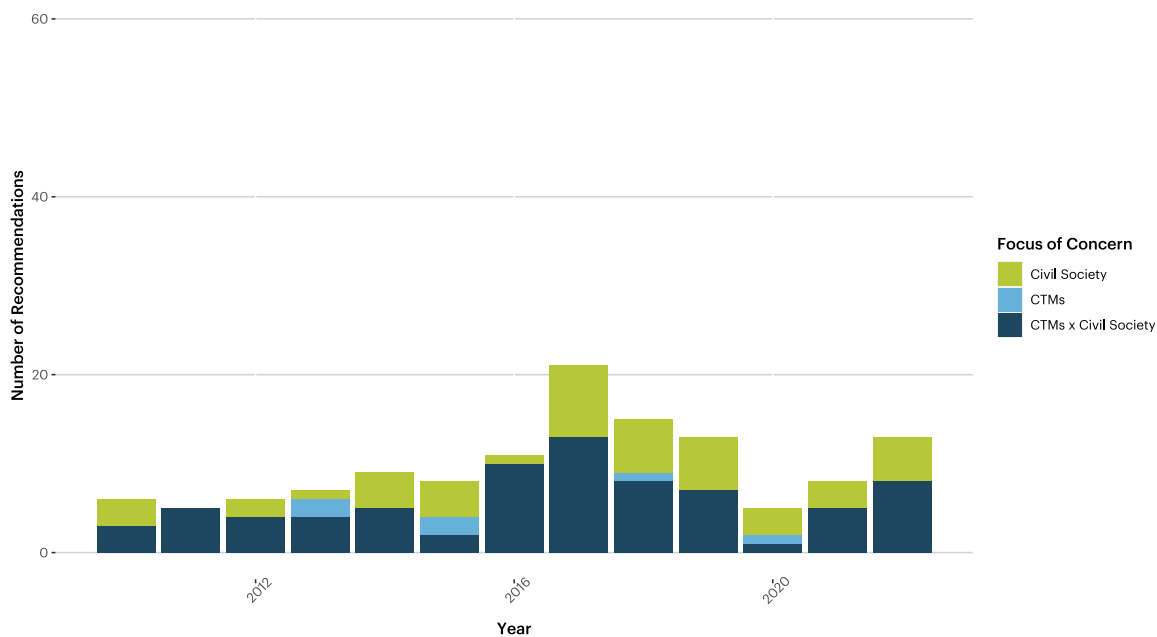
454 BRA 6/2021, p. 4; EGY 6/2021, p. 5.

455 Bars indicate the total number of times per year the committee raised a concern in relation to a government measure or practice, disaggregated further by whether it focused on: the impact on civil society of a general State practice; a CTM or other security measure without referencing civil society impact; the effects of security measures on civic space or civil society actors (“CTMs x Civil Society”); or states of emergency.

**Figure 2. Committee Against Torture (CAT) recommendations, by focus of concern (2002-2022)<sup>456</sup>**



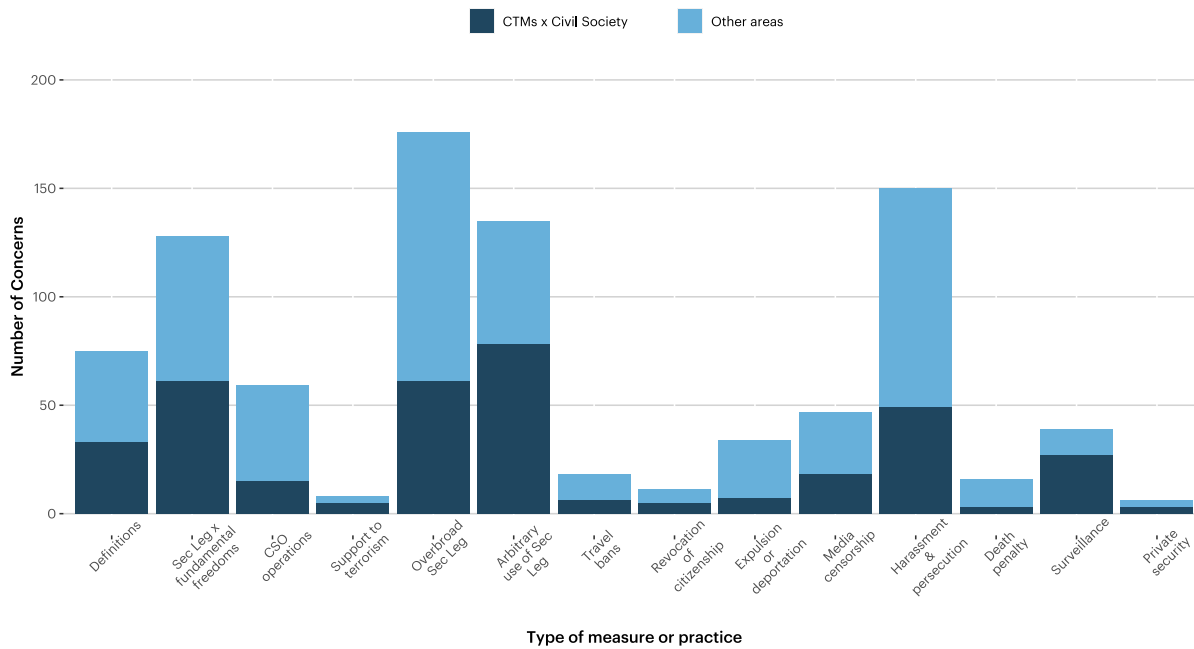
**Figure 3. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) recommendations, by focus of concern (2002-2022)<sup>457</sup>**



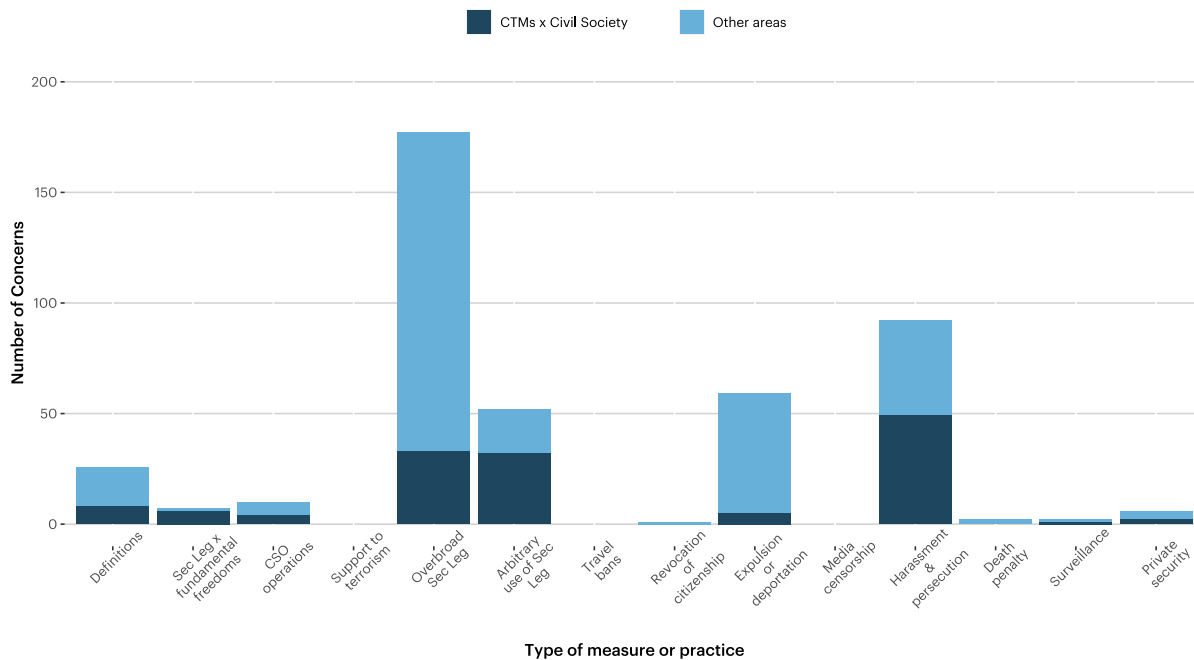
456 Bars indicate the total number of times per year the committee raised a concern in relation to a government measure or practice, disaggregated further by whether it focused on: the impact on civil society of a general State practice; a CTM or other security measure without referencing civil society impact; the effects of security measures on civic space or civil society actors (“CTMs x Civil Society”); or states of emergency.

457 Bars indicate the total number of times per year the committee raised a concern in relation to a government measure or practice, disaggregated further by whether it focused on: the impact on civil society of a general State practice; a CTM or other security measure without referencing civil society impact; or the effects of security measures on civic space or civil society actors (“CTMs x Civil Society”).

**Figure 4. HRC Concerns, by type of measure & focus of concern (2002-2022)<sup>458</sup>**



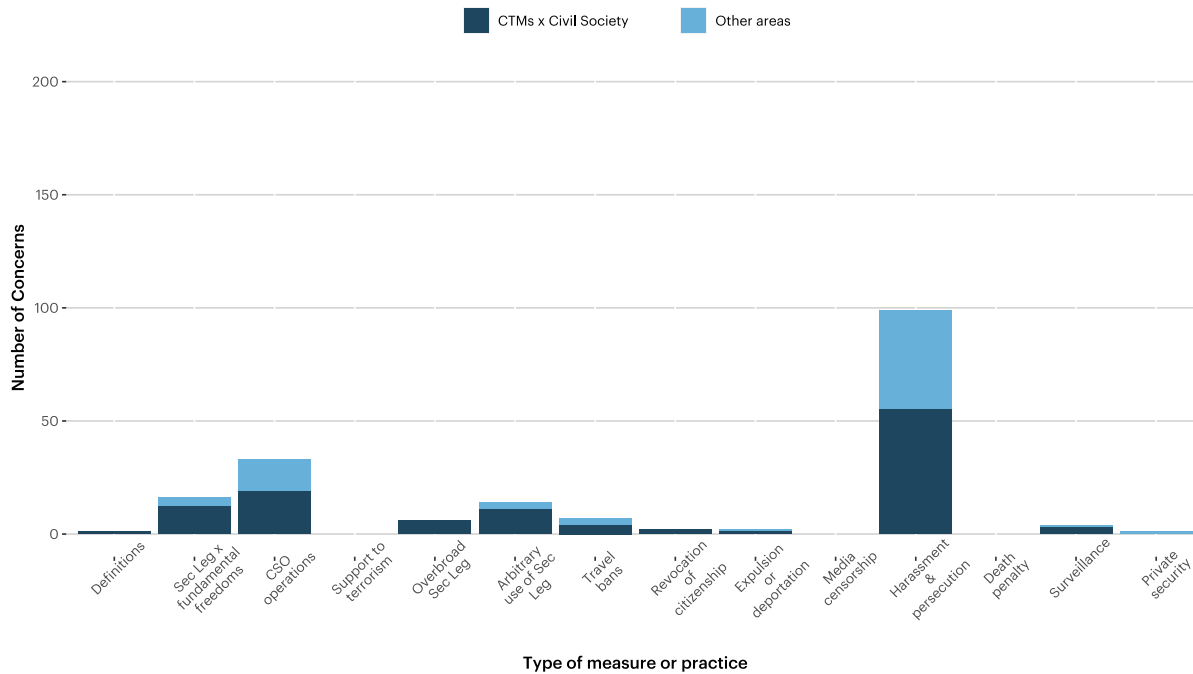
**Figure 5. CAT Concerns, by type of measure & focus of concern (2002-2022)<sup>459</sup>**



458 Bars indicate the total number of times the committee raised a concern in relation to a government measure or practice, disaggregated further by whether the concern explicitly noted its effects on civic space or civil society actors (“CTMs x Civil Society”).

459 Bars indicate the total number of times the committee raised a concern in relation to a government measure or practice, disaggregated further by whether the concern explicitly noted its effects on civic space or civil society actors (“CTMs x Civil Society”).

**Figure 6. CEDAW Concerns, by type of measure & focus of concern (2010-2022)<sup>460</sup>**



### Recommendations

- Provision of increased resourcing to Human Rights Treaty bodies, Universal Period Review processes, and Special Procedures Mechanisms is necessary to meet the high levels of reported cases of misuse by civil society and individuals on the basis of counter-terrorism and P/CVE. This will require further Member States support to recognize the growing demands on these mechanisms to safeguard key elements of human rights in the long-run and contribute to more peaceful and secure societies.
- Meaningfully review communication letters from Special Procedures as a useful resource to receive tailored and practical guidance for how a government can revise security legisla-

tion to conform with its human rights obligations.

- Human Rights Treaty Bodies should make use of the Special Rapporteur’s Model Definition of Terrorism.
- Human Rights Treaty Bodies and the Universal Periodic Review process should consistently seek to name and address the misuse of security and counter-terrorism measures against vulnerable civil society actors and communities.
- Individual HRTB committees should find further opportunities to work across institutions, both with respect to the other nine core treaty bodies as well as UN Charter human rights mechanisms. This can help to improve standardization and greater consolidation of ef-

460 Bars indicate the total number of times the committee raised a concern in relation to a government measure or practice, disaggregated further by whether the concern explicitly noted its effects on civic space or civil society actors (“CTMs x Civil Society”).



forts in this area, as well as those within Special Procedures reports and communications.

- Treaty bodies and the CEDAW in particular should more explicitly reflect on the impact of security and CTMs on the lives of women and girls.
- Special Procedures mandate holders should continue to consider ways in which they can leverage communications to recommend concrete and practical tools and steps that would help de-normalize and recondition a now habituated government response to perceptions of security threats.



Photo by Albert González Farran, UNAMID.

# CHAPTER 5

## CONCLUSION & CROSS-CUTTING RECOMMENDATIONS

Concluding this Global Study requires pause and recognition of the resilience, positive force and sheer determination of civil society across the globe which seeks to realize peaceful, just and inclusive societies. Notwithstanding the hardship, challenges, and undulating Sisyphean task of advancing rights in complex and closing spaces civil society consistently shows up, takes risks for rights, defends the vulnerable, strives for the greater good, and is tireless in its advocacy, hard work, reliability, and solidarity. The individuals that took risks to give evidence to this Study and who take risks every day for the dignity and humanity of others deserve recognition, support, protection, defense, and care. It is the particular obligation of the UN to be rock solid in its support to and defense of civil society. They deserve no less from us.

The terrain described by this Study is exceedingly difficult and the scale of harms experienced is indisputable and unacceptable. It should also be self-evident that effective counter-terrorism is not being

realized by the widespread, systemic targeting of civil society. Precisely the opposite is true. The kinds of violations revealed by this Study demonstrate that security is not the goal of abusive State practice but rather its opposite, namely the continuance of instability, insecurity, and cultures of impunity and violence. Our collective security is not well-served by the distortions that define contemporary counter-terrorism and P/VE practices across the globe.

The time for action then is now. We can no longer tolerate such systemic, abusive, and counter-productive practices. The UN and the Member States that comprise it have collective interests in maintaining the integrity of the UN Charter, and this Study provides both the evidence base to end the current status quo, as well as concrete recommendations to remedy globally evidenced human rights deficits in approaches to counter-terrorism and P/CVE at all levels. The Study urges consolidated action by Member States and the UN in particular to

address these issues as a matter of urgency. Our collective global security depends on it.

## Member States

*Member States should:*

- Reorient militarized approaches to counter-terrorisms in response to the deep evidence on strategies and investments that lead to successful prevention of violence advancing peacemaking and peacebuilding alternatives.
  - Diligently pursue deliberate and intentional pruning of national, regional, and international counter-terrorism architectures that have bulged over the last twenty years to bring balance and human rights compliance in this arena.
  - Use the decades of documentation and implement recommendations prepared by the Human Rights Treaty Bodies and Special Procedures Mechanisms as a tool to achieved increased human rights and rule of law compliant responses to terrorism and violence.
  - Establish effective and transparent accountability mechanisms for violations of human rights resulting from the misuse of counter-terrorism and P/CVE measures.
  - Rebalance domestic budgets and allocations to address the prevention of violence in a sustained and meaningful way. This requires participatory budget processes, budgeting, and allocation of adequate resources to strengthening of the rule of law, the institutionalization of human rights; the advancement of accountability; and mainstreaming of anti-corruption and structural commitments to ensure prevention. It means less growth in counter-terrorism norm production and institutions and accepting the value proposition of investment in creating the conditions that effectively prevent terrorism, including a functional and diverse civil society.
- Establish adequately resourced and technologically capable independent oversight mechanisms of national counter-terrorism institutions.
  - Eliminate the double standards across human rights and gender equality commitments and counter-terrorism through initiating innovative process and action (via programs, policies, funding, or practice) on how to invest in human rights and gender equality programs and work in contexts affected by terrorism and violence, rather than solely investing in counter-terrorism focused work with peripheral “mainstreaming” human rights and gender equality aims. The focus of investment solely in counter-terrorism institutions and bodies (including the UN) is increasingly documented to be rooted in aims of protecting the status quo and solidifying institutions through nominal and instrumentalized approaches. Member States must consider balancing budgets on investment in UN entities normatively leading gender equality, human rights, rule of law, and development, rather than counter-terrorism capacity building.
  - Deliver concrete commitments to civil society to foster their meaningful participation in the design, development, and implementation of all measures to address peace and security, including terrorism and violent extremism challenges, and in all peace and security efforts. This requires immediately scaled up investments of timely and flexible funding, including core funding, to civil society to support their efforts to curb attacks on human rights, civil society, and civic space.
  - Accept that mere reform counter-terrorism laws, policies, and institutions is not sufficient to address the depth and scale of misuse evidenced in this Study. Instead, a fundamental transformation of existing practices of addressing terrorism is needed, ensuring effective

tive prevention and holistic safeguarding of the misuse of counter-terrorism and P/PVE measures against civil society.

- Adopt robust export control regimes for the cross-border trade of surveillance technologies in order to prevent the sale of such technologies when there is a risk that they could be used in violating human rights, including by targeting human rights defenders or journalists.
- Actualize legislative reform and increase commitments to victims/survivors of terrorism through reporting on the recommendations made during the last Global Congress for Victims of Terrorism, and making concrete resource and political commitments during the next conference, anticipated in 2024. Member States should increase funding to victims/survivors and their associations/organizations, particularly those who deliver essential services to survivors and their communities, including in conflict-affected contexts to meet the long-term health and psycho-social needs of individuals and communities.
- Address and remedy the denial of access of civil society to the UN on the basis of politicization of accreditation,<sup>461</sup> and bring increased transparency to the process of accreditation.
- Undertake participatory assessments with civil society, humanitarians, and other stakeholders, of compliance of domestic counter-terrorism sanctions regimes with international humanitarian law, including through the requirements of UN Security Council resolution 2664.

## United Nations

*The United Nations should:*

- Prioritize investments in rule of law-based approaches, throughout all UN entities, to counter-terrorism and P/CVE focused on addressing the conditions conducive to terrorism and violence rather than simple technocratically labeled counter-terrorism and P/CVE programming. This includes agencies, funds and programs that specialize in legal and security sector reform, good governance, gender equality and women's peacebuilding, and broader community-based violence prevention focusing on those core areas of work rather than adapting programming to demands of counter-terrorism and P/CVE narratives.
- Establish consistent, UN-wide public, principled, and official stances on the impact of counter-terrorism and P/CVE measures on civil society and civic space aimed at advancing the human rights and rule of law compliance of countering terrorism. This includes addressing the lack of visibility among senior UN officials as outspoken and clear on the documented impacts of counter-terrorism and P/CVE on civil society and civic space.
- Collect global disaggregated data in line with principles of do-no-harm, informed consent, and human rights due diligence, to identify discriminatory and group-based patterns of misuse of counter-terrorism and P/CVE measures in a sustained way, utilizing the findings of this Study as a baseline.
- Assume accountability for existing commitments to concretely mainstream gender equality and human rights, specifically through transparent and urgent implementation of the gender-marker within the UNOCT, in consulta-

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461 ISHR. Submission to Report of the High Commissioner on Civil Society Space in Multilateral Institutions: Existing interaction, Challenges, Good Practice & Recommendations (2017).

tion with UN Women and the Controller's Office as suggested by the Secretary-General's latest report (A/77/718) and adopt overdue procedures on the allocation of a minimum 15 per cent of all funds for counter-terrorism efforts to human rights and gender equality, as originally recommended in 2015 by the United Nations Secretary-General.

- Implement all recommendations of UN Women's Global Digital Consultation relevant to the United Nations and report on their implementation in appropriate forums. Without implementation of civil society recommendations, the UN's commitment to the meaningful participation of civil society cannot be demonstrated.
- Establish methodologies for identifying discriminatory patterns in the misuse of counter-terrorism, including within UN CTC country assessments. Where such patterns of misuse are identified, they must be named, and where cumulative patterns of misuse are identified, technical assistance and capacity building must cease and be subject to a revised risk assessment. The Counter-Terrorism Committee and its Executive Directorate must find effective measures politically and legally to address such misuse including consideration of "grey-lists," namely a formal mechanism to identify Member States who abuse human rights while countering-terrorism.
- Publish a complimentary report of the UN Secretary-General's annual report on reprisals that goes beyond reprisals for cooperation with the UN and provides a compilation and analysis of alleged patterns of misuse of counter-terrorism and P/CVE measures against civil society as a whole and/or particularly vulnerable national, social, legal, or religious groups.
- Establish clearer UN protocols of human rights due diligence amidst the grave threat to civil society and the growth of counter-terrorism and P/CVE technical assistance and capacity

building. The level of risks and the decentralization of risk controls to entities that have no demonstrated human rights due diligence protocols present an unacceptable risk to civil society and civic space. The UN must be able to act quickly, with one-voice, and establish clear political protocols for the cessation of counter-terrorism technical assistance and capacity building when counter-terrorism norms and institutions are used to target and harm civil society, and human rights defenders.

## Regional Organizations

*Regional organizations should:*

- Enhance procedures for overseeing the impact of counter-terrorism measures on civil society. Strengthen the role of regional human rights mechanisms in building connectivity between positive commitments to addressing the conditions conducive to terrorism and preventing violence in line with international and regional human rights law commitments.
- Engage with Human Rights Treaty Bodies and Special Procedures Mechanisms to improve working relationships and entry points for civil society in regional systems mirroring the UN recommendations. Dedicate regional space for civil society in regional processes on counter-terrorism and P/CVE in line with human rights due diligence safeguards.
- Standardize practices to prevent, address, and respond to reprisals for civil society's engagement in regional processes at the national level among members.
- Facilitate cross-fertilization or twinning across diverse regions for Member States and regional organizations investing in and developing human rights-based and prevention-based approaches to counter-terrorism and P/CVE.
- Engage with their regional human rights mech-

anisms to improve working relationships and entry points for civil society in regional systems mirroring the UN recommendations.

## Private Sector & Other Stakeholders

*Private sector actors and other stakeholders should:*

- Urgently mainstream and implement the UN Guiding Principles on Business and Human Rights amidst the increasing outsourcing to and implication of the private sector in counter-terrorism and P/CVE related human rights violations.
- Establish a moratorium on the use of remote biometric recognition technologies in public spaces, or at least until the authorities responsible can demonstrate compliance with privacy and data protection standards and the absence of significant accuracy issues and discriminatory impacts and until all the recommendations set out in paragraph 53 (j) of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression are implemented.
- Banks and intermediary financial institutions must adopt a firmly risk-based approach to counter-terrorism financing through the adoption of human rights and due diligence safeguards and make readily available internal compliance policies.
- Address the misuse and abuse of international law enforcement mechanisms that are relied upon in counter-terrorism. Specifically, INTERPOL should address the misuse and abuse of 'red notices' by Member States to target civil society and implement heightened due diligence protocols to prospectively assess the risk of misuse, and, when identified, establish clear operating protocols to remedy and further avoid the instrumentalization of its own legal and political powers by abusive count-

er-terrorism co-option.

- Ensure support and facilitation, specifically by the FATF, for Member States to implement independent oversight and judicial review processes to tackle arbitrariness and human rights abuses in the implementation of CFT penalties, and account for over-regulation, including appeal procedures for listing and designation procedures, asset seizures, non-profit dissolutions, and other sanctions and penalties. Overregulation and human rights violations committed in the counter-terrorism financing context – particularly with respect to the disparate impacts on organizations representing the interest of women, as well as ethnic and religious minorities – should also be taken into account in mutual evaluation review and other CFT compliance efforts.
- Cease privatized collation, use, and service provision of international, regional, and national sanctions regimes without significant due process and human rights due diligence reform of such regimes. Corporate accountability for the private sector collation, use, and service provision on the basis of such lists “amplify” screening procedures and contribute to the proliferation of measures against civil that raise numerous challenges of legality, due process, discrimination, and abuse.
- Private sector and philanthropic support must be directed to ensure the vibrancy, sustainability, and protection of civil society. This requires immediately scaled up investments of timely and flexible funding, including core funding, to civil society to support their efforts to curb attacks on human rights, civil society and civic space.

## Civil Society

### *Civil society should:*

- Continue to engage in cooperative relationship building locally, nationally, regionally, and internationally drawing on and building out from existing relationships including those developed as a result of this Global Study.
- Continue to engage proactively with the Human Rights Treaty Body Mechanisms and Special Procedures Mechanisms in elevating their experience of human rights violations for themselves and for those they represent. Civil society has created the evidence basis to date and will continue to be imperative to continued documentation and jurisprudential development and augmentation.
- Protect itself against spyware as far as possible by utilizing privacy safeguards and building technical capacity to resist misuse of counter-terrorism technology. Civil society must invest in digital security, deepen its own reflective self-governance, and ensure knowledge transfer within and across national, regional, and global intersections.
- Continue to elevate diversity and local partners to ensure that those most marginalized and at the center of these violations remain at the center of responses to counter-terrorism and are given the space and support to speak globally, consistent with the mantra of “nothing about us without us”.
- Recognize the importance of relationships between international, national, and local organizations while taking note of evident power imbalances and funding challenges that disproportionately impact those organizations working at the local level. Here, dedicated efforts should be made to facilitate those organizations close to the ground, in touch with affected communities and elevating their voices and their access to resources and political spaces.



# APPENDICES

# Appendix 1: Data Sources

- **Call for Inputs & Surveys**
  - 108 inputs by civil society organizations, governments, and other entities
    - 5 UN Inputs
    - 2 Regional Organization Inputs
    - 16 Member State Inputs
    - 76 Civil Society Inputs by a total of 116 organizations
    - 9 Other Inputs
  - Civil Society Survey for the Global Study, which received 29 responses from civil society
  - Survey to Inform the Outcome of the Civil Society Workshop in Advance of the UN High-Level International Conference on Human Rights, Civil Society, and Counterterrorism, which received 37 responses from individual civil society actors, sign on from over 80 organizations
- **Call for Inputs to Regular Reports**
  - IHL Report: 11 Civil Society Organizations, 2 Member States, 3 UN
  - Gender Report: 12 Civil Society Organizations, 4 Member States, 1 Regional Organization, 3 UN, 1 Other Stakeholder
  - Civil Society Report: 72 Civil Society Organizations, 7 Member States, 1 Regional Organization, 3 UN, 4 Other Stakeholders
  - Capacity Building and Technical Assistance: 27 Civil Society Organizations, 7 Member States, 2 Regional Organizations, 4 UN, 2 Other Stakeholders
  - Technology Report: 7 Civil Society Organizations, 6 Member States, 2 UN, 7 Other Stakeholders
  - PVE Report: 57 Civil Society Organizations,
- **Dedicated Civil Society Consultations for the Global Study**
  - CSO Coalition on Human Rights & Counter-Terrorism Consultation - 26 April 2022
  - Asia Pacific Consultation - 26 April 2022
  - Middle East and North Africa Consultation – 28 April 2022
  - Europe Civil Society Consultation – 3 May 2022
  - Latin America Consultation – 3 May 2022
  - Consultation with the Global Center and Civil Society Partners - 6 May 2022
  - Civil Society Workshop on Enhancing Civil Society Leadership and the Promotion and Protection of Human Rights in Counterterrorism - Malaga, Spain – 9 May 2022
  - South Asia Civil Society Consultation – Confidential - October 2022
  - West, East, and Central Africa Consultation – Nairobi, Kenya – 21-22 November 2022
  - Israel Consultation – Jerusalem – December 2022
  - Occupied Palestinian Territory Consultation – December 2022
  - Asia-Pacific Consultation - Bangkok, Thailand – 25-26 April 2022
  - Western Balkans & Eastern Europe Consultation - Skopje, North Macedonia – 20-21 March 2023
  - Middle East and North Africa - Geneva, Switzerland (Hybrid) - 16 March, 2023
  - Latin America Consultation - Virtual - 11 May 2023
  - North America Consultation - Virtual - 12

11 Member States, 2 Regional Organizations, 4 UN, 9 Other Stakeholders

May 2023

- **United Nations Consultations**

- Working Group Meeting & Presentation on the Global Study, UN Global Counter-Terrorism Coordination Compact Working Group on Human Rights, Rule of Law and Victims of Terrorism, Office of the High Commissioner for Human Rights (Chair) & the United Nations Office of Counter-Terrorism (Vice-Chair) - 21 March 2023
- Chatham House Discussion to inform the Special Rapporteur's forthcoming Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space, hosted by the UN Global Counter-Terrorism Coordination Compact Working Group on Human Rights, Rule of Law and Victims of Terrorism, Office of the High Commissioner for Human Rights (Chair) & the United Nations Office of Counter-Terrorism (Vice-Chair) - 4 May 2023

- **Other Events & Consultations**

- Global Expert Hub on AML/CFT – Paris, France (September 2022)
- Side Event on Misuse of Counterterrorism Measures and Closing Civic Space, Office for Democratic Institutions and Human Rights – Warsaw, Poland (October 2022)
- Annual Meeting of the Security and Policy Alternatives Network (SPAN) – Berlin (October 2022)
- Frontline Defenders Annual Meeting – Dublin (October 2022)
- Closed Consultation with Women Human Rights Defenders and Peacebuilders - Virtual - December – 2022
- Closed Consultation with International Service for Human Rights – Geneva – March – 2023.

- United Nations Reports & Data

- Special Procedures Communications under the CTHR and other mandates
- Treaty Body Concluding Observations of the Human Rights Committee and Committee Against Torture (2002-2022) and the Committee on the Elimination of Discrimination Against Women (2010-2022)
- Treaty Body Individual Communications Decisions from all committees
- UN Women (2022). Global Digital Consultation, Voices and perspectives of civil society on the gendered dimensions of violent extremism and counterterrorism responses – Outcome report.
- United Nations (2022). UN Guidance Document on Intimidation and Reprisals for Cooperation with the United Nations: Focus on Counterterrorism.
- United Nations Interregional Crime and Justice Research Institute and SWISSAID (2022). Perceptions of Climate Change and Violent Extremism: Listening to Local Communities in Chad.
- Database of Special Procedures and Treaty Body Mechanism Findings and Recommendations on the Impact of Counter-Terrorism on Civil Society and Civic Space

- **Other Sources**

- CIVICUS, People Power under Attack: A Global Analysis of Threats to Fundamental Freedoms (2018)
- Front Line Defenders Global Analyses 2018 (2019) and 2022 (2023)
- International Center for Not-For-Profit Law, Survey of Trends Affecting Civic Space: 2015-16, Global Trends in NGO Law, vol. 7, No. 4 (2016)
- International Center for Not-For-Profit Law. COVID-19 Civic Freedom Tracker

- Civil Society Workshop Outcome Document (2022)
- OECD (2021). The impact of national and global security measures on civic space.
- OECD (2022). The Protection and Promotion of Civic Space Strengthening Alignment with International Standards and Guidance.

## Appendix 2: Codebook For Inputs

This codebook was used to analyze member state inputs, civil society inputs, United Nations inputs, regional inputs, and other inputs. The purpose of this codebook is to analyze the impact of terrorism and counterterrorism measures on civil society and civic space. The codebook is divided into four parts:

- PART I: Document Information
- PART II: Harassment Mechanisms
- PART III: Impact on Civil Society
- PART IV: Civil Society Involvement
- PART V: Recommendations

### **PART I: General Information**

- Information Source
  - Call for Input or Surveys
  - Events
  - Consultations
  - E-Consultations
  - Thematic Papers
  - Internal Data
  - UN Reports
- Other Input
  - Government
  - International Organization
- Name of Civil Society Member
- Name of Civil Society Organization
- Type of Civil Society Organization
  - Women’s Rights Organization
  - Human Rights Organization
  - Humanitarian/Development Organization
  - Counterterrorism or PVE Organization
  - Youth Organization
  - Law and Justice Organization
  - Think Tank
  - Political Party
- Country
- Region
  - West, East, Central, and South Africa
  - Middle East and North Africa
  - Asia and the Pacific
  - Latin America, Central America, and the Caribbean
  - Central and Eastern Europe
  - Western Europe
  - North America

### **PART II: Mechanisms**

- Type of Law
  - Criminal
  - Civil
  - Administrative
- Laws and Regulations Providing for Offenses of Terrorism or Extremism
  - Definitions of terrorism / violent extremism
  - Financing a Terrorist Organization
  - Belonging to a Terrorist Organization
  - Assisting a Terrorist Group
  - Inciting Terrorism
  - Laws Relating to Foreign Fighters
  - Terrorist Organization Designation
- Adjacent Laws and Regulations
  - Spreading False News
  - Criminalization or Prohibition of Disseminating Information

- Sedition
  - Defamation
  - Insulting the State or Damaging National Unity
  - Emergency Powers
  - National Security Laws
  - Laws designating armed groups / situations of armed conflict
  - Family law
11. National Strategies (e.g. counterterrorism, P/CVE)
12. Context
- Occupation
  - Armed Conflict
  - Post-Conflict
13. Responsible State Actor
- Military
  - Law Enforcement (i.e. Police)
  - Intelligence Services
  - Government Representatives/Sectors
14. Judicial and Prosecutorial Harassment
- Interrogation
  - Arrest
  - Arbitrary detention
  - Unfair trial and due process violations
  - False accusation
  - Conviction
  - Sentencing
  - Capital punishment
15. In-Detention Violations
- Forced labor
  - Torture and cruel, inhumane, and degrading treatment
  - Medical negligence
  - Sexual and gender-based violence
  - Solitary confinement
  - In-Detention Death
16. Administrative Measures
- Movement restriction (e.g. travel ban)
  - Restrictions on public benefits (e.g. access to public education, healthcare, welfare)
  - Restrictions on obtaining identity documentation
  - Obligation to engage with or permit monitoring from state security agency
  - Restriction on access to forms of communication
  - Denial of access to property or confiscation of property
  - Revocation of citizenship/Prevent return or repatriation
  - Deportation
  - Employment bans and restrictions
  - Curfews
17. New and Emerging Technology
- Artificial Intelligence
  - Biometrics
  - Digital Surveillance
  - Digital Spyware
  - Advanced Passenger Information
  - Unarmed Aircraft Systems (Drones)
  - Social media, website or phone restrictions, hacking, or surveillance
  - Virtual assets and new financial technologies
  - Face Recognition
  - Public-Private Data Sharing (social media; ridesharing app; etc.)
  - Financial Harassment
  - De-Risking
  - Auditing Requirements (including forced disclosure)
  - Restrictions on Access to Funding
  - Fines
  - Asset Freeze or Seizure
  - Limitations on Foreign Funding
18. Organizational Harassment
- Closure of Organization
  - Obligation or Difficulty to Register

- Destruction of Organizational Property
- Raids on Organizations
- Delicensing of Organization
- Removal or Replacement of Trustees or Board Members
- Intrusive Supervision
- Termination of Staff

#### 19. Discriminatory Features (on the face of the law/ regulation)

- On the basis of national, ethnic, cultural, religious and linguistic identity
- On the basis of sexual orientation and gender identity
- On the basis of indigeneity

#### 20. Transnational Repression

- Targeting families in home country
- Surveillance in host country
- Threats in host country
- Denial or delay in renewal or issuance of documents

#### 21. Acts of Intimidation, Reprisal, or Violence

- Verbal threats
- Smear campaign
- Physical harassment or violence
- Raids on homes
- Theft
- Gendered and sexual violence
- Extrajudicial killing
- Enforced disappearance
- Physical/human surveillance
- Prevention, Suppression, or Imposition of Culture

#### 22. Exclusion from or Reprisal for Participation in UN Programming

- Managing, denying, and limiting civil society access to UN
- Reprisal for participation in UN programming

### **PART III: Impact on Civil Society**

#### 23. Victim Group

- Women
- Men
- Children
- LGBT and Gender Diverse People
- National, Ethnic, Cultural, Religious and Linguistic Group
- Indigenous Peoples
- Journalists or Bloggers
- Lawyers
- Human Rights Defenders
- Humanitarians and Aid Workers
- Civil Society Organizations
- Artists
- Victims of Terrorism (and family)
- Academics or Intellectuals
- Refugees or Migrants
- Families of Civil Society Member
- Activists
- Social Movements Members
- (Former) Members of Armed Groups or Individuals Designated as Terrorist Organizations

#### 24. Psycho-Social Impact

- Mental health
- Social relationships

#### 25. Physical Health

#### 26. Chilling Effect

- Shrinking civic space
- Suppression of social movements
- Exile
- Changes in scope of work

#### 27. Stigmatization

#### 28. Financial Marginalization (e.g. loss of income)

### **PART IV: Civil Society Involvement**

#### 29. Participation in Drafting Process of National Laws or Regulations

30. Exclusion in Drafting Process of National Laws or Regulations
31. Engagement in Design and Delivery of UN, IO or National Programming
32. Exclusion from Design and Delivery of UN, IO or National Programming
33. Contributing to Rehabilitation and Reintegration of Foreign Terrorist Fighters
34. Civil Society Control Over National Programming Priorities and Objectives
35. Extractive Approach to Civil Society Involvement in National Programming Priorities and Objectives

#### Part V: Recommendations

36. Recommendations

## Appendix 3: Codebook For Human Rights Treaty Bodies & Special Procedures Mechanisms

### A. Collection of Primary Source Materials

Within the UN human rights system, each of the nine core international human rights treaties (IHRTs) are monitored by reviewing committees—Human Rights Treaty Bodies (HRTBs)—that, among other functions, receive periodic reports from the member states on their human rights practices. All HRTBs publish concluding observations (COs) following their formal review

of state reports. These COs contain recommendations for specific reforms a government should undertake to address shortcomings in the implementation of their human rights obligations as defined by the relevant Treaty. Most commentators agree that these recommendations are not legally binding,<sup>462</sup> but all state reports and committee observations are made public, and sometimes cited by domestic and regional courts.<sup>463</sup> This arguably raises the political stakes of ignoring them, creates a basis for soft law norms, and over time contributes to the crystallization of “hard law” that may become legally binding on States. Based on past research on state reporting to the HRTBs,<sup>464</sup> an initial determination was made to focus on concluding observations, which represent the most pertinent HRTB documents for mapping how UN human rights mechanisms have been addressing the misuse of counter-terrorism measures and measures for countering and preventing violent extremism. While follow-up letters from the HRTBs as well as List of Issues Prior to Reporting may contain relevant information, the central recommendations are found first and foremost within the COs.

All concluding observations adopted by the Human Rights Committee (HRC) and the Committee Against Torture (CmAT) between 2002 and 2022 (if published online by December 2022), and the Committee on the Elimination of Discrimination Against Women (CmEDAW) between 2010 and 2022 were downloaded from the UN Treaty Body Database. A text corpus for each committee was compiled (see CCPR.RData, CAT.RData, CEDAW.RData) to perform initial text mining and term frequency analysis.

462 Michael O’Flaherty, *The Concluding Observations of UN Human Rights Treaty Bodies*, vol. 6 *Hum. Rts. L. Rev.* 27, 36 (2006).

463 Machiko Kanetake, *UN Human Rights Treaty Monitoring Bodies Before Domestic Courts*, 67 *Int’l & Comp. L. Q.* 201 (2018); Gerald L. Neuman, *Import, Export, and Regional Consent in the Inter-American Court of Human Rights*, 19 *Eur. J. Int’l L.* 101 (2008).

464 Cosette D. Creamer & Beth A. Simmons, *The Proof is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 *AJIL* 1 (2019).

Table 1. Search results for HRTB concluding observations between 2002-2022 (for HRC and CmAT) and 2010-2022 (for CmEDAW).

	Total COs	terroris* (%COs)	extremis* (% COs)	Concerns extracted	Average concern/CO
HRC	286	43.7%	12.6%	554	1.937
CmAT	288	36.5%	2.1%	316	1.097
CmEDAW	287	6.6%	2.8%	131	0.457

## B. Search Procedure

HRTB COs are structured differently, depending on the committee and the relevant IHRT, although recently the HRTB chairs and the OHCHR Secretariat have made efforts to harmonize their working methods.<sup>465</sup> Most COs contain three main sections: (a) Positive Aspects; (b) Principal Matters of Concern and Recommendations; and (c) a concluding section addressing dissemination and follow-up procedures and any other issues. Within (b), concerns and recommendations are typically organized by treaty right or provision. A few committees have begun to include separate subsections in (b) concerning CT and PCVE measures, although recommendations concerning CT/PCVE practices still continue to appear in other subsections of the document. For a given human right or set of rights, the first paragraph describes the committee's concern about relevant government measure(s) or practice(s) while the second paragraph outlines recommended actions to address those concerns. The search procedure entailed first extracting concerns and recommendations from the document as two separate paragraphs if either the concern or the recommendation contained one or more of the following terms:

- terroris\*<sup>466</sup>

- extremis\*<sup>467</sup>
- "national security"; "state security"; "public security"; "security of the state"; "security threat"; "public order"
- emergency (powers; state of)

In most cases employing these search terms was sufficient to extract all relevant concerns and/or recommendations. To ensure that the search procedure captured recommendations concerning security measures restricting civic space (even if not explicitly referenced in the context of CT/PCVE), a second search was conducted using the following search terms. For this search, manual inspection of the text was conducted to ensure the concern or recommendation was relevant to the Global Study, given these terms also captured recommendations relating to, inter alia, birth registration.

- regist\*<sup>468</sup>
- membership
- journalist
- "rights defenders"

Table 1 lists the total number of concluding observations each HRTB reviewed during the search years, as well as the percentage of those COs that included a keyword variation of the root "terror-

465 International Human Rights Instruments, 30th Mtg. of Chairs of the Human Rights Treaty Bodies, Identifying Progress Achieved in Aligning the Working Methods and Practices of the Treaty Bodies: Note by the Secretariat, UN Doc. HRI/MC/2018/3 (Mar. 23, 2018).

466 The asterisk represents a truncation symbol for performing searches that retrieve all potential variations of a keyword that use the same root or stem. The root "terroris\*", for example, returns all terms containing that stem (i.e., terrorist, terrorism, counterterrorism, anti-terrorism, etc.), ensuring all pertinent references are captured.

467 Truncation search procedure employed to retrieve variations of keyword root (extremism, extremist, etc.).

468 Truncation search procedure employed to retrieve variations of keyword root (registration, deregistered, etc.). Subsequent manual inspection used to only retain references to the registration procedures for non-governmental organizations.



is\*” (such as counter-terrorism, terrorist, etc.) and the percentage of COs that included a keyword variation of the root “extremis\*” (such as violent extremism, extremist groups, etc.). Surprisingly, less than half of treaty body reviews reference terrorism or extremism verbatim. However, the search procedure extracted concerns relating to national security measures, including those contained within CTMs that are not identified explicitly by the committee as “anti-terrorism” legislation. Table 1 thus further indicates the total number of relevant concerns extracted from all States party reviews during the period under investigation. Finally, some concluding observations contained no relevant concerns, while others contained several. For this reason, the last column provides a standardized measure, averaging the total number of concerns extracted over all concluding observations. In short, this number gives a sense of the average frequency of concerns raised during a single country’s review that relate to national security measures and/or targeting of civil society. Given its considerably broader mandate, the HRC references such measures nearly twice as often as the CmAT and over four times more frequently than the CmEDAW.

### C. Coding Instrument

#### a. Coding of concerns expressed about State measures or practices

Drawing from the Special Rapporteur’s previous report on “Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders,”<sup>469</sup> the following guidelines were used to code each concern paragraph based on the measure or practice at issue. The HRTBs frequently express more than one concern about a single measure or express concern about more than one measure or practice within a single paragraph. For this reason, each country-concern may be placed

within more than one of the following categories:

- 1 = security legislation with overly broad or vague definitions of either terrorism or extremism
  - Definitions that lack precision enable authorities to apply them arbitrarily or discriminatorily, through an extension of the proscribed conduct.
  - Examples:
    - “The Committee is concerned about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant.” (ISR2)
    - “The Committee is concerned about the potentially overbroad reach of the definition of terrorism in article 147b of the Penal Code.” (NOR5)
    - “The Committee is equally concerned by the new draft legislation targeting extremist religious groups, which contains a very broad definition of ‘extremist’” (BGR4)
- 2 = criminalization (within security legislation or public order laws) of the legitimate exercise of fundamental freedoms
  - Freedom of expression and opinion, freedom of association, freedom of assembly and freedom of religion
  - This category includes criminalization of actions short of or including incitement or defamation of public officials or the state
  - Laws that criminalize having ‘contacts’ or

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<sup>469</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders, Human Rights Council, 40th session, U.N. Doc. A/HRC/40/52 (1 March 2019).

‘corresponding’ with groups that are hostile to the State, or to ‘hold sit-ins, protests or meetings that could harm the unity or stability of the State’

- Laws that allow the police to enter the offices of a foreign NGO and search them when there are suspicions that activities are in breach of security, ethnic unity, national and social interests
- Examples:
  - The Committee is concerned “that the unreasonably vague wording of article 7 of the [National Security] Act could have a chilling effect on public dialogue and is reported to have unnecessarily and disproportionately interfered with freedom of opinion and expression in a number of cases. The Committee notes with concern that the Act is increasingly used for censorship purposes.” (KOR4)
  - “The Committee is concerned about: (a) article 20 of the Press Act of 4 June 2013, which provides for a broad exception to provisions for the protection of journalists’ sources in cases involving national security, public order, defence secrets and the physical or mental integrity of one or more persons; (b) articles 18 and 19 of the Press Act, which restrict the range of subjects that journalists may cover; and (c) articles 59, 60 and 61 of the Press Act, which provide for criminal prosecution in the event of a violation of articles 18 and 19 and heavy fines for the media.” (BDI2)
  - “The Committee is concerned that human rights defenders and media professionals continue to be subjected to convictions for the exercise of their profession, in particular through the criminalization of defamation in article 125, and through the excessive application of articles 214, 215, 216 and 220 (protection of public order), or articles 226 (publication or broadcasting of obscene materials), 285 (confidentiality of investigations), 228 (judiciary), 314 (membership of an armed organization), 318 (prohibiting criticism of the military) of the Criminal Code, thereby discouraging the expression of critical positions or critical media reporting on matters of valid public interest, adversely affecting freedom of expression in the State party.” (TUR1)
- 3 = legislation that regulates the existence of civil society organizations
  - obligations to register, provisions for deregistration, restricted access to foreign funding
  - Examples:
    - “The Committee is also concerned that Law No. 04/2012 and Law No. 05/2012 contain onerous obligations for the registration of national and international NGOs, respectively, and international NGOs are requested to provide evidence of funding for the entire period for which they seek registration, leading many of them to seek registration for short periods only.” (RWA4)
    - “The Committee is concerned about the restrictions on freedom of association, including under the 2014 Voluntary Association Act, such as the compulsory registration of associations, provisions allowing wide monitoring powers of the authorities over the activities and finances of associations and the broad legal grounds for closing them down by court order.” (TKM2)
    - “The Committee remains concerned that current legislation continues to impose restrictions on the right to freedom of association, including: (a) unreasonable and burdensome legal and admin-

- istrative requirements for registering NGOs and political parties; (b) an extensive list of reasons to deny registration; (c) the requirement for NGOs to obtain de facto approval from the Ministry of Justice when travelling abroad or receiving funds from foreign sources; and (d) the prohibition of NGOs from participating in “political activities.” (UZB5)
- “The Committee is concerned at reports of frequent inspections of non-governmental organizations (NGOs) resulting in fines or even closure of some of them. The Committee is also concerned about the chilling effect on the activities of NGOs as a result of the financial reporting requirements introduced by the amendments to the Public Associations Act, adopted on 2 January 2019, aimed at preventing money laundering and the financing of terrorism through NGOs.” (TJK3)
- 4 = measures or laws that limit forms of “support to terrorism”
    - Examples:
      - “The Committee is concerned about the provisions in the Act on prevention of terrorism of 2006, including the amendments of 2014, which broadened the definition of terrorism to include such acts as disturbing the public order, acts that sow discord and online activity that supports or spreads ideas of terrorist groups.” (JOR5)
      - “The Committee takes note of reports that the exercise of freedom of expression and association could be unjustifiably hindered by prosecutions before the National High Court for the offences of association and collaboration with terrorist groups.” (ESP5)
  - 5 = security legislation that is indiscriminate or overbroad
    - Security legislation that loosely invokes national security, national/public interest, public order, social and political stability
  - Security legislation that violates Convention rights
  - Examples:
    - “Committee expresses concern at the compatibility of some provisions of the Terrorism Suppression Amendment Act 2007 with the Covenant. It is particularly concerned at the designation procedures of groups or individuals as terrorist entities and at the lack of a provision in the Act to challenge these designations, which are incompatible with article 14 of the Covenant. The Committee is also concerned about the introduction of a new section allowing courts to receive or hear classified security information against groups or individuals designated as terrorist entities in their absence.” (NZL5)
    - “The Committee is concerned that under article 143, paragraph 4, of the Code of Criminal Procedure detainees are prevented from communicating with other persons in cases of terrorism or violent or highly organized crimes, until such time as the detainee is brought before a court.” (PRT4)
    - “The Committee notes with concern that the amendments to the Canada Evidence Act introduced by the Anti-Terrorism Act (sect. 38), relating to the non-disclosure of information in connection with or during the course of proceedings, including criminal proceedings, which could cause injury to international relations, national defence or national security, do not fully abide by the requirements of article 14 of the Covenant.” (CAN5)
  - 6 = the application or use of security legislation, especially targeting civil society actors
    - Judicial harassment

- Arbitrary arrest
- Arbitrary charges brought under security legislation
- Examples:
  - “The Committee remains concerned about the broad and unclear wording of the provisions in the Criminal Code that define what acts constitute acts of terrorism and the introduction of new, vaguely defined offences in 2015. It is also concerned by reports that charges have been brought under these provisions without proper cause against journalists who were fulfilling their duty to inform the public and that the fact that these provisions are so vaguely worded discourages the exercise of other Covenant rights, including the right to freedom of expression.” (MAR6)
  - “Use of the [Anti-Terrorism] Act to legitimize the targeting of government critics, human rights defenders and journalists, including by “red-tagging”, and the consequent chilling effects on the freedom of expression, peaceful assembly and association.” (PHL5)
  - Concern about “the overly broad definition of terrorism and terrorist activities that is reportedly widely used to charge and prosecute members or suspected members of banned Islamic movements.” (UZB4)
- 7 = administrative measures lacking judicial oversight & remedies
  - 7a: travel bans; control orders; restrictions on movement
    - “provisions of the Belgian Nationality Code and the Consular Code that allow, on the one hand, for persons who apparently pose a serious danger to public order or security to be stripped of their Belgian nationality, and on the other hand, to have the passports or travel documents of such persons revoked.” (BEL6)
  - “preventive control measures, such as travel bans, that could be ordered by the President of the National Security Agency or the General Secretary of the Ministry of the Interior against persons suspected of preparing or planning a terrorist act, with no requirement of prior judicial authorization.” (BGR4)
  - “Committee is concerned that the new Counter-Terrorism and Security Act 2015...further extends the power of police officers to seize and temporarily retain travel documents if there are reasonable grounds to suspect that a person intends to travel abroad to engage in terrorism-related activities” (GBR7)
- 7b: revocation of citizenship
  - See BEL6 above
  - “Committee is concerned about the introduction of temporary exclusion orders and the use of citizenship deprivation orders in the terrorism context. The Committee is concerned about the possibility of persons being rendered stateless as a result of such measures” (GBR7)
  - “Committee is concerned about the introduction of temporary exclusion orders and the use of citizenship deprivation orders in the terrorism context. The Committee is concerned about the possibility of persons being rendered stateless as a result of such measures.” (KWT3)
- 7c: deportation/expulsion/refoulement
  - “The Committee is concerned that the State party continues to rely on its “deportation with assurances” policy to justify the deportation of foreign nationals suspected of terrorism-related offenses to countries where it is reported that

they may face a real risk of torture or other forms of ill-treatment.” (GBR7)

- “The Committee is concerned at the proposed and pending amendment to the Law on the Legal Status of Aliens, which may allow for the removal of foreigners who are regarded as constituting a threat in terms of national security or public policy, before an appeal has been heard, even if they may be exposed to a violation of their rights under article 7 of the Covenant in the country of return. In this context, the Committee is also concerned at proposals aimed at generally lowering the threshold for establishing the threat to national security or public policy (arts. 9 and 13).” (LTU3)
  - 7d: media censorship/blocking websites/Internet shutdowns
  - “The Committee is concerned that existing regulations governing states of emergency, including the State of Emergency Act, do not appear to comply with the procedural and substantive requirements of article 4 of the Covenant, and that the State party has reportedly been using emergency powers, including as a counter-terrorism measure on the basis of the Electronic Communications Act and the Counter-Terrorism Act, such as blocking access to the Internet and mobile communication services but without a court order and without declaring an official state of emergency.” (TJK3)
  - “The Committee is also concerned about reports that the State party has targeted Al-Wasat, which was said to be the country’s only semi-independent newspaper, including by suspending its print and online publication, leading to its definitive closure in 2017.” (BHR1)
  - “It is further concerned at reports that the authorities resort to criminal provisions, including those of Proclamation No. 1176/2020 on the Prevention and Suppression of Terrorism Crimes and of Proclamation No. 1185/2020 on the Prevention and Suppression of Hate Speech and Disinformation, to suppress dissenting opinions and critical reporting, including about the ongoing conflict. It regrets information received about shutdowns of the Internet and phone services without a clear legal basis, which are disproportionate in their range and duration.” (ETH2)
- 8 = harassment & persecution (physical, media, smear campaigns by politicians)
    - “While the Committee appreciates the State party’s need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets reports that law enforcement officials target vulnerable groups such as asylum-seekers and members of Islamic groups in their activities to combat terrorism” (KAZ1)
    - “The Committee is concerned at reports of increased crackdowns, including in the context of the Government’s counter-terrorism and anti-illegal drug operations, on human rights defenders, activists and other civil society actors to discourage them from carrying out their legitimate activities” (PHL5)
  - 9 = states of emergency and derogations (includes laws regulating states of emergency, specific emergency declarations, and derogations thereunder)
    - “The Committee is further concerned about violent forced evictions of indigenous communities and the excessive use of states of emergency as a social control mechanism” (GTM4)
    - “The Committee is concerned that existing regulations governing states of emergency, including the State of Emergency Act, do

not appear to comply with the procedural and substantive requirements of article 4 of the Covenant, and that the State party has reportedly been using emergency powers, including as a counter-terrorism measure on the basis of the Electronic Communications Act and the Counter-Terrorism Act, such as blocking access to the Internet and mobile communication services but without a court order and without declaring an official state of emergency” (TJK3)

10 = application of death penalty for terrorist offenses

- “While recognizing the necessity of counter-terrorism measures in the State party, the Committee is particularly concerned about: (a) Act No. 2014/028 of 23 December 2014 on the penalization of acts of terrorism, which introduces new grounds for the death penalty, contains provisions that are incompatible with basic human rights and provides for the jurisdiction of military courts, even over civilians” (CMR5)
- “While recognizing the necessity of counter-terrorism measures in the State party, the Committee is particularly concerned about: (a) Act No. 2014/028 of 23 December 2014 on the penalization of acts of terrorism, which introduces new grounds for the death penalty, contains provisions that are incompatible with basic human rights and provides for the jurisdiction of military courts, even over civilians” (ETH2)
- 11 = surveillance & privacy concerns
  - “The Committee is concerned about the Anti-Terrorism Act of 2020, in particular in relation to:... (d)Excessive powers granted to the Anti-Terrorism Council to permit the collection and publication of the personal data of individuals

suspected of terrorism, without judicial oversight, and surveillance of those individuals without their knowledge; (e) Use of the Act to legitimize the targeting of government critics, human rights defenders and journalists, including by “red-tagging”, and the consequent chilling effects on the freedom of expression, peaceful assembly and association” (PHL5)

- 12 = private security forces
  - “The Committee also, while taking note of the legislative framework governing the activities of private security companies, remains concerned about the increase in the number of such companies, many of which are not yet subject to oversight, and complaints concerning the excessive use of force by military personnel and private security agents in areas where the population has expressed opposition to extractive and exploratory projects” (GTM4)
- 13 = repatriation of children born of nationals from conflict zones
  - “The Committee is concerned about the number of children born to Finnish nationals still living under harsh conditions in such zones, in particular at the al-Hol refugee camp in the Syrian Arab Republic” (FIN7)

#### **b. Secondary coding of concerns**

To mitigate a potential critique of the study, concerns were further categorized into one of three buckets:

- a = CT/CVE measures or practices that may abridge Convention rights but that do not, prima facie, target civil society directly
- b = measures or practices that target civil society directly but that do not operate explicitly as CT/CVE or security measures
- c = CT/CVE measures or practices that

(1) explicitly (by their terms) target civil society directly; and/or (2) are used in practice to target civil society

This secondary coding procedure was employed to address the fact that several concerns extracted relate to measures and practices that the committee did not explicitly indicate were used within the context of countering terrorism or preventing violent extremism. Category (c) thus encompasses explicit references by a treaty body to the direct use of security measures, PCVE measures, or CTMs to target civil society. The other two categories include concerns about: (a) the use of security measures generally that may violate Convention rights but for which the committee did not explicitly reference effects on civic space; or (b) rights abuses that target civil society but for which the treaty body did not explicitly reference a specific security or PCVE measure. Capturing all potentially relevant concerns and further disaggregating them into these categories provides a broader context for analyzing the extent to which the HRTBs have (not) focused explicitly on the impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders.

**Table 2.** Number of concerns by HRTBs regarding different types of CT and CVE measures and percentage of those concerns relating to the use of measures to target civil society or civic space, between 2002-2022 (for HRC & CmAT) and between 2010-2022 (for CmEDAW).

	HRC Total Concerns	HRC % CTMs x Civil Society	CmAT Total Concerns	CmAT % CTMs x Civil Society	CmEDAW Total Concerns	CmEDAW% CTMs x Civil Society
Definition of terrorism and/or extremism	75	44	26	30.8	1	100
Security legislation restricting fundamental freedoms	128	47.7	7	85.7	16	75
Regulations on registration or operation of CSOs	59	25.4	10	40	33	57.6
Measures limiting forms of "support to terrorism"	8	62.5	0	-	0	-
Indiscriminate or overbroad security legislation	176	34.7	177	18.6	6	100
Application or use of security legislation	135	57.8	52	61.5	14	78.6
Travel bans	18	33.3	0	-	6	33.3
Revocation of citizenship	11	45.5	1	0	2	100
Expulsion or deportation	34	20.6	59	8.5	2	50
Media censorship	47	38.3	0	-	0	-
Physical & verbal harassment or persecution	150	32.7	92	n/a	3	n/a
States of emergency and/or derogations	71	n/a	35	n/a	3ww	n/a
Application of the death penalty for terrorist offenses	16	18.8	2	0	0	-
Surveillance	39	69.2	2	50	4	75
Use of private security forces	6	50	6	50	1	0
Repatriation of children	3	33.3	0	-	0	-



The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was created to promote and ensure protection of human rights by recommending rights-complaint counter-terrorism legislation and policies, providing support, technical assistance, and expertise to States, UN entities, civil society, and other relevant stakeholders. The mandate was established (HRC 2005/80) in recognition that as incidents of terrorism continue, the misuse of legislation and policies to combat terrorism have grown with an adverse impact on human rights and fundamental freedoms.

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