



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



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

CHAPTER 2

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

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

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

responsibility for the protection of national security and the enforcement of human rights.¹³⁴

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

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

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

In the years that followed, the Security Council adopted multiple additional resolutions under Chapter VII imposing further legal duties on States to introduce specific kinds of domestic counter-terrorism laws, sanctions, and other measures.¹³⁶ Although the Security Council began to recognize in subsequent resolutions the need for national counter-terrorism laws and measures to comply with all existing international law obligations—including under international human rights law, international humanitarian law, and international refugee law—none of these resolutions provided clear and explicit human rights guidance.¹³⁷ Moreover, none of the resolutions stipulated a precise definition of terrorism to be applied across all counter-terrorism resolutions.¹³⁸ A veritable explosion of counter-terrorism regulation has followed, with at least 140 States adopting counter-terrorism legislation between 2001 and 2018.¹³⁹ Notably, the determination with which the international community took swift, draconian measures to counter-terrorism after 11 September 2001, facilitated a blanket, zero-risk ap-

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

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

National Counter-Terrorism Lawmaking

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

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

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

136 A/73/361.

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

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

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

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

141 Confidential Input (Turkey).

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

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

rooted in long-standing regimes of exceptional power including martial law, *État de Siège*, and legislative or executive emergency powers.¹⁴⁴ As multiple Global Study participants underscored, many current counter-terrorism enactments have their roots in legislation and practice directed at native and indigenous peoples by colonial powers.¹⁴⁵ Although their passage is generally exceptional, with the rhetoric of exceptional and short-term existence, counter-terrorism laws and regulations have the tendency to persist and move from exceptional to regular use over time, committing the State to long-term exceptionality. Such exceptionality is one of the primary causes of states of emergency in securitized national settings—as further exacerbated by emergency powers and exceptional measures adopted throughout the Covid-19 pandemic¹⁴⁶—and is consistently correlated with severe and systematic human rights violations.¹⁴⁷ Recent cross-cutting social challenges in Latin America especially have accentuated the reflexive use of and return to counter-terrorism power and pathways. Viewing counter-terrorism law as a form of exceptional legal regime underscores the risk and challenges faced by civil society when it is used and normalized in society.

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

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

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

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

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

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

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

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

many States have passed counter-terrorism financing legislation (Chapter 3, Part 3) and sanctions laws and frameworks in the name of countering terrorism (Chapter 3, Part 4). In the shadow of Security Council mandates¹⁴⁹ some States have also incorporated new forms of ‘indirect incitement’ into hastily passed domestic legislation, while others have subjected pre-existing laws to expansive interpretations. The result is a broad spectrum of offences, and prosecutions, based on diverse forms of ‘dangerous’ expression, such as encouragement, glorification, justification, apology, possession, dissemination or making available prohibited information or materials, or professing to be a member of or associated with prohibited organizations. Civil society organizations have felt the consequences of this widened consensus on “association” and “incitement”. These kinds of offences move State action into a pre-criminal space with clear consequences for the integrity of the rule of law and legal

DATA HIGHLIGHTS

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

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

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

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

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

ISSUE IN FOCUS

Regional and Global Legislative Cross-Fertilization

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 West, East, Central Africa Consultation.

158 ADM (France).

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

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

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

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

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

REGIONAL TRENDS

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

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

practices, and powers.¹⁶⁴

Regional Counter-Terrorism Architecture

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

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

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

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

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

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

167 Latin America and the Caribbean Consultation (El Salvador, Guatemala, Honduras).

ISSUE IN FOCUS

UN Counter-Terrorism Architecture

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

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

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

International Counter-Terrorism Architecture

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

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

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

170 A/76/261.

171 A/73/361.

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

Recommendations

- Consistent review and assessment of national counter-terrorism laws and regulations should be undertaken by all UN entities engaged in counter-terrorism programming and technical assistance, such as the UN Office of Counter-Terrorism, including through review and integration of the recommendations and analysis of the Universal Periodic Review, UN Human Rights Treaty Body and Special Procedures Mechanisms, and the Office of the UN High Commissioner for Human Rights¹⁷⁴ Such analysis should also be consistently integrat-

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

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

¹⁷² A/74/335.

¹⁷³ A/HRC/40/52, para. 30.

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

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

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

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

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

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

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

177 A/70/674, para. 1.

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

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

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

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

182 A/77/345, para. 22.

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

184 A/77/266.

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

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

Definitional Ambiguity of (Violent) Extremism

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

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

¹⁸⁶ A/HRC/43/46, para. 16.

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

REGIONAL TRENDS

Spotlight of a Regional P/CVE Framework

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

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

non-violent acts and increasingly forms of expression, risking undue impingement on the rights to freedom of opinion and expression, freedom of religion or belief, and other fundamental freedoms, as well as non-discrimination—some of which are non-derogable even in times of public emergency¹⁸⁸

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

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

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

Decentralized Implementation and the Risks of Instrumentalization

Among the P/CVE programs and policies identi-

188 ICCPR, art. 4(2).

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

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

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

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

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

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

195 A/77/266, para. 5.

196 A/77/266, para. 24.

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

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

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

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

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

Further Marginalization of the Marginalized

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

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

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

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

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

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

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

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

205 Muslim Advocates Input.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

216 A/HRC/46/36.

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

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

219 OL OTH 41/2019.

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

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

grants, asylum seekers and refugees,²²² and youth²²³ have also problematically been labeled “(violent) extremists.”

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

P/CVE IMPACTS ON YOUTH

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

Progress Study on Youth, Peace and Security (2018)

Recommendations

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

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

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

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

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

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