Photo: Ryan Brown, UN Women

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

UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

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.[407] 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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407 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.[408] 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.[409] 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.[410]

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.[411] Pre-existing discriminatory laws, norms, and practices as described earlier in this Study also contribute to the inadequate situation of participation.[412]

> *"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

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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.[413] 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.[414] 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,[415] 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.[416] 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,[417] and making concrete commitments to abide by human rights compliant practices in the future.[418] 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.[419] 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 developd 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 Sesssion of the Human Rights Council

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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).
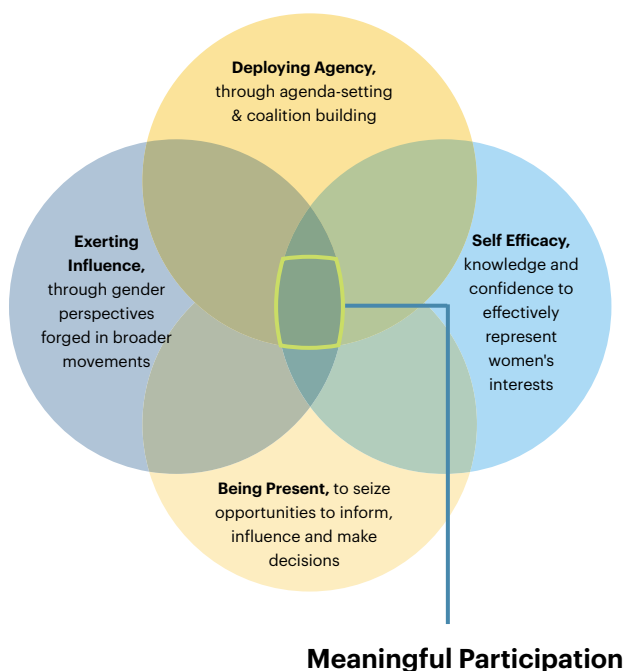
Recommendations

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)

Deploying Agency, through agenda-setting & coalition building

Exerting Influence, through gender perspectives forged in broader movements

Self Efficacy, knowledge and confidence to effectively represent women's interests

Being Present, to seize opportunities to inform, influence and make decisions

Meaningful Participation

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."[420] 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),[421] 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,[422] but that improving civil society's meaningful participation is a task across the UN system.[423] 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.[424] 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.[425] 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.[426] The Council must provide consis-

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

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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-

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.[427]

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 programmatically engaged 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.[428] 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.[429] 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.[430] 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.[431] 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.[432]

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-

sidiary bodies.

- For all UN counter-terrorism entities, given continued misuse by States, a fundamental re-thinking 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 developedd 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,[433] 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.[434]

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[435] 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

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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.[436] 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."[437]

Figures 4-6 display the number of concerns each HRTB raised regarding distinct types of measures or praces. 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[438] 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-

sures 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.[439] 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,"[440] "religiously motivated extremist association,"[441] "terrorist result," "opposing the State" or "non-allegiance to its leadership,"[442] "promoting terrorism,"[443] "widespread terror through political extremism," and "serious social disturbance."[444] 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.[445] 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.[446] The trends and misuse track alongside the challenges identified by HRTBs above, including addressing a 'permanent state of emergency;'[447] 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;"[448] 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;"[449] expansive security surveillance powers which "creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders;"[450] 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."[451]

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,"[452] and that States "open a public space for discussion with civil society and experts to ensure conformity with international human rights standards."[453] 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.[454]

Figure 1. Human Rights Committee (HRC) recommendations, by focus of concern (2002-2022).[455]
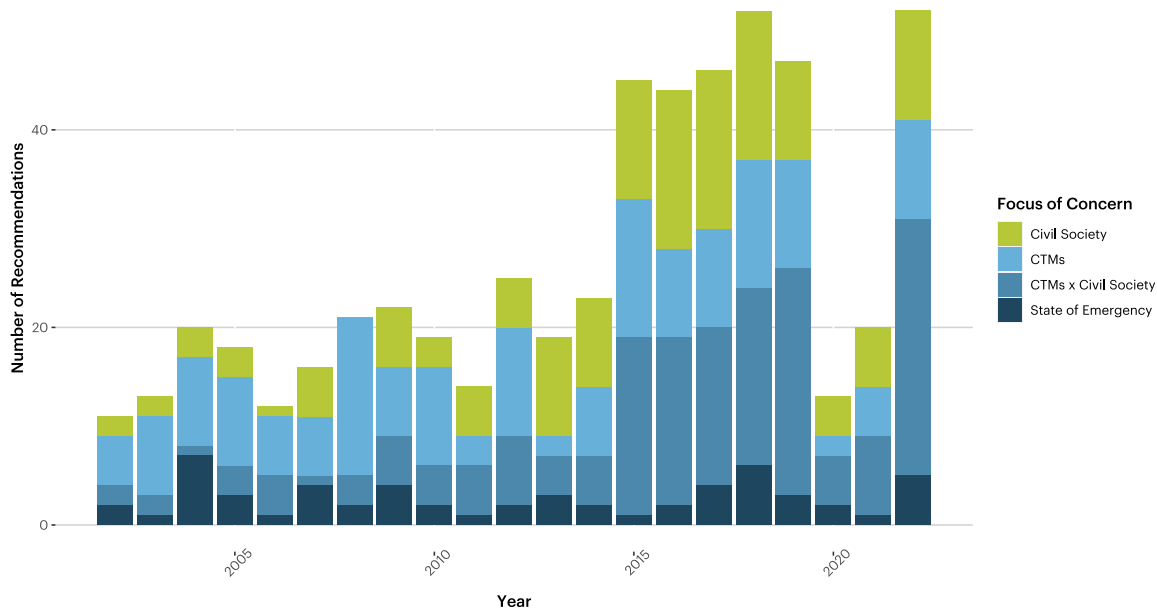
451 ETH 3/2019, p. 8; EGY 4/2020, p. 2.

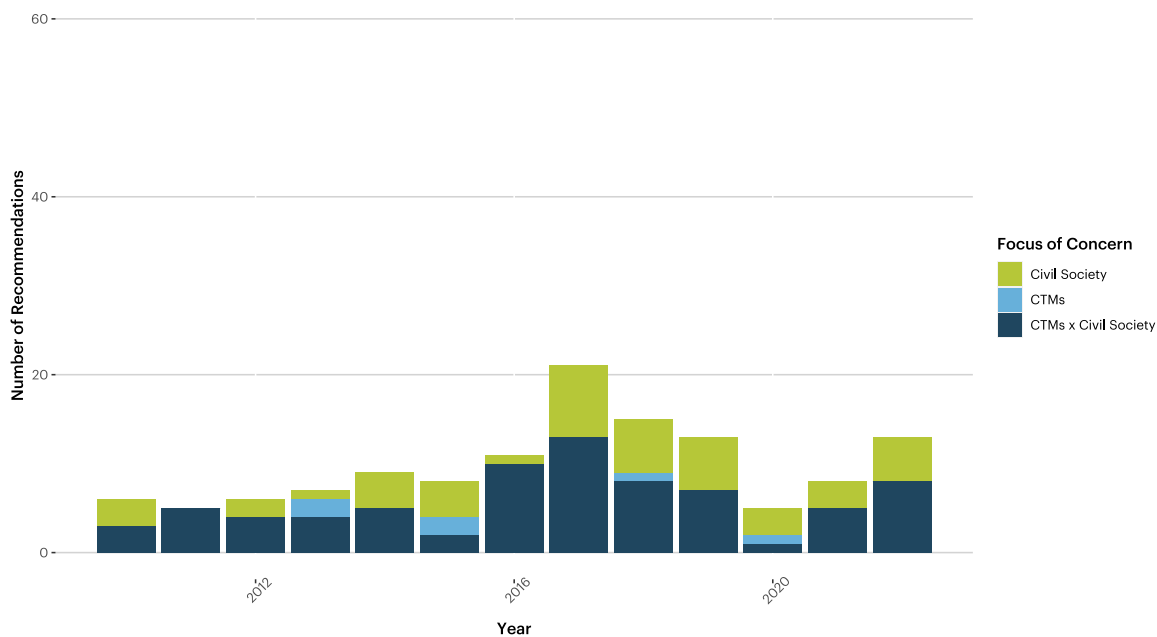452 ETH 3/2019, p. 3.

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)[456]
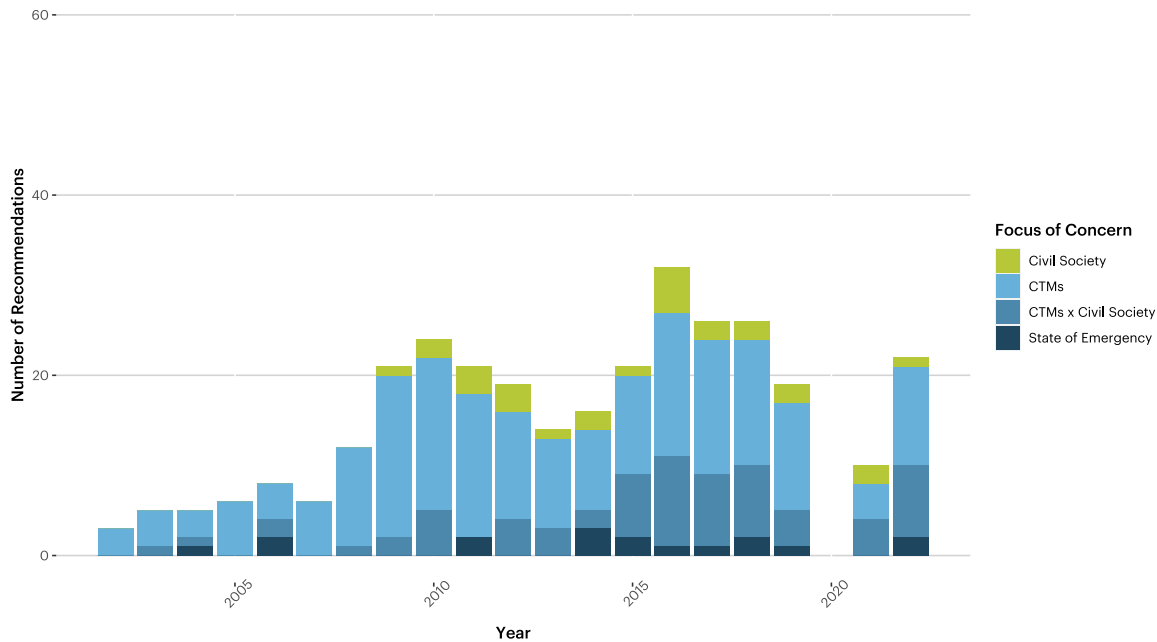
Figure 3. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) recommendations, by focus of concern (2002-2022)[457]
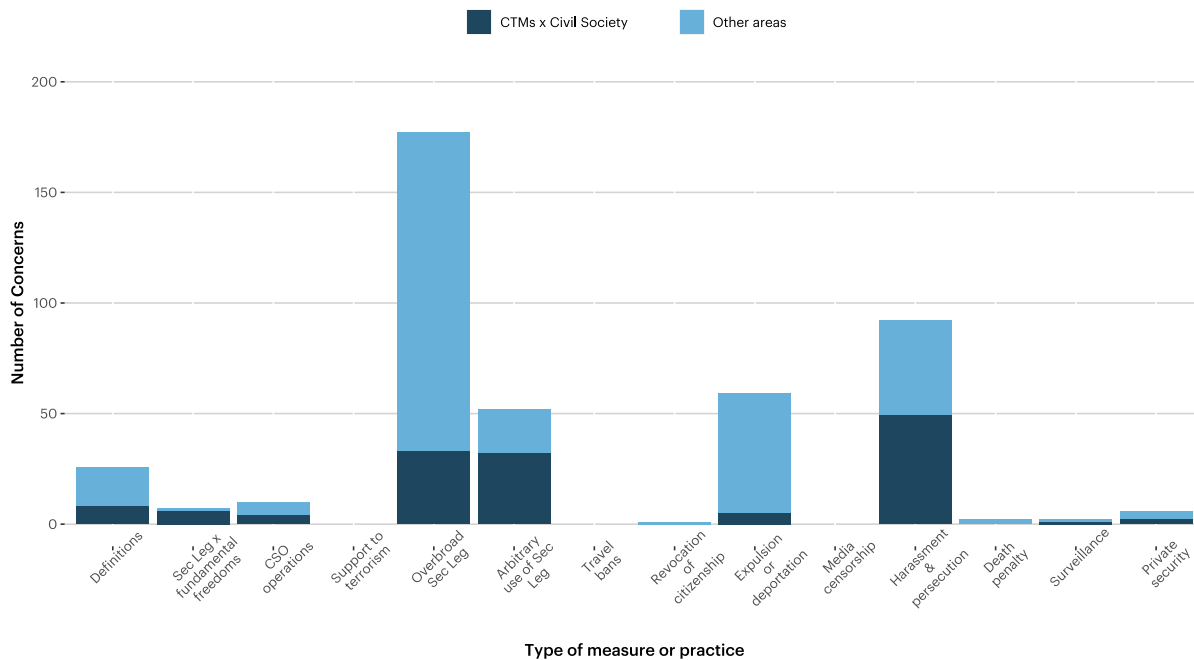

456 Bars indicate the total number of times per year the committee raised a concern in relation to a government measure or practice, disaggregated further by whether it focused on: the impact on civil society of a general State practice; a CTM or other security measure without referencing civil society 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)[458]

Type of measure or practice
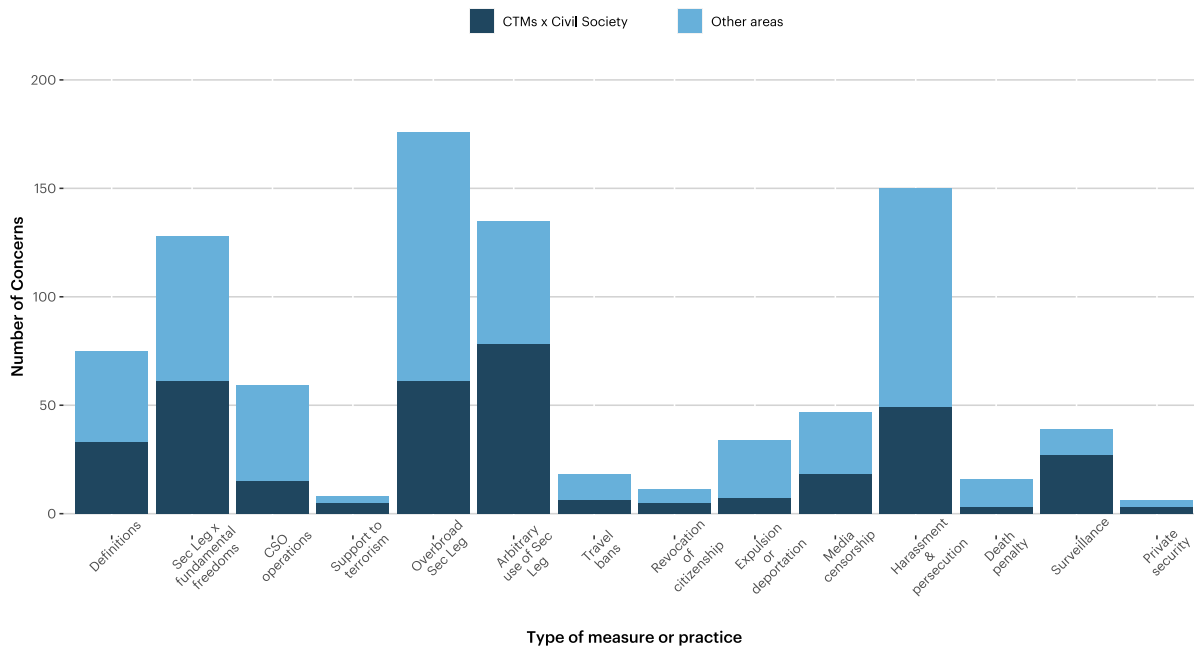
Figure 5. CAT Concerns, by type of measure & focus of concern (2002-2022)[459]


Type of measure or practice

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)[460]
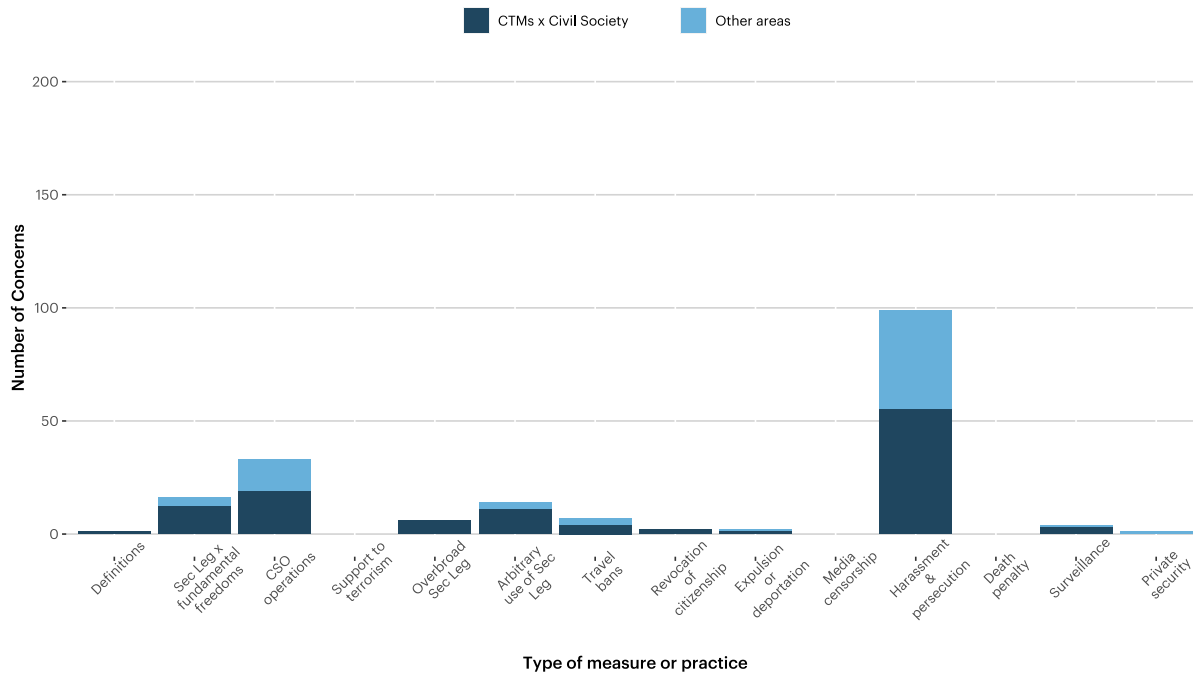
Recommendations

- 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 legislation 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-

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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.