

THEMATIC BRIEF: 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

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 role of the Special Procedures of the UN Human Rights Council, independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. There are presently 45 thematic and 14 country mandates, which undertake a range of activities that contribute to the development and monitoring of international human rights standards. Special Procedures mandate holders undertake country visits, engage in advocacy, raise public awareness, provide advice for technical cooperation, and act on individual cases of reported rights violations or concerns by sending communications to States and other actors.

This report analyzes the work of all Special Procedures mandate holders in drawing attention to the impact of security measures on civil society and civic space within their communications. These communications comprise letters sent to governments and other actors, such as intergovernmental organizations, businesses, and military or security companies. The experts report on allegations of human rights violations, either ongoing or potential, as well as voice concerns about draft or enacted laws, policies, or practices. In the context of this study, the communications contain extraordinarily granular legal analyses of State security measures and practices. They further provide nuanced recommendations on how

and why a given measure raises human rights concerns with detrimental effects for a vibrant civic space.

II. Methodology

The primary source materials (communications) for this study were pulled from the [UN Special Procedures Communications database](#), which contains all communications sent and replies received by all SP mandates since January 2011. The search employed using the database's search function returned all communications for which the summary included the terms: terrorism, extremism, and all keyword variants; additional searches were conducted to capture communications in French and Spanish. This list was further narrowed by limiting the results to communications (whether joint or individual) joined by one of several thematic mandates that address fundamental rights essential for securing a vibrant and functioning civil society. These include: the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; the right to privacy; summary and arbitrary executions; the situation of human rights defenders; the rights of Indigenous Peoples; the rights of migrants; minority issues; the rights of persons with disabilities; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; protection against violence and discrimination based on sexual orientation and gender identity; violence against women and girls; and discrimination against women and girls. This yielded 406 communications, of which only sixteen were not also joined by the SRCT & HR mandate holder.

A second search was performed on all mandates' communications that were not joined by the SRCT & HR mandate holder that returned any reference to "security" within a communication summary, in English, French, and Spanish. This list was manually inspected to ensure relevance for the Global Study. In total, this study synthesized 477 communications to States and 9 communications to other actors spanning eleven years (those published between 2011 and 2022) in order to document and analyze trends and patterns in the efforts of Special Procedures mandate holders to counter the manifold effects of State security measures on economic, social, and political life.

III. Overview of Special Procedures' Communications

Security legislation

Special Procedure mandate holders have taken 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,”¹ “religiously motivated extremist association,”² “terrorist result,” “opposing the State” or “non-allegiance to its leadership,”³ “promoting terrorism,”⁴ “widespread terror through political extremism” and “serious social disturbance.”⁵ 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.⁶ 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.⁷ States should ensure that the list of activities that may be considered as “undermining the security of the state” is restricted, does not potentially include a significant range of legitimate activities, and “could not be instrumentally used to target, among others, journalists, bloggers, writers, investigators, human rights defenders, political activists, opposition representatives or religious or minority leaders for reasons un-related to terrorism.”⁸ At times communications recommend that terms or offenses be removed entirely from legislation. For example, one communication advised removal from legislation of the offence of “false threat of a terrorist act,” which may subject individuals to criminal penalty “for acting in what they may (subjectively) believe to be in the public interest and safety.”⁹

¹ AUS 2/2018.

² AUT 2/2021.

³ ARE 6/2020

⁴ CAN 1/2015

⁵ BRA 8/2015

⁶ See, e.g., BRA 8/2015; CMR 2/2014, p. 2.

⁷ See, e.g., ARE 6/2020; DNK 3/2021.

⁸ CAN 1/2015; see also IND 32/2018; LVA 1/2016.

⁹ ETH 3/2019.

In revising legislation, Special Procedure mandate holders recommend that definitions of offences should comply with the requirements of necessity, proportionality, and legal certainty. Criminal offences must be “set out in precise and unambiguous language that narrowly defines the punishable offence” and the definition of terrorism and related offences must be “accessible, formulated with precision, non-discriminatory and non-retroactive” as well as confined to acts that are “genuinely” terrorist in nature,¹⁰ in accordance with the elements identified by the 19 UN Sectoral Conventions on terrorism offences, the Security Council in its resolution 1566 (2004) and the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and consistent with the Special Rapporteur’s model definition of terrorism.¹¹ Any offence defined in law as a terrorist crime should satisfy three cumulative conditions:

- (a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages;
- (b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and
- (c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.¹²

Special Procedure mandate holders further request States ensure that any restrictions or limitations on rights through the application of security legislation be (a) necessary; (b) impinge only minimally on rights (the least restrictive alternative); (c) demonstrate proportionality between means and clearly stated objectives; and (d) be consistent with other fundamental rights and non-discriminatory in purpose and practice.¹³ Moreover, communications recommend that States ensure “that the ordinary law is used where appropriate, and that countering terrorism is not weakened by bringing the regulation of acts that rightly belong elsewhere in the criminal, civil or administrative law into counter-terrorism regulation.”¹⁴ Conversely, the importation of exceptional measures previously

¹⁰ ARE 6/2020

¹¹ E/CN.4/2006/98, paras. 26-50 and 72; A/HRC/15/51, para. 28

¹² See, e.g., NGA 5/2020, p. 7; EGY 11/2015, p. 4; NZL 1/2021, pp. 3-4.

¹³ See, e.g., GTM 5/2022.

¹⁴ ETH 3/2019, p. 6; A/HRC/37/52, para. 6; EGY 4/2020, p. 2; CHN 18/2019, p. 2; HTI 2/2021, p. 2; LKA 2/2022, p. 8; NZL 1/2021, p. 4 (stressing that “respect for the law is built upon the community’s understanding that it is necessary and that the sanctions it imposes are subject to proper limits. Once communities...begin to challenge the legitimacy of those counter-terrorism measures, respect for and compliance with the law may be jeopardized...[A]ny measures which undermine community

included in an emergency law into ordinary criminal law “leads to a normalization and a perpetuation of the emergency, which can lead to a 'permanent state of emergency'.”¹⁵

Communications additionally focus on 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.”¹⁶ Security legislation authorizing expansive security surveillance powers and lacking sufficient due process protections also “creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders to conduct investigations and build and maintain relationships with sources of information.”¹⁷ Additionally, provisions that “appear to enable impunity for human rights violations committed during counter-terrorism operations” abrogate the rule of law entirely through a *de facto* or covert state of emergency.¹⁸

With respect to efforts to P/CVE, Special Procedure mandate holders have emphasized 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,” particularly when it “is deployed, not part of a strategy to counter violent extremism, but as an offence in itself.”¹⁹ Special Procedure mandate holders further consider that a general linkage between religious ideology and violent extremism is subject to abuse through the potential conflation of violent extremism with the genuine and protected exercise of rights.²⁰

Finally, communications have called attention to the risk of various security laws intersecting with regulations on nonprofit and civil society organizations (CSOs) in ways that can result in the significant shrinking of civic space²¹ and be used to

respect and engagement risk becoming counter-productive.”); TJK 5/2022, p. 8; TUR 13/2020, p. 6 (underscoring “the human rights challenges that follow from normalizing emergency powers in the ordinary law, thereby creating *de facto* permanent emergencies in national legal systems.”).

¹⁵ 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 »”).

¹⁶ 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.”).

¹⁷ A/HRC/41/35, para. 26.

¹⁸ TJK 5/2022.

¹⁹ ETH 3/2019, p. 8; EGY 4/2020, p. 2.

²⁰ AUT 2/2021.

²¹ See, e.g., EGY 6/2021, p. 2.

target nongovernmental groups' legitimate and lawful activities.²² Moreover, 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."²³

Special Procedure mandate holders often recommend that the process of legislative revision be "transparent and accessible, inviting the widest possible engagement from stakeholders,"²⁴ and that States "open a public space for discussion with civil society and experts to ensure conformity with international human rights standards."²⁵ 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.²⁶ States should regularly review counter-terrorism and emergency laws to ensure it remains necessary and in compliance with international law compliant.²⁷

Revocation of citizenship

Special Procedure mandate holders have highlighted the range and extent of activities deemed a threat to national security that States employ to revoke nationality, in violation of the prohibition against arbitrary deprivation of citizenship. Revocation of citizenship "on broadly defined and imprecise national security grounds, given the capacity of the misuse of such terminology and its inherent lack of precision and clarity is presumptively arbitrary."²⁸ The presumption is overridden only where such deprivation is: "carried out in pursuance of a legitimate purpose; provided for by law; necessary; proportionate; and in accordance with procedural safeguards."²⁹ Special Procedure mandate holders underscore how the widespread use of citizenship stripping, in the name of countering terrorism, is inconsistent with the spirit and intention of international human rights law. Further, when states enact new grounds for loss or deprivation of nationality, they must "include transitional provisions to prevent an individual from losing their nationality due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground."³⁰

Media censorship

²² TUR 3/2021, p. 4.

²³ Ibid, pp. 6-7.

²⁴ ETH 3/2019, p. 3.

²⁵ BLR 2/2021, p. 9.

²⁶ BRA 6/2021, p. 4; EGY 6/2021, p. 5.

²⁷ EGY 4/2020; NZL 1/2021, p. 2; TJK 5/2022.

²⁸ GBR 3/2022, p. 3

²⁹ Ibid; See also ARE 6/2020.

³⁰ GBR 3/2022, p. 4; *UNHCR Guidelines on Statelessness No. 5* (May 2020), para. 93.

Communications have increasingly addressed the use of security measures to impose undue restrictions on fundamental rights through media censorship. These actions span Internet shutdowns, slowed connections, the blocking of certain websites and/or platforms, and non-authorization of foreign journalists.³¹ Special Procedure mandate holders have observed that “protection of national security and public order are often invoked to justify internet shutdowns” and that the “mere possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public cannot be used to justify restrictions under those grounds, including an internet shutdown.”³² Particularly during times of protest and/or crisis, access to information and communication services is critical and the complete shutdown of the internet and telecommunication networks “would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedoms of expression and of peaceful assembly and of association.”³³

Judicial, physical & verbal harassment

The vast majority of communications analyzed for this study concerned reports and discrete instances of the (mis)use of security measures against civil society actors. As the Special Rapporteur on counter-terrorism and human rights has noted previously, this frequently takes the form of judicial harassment through the invocation of overbroad security legislation to arrest, detain, and charge, inter alia, human rights defenders, activists, artists, political dissidents or opposition members, journalists, union leaders, students, academics, indigenous peoples, LGBTQI+ persons, and members of cultural, ethnic, racial, or religious minorities.³⁴ Just as frequently, this takes the form of physical or verbal harassment, intimidation, persecution, violence, and extralegal killings against such persons. Verbal harassment includes statements by government officials labeling civil society actors as “terrorists” and portraying them as threats to national security. Special Procedure mandate holders have noted that such “red-tagging” of civil society actors, particularly by high level State officials, “contributes to the normalisation of, and seemingly attempts to provide justification for, the extrajudicial killing of human rights defenders.”³⁵

In response to reports of judicial harassment, Special Procedure mandate holders have repeatedly stressed that CTMs and security legislation should not be used to

³¹ See, e.g., TZA 6/2020.

³² IRN 11/2022, p. 9 (“National security, in particular, cannot be invoked as rationale for restrictions ‘where the very reason for the deterioration of national security is the suppression of human rights’ (CCPR/C/GC/37, para. 42) (A/HRC/47/24/Add.2, para. 16)”).

³³ LKA 2/2022, pp. 9-10; KAZ 1/2022, p. 9; SDN 6/2022, p. 16.

³⁴ A/HRC/40/52.

³⁵ PHL 1/2021, p. 7. See also KAZ 1/2022, p. 9.

target and prosecute individuals peacefully exercising their fundamental rights and freedoms³⁶ or “as an excuse to suppress peaceful minority groups and their members.”³⁷ As for physical harassment by security forces, particularly when extralegal killings occur, allegations should be investigated in accordance with relevant international standards, with the aim to ensure that those responsible are brought to justice, promote accountability, prevent impunity, and avoid denial of justice and repeated violations.³⁸ States have a duty to investigate unlawful deprivations of life resulting from the actions of State security forces “promptly, effectively, and thoroughly, with independence, impartiality and transparency.”³⁹ Particularly in contexts that lack investigations of alleged misuse and disciplinary actions, a general absence of accountability for security forces involved “may contribute to have a chilling effect...on the exercise of the legal profession, as well as on human rights defenders and civil society organizations engaging in peaceful protests or any sort of civic manifestation.”⁴⁰

Member State nationals held in camps in North-East Syria

Over the past several years, Special Procedure mandate holders adopted an innovative method to call attention to the situation of Member State nationals, primarily women and children, deprived of their liberty in camps in North-East Syria. This study reviewed a total of 74 joint action letters sent to 56 individual States. In these letters, Special Procedure mandate holders have reminded governments they have a duty to act with due diligence to protect vulnerable individuals located outside of their territory, “where their actions or omissions can positively impact on these individual’s human rights.”⁴¹ They further called on governments whose nationals are detained to fulfil this duty through the immediate return and repatriation of their nationals from conflict zones. Of note, these communications highlight the specific and acute impact of registration and verification exercises undertaken in these camps on women and children due to their alleged association with terrorist groups. This effort, led by the SRCT & HR,

³⁶ GBR 13/2018, p. 4; KAZ 1/2022, pp. 8-9.

³⁷ ZWE 3/2022, pp. 1, 7-8 (in reference to physical harassment by security forces and judicial harassment using security measures, such as charges of “participating in a gathering with intent to promote public violence”). See also IRN 27/2021, pp. 1-2 (relating to charges against HRDs for, *inter alia*, “gathering and colluding to act against national security” and “propaganda against the state”); NGA 5/2020, p. (THA 2/2022, p. 3 (noting the “growing trend to misuse legal provisions [within CT legislation] relating to blasphemy for personal or political reasons to target members of religious minorities”).

³⁸ Relevant international standards referenced include the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) and Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (E/RES/1989/65).

³⁹ PHL 6/2021; TUR 6/2021, p. 8; TZA 6/2020, p. 14.

⁴⁰ ZWE 3/2022, pp. 1, 3. See also THA 2/2022; IRN 11/2022.

⁴¹ See, e.g., AUS 1/2021, p. 13.

has been further amplified by the fact that as many as 15 different mandate holders joined these letters.

Other actors

In addition to communications to States, Special Procedures mandate holders occasionally send letters to other actors, such as intergovernmental organizations and private sector entities. The Special Rapporteur identified nine such communications to relevant to the Global Study, sent to the Financial Action Task Force (FATF),⁴² the Permanent Delegation of the European Union (EU) to the UN,⁴³ the UN Framework Convention on Climate Change,⁴⁴ Aruba Airlines,⁴⁵ and two unrecognized state entities.⁴⁶ Special Procedures mandate holders called on the FATF to undertake revisions in their standards and guidance to “better reflect[] approaches to anti-money laundering and counter-terrorism that comply with international human rights standards.”⁴⁷ They further requested the FATF to take steps to ensure that national laws passed pursuant to FATF guidance comply with States’ human right obligations and to adopt procedures to rectify national misuse of FATF standards.⁴⁸ Similar to communications sent to States, communications to unrecognized state entities addressed reports of excessive use of force during peaceful protests and the stigmatization and judicial harassment of HROs. Special Procedures mandate holders also reviewed proposed EU CTMs in light of international and regional human rights standards.

IV. Conclusion and Recommendations

The communications of the Special Procedures are noteworthy for their incredibly rich and intersectional analyses of CT and P/CVE measures in light of international human rights standards. This is particularly the case for observation letters, which focus on discrete laws. These increasingly provide tailored and practical guidance for how a government can revise security legislation to conform with its human rights obligations. Moreover, such communications often invite continued engagement, dialogue, and feedback between Special Procedure mandate holders and government officials while a State undertakes review and revision of its laws.

⁴² One solo communication by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (OTH 14/2016) and one joint communication led by the SRCT & HR mandate holder (OTH 72/2020).

⁴³ OTH 229/2021; OTH 73/2020; OTH 71/2018.

⁴⁴ OTH 96/2022.

⁴⁵ OTH 43/2019.

⁴⁶ OTH 9/2023; OTH 10/2015.

⁴⁷ OTH 14/2016, p. 1.

⁴⁸ OTH 72/2020, p. 6.

This represents a clear effort by Special Procedure mandate holders to persuade and socialize States, in that the communications employ respectful, professional, and firm language to elicit genuine consideration of their suggestions.⁴⁹ Iterative engagement is likely to arise and be successful when the Special Procedure mandate holders commend States for what they are doing 'right' (back-patting) as well as telegraph normatively-informed critical assessments (mild shaming) of measures and practices, followed up by assurances of assistance and support (identification).

The Special Rapporteur has consistently underscored the risk that multiple and overlapping security measures can lead to the normalization of de facto states of emergency and the use of extraordinary policy tools to address "ordinary" security concerns. The 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.

⁴⁹ Research consistently shows that perceived expertise is positively associated with persuasion. See, e.g., Robert B. Cialdini & Noah J. Goldstein, "Social Influence: Compliance and Conformity," 55 ANN. REV. PSYCHOL. 591 (2004).