

# **THEMATIC BRIEF: THE ROLE OF UN HUMAN RIGHTS TREATY BODIES IN ADDRESSING THE MISUSE OF COUNTER-TERRORISM AND PREVENTING & COUNTERING VIOLENT EXTREMISM MEASURES**

*Prepared to Inform the Global Study on the Impact of Counterterrorism on Civil Society & Civic Space by the United Nations Special Rapporteur on the Promotion & Protection of Human Rights & Fundamental Freedoms While Countering Terrorism*

## **I. Introduction**

This policy report documents the role that UN human rights mechanisms have played in addressing the use and misuse of counter-terrorism measures (CTMs) and measures to prevent and counter violent extremism (PCVE) to target civil society. The UN human rights machinery engages in a range of activities with the potential to monitor State responses to terrorism and violent extremism as it impacts civil society, but to date we lack a comprehensive overview of the ways various UN mechanisms have addressed or have failed to address the misuse of these measures. This report seeks to begin to fill that gap. It focuses on the UN Human Rights Treaty Bodies, namely their review of States party reports and, where relevant, decisions on individual communications.

This report analyzes the work of three treaty bodies: the Human Rights Committee (HRC), which monitors implementation of the International Covenant on Civil and Political Rights (CCPR); the Committee Against Torture (CmAT), which monitors implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Committee on the Elimination of Discrimination Against Women (CmEDAW), which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Several reasons motivate an initial focus on these three treaties. They represent some of the most important multilateral human rights treaties, covering a broad range of universal as well as group-specific rights. The CCPR enables evaluation of a broad range of rights essential to a vibrant civil and political space that are most likely to be impacted by efforts to counter terrorism and violent extremism. The other two treaties represent “single issue” conventions situated within a broader regime organized around their respective issues, areas that often stimulate specialized interest group attention. The CAT covers protections directly tied to national security and countering terrorism, and issues of torture, inhuman, or degrading treatment have regularly been addressed by the mandate it its

thematic work and communications. While the CEDAW touches on culturally sensitive issues, it is the second most widely ratified international human rights instrument, has a dedicated bureaucracy, and active involvement by organized women's rights groups. Moreover, the Special Rapporteur's mandate is committed to gender mainstreaming in all its work that this study adopts through its inclusion of CmEDAW recommendations.

## II. Methodology

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 review of State reports. These COs contain recommendations for specific reforms a government should undertake to address the full implementation of treaty obligations and address shortcomings. Most commentators agree that these recommendations are not legally binding,<sup>1</sup> but all state reports and committee observations are made public, and sometimes cited by domestic and regional courts.<sup>2</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>3</sup> this study will focus on concluding observations as the most pertinent outputs for mapping how UN human rights mechanisms have been addressing the misuse of counter-terrorism measures (CTMs) and measures for preventing and countering violent extremism (PCVE). 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 concluding observations.

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](#). Most contain three main sections: (a) Positive Aspects; (b) Principal Matters of Concern and Recommendations; and (c) a concluding

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<sup>1</sup> Michael O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUM. RTS. L. REV. 27, 36 (2006).

<sup>2</sup> 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).

<sup>3</sup> Cosette D. Creamer & Beth A. Simmons, *The Proof is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 AJIL 1 (2019).

section addressing dissemination and follow-up procedures. A search procedure was developed based on 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” (A/HRC/40/52) to extract concerns regarding States party measures or practices relating to countering terrorism, CVE, PVE, national security, or public order. To ensure that the search procedure captured recommendations concerning security measures restricting civic space (even if not explicitly referenced in the context of CT/CVE), a second search was conducted to extract concerns relating to the registration of civil society organizations, human rights defenders, and journalists. For this search, manual inspection of the text was conducted to ensure the concern or recommendation was relevant to the Global Study (see Annex for further details on the search procedure and terms employed).

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 “terroris\*” (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 review. 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.

	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

**Table 1.** Search results for HRTB concluding observations between 2002-2022 (for HRC and CmAT) and 2010-2022 (for CmEDAW).

Drawing again from the Special Rapporteur’s previous report 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), a coding procedure was developed to assign each **concern** to one or more categories based on the measure or practice at issue. The HRTBs frequently express concern about more than one measure or practice as it relates to the human rights provision under consideration; for that reason, each country-concern may be coded as falling within more than one category (see Annex for further details regarding the coding methodology and examples of concerns for each type of measure).

Finally, in order to address a potential critique that some of these measures and practices operate outside the context of countering terrorism, 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 their 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.

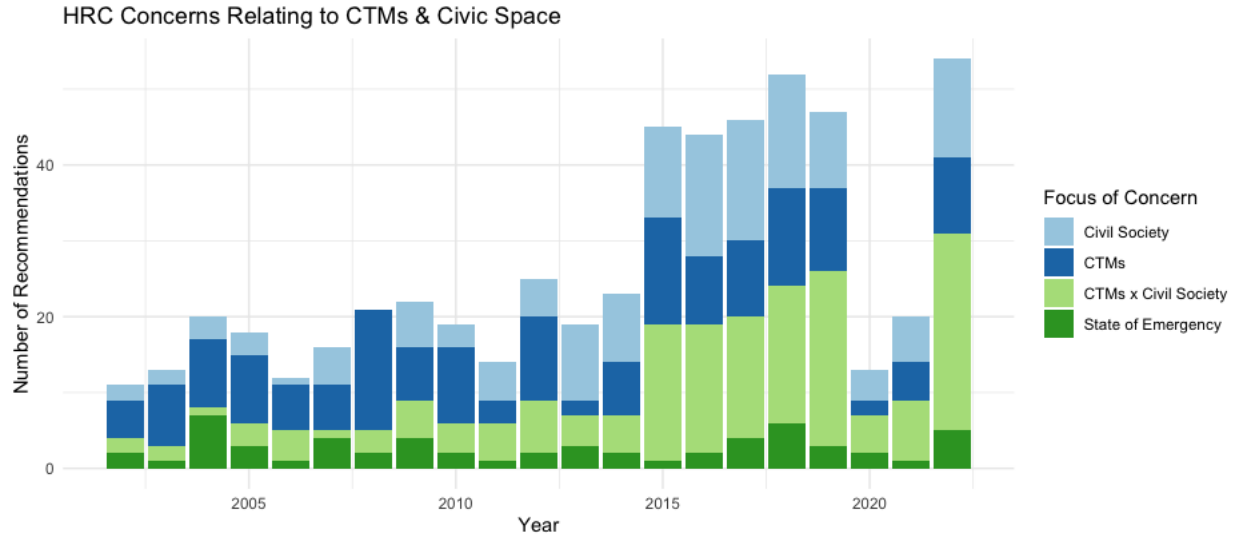
### III. Treaty Body concerns regarding the impact of measures to address terrorism and violent extremism on civic space

The frequency of HRTB concerns and recommendations relating to the use of CTMs (and occasionally PCVE measures) targeting civic space has increased over time, particularly since 2015 (see Figures 1, 2, and 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. Following the terrorist attacks of September 11, 2001, as governments began to enact more expansive CTMs, treaty bodies did begin to address ways in which these measures conflicted with human rights standards, particularly in their application to alleged terrorist groups. These early concerns were expressed rather generally; not until the mid-2010s did HRTBs begin to turn their attention to the increasingly extensive use of security measures directed at civil society actors (represented by the blue bars within Figures 1-3). 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.<sup>4</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>5</sup>

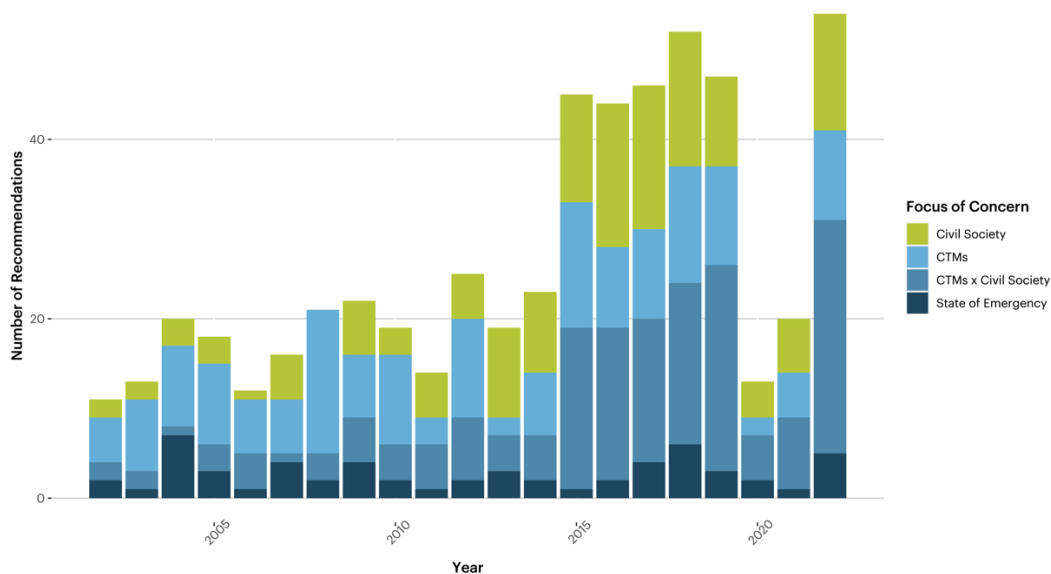
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<sup>4</sup> Documented within the Special Rapporteur's 2020 Report, *Human rights impact of policies and practices aimed at preventing and countering violent extremism* (A/HRC/43/46).

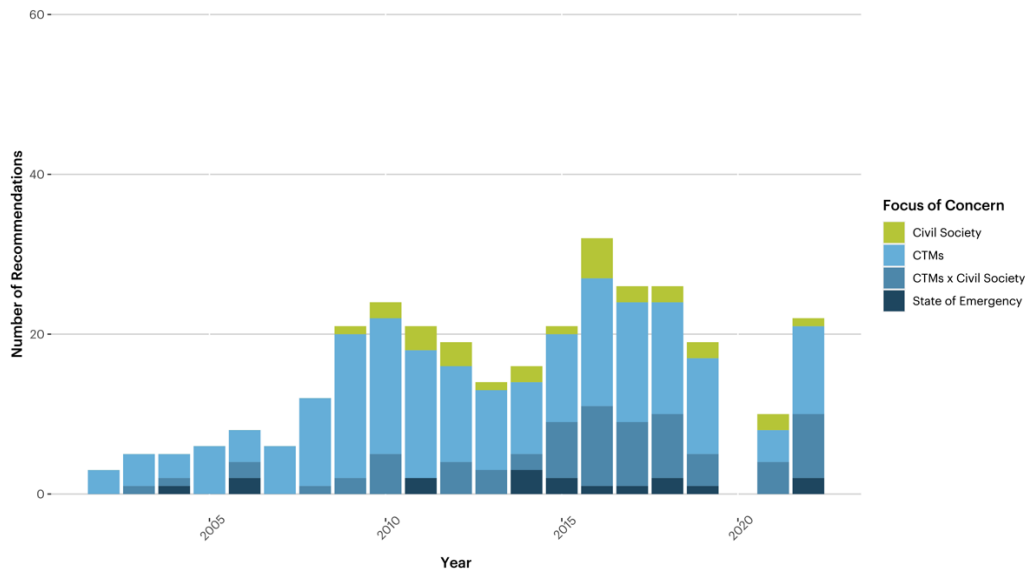
<sup>5</sup> CCPR/C/AUS/CO/6 (2017), para. 15.



**Figure 1. HRC recommendations, by focus of concern (2002-2022).** 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. CmAT recommendations, by focus of concern (2002-2022).** 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 3. CmEDAW recommendations, by focus of concern (2010-2022).** 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”).

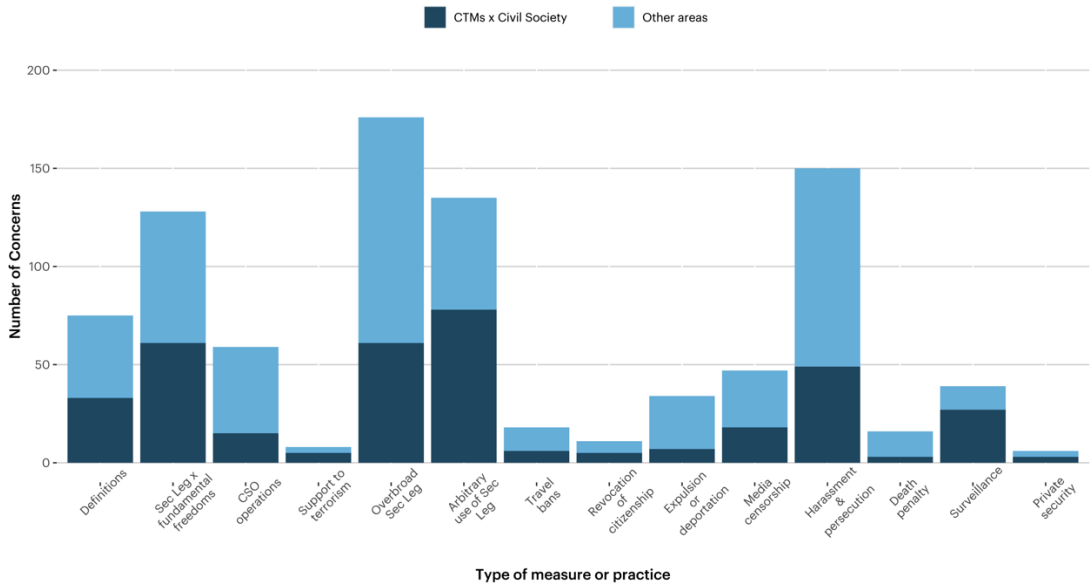
Table 2 lists the categories used to code each recommendation based on the type of measure or practice about which the HRTB voiced a concern (see Annex for examples of and the magnitude of concerns expressed about each type of measure to date).

<b>Table 2. Types of CT and CVE measures coded from treaty body concerns</b>
<ul style="list-style-type: none"> <li>● Definition of terrorism and/or extremism</li> <li>● Security legislation restricting fundamental freedoms</li> <li>● Regulations on registration or operation of CSOs</li> <li>● Measures limiting forms of “support to terrorism”</li> <li>● Indiscriminate or overbroad security legislation</li> <li>● Application or use of security legislation</li> <li>● Administrative measures lacking judicial oversight &amp; remedies               <ul style="list-style-type: none"> <li>○ Travel bans</li> <li>○ Revocation of citizenship</li> <li>○ Expulsion or deportation</li> <li>○ Media censorship</li> </ul> </li> <li>● Physical &amp; verbal harassment or persecution</li> <li>● States of emergency and/or derogations</li> <li>● Application of the death penalty for terrorist offenses</li> <li>● Surveillance</li> <li>● Use of private security forces</li> <li>● Repatriation of children of nationals from conflict zones</li> </ul>

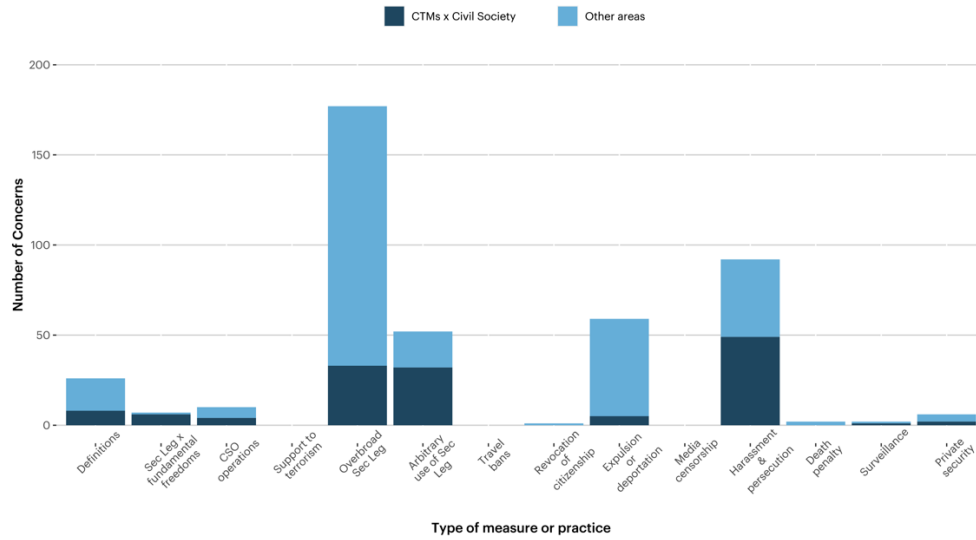
Figures 4-6 display the number of concerns each HRTB raised regarding distinct types of measures or practices. As noted previously, to address the fact that several concerns relate to measures and practices for which the committee does not *explicitly* indicate operate within the context of countering terrorism or preventing violent extremism, they were further disaggregated into one of three categories. The “CTMs x Civil Society” category (shaded red in Figures 4-6) represents the number of times a treaty body *explicitly* referenced the use of security measures, PCVE measures, or CTMs to target civil society. The “other areas” category (shaded blue in Figures 4-6) 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 PCVE measure.



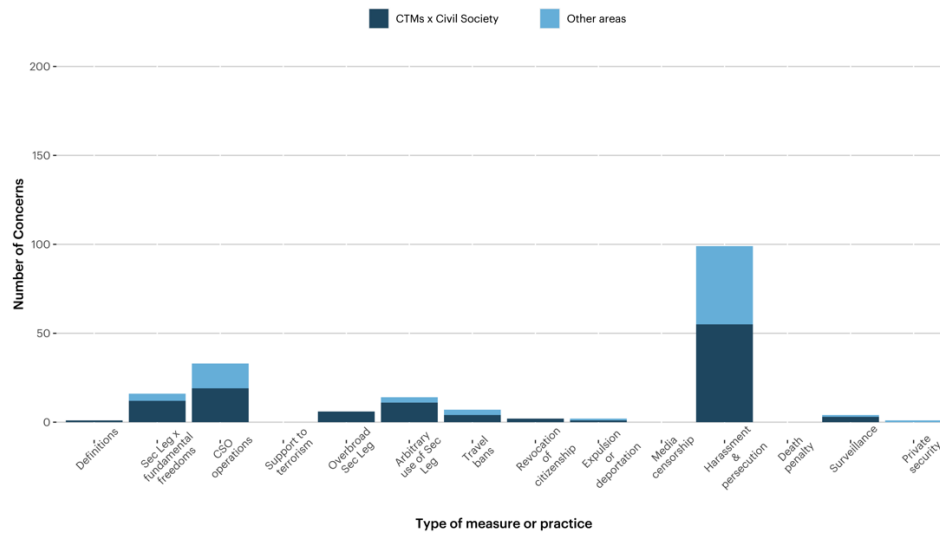
Given the human rights remit of the HRC, it has understandably addressed a broader range of measures than the CmAT and CmEDAW. All three committees, however, frequently address verbal and physical harassment, intimidation, and persecution, with CmEDAW focusing predominantly on gender-based violence and harassment. Aside from harassment, HRC and CmAT 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 CmAT. For both committees, half of all these concerns relate explicitly to the targeting of civic space. In contrast, given its mandate, CmEDAW 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 following section details these concerns and subsequent HRTB recommendations for each type of measure or practice.



**Figure 4. HRC Concerns, by type of measure & focus of concern (2002-2022).** 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 5. CmAT Concerns, by type of measure & focus of concern (2002-2022).** 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. CmEDAW Concerns, by type of measure & focus of concern (2010-2022).** 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”).

## IV. Overview of HRTB recommendations

### Definitions of terrorism and extremism

The treaty bodies have consistently expressed concern with respect to various formulations of the crime of terrorism in States' security laws, namely overly broad or vague definitions susceptible to wide interpretation and application.<sup>6</sup> They caution that ambiguous or imprecise definitions "might encompass and consequently jeopardize legitimate activity in a democratic society, in particular participation in public demonstrations,"<sup>7</sup> and that definitions that "include such acts as disturbing the public order, acts that sow discord and online activity that supports or spreads ideas of terrorist groups...would allow authorities to detain and prosecute, among others, individuals who exercise their right to freedom of expression and peaceful assembly."<sup>8</sup> The CmEDAW has only explicitly addressed CTM definitions on one occasion, voicing concern about "broad definitions of acts of terrorism, terrorist organizations and financing of terrorism...in particular at the gendered impact of such broad definitions, resulting in the exposure of women activists to gender-specific forms of abuse and harassment."<sup>9</sup> To address these concerns, treaty bodies have recommended that States adopt "more precise," "narrower," or "restrictive" definitions that are in conformity with international standards and comply with principles of legal certainty and predictability. Furthermore, the definition should ensure that application of CT legislation observes principles of necessity, proportionality, and non-discrimination and that CT efforts do not target individuals on political, religious, ethnic, social, cultural, or ideological grounds.

In the context of individual communications, the treaty bodies only occasionally confront broad definitions of terrorism. For example, the HRC considered the definition of acts and activities of terrorism contained within the Maldives' Prevention of Terrorism Act, article 2(b) of which included "the act or the intention

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<sup>6</sup> See, e.g., CCPR/C/GBR/CO/7 (2015), para. 14 (expressing concern about the State's "broadly formulated definition of terrorism...that can include a politically motivated action which is designed to influence a government or international organization"); CAT/C/KEN/CO/3 (2022), para. 27 (expressing concern about "a definition of terrorism that is vague, overly broad and has been used to oppress those critical of the Government").

<sup>7</sup> CCPR/C/ISL/CO/4 (2005), para. 10.

<sup>8</sup> CCPR/C/JOR/CO/5 (2017), para. 12. See also CCPR/C/USA/CO/3 (2006), para. 11 (expressing "concern about the potentially overbroad reach of the definitions of terrorism under domestic law...which seem to extend to conduct, e.g. in the context of political dissent, which, although unlawful, should not be understood as constituting terrorism").

<sup>9</sup> CEDAW/C/SYR/CO/2 (2014), para. 29.

of kidnapping or abduction of person(s) or of taking hostage(s).”<sup>10</sup> In an individual communication brought by the former democratically elected president of Maldives, the HRC considered the Act’s definition of terrorism to be “formulated in a broad and vague fashion that does not comply with the principle of legal certainty and predictability and that is susceptible to wide interpretation,” as was the case when applied to the former President.<sup>11</sup> While it found the State had an obligation to review the charges and “take steps to prevent similar violations from occurring in the future, including reviewing its legislation to ensure that any restriction on the right to stand for office is reasonable and proportionate,” it made no further recommendation with respect to the overbroad definition in the Prevention of Terrorism Act specifically.<sup>12</sup>

To date the treaty bodies have not recommended a ‘model’ definition. However, the HRC has suggested, *inter alia*, that the crime should require an intent to coerce, compel, or intimidate a government or section of the public and be restricted to cases involving acts of violence or include an element of direct incitement or resort to violence. Terrorist acts should also be defined in terms of their objective or purpose and limited to offences justifiably equated with the serious consequences of terrorism.<sup>13</sup> The definition should also ensure that its interpretation and application does not lead to the suppression of protected conduct and speech, or denial and restriction of rights “under the cover of terrorist acts,”<sup>14</sup> “in particular with regard to human rights defenders and journalists.”<sup>15</sup> Similarly, the CmAT recommends that terrorist acts not be defined in a way that gives rise to interpretations used to label the legitimate expression of rights as terrorist acts, in particular engaging in non-violent expression and advocacy in defense of human rights, or persecute participants in or supporters of social protests, individuals running for office, or those who express dissenting views. In one instance the HRC recommended that “inspiration for an adequate definition of terrorism” could be drawn from paragraph 28 of the Special Rapporteur’s report on

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<sup>10</sup> CCPR/C/122/D/2270/2013 (2018), para. 2.15 and fn 4.

<sup>11</sup> Ibid., para. 8.3. The HRC further observed that the judicial proceedings in which the former President was convicted on charges of terrorism were “politically motivated, had serious flaws and violated the right to fair trial...[and] the restrictions of his right to stand for office, as a result of the said conviction and sentence, are arbitrary,” in violation of CCPR Article 25. Ibid, para. 8.7.

<sup>12</sup> Ibid, para. 10. The Special Rapporteur has addressed this legislation in her 2023 Report on the Maldives. A/HRC/52/39/Add.1..

<sup>13</sup> CCPR/C/POL/CO/7 (2016), para. 10 (“ensure that the Penal Code not only defines terrorist crimes in terms of their purpose, but also narrowly defines the nature of those acts”).

<sup>14</sup> CCPR/C/TUN/CO/5 (2008), para. 15.

<sup>15</sup> CCPR/C/DZA/CO/4 (2018), para. 18.

*Ten areas of best practices in countering terrorism (A/HRC/16/51) and from paragraph 3 of Security Council resolution 1566 (2004).*<sup>16</sup>

The CmAT has not yet addressed any State's definition of extremism to date. As the number of countries enacting PCVE measures began to rise after 2015, the HRC did begin to occasionally dedicate a section of its concluding observations to "Combating extremism" or "Definition of extremism," sometimes in conjunction with a dedicated focus to "Counter-terrorism measures."<sup>17</sup> A dedicated focus to PCVE will likely continue as more of these measures are brought to the committee's attention. To date, the HRC has in a few instances voiced concern about PCVE legislation, such as a draft law "aimed at extremist religious groups, which contains a very broad definition of 'extremist'," recommending that the State clarify "the vague definition of key terms, removing restrictions on preaching in languages other than Bulgarian and ensuring that any legal restrictions, including regarding access to foreign funding, are not used as a tool to curtail freedom of expression."<sup>18</sup> It has further recommended that definitions must include an element of violence or (advocacy of) hatred, should establish clear and precise criteria for designating certain materials as extremist, and must conform with Covenant article 19 as well as principles of legal certainty, predictability, and proportionality.<sup>19</sup> Furthermore, the range of activities considered extremist should be limited.

## **Security legislation restricting the legitimate exercise of fundamental freedoms**

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<sup>16</sup> See, e.g., CCPR/C/KOR/CO/4 (2015), para. 21 ("The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant, are applicable to terrorism alone and comply with the principle of non-discrimination. In particular, the State party should ensure that acts of terrorism, including cyberterrorism, are defined in a precise and narrow manner, and that legislation adopted in that context is limited to crimes that would clearly qualify as acts of terrorism.")

<sup>17</sup> CCPR/C/KAZ/CO/2 (2016); CCPR/C/RUS/CO/8 (2022); CCPR/C/TKM/CO/2 (2017).

<sup>18</sup> CCPR/C/BGR/CO/4 (2018), paras. 35 and 36; see also CCPR/C/KAZ/CO/2 (2016), paras. 13 and 14 ("The State party should bring its counter-terrorism and counter-extremism legislation and practices into full compliance with its obligations under the Covenant, inter alia, by revising the relevant legislative provisions, with a view to clarifying and narrowing the broad concepts referred to above to ensure that they comply with the principles of legal certainty and predictability and that the application of such legislation does not suppress protected conduct and speech").

<sup>19</sup> See, e.g. CCPR/C/TKM/CO/2 (2017), para. 15 (recommending the State party bring its CVE legislation into conformity with international standards by "narrowing the broad range of activities considered extremist and ensuring their conformity with the principles of legal certainty, predictability and proportionality, and by ensuring that the definition of extremism contains an element of violence or advocacy of hatred").

This category encompasses security or public order laws, including specific legislation for countering terrorism, that a treaty body finds *de jure* violates fundamental freedoms, namely freedoms of expression and opinion, association, assembly, and religion. The treaty bodies typically recommend revision or amendment of such laws to conform with international human rights standards generally. States have been requested to amend or repeal security laws and security-related provisions in penal codes that, *inter alia*: criminalize blasphemy, insulting the head of State, or making of derogatory remarks about the State; engaging in “anti-State activities” or “tarnishing the image of the nation”;<sup>20</sup> prohibit participation in unregistered organizations; prohibit “collusion with a view to undermining national integrity”;<sup>21</sup> or incitement to “social, national, clan, class or religious discord.”<sup>22</sup> The HRTBs have suggested States engage all stakeholders in the process of reviewing and revising security legislation.

The HRC provides slightly more guidance than CmAT or CmEDAW in requiring States to ensure that any legal restrictions enacted to counter terrorism are not used as a tool to curtail legitimate freedom of expression, association, and peaceful assembly beyond the narrow conditions permitted under the Covenant, namely that the restriction is necessary, proportional, and justified. Security laws should never be used to suppress the legitimate expression of critical and dissenting opinions,<sup>23</sup> to intimidate members of civil society who exercise their right to peaceful assembly or participation in public affairs,<sup>24</sup> or to prosecute civil society members for engagement with international NGOs and human rights mechanisms.<sup>25</sup>

The HRC has encouraged States to “consider” decriminalizing defamation, or at least apply it only in serious cases and refrain from imprisonment as a penalty for defamation. It has further called on States to repeal sedition provisions and refrain from apply national security laws to sedition cases. The treaty bodies have addressed CVE legislation in a few instances to recommend that it employ precise and narrow definitions of hate crimes and crimes against State security<sup>26</sup> and that

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<sup>20</sup> CAT/C/BGD/CO/1 (2019), para. 31.

<sup>21</sup> CAT/C/NIC/PCO/2 (2022), para. 23.

<sup>22</sup> CCPR/C/KAZ/CO/2 (2016), para. 49.

<sup>23</sup> See, e.g., CCPR/C/CHN-HKG/4 (2022), para. 16.

<sup>24</sup> See, e.g., CCPR/C/JOR/CO/5 (2017), para. 33; CCPR/C/PHL/CO/5 (2022), para. 50.

<sup>25</sup> See, e.g., CCPR/C/CHN-HKG/4 (2022), para. 50 (calling on the State party to “ensure that members and representatives of civil society organizations will not be charged under the National Security Law or victimized in any other form as a result of their engagement with the Committee for the current review as well as with other international human rights mechanisms, including other treaty bodies, the Human Rights Council, the Special Procedures and the Universal Periodic Report as well as with international NGOs”).

<sup>26</sup> CCPR/C/RWA/CO/4 (2016), para. 40.

forms of religious activities, such as proselytism and other missionary activities, are decriminalized.<sup>27</sup>

## **Regulations governing the registration or operation of CSOs**

Recommendations under this category apply primarily to regulations governing the registration, operation, or very existence of NGOs, particularly human rights organizations. Most recommendations simply request States revise regulations on CSO registration and operation to ensure their compatibility with international human rights standards, namely freedom of association (CCPR, article 22). States have been cautioned to refrain from criminalizing public associations, including political parties, for their legitimate activities and that any restrictions on the freedom of association should be necessary, proportionate, and non-discriminatory. At times, the committees engage in an intersectional analysis by further referring to conformity with Covenant article 19 (freedom of expression), article 25 (right to participate in public affairs), and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (GAOR 53/144).

The HRTBs regularly indicate that registration measures should not discriminate against foreign CSOs, those with members who reside outside of the country, or those that receive foreign funding. The committees have recommended that funding restrictions on domestic CSOs be reconsidered or lifted,<sup>28</sup> that HROs be permitted to access foreign sources of funding without being required to register as “foreign agents,”<sup>29</sup> and that any legal restrictions regarding access to foreign funding are not used as a tool to curtail freedom of association or expression.<sup>30</sup> One recommendation made explicit reference to the opinion of the European Commission for Democracy through Law on this matter.<sup>31</sup>

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<sup>27</sup> CCPR/C/UZB/CO/4 (2015), para. 22; CCPR/C/UZB/CO/5 (2020), para. 43.

<sup>28</sup> See, e.g., CCPR/C/HUN/CO/6 (2015), paras. 53-56; CEDAW/C/KEN/CO/8 (2017), para. 13.

<sup>29</sup> CCPR/C/RUS/CO/8 (2022), paras 34 and 35; CEDAW/C/RUS/CO/8 (2015), para. 15 (noting “the adverse impact of the amendments on women’s rights organizations,” regretting they had “resulted in restrictions on the activities of non-governmental organizations and the suspension or closure of some such organizations working in the field of women’s rights”). See also CEDAW/C/RUS/CO/9 (2021), paras. 18 and 19.

<sup>30</sup> CCPR/C/BGR/CO/4 (2018), para. 36; see also CEDAW/C/PAK/CO/5 (2020), para. 15 (noting “with concern that the procedure for non-governmental organizations to obtain foreign funding lacks transparency and is cumbersome and applied in a discriminatory manner”).

<sup>31</sup> CCPR/C/RUS/CO/7 (2015), para. 23.

Occasionally, the treaty bodies recommend that States further facilitate CSO registration by, *inter alia*: simplifying complex registration rules;<sup>32</sup> removing procedural and substantive registration obstacles;<sup>33</sup> establishing clear criteria for decisions that deny registration, temporarily suspend, or permanently close organizations;<sup>34</sup> and ensuring registration applications are processed professionally and expeditiously.<sup>35</sup> In a few instances, the HRC cautions States to refrain from using NGO regulations or security laws to dissolve groups for the legitimate exercise of their rights.<sup>36</sup>

Less frequently, the HRTBs consider regulations for religious groups, political parties, and trade unions. These recommendations tend to request States remove obstacles to the registration and operation of these groups. Regarding religious groups, the HRC at times recommends the decriminalization of religious activity by unregistered organizations.<sup>37</sup> It also requests States to ensure that registration criteria be transparent, objective, fair, and that any limitations conform to CCPR Art. 18.<sup>38</sup>

## **Measures limiting forms of “support to terrorism”**

Within eight reviews, the HRC has expressed concern about legislation that criminalizes various forms of support to terrorism including: “association and collaboration with terrorist groups”; “provocation and vindication of terrorism”; “encouragement of terrorism”; “public justification of terrorism”; online activity that supports or spreads ideas of terrorist groups; and failure to report activities of spouses suspected of terrorism. The HRC notes that such provisions may unjustifiably restrict the legitimate freedom of expression and have been used to target civil society actors; it recommends revising legislation to ensure its application does not lead to a disproportionate interference with that right. The CmAT and CmEDAW have not addressed this type of measure to date.

## **Indiscriminate or overbroad security legislation**

This category covers security legislation that loosely invokes national security, national/public interest, public order, or social and political stability, as well as security legislation that the HRTBs consider violate one or more treaty obligations. Concerns regarding these types of measures frequently overlap with those

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<sup>32</sup> See, e.g., CEDAW/C/TKM/CO/5 (2018), paras. 28 and 29.

<sup>33</sup> See, e.g., CEDAW/C/TJK/CO/6 (2018), paras. 19 and 20.

<sup>34</sup> See, e.g., CCPR/C/AZE/CO/4 (2016), paras. 40 and 41.

<sup>35</sup> See, e.g., CCPR/C/TKM/CO/1 (2012), para. 19.

<sup>36</sup> See, e.g., CCPR/C/BHR/CO/1 (2018), paras. 57 and 58.

<sup>37</sup> See, e.g., CCPR/C/UZB/CO/5 (2020), para. 43.

<sup>38</sup> Ibid. See also CCPR/C/IRQ/CO/6 (2022), para. 31.



concerning other types of measures or practices. The treaty bodies regularly recommend that States amend or eliminate overbroad provisions relating to national security, such as crimes of treason or “anti-State activities.” They also insist that CT and security legislation fully comply with international human rights standards and provide for procedural safeguards against improper application.

In particular, the treaty bodies have recommended that security laws contain clear prohibitions against arbitrary arrest, detention, and torture, and that such legislation adhere to principles of legal certainty and predictability, necessity, and proportionality. Any limitations on human rights for national security purposes should provide appropriate safeguards and preventive measures to ensure that their application does not unduly restrict human rights. Additionally, laws should guarantee appropriate procedural safeguards for persons suspected of or charged with terrorist acts or related crimes, in accordance with CCPR articles 9 and 14, the HRC’s general comment number 35 (2014), and CmAT general comment number 2 (2007). Recommended safeguards have included strict observance of the principles of necessity and proportionality when using terrorism-related arrest powers; limitations on the use of preventive detention; cessation of incommunicado detention regimes;<sup>39</sup> and guarantees of the right to a fair trial and access to justice.

In some instances, the treaty bodies have requested the State transfer jurisdiction of detention and investigation facilities from defense or national security ministries to justice ministries and transfer cases brought against civilians from military to civil courts. When a State intends to revise or enact new security laws, the treaty bodies have recommended the legislative process be transparent, inclusive, and involve meaningful participation by civil society and the public.

## **Application or use of security legislation**

Under this category fall practices involving the application or use of security measures or security-related criminal provisions in an arbitrary or indiscriminate fashion, particularly when directed against civil society actors. Practices include arbitrary arrest, detention, prosecution, and other forms of judicial harassment. Civil society actors targeted span activists, peaceful demonstrators, academics, lawyers, human rights defenders, journalists, political opponents, members of their families, and minority or indigenous groups.<sup>40</sup> Concerns expressed regarding this

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<sup>39</sup> CCPR/C/125/D/2657/2015 (2019), para. 11 (“the State party should take the necessary measures, including urgent measures of a legislative nature, to put an end to the incommunicado detention regime”). See also: CCPR/C/ESP/CO/6 (2015), para. 17; CCPR/C/ESP/CO/5 (2008), para. 14; CCPR/C/107/D/1945/2010 (2013), para. 10.

<sup>40</sup> CEDAW/C/CHL/CO/7 (2018), para. 30 (“The Committee is further concerned that anti-terrorism legislation has been applied disproportionately to criminalize certain acts by indigenous women in connection with the assertion of their rights, including their rights to

practice almost always appear alongside recommendations regarding the law being applied, namely security legislation that is overbroad and/or that restricts the legitimate exercise of fundamental freedoms.<sup>41</sup>

In response to such practices, treaty bodies typically call on the State to “refrain” from applying counter-terrorism legislation or broadly defined security-related offences to bring retaliatory charges against civil society actors and to take unspecified preventive steps to ensure that CTMs are “not applied arbitrarily and abusively in a manner that restricts civic space.” Forms of such judicial harassment have also included, *inter alia*, charges of contempt of court, defamation, sedition for criticizing government leaders, or the use of provisions on extremism to suppress critical reporting on matters of public interest. The HRTBs have further requested immediate review of the legality of arrests performed during counter-terrorism operations, independent investigations into allegations of unlawful or arbitrary arrest against civil society actors, and the release of those found to be detained arbitrarily. In addition to reviewing instances of arbitrary arrest and detention under CTMs, the HRC has occasionally recommended that States take additional steps to promote civic space. The treaty bodies all regularly request States ensure that no individual or group is subjected to charge or prosecution in reprisal for cooperating with UN, other international, regional, or national human rights entities. On one occasion, the CmEDAW expressed concern regarding “insufficient efforts to include a gender perspective in strategies to prevent violent extremism and counter terrorism,” recommending the State party “strengthen its efforts to include a gender perspective in strategies to prevent violent extremism and build the capacity of women and girls, including women civil society groups, to engage in efforts to counter terrorism.”<sup>42</sup>

## **Administrative measures lacking judicial oversight & remedies**

### **Travel bans & other restrictions on movement**

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ancestral lands”); CAT/C/CHL/CO/6 (2018), para. 19 (“the State party should refrain from applying counter-terrorism legislation to persons accused solely of causing property damage in the course of demonstrations in favour of the rights of indigenous people”).

<sup>41</sup> See, e.g., CAT/C/CHN/CO/5 (2015), para. 36 (raising concerns “at consistent reports that human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities continue to be charged, or threatened to be charged, with broadly defined offences as a form of intimidation. Such offences reportedly include “picking quarrels and provoking troubles”, “gathering a crowd to disturb social order” or more severe crimes against national security. In this respect, the Committee expresses particular concern at the broadly defined crimes grouped under the categories of “endangering national security” and “terrorism” in the Criminal Law and in the 2015 National Security Law...”).

<sup>42</sup> CEDAW/C/CHE/CO/5 (2016), paras. 16 and 17.

The HRC has recommended that States ensure measures restricting an individual's freedom of movement be founded on a reasonable suspicion of participation in criminal activity. It further requires such measures conform with Covenant articles 9 and 12, in particular requirements of necessity and proportionality; that effective safeguard, including judicial oversight, are in place to counter abuses; and that States refrain from imposing travel bans arbitrarily against journalists, opposition politicians, human rights defenders and lawyers. A half dozen CmEDAW concerns relate to restrictions on the freedom of movement for women's rights activists and women journalists in particular, although only two explicitly reference security justifications.<sup>43</sup> The CmAT has not addressed this type of measure to date.

### **Revocation of citizenship**

While most revocations addressed occurred in the context of countering terrorism, a few related to members of religious groups not recognized by the State party. For the former, the HRC typically requests the State to ensure citizenship cannot be revoked, except when in accordance with principles of legality, necessity, and proportionality, and when such decisions are subject to independent judicial review. States must also establish procedures to avoid rendering an individual stateless. To date the CmAT has only issued one recommendation regarding revocation of citizenship, although not in the context of CTMs, calling on the State party to "refrain from using" this measure "as a form of reprisal against human rights defenders, journalists and any other critics who are political activists and not in favour of the authorities."<sup>44</sup> The CmEDAW has further noted that laws permitting "the deprivation of nationality of individuals who have committed terrorist crimes and/or caused other grave damage to vital interests" create a high risk of statelessness for women and girls, and that the State party should "provide safeguards against the arbitrary deprivation of nationality with a view to preventing statelessness, including the right to lodge an appeal with suspensive effect and the availability of effective remedies, which should include the possibility of restoring nationality."<sup>45</sup>

### **Expulsion or deportation of migrants or refugees**

The treaty bodies regularly address security regulations and CTMs that States use to expel, extradite, or return non-nationals, including refugees and asylum seekers. In the context of countering terrorism, the HRTBs request that States ensure all measures comply fully with the principle of non-refoulement and provide necessary procedural guarantees. Procedural guarantees recommended have

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<sup>43</sup> CEDAW/C/ISR/CO/6 (2017), paras. 30 and 31; CEDAW/C/SYR/CO/2 (2014), paras. 29 and 30.

<sup>44</sup> CAT/C/BHR/CO/2-3, para. 33.

<sup>45</sup> CEDAW/C/KAZ/CO/5 (2019), paras. 33 and 34.

included examination of each individual case rather than collective determinations, especially mass forced returns; and an appeal mechanism, with judicial review of the decision's merits rather than mere reasonableness. In their application, measures should not result in arbitrary or indefinite detention.

With respect to extradition requests, the HRTBs request States to not rely solely on diplomatic assurances when deportation may result in torture or persecution; adopt clear and transparent procedures for judicial review before deportation/extradition; and establish effective means to monitor the fate of affected individuals and take appropriate remedial action when assurances are not fulfilled.<sup>46</sup>

### **Media censorship**

The HRC has addressed a broad range of restrictions on free speech, the media, and press censorship, including the closure of media outlets, Internet and phone service shutdowns, and the blocking of specific content or websites. Of note, the HRC at times explicitly identifies instances of "inappropriate application" of media regulations "in the combat of terrorism, as illustrated by the closure of many newspapers"<sup>47</sup> or the use of emergency powers as a counter-terrorism measure to "block[] access to the Internet and mobile communication services but without a court order and without declaring an official state of emergency."<sup>48</sup>

The HRC typically reminds States that any restrictions imposed on press and media activities, including restrictions adopted in pursuit of countering terrorism, comply with CCPR Article 19(3) as elaborated in HRC general comment number 34 (2011)

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<sup>46</sup> See, e.g., CAT/C/DEU/CO/5 (2011), para. 25 (noting that "such assurances may not ensure that an individual would not be subjected to torture or ill-treatment if returned, even in cases where post-return monitoring mechanisms are put in place"); CAT/C/GBR/CO/5 (2013), para. 18 ("The more widespread the practice of torture or other cruel, inhuman or degrading treatment, the less likely the possibility of the real risk of such treatment being avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. Therefore, the Committee considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.").

<sup>47</sup> CCPR/C/ETH/CO/1 (2011), para. 24 See also CCPR/C/ETH/CO/2 (2022), para. 39 ("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 (*sic*) 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.").

<sup>48</sup> CCPR/C/TJK/CO/3 (2019), para. 21.

and adhere to principles of necessity and proportionality.<sup>49</sup> In particular cases it recommends that independent newspapers, local broadcasting of radio stations, and public broadcasting are not subject to unreasonable restrictions, political influence, and government interference. To that end, it may call on a State ensure the independence and impartiality of the State broadcasting and licensing authorities, permit the establishment of private media institutions, and promote a plurality of opinions in the media.<sup>50</sup> The HRC has also stressed that States must ensure individuals have access to Internet websites and social networks without undue restrictions. Any restriction on access to Internet, phone services, or the blocking of media resources should similarly adhere to the principles of legality, proportionality, and necessity. Moreover, any decision to block or content must be made by an independent authority and subject to judicial oversight or review. The CmAT and CmEDAW have not expressly addressed this practice to date.

## **Physical & verbal harassment & persecution**

The HRTBs frequently address physical and verbal harassment of civil society actors, both generally and in the context of countering terrorism. Types of harassment and persecution addressed include, *inter alia*, attacks, extrajudicial killings, intimidation, threats, public discrediting by government officials or media smear campaigns,<sup>51</sup> and other forms of stigmatization. Actors or groups targeted by such practices have spanned academics, activists, lawyers, human rights defenders, journalists, artists, and their families, as well as ethnic and religious minority groups. The CmEDAW has specifically focused on violent threats and attacks by security forces during internal conflicts or counter-terrorism operations that directly target and have a negative impact of this situation on women and girls.<sup>52</sup> The committees typically call on the states to refrain from and adopt necessary measures to prevent and put an end to such harassment. They further

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<sup>49</sup> CCPR/C/JPN/CO/7 (2022), para. 37 (recommending the State party “ensure that the Act on the Protection of Specially Designated Secrets and its application conform to the strict requirements of article 19 of the Covenant, including by narrowly defining the categories of information that could be classified as secret and guaranteeing that any restriction of the right to seek, receive and impart information complies with the principles of legality, proportionality and necessity in order to prevent a specific and identifiable threat to national security, and that no individual is punished for disseminating information of legitimate public interest that does not harm national security.”).

<sup>50</sup> See, e.g., CCPR/C/HKG/CO/4 (2022), para. 42; CCPR/C/JPN/CO/7 (2022), para. 37; CCPR/C/KWT/CO/3 (2016), para. 41; CCPR/C/TGO/CO/5 (2021), para. 44; CCPR/C/VNM/CO/3 (2021), para. 46.

<sup>51</sup> CCPR/C/CZE/CO/4 (2019), para. 16 (raising particular concern “that senior officials in the State party reportedly encourage the public perception of migration as a threat to public security and that the media has been used to instil (*sic*) fear of migrants and asylum seekers and to strengthen stereotypical prejudices based on ethnicity or religion”).

<sup>52</sup> See, e.g., CEDAW/C/PAK/CO/4 (2013), paras. 13 and 14.

recommend that allegations of such practices should be promptly, impartially, and effectively investigated, those responsible should be prosecuted and punished, and victims should be provided access to effective remedies and reparations. In some cases, they recommend the State establish an independent national mechanism for the protection of human rights defenders, journalists, and other civil society actors.<sup>53</sup>

In cases of physical harassment or persecution, the HRTBs encourage States to adopt strict regulations on appropriate uses of force, coercive measures, equipment, and weapons, incorporating the principles of lawfulness, necessity, proportionality, and the precautionary principle. Any uses of force should be evaluated based on the potential risks involved and the inadequacy of other, less restrictive measures. This recommendation frequently arises in the context of harassment and ill-treatment by law enforcement officials during demonstrations or in the context of counter-terrorism operations.<sup>54</sup> States are further requested to provide mandatory and ongoing training to all members of security forces in the proper use of force and firearms, consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020).

## **States of emergency**

In addressing legislation providing for states of emergency and derogations thereunder, the HRC typically requests that States ensure those laws fully comply with CCPR article 4 and the HRC's general comment number 29 (2001) on derogations during a state of emergency.<sup>55</sup> The CmAT understandably focuses on ensuring that the absolute, non-derogable prohibition of torture (CAT Art. 2(2)) is incorporated into law and strictly followed during states of emergency. On the few occasions the CmEDAW has addressed emergency laws, it has called on states to ensure they "do not infringe upon the rights of women, including women human rights defenders, and their right to freedom of expression"<sup>56</sup> and "that all women and girls who live in areas that are subject to emergency laws are effectively

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<sup>53</sup> See, e.g., CAT/C/CUB/CO/3 (2022), para. 41.

<sup>54</sup> CAT/C/KAZ/CO/2 (2008), para. 8 ("ensure that the fight against terrorism does not...impose undue hardship on vulnerable groups").

<sup>55</sup> CCPR/C/21/Rev.1/Add.11 (2001), para. 4 (A "fundamental requirement for any measures derogating from the Covenant is that such measures be limited to the extent strictly required by the exigencies of the situation in accordance with the principle of proportionality...the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation").

<sup>56</sup> CEDAW/C/FJI/CO/4 (2010), para. 13.

protected from discrimination, both in law and in practice.”<sup>57</sup> In this regard, the CmEDAW has recalled that the principle of non-discrimination is non-derogable and continues to apply even during times of armed conflict and in states of emergency, as indicated in the Committee’s general recommendation number 28 (2010) on the core obligations of States parties under CEDAW article 2. The treaty bodies have further emphasized that states should review periodically the need to maintain a state of emergency, particularly in the context of countering terrorism.

## **Application of the death penalty for terrorist offenses**

A handful of concerns and recommendations relate to the imposition of the death penalty for terrorism-related offenses, and only a few of these are made in the context of addressing the use of CTMs to target civic space. As applied to terrorist offenses, the treaty bodies recommend that States exercise discretion and caution in imposing the death penalty in practice, and then only for the most serious crimes involving intentional killing and not for offenses, such as the financing of terrorism, which do not constitute the “most serious crimes” within the meaning of CCPR article 6(2). They further caution that it never imposed in the absence of fair trial procedures or by military courts against civilians. The CmEDAW has not expressly addressed this practice to date.

## **Surveillance & privacy concerns**

The treaty bodies have made clear that all types of surveillance activities and interference with privacy (online surveillance, interception of communications, access to communications data and retrieval of data surveillance), especially for the purposes of State security, must adhere to CCPR article 17. Any interference with the right to privacy must be governed by law, conform to principles of necessity and proportionality, and be subject to effective safeguards. Requisite safeguards include judicial authorization of surveillance, with such authorization subject to effective, regular, and independent oversight mechanisms.<sup>58</sup> Affected persons should also, where possible, be notified of the surveillance and interception activities to which they are being subjected and have access to effective remedies in cases of abuse.<sup>59</sup> In a separate instance, the HRC indicated that any surveillance activity must be authorized by laws that: “(i) are publicly accessible; (ii) contain provisions that ensure that collection of, access to and use

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<sup>57</sup> CEDAW/C/THA/CO/7 (2017), para. 9.

<sup>58</sup> CCPR/C/GNQ/CO/2 (2019), paras. 50 and 51 (expressing concern “at reports that civil society activists, opposition members, journalists and foreign diplomats are subject to Internet and telephone surveillance”).

<sup>59</sup> CCPR/C/PHL/CO/5 (2022), paras. 13 and 14.

of communications data are tailored to specific legitimate aims; (iii) are sufficiently precise and specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, and procedures for the use and storage of data collected; and (iv) provide for effective safeguards against abuse.”<sup>60</sup>

## **Use of private security forces**

The treaty bodies have only addressed the use of private security forces a few times. In doing so, they have consistently recommended that States parties enact measures for the registration and control of private security services and ensure that private forces are subordinate to State law enforcement officials and their activities are properly monitored. Laws on private security forces should establish recruitment and training requirements, including that private security personnel receive human rights training and that persons involved in human rights violations are prevented from performing functions in private forces. Allegations of the excessive use of force by private security personnel must be investigated and those responsible prosecuted. States should further ensure that victims of acts committed by private security personnel have access to justice and effective redress mechanisms. On one occasion the CmAT referenced its general comment number 2 (2007) on the implementation of CAT article 2, in which it established that States bear responsibility for the acts and omissions of private contractors.

## **Repatriation of children born to State party nationals from conflict zones**

In recent years, the HRC has on three occasions issued recommendations concerning the wellbeing and repatriation of children born to States party nationals in conflict zones.<sup>61</sup> It has urged those States to repatriate all such children through a clear and fair procedure that respects the principle of the best interests of the child. Upon repatriation, States should further provide them with support, access to rehabilitation services and care, as well as reintegration and family reunification. The CmAT and CmEDAW have not addressed this issue to date.

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<sup>60</sup> CCPR/C/GBR/CO/7 (2015), para. 24; CCPR/C/USA/CO/4 (2014), para. 22.

<sup>61</sup> CCPR/C/BEL/CO/6 (2019), paras. 13 and 14; CCPR/C/FIN/CO/7 (2021), paras. 10 and 11; CCPR/C/KGZ/CO/3 (2022), paras. 19 and 20.



## V. Conclusions and Recommendations

The UN human rights treaty body system faces many challenges. Reform discussions have recurred since its inception,<sup>62</sup> with commentary taking on increased urgency since the early 2000s, as the system has expanded in size, scope, and membership. The treaty bodies are severely under-resourced, leading to a host of inadequacies. In short, they lack the resources to adequately counter manifold attacks on civil society. Moreover, until the mid-2010s the treaty bodies did not systematically 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. The HRC has taken a welcome lead in increasingly raising concerns about these trends and identifying such trends in granular and specific ways. The Special Rapporteur encourages it to continue to do so explicitly and urges the CmAT and CmEDAW to follow this practice.

More generally, the Special Rapporteur observes that individual committees frequently miss opportunities to work across institutions, both with respect to the other nine core treaty bodies as well as UN Charter human rights mechanisms. This has resulted in uneven standardization and insufficient consolidation of efforts in this area, with minimal referencing of and building on the recommendations of other treaty bodies as well as those within Special Procedures reports and communications. It is noteworthy that, even as they have begun to provide more detailed guidance on how security legislation should and should not define terrorism or terrorist activities, only once has reference been made to the Special Rapporteur's Model Definition of Terrorism.<sup>63</sup> As a positive practice in defining CT legislation terms that is of immediate and direct utility to States, the HRTBs are urged to continue this practice during future reviews. Further, the Special Rapporteur calls on the treaty body system to more consistently use and build on the reports and expertise of all Human Rights Council's Special Procedures Mandate Holders as they relate to the impact of security measures on civic space. In particular, the treaty bodies and the CmEDAW in particular should more explicitly reflect on the impact of security and CTMs on the lives of women and girls, given the data the Special Rapporteur has gathered on this issue.

The observations and recommendations synthesized in this report offer an initial but in many respects limited set of positive practices for how to reform counter-terrorism and counter-extremism measures in line with international human rights standards. UN Member States can and should build on the work these committees have undertaken to date, both in terms of documenting the creeping impact of security measures on civic space and providing guidance on how to prevent their

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<sup>62</sup> A/44/668 (1989).

<sup>63</sup> A/HRC/16/51 (2010), Practice 7, p. 14.

misuse. This is particularly critical given limitations on treaty bodies' capacity to follow up in practice on their recommendations.

This study did not directly examine the efforts of civil society actors to draw attention to the effects of CTMs on civic space, through their submission of shadow reports to the HRTBs. However, the Special Rapporteur observes based on reports of abuse and other information contained within HRTB concluding observations that this is likely occurring in practice, albeit inconsistently. To that end, civil society is encouraged to continue to draw explicit and systematic attention through shadow reporting to the use and misuse of counter-terrorism and counter-extremism measures as they impact civic space. Further, the Special Rapporteur invites civil society to draw on the concerns and recommendations contained within this study in order to amplify the work of the HRTBs in this area.