

Strengthening
HUMAN
RIGHTS

**in Counter-Terrorism
Strategy and Policy**

A Toolkit



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Strengthening Human Rights in Counter-Terrorism Strategy and Policy:

A Toolkit

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Introduction

International human rights law lays down obligations which States are bound to respect. By becoming parties to international human rights treaties, States assume obligations and duties under international law to respect, protect and fulfil the human rights of all individuals in their territory and subject to their jurisdiction.¹ It requires States to align counter-terrorism measures with international human rights obligations and ensure harmful impacts of counter-terrorism measures are avoided. It also includes taking effective measures to protect the life and security of individuals against the threat of terrorist acts. Acts of terrorism have a detrimental effect on the full enjoyment of human rights and fundamental freedoms. They destabilize governments; jeopardize peace and security; undermine democracy, good governance and civil society; threaten social and economic development; and disproportionately affect specific groups, including women and children.²

Additionally, it is vital for States to address the conditions conducive to terrorism, including persistent failures to respect human rights.³ Counter-terrorism measures that do not uphold human rights can create both fresh grievances and an environment susceptible to violence and insecurity.⁴ Protecting and promoting human rights, including advancing gender equality, should not be seen as operational or strategic impediments, but rather as prerequisites for successful counter-terrorism measures.⁵

As counter-terrorism strategy or policy can have a determinant influence on subsequent measures taken in countering terrorism, the inclusion of human rights in counter-terrorism strategy and policy can help strengthen the fight against terrorism.

How will this toolkit help?

This toolkit sets out key actions to help States integrate human rights in counter-terrorism strategy and policy in three separate but interrelated areas:

- [Tool 1](#) – Integrating human rights into the content of a counter-terrorism strategy and policy
- [Tool 2](#) – Building institutional human rights specialist capacity in counter-terrorism
- [Tool 3](#) – Strengthening engagement with civil society in counter-terrorism

It includes prompts and questions on how to consider and integrate human rights in strategy or policy discussions, checklists and practical steps to assist in aligning strategy or policy with a State's human rights obligations. For additional guidance, the endnotes and hyperlinks provide supplemental resources.

Who is the toolkit for?

This toolkit is designed for policy officials and decision makers in government working at the national or local level on counter-terrorism strategy or policy design, implementation and evaluation. It can be used by policy officials to build on their existing work to integrate human rights in counter-terrorism.

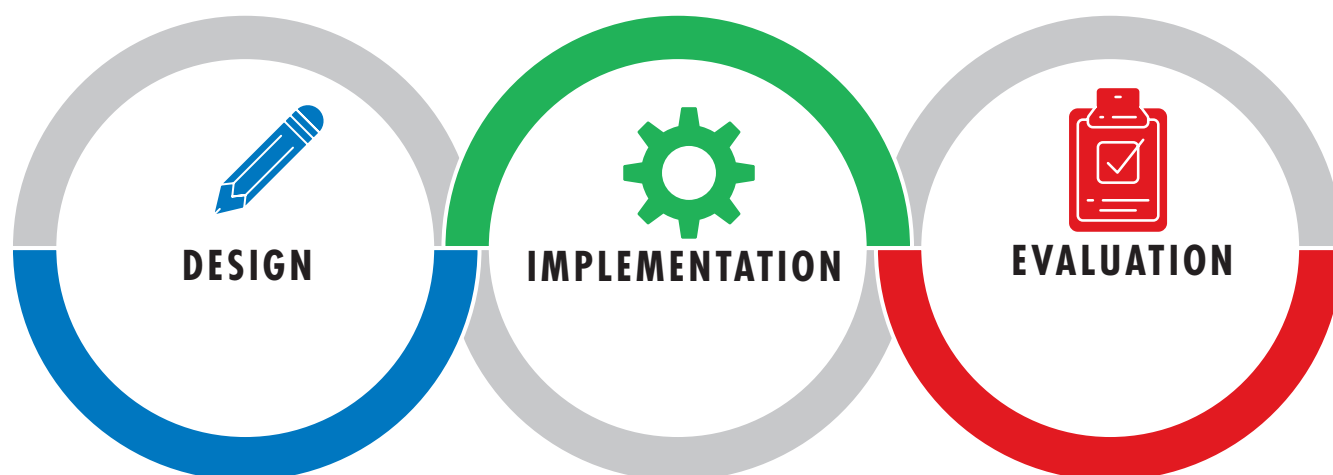
How to use the toolkit

This toolkit should be used from the outset of and across counter-terrorism strategy or policy design, implementation and evaluation to help ensure that human rights are incorporated into the content and inform decision-making. It is recommended that all three tools be used simultaneously.

Using the toolkit is not an indicator of effective implementation of a State's obligations under international human rights law – measuring a State's progress in implementing its commitments to respect, protect and fulfil human rights is assessed by holistically examining its laws, policies, procedures and practices. However, these tools, if implemented as they are intended to be used, will contribute to this progress.

How to integrate human rights actions in counter-terrorism strategy and policy

[Diagram 1](#) illustrates human rights actions to be undertaken throughout the strategy or policy process (including design, implementation, evaluation and review) to ensure integration of human rights in counter-terrorism strategy or policy. The activities are not necessarily distinct to each phase, but rather should be seen as key elements to address in and across the process.

Diagram 1: Human rights actions in a counter-terrorism strategy or policy process

- | | | |
|--|---|--|
| DESIGN | IMPLEMENTATION | EVALUATION |
| <ul style="list-style-type: none"> ● Consider and incorporate human rights into the policy question or problem ● Identify potential human rights issues that may arise from a proposed strategy or policy ● Analyse and assess possible risks to the human rights of the proposed counter-terrorism strategy or policy ● Design measures to mitigate risks to human rights ● Identify, including through a gender and intersectional lens, applicable human rights to the proposed counter-terrorism strategy or policy ● Incorporate a gender analysis and potential effects and impacts of the proposed counter-terrorism strategy or policy ● Elicit human rights inputs from stakeholders across government (see Tool 2), national institutions and civil society actors (see Tool 3) ● Include and refer to specific human rights and human rights issues in a strategy or policy that are relevant to or arise in relation to a counter-terrorism strategy or policy ● Align the content on human rights in a strategy or policy with international human rights norms and standards ● Embed equality, diversity and inclusion into workforce and workstreams of designing, implementing and evaluating strategy or policy ● Identify the officials and authorities responsible for the different roles in counter-terrorism strategy or policy | <ul style="list-style-type: none"> ● Monitor the effects and impacts on human rights of a counter-terrorism strategy or policy ● Collect disaggregated data to bolster analysis of specific groups or individuals affected or disproportionately impacted by the strategy or policy, including: <ul style="list-style-type: none"> – Racial, ethnic, indigenous or religious groups – Youth – Women – Migrants – Refugees, asylum seekers, internally displaced persons and stateless persons – Human rights defenders – Children – Persons with disabilities – Victims of terrorism and counter-terrorism ● Analyse the impacts on specific groups and use this to adjust, change or even stop the policy ● Examine the impacts on civic space of a strategy or policy and identify ways to address negative impacts ● Engage external stakeholders, including diverse civil society actors, on their views, experience and evidence of the implementation of the strategy or policy ● Cooperate and engage with independent oversight and accountability mechanisms | <ul style="list-style-type: none"> ● Include human rights when evaluating the effectiveness of a strategy or policy ● Identify and assess the effects and impacts on human rights of a strategy or policy ● Identify ways to address negative effects and impacts on human rights ● Involve external stakeholders, including independent oversight mechanisms and civil society, to take into account their information and findings on the strategy or policy |



TOOL 1

**Integrating
human rights
into the content of
a counter-terrorism
strategy and policy**



This tool provides policy officials in government with guidance on how to uphold human rights in counter-terrorism strategy and policy design, and integrate human rights into counter-terrorism strategy or policy processes; it includes steps to increase accountability, oversight and transparency.

Topics covered:

- Identifying and including the relevant human rights in a counter-terrorism strategy or policy
- Considering how the strategy or policy may impact different groups, particularly those at risk of discrimination
- Assessing risks to human rights from a counter-terrorism strategy or policy
- Is the proposed strategy or policy limiting or restricting a human right? What rights cannot be derogated?
- What steps to take to increase transparency, oversight and accountability in counter-terrorism strategy and policy
- Where to find information by UN human rights mechanisms on counter-terrorism



1. Identifying and including the relevant human rights in counter-terrorism strategy or policy

1.1 A snapshot of key counter-terrorism issues and relevant human rights

[Diagram 1.1](#) indicates some of the key counter-terrorism issues, highlights the types of potential human rights issues that may arise and refers to corresponding human rights.


1.2 Including human rights in a counter-terrorism strategy or policy


All human rights are to be respected in countering terrorism; however, certain human rights are more often affected – and among them are those presented below. Making explicit the connection to human rights in counter-terrorism responses could help ensure adequate consideration of human rights in a strategy or policy, including measures and actions contained and stemming from those key government documents.

- Right to life
- Equality and non-discrimination
- Prohibition of torture and other ill-treatment
- Right to liberty and security
- Freedom of opinion and expression
- Right to privacy
- Freedom of peaceful assembly and association
- Rights of the child



Diagram 1.1: Snapshot of key counter-terrorism and human rights issues

 Potential human rights issues

 Relevant human rights

DEFINITION OF TERRORISM AND TERRORIST ACTS IN NATIONAL LAWS



- Vague and broad definition of terrorism offences
- Broad discretion in determining what is labelled as terrorism impacting criteria for listing/proscription
- Criminalizing acts such as “glorification” in violation of freedom of expression



- Principle of legality and legal certainty
- Equality and non-discrimination
- Freedom of opinion and expression

COUNTERING TERRORIST NARRATIVES



- Over-censorship
- Automated content moderation
- Stigmatization and harmful stereotypes



- Freedom of opinion and expression
- Non-discrimination
- Freedom of religion

PREVENTING AND ADDRESSING THE CONDITIONS CONDUCTIVE TO TERRORISM



- Marginalization and discrimination
- Securitization of welfare, protection and education services
- Human rights violations



- Equality and non-discrimination
- Economic, social and cultural rights
- Right to effective remedy

REPATRIATION AND RETURN OF SUSPECTED FOREIGN FIGHTERS AND THEIR FAMILIES



- Statelessness and arbitrary deprivation of nationality
- Prolonged and unlawful detention including of children
- Preventing returns hinders justice and accountability



- Right to nationality
- Right to fair trial and due process, including for children
- Right to family life

USE OF ARTIFICIAL INTELLIGENCE IN COUNTER-TERRORISM



- Arbitrary surveillance of public space (offline and online)
- Mass use of technologies risks inaccurate and discriminatory results
- Automated decision-making risks discriminatory outcomes



- Right to privacy
- Freedom of peaceful assembly and association
- Equality and non-discrimination

APPLICATION OF ADMINISTRATIVE MEASURES IN TERRORISM CASES



- Unrestrained administrative measures
- Lack of due process and judicial safeguards
- Misuse and discriminatory impact



- Principles of legality, necessity and proportionality
- Right to fair trial and due process
- Equality and non-discrimination

USE OF LETHAL FORCE IN COUNTER-TERRORISM




- Extra-judicial executions/unlawful killings
- Excessive use of force
- Lack of accountability and transparency




- Right to life
- Principles of legality, necessity and proportionality
- Right to effective remedy



Diagram 1.1: Snapshot of key counter-terrorism and human rights issues (continued)

 Potential human rights issues

 Relevant human rights

COUNTERING THE FINANCING OF TERRORISM



- Undue impediments on civil society actors' work
- Restrictions to civic space and humanitarian activities
- Arbitrary searches and seizures



- Freedom of association
- Freedom of opinion and expression and peaceful assembly
- Right to privacy

CRIMINAL JUSTICE FOR TERRORISM-RELATED CASES



- Excessive resort to trial of civilians by military/special courts
- Use of coerced confessions/anonymous informants as evidence in court
- Restrictions to legal counsel



- Right to fair trial and due process
- Prohibition of torture and other ill-treatment
- Right to a lawyer

PRE-CHARGE/PRE-TRIAL DETENTION



- Lack of legal basis and safeguards during detention
- Torture and ill-treatment
- Lengthy pre-trial detention



- Right to be presumed innocent until proven guilty
- Prohibition of torture and other ill-treatment
- Right to fair trial and due process, including right to be promptly informed of charges

SUPPORT AND JUSTICE FOR VICTIMS AND THEIR FAMILIES OF TERRORISM ACTS AND HUMAN RIGHTS VIOLATIONS



- Unequal and ineffective access to justice
- Inadequate provision of support and assistance
- Stigmatization of victims, including based on gender



- Right to effective remedy
- Right to fair trial, including equality before the law
- Right to reparation (recognition, memorialization, information and assistance)

USE OF SURVEILLANCE



- Mass or bulk surveillance
- Unregulated cyber-surveillance technologies and trade
- Lack of accountability and independent oversight



- Right to privacy
- Freedom of opinion and expression
- Right to effective remedy

USE OF EMERGENCY POWERS



- Sweeping powers beyond the exigencies of the emergency
- Emergency powers become ordinary law
- Lack of transparency regarding authority, competencies and duration of emergency measures



- Principles of legality, necessity and proportionality
- Right to fair trial and due process
- Public oversight, transparency and accountability



1.2.1 RIGHT TO LIFE

This right is enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). It recognizes that everyone has a right to life, and no one should be arbitrarily deprived of their life. It is non-derogable, so it cannot be suspended in any circumstances even during a public emergency.

What is the relevance of this right to counter-terrorism responses?

Acts of terrorism usually involve deliberate attacks against the general public causing death and serious injury, which engages the right to life. States have duties to protect individuals in their jurisdiction from all foreseeable threats to life, including terrorist attacks.⁶ States also have a duty to ensure that no individual is arbitrarily deprived of his or her life. This is particularly relevant in counter-terrorism actions, which could include deliberate, targeted or arbitrary killings.⁷ There are also concerns regarding the lack of due process in terrorism-related trials involving the imposition of the death penalty, including for offences that do not meet the threshold of “the most serious crimes” or against juvenile offenders.⁸

How to uphold this right in a counter-terrorism strategy or policy

A counter-terrorism strategy or policy should reaffirm a State’s obligation to uphold the right to life. It should recognize that terrorism is a threat to life – terrorism attacks are usually directed to kill and injure people – and acknowledge the rights of victims and their families to obtain effective remedy and reparations, including assistance.

Equally, a strategy or policy should also state that all counter-terrorism measures should seek to preserve and protect life and reduce loss of life, including in the planning and implementation of counter-terrorism operations that may involve the use of lethal force. It should refer to the legal framework that strictly controls and limits the circumstances in which law enforcement officers may resort to the use of lethal force.⁹ Some States have deployed the military to counter terrorism and, in this case, a strategy or policy should state clearly that the powers granted to armed forces for public security tasks must be exceptional, time limited, subordinate and accountable to civil authorities, and in accordance with civilian law and international human rights law. Where lethal force has been used, there should be an independent and impartial investigation into the circumstances of any deaths and accountability, including prosecutions and reparation, for any violations of the right to life.



1.2.2 EQUALITY AND NON-DISCRIMINATION

These rights are enshrined in ICCPR Articles 2, 3 and 26; Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Articles 3, 4 and 5 of the Convention on the Rights of Persons with Disabilities (CRPD); and Articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Among those grounds protected against discrimination are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All persons have the right to be treated equally, which includes equal protection of the law without any discrimination, equality before the law and equal participation in public life. Non-discrimination is non-derogable, so it cannot be suspended in any circumstances even during a public emergency.

What is the relevance of these rights to counter-terrorism responses?

Different types of counter-terrorism measures present different risks to the rights of equality and non-discrimination,¹⁰ and some measures can disproportionately impact certain racial, ethnic and religious minorities and others as highlighted by the following examples:

- The practice of watch-listing – the placement of individuals or groups who are known and/or suspected terrorists on a national list – may entail discrimination on the grounds of race, ethnicity, religion or political opinion.¹¹
- The use of biometric technologies, such as facial recognition, including in counter-terrorism responses, entails significant risks of profiling on the basis of race, ethnicity, religion, sex and gender.¹²
- Nationality stripping as a counter-terrorism response has disproportionately impacted individuals belonging to certain ethnic or racial groups,¹³ and has a differential impact for women.
- Data-driven technologies such as artificial intelligence, machine learning and predictive analytics that are used for counter-terrorism purposes may reproduce and reinforce gender and racial bias or aggravate or lead to discriminatory practices.¹⁴

Discrimination may also affect the way in which victims of terrorism are able to access justice or receive support; in many contexts, this may overlap with existing gender inequalities which limit access to justice for women.

Additionally, gendered security harms have resulted from counter-terrorism strategies and policies particularly when gender is regarded as synonymous with women, when human rights and gender are removed from counter-terrorism strategies or policies, when gender equality is instrumentalized as a national security tactic, or when a gender equality perspective is used to focus on women terrorists in ways that encourage punitive State responses.¹⁵ Men and boys are also affected by



gender-based biases and discrimination where counter-terrorism strategies or policies inherently view them as potential security risks.¹⁶

How to uphold these rights in a counter-terrorism strategy or policy

The rights to equality and non-discrimination should be clearly recognized in a strategy or policy, as well as referencing the relevant legislation that prohibits discrimination on the grounds set out in international human rights law. This includes making clear that racial or ethnic profiling, stereotyping or stigmatization, and any discrimination is prohibited and not just to be avoided. Doing so could help to ensure that these rights are sufficiently considered in the counter-terrorism measures or actions flowing from the strategy or policy.

A strategy or policy should also require relevant agencies to undertake human rights impact assessments (including integrating the principle of non-discrimination) of counter-terrorism responses. To assist with this, disaggregated data on the application and impact of counter-terrorism measures should be regularly collected and analysed. Gender-sensitivity training and capacity-building should also be incorporated into the professional training and development of officials (policymakers, law enforcement, border control and other personnel) involved in strategy or policy design, implementation, and evaluation.

The strategy or policy could also include a commitment to consultations with communities affected by counter-terrorism measures so that they may be able to help a State in understanding and addressing biases and discrimination. It should also set out what efforts' government is taking to prevent, address and remedy discrimination, tackle racism and advance equality in its counter-terrorism responses, especially in affected communities.

It is also important for a strategy or policy to recognize that pre-existing discriminatory norms, laws and policies against women particularly are present in many contexts and create general conditions that affect the realization of human rights for women and gender diverse persons. Incorporating a gender analysis and perspective into the strategy or policy process is key to help identify the specific gendered impacts of counter-terrorism policies and measures, including the specific impacts on the rights of women and girls, men and boys, and gender diverse persons. It will also help identify specific protection needs of family members, including women and children.

1.2.3 PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT

This prohibition is enshrined in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and ICCPR Article 7. No one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment; and States must put in place measures to uphold this prohibition, including the prevention and criminalization of torture, training of officials, and prompt and impartial investigations where there are reasonable grounds that an act of torture has been committed. This prohibition is non-derogable, so it cannot be suspended in any circumstances even during a public emergency.



What is the relevance of this prohibition to counter-terrorism responses?

The use of torture and other cruel, inhuman or degrading treatment or punishment (torture and other ill-treatment) in counter-terrorism has been widely documented by the United Nations (UN).¹⁷ A number of Special Rapporteurs have found that where individuals accused of terrorism have been held incommunicado for prolonged periods without charge or trial and without proper access to legal counsel or recourse to independent judicial review, this in some instances meets the threshold of torture, cruel, inhuman or degrading treatment.¹⁸

Legislation also has been misused to curb otherwise legitimate activities and target journalists, human rights defenders, minority groups, members of the political opposition or other individuals, some of whom have been arbitrarily detained and subjected to torture or other ill-treatment while in custody.¹⁹

Concerns have also been expressed regarding allegations that arbitrary detention, torture and extrajudicial killings had been committed against members of a religious community as a group for their alleged links with terrorist groups.²⁰

How to uphold this prohibition in counter-terrorism strategy or policy

The prohibition on torture and other ill-treatment is absolute, even in a public emergency, and cannot be justified under any circumstances. This needs to be recognized in a counter-terrorism strategy or policy along with the guarantee of holding accountable those who had any part in acts of torture or other ill-treatment.²¹ A strategy or policy should also outline the recourse and access to justice, including reparation, for victims of acts of torture or other ill-treatment by State agents. In countries where a national preventive mechanism is established, a strategy or policy should acknowledge its mandate to visit individuals being held on terrorism charges in places of detention. The strategy or policy could also reiterate lawyers' access to all individuals detained for allegedly committing a terrorism offence.

It would be useful for a strategy or policy to stipulate appropriate instruction, training and oversight of all law enforcement, military, civilian and medical personnel, public officials, or other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.²²

A government could indicate in a strategy or policy what preventive measures it has adopted to guarantee the prohibition of returning an individual to any country where he or she is at risk of torture or other ill-treatment,²³ including not solely relying on diplomatic assurances to undermine the principle of non-refoulement.²⁴



1.2.4 RIGHT TO LIBERTY AND SECURITY

These rights are enshrined in ICCPR Articles 9 and 10. They recognize that everyone has the right to liberty and security, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his or her liberty except on the grounds set out in law. All persons deprived of their liberty shall be treated with humanity and dignity.

What is the relevance of these rights to counter-terrorism responses?

A State may lawfully arrest and detain an individual suspected of terrorist offences.²⁵ However, counter-terrorism responses have been marked by arbitrary arrest, prolonged pre-trial detention periods, the use of administrative detention with insufficient safeguards for judicial oversight, arbitrary and unlawful detention, or secret detention. These actions increase the risk of enforced disappearance and/or torture and other ill-treatment.²⁶

Also, if terrorism offences are vague and broad in scope, this can lead to overly broad grounds for administrative detention or detention of individuals which is not strictly necessary.²⁷ There are also instances where a State resorts to emergency or special laws and procedures to combat terrorism, which often increases the risk of arbitrary detention because of the failure to adhere to procedural guarantees set out in ICCPR Article 14.²⁸ In certain cases, intelligence services have been granted arrest and detention powers in counter-terrorism operations, with no explicit guarantee of due process rights. Also, concerns have been raised that legislation governing the functioning of intelligence services does not provide for sufficient control and oversight.²⁹

How to uphold these rights in a counter-terrorism strategy or policy

A counter-terrorism strategy or policy should reiterate the importance that all law enforcement officials (and any other authority with detention and arrest powers) must respect the right to liberty and security of all individuals. Explicit language could include ensuring detainees: (a) are brought promptly before a court after arrest, (b) can promptly challenge the lawfulness of their detention before a court, (c) be given regular access to medical doctors and legal counsel and (d) be able to communicate regularly with their family. Even in a public emergency, minimum access to legal counsel and prescribed reasonable limits on the length of preventive detention remain obligatory.³⁰

Reference to the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Nelson Mandela Rules) would also be helpful to set out the framework for detention for counter-terrorism offences.



1.2.5 FREEDOM OF OPINION AND EXPRESSION

These rights are enshrined in ICCPR Article 19. It recognizes that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, including to seek, receive and impart information and ideas of all kinds.

What is the relevance of these rights to counter-terrorism responses?

Domestic laws criminalizing acts of “encouragement”, “glorification”, “apology” or “justification” of terrorism could lead to undue interference with freedom of expression, especially as they tend to be broadly or vaguely defined.³¹

Additionally, excessive State efforts to address the misuse of information and communication technologies (ICT) by terrorist groups have negatively impacted freedom of opinion and expression.³² For example, some States have imposed internet shutdowns under the justification of maintaining public order and protecting national security. Such shutdowns have unintended consequences affecting numerous users engaged in legitimate activities, invariably fail to meet the standards of necessity in pursuit of a legitimate aim and have been generally disproportionate in terms of their duration and geographic scope.³³

Freedom of expression online is also increasingly restricted by big tech companies under counter-terrorism justifications. Some States have exerted influence on private companies to engage in the undue moderation or the removal of online content. Vague definitions of terrorism and “violent extremism” and the dominance of corporate policies over a clear legislative framework have obscured the line between lawful and unlawful content. Scrutiny over decisions made by private companies is limited, and there is a lack of robust judicial oversight or review of decisions, for example, to remove content.³⁴

How to uphold these rights in a counter-terrorism strategy or policy

A counter-terrorism strategy or policy could make clear that certain forms of freedom of expression should not be prohibited or criminalized in the name of counter-terrorism such as dissent, online activism or criticism of the government. A strategy or policy should clearly state that the right to hold opinions cannot be subject to restriction or derogated.³⁵ It could identify the types of counter-terrorism issues and challenges which intersect with freedom of opinion and expression – such as in relation to preventing, modifying or removing actual online terrorist content or the use of new technologies to counter terrorism – to highlight in particular the types of measures that may involve restricting freedom of expression. A strategy or policy should acknowledge that such restrictions must be in line with a legitimate aim and the principles of necessity, proportionality and non-discrimination. It should also refer to the provisions that legislate for these restrictions, how the restrictions are determined, which authorities have powers for restricting these rights and how the restrictions can be challenged.



The freedom to seek, receive and impart information is part of freedom of expression, and a government should proactively make counter-terrorism strategy and policies publicly accessible.³⁶

1.2.6 RIGHT TO PRIVACY

This right is enshrined in ICCPR Article 17. It recognizes that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence and has the right to protection of the law against such interference.

What is the relevance of this right to counter-terrorism responses?

Counter-terrorism measures – particularly surveillance operations and targeted or bulk surveillance activities – often risk contravening the right to privacy and the principles of a legitimate aim, necessity, proportionality and non-discrimination. Additionally, such measures tend to disproportionately target minorities and marginalized communities.³⁷

The growth in use of artificial intelligence, spyware, biometric and other technologies in counter-terrorism activities also affects the right to privacy as well as non-discrimination and freedom of expression. Facial recognition in particular entails significant risks of profiling individuals on the basis of race, ethnicity or religion. For example, it can be used for illegitimate purposes under the justification of countering terrorism, such as identifying participants in peaceful assemblies.³⁸ Despite efforts to control the use of such technologies, many authorities use them in counter-terrorism activities without appropriate human rights safeguards.³⁹

How to uphold this right in a counter-terrorism strategy or policy

A counter-terrorism strategy or policy should clearly stipulate that the responsible government agency will ensure that any interference with the right to privacy is prescribed in law and in accordance with a legitimate aim and the principles of necessity, proportionality and non-discrimination. Furthermore, it could include:

- Which legislative provisions authorize any limitations
- Which independent, preferably judicial, authorities can exercise these powers
- How any restrictions may be challenged
- What oversight mechanisms and effective remedies are available for victims of unlawful interference with privacy

A strategy or policy should refer to the applicable standards for data protection, requiring that personal data should only be collected for specified, explicit and legitimate purposes and must be processed in accordance with the principles of legality, lawfulness and legitimacy, consent, transparency, purpose, fairness, proportionality, minimization, quality, responsibility and security.⁴⁰



1.2.7 FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

These rights are enshrined in ICCPR Articles 21 and 22. They recognize, respectively, the right to peaceful assembly and that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.

What is the relevance of these rights to counter-terrorism responses?

On the right to peaceful assembly, counter-terrorism measures and laws have been used by States on the pretext of national security or public safety to grant broad powers to law enforcement and security agencies to restrict or prohibit legitimate peaceful demonstrations and target, restrict and criminalize civil society actors. Environmental and climate justice activists have been prosecuted based on counter-terrorism measures.⁴¹ Additionally, excessive force has been used to suppress peaceful protesters⁴² and surveillance technologies used to monitor peaceful protests and other assemblies.⁴³ These types of counter-terrorism responses have a significant negative effect on civic space by dissuading, limiting or restricting access to the exercise of peaceful assembly.

As regards freedom of association, measures countering the financing of terrorism (CFT) – such as over-reach and unnecessarily broad approaches to registration, access to funding and regulatory requirements, and the deliberate abuse of CFT measures to suppress certain views and limit civic space – have interfered with their freedom of association.⁴⁴ For instance, civil society organizations have reported restrictions on the right to form or maintain an organization due to laws that grant broad discretion to deny or cancel registration on the basis of alleged security and counter-terrorism concerns or restrictions or prohibition on foreign funding.⁴⁵ Additionally, CFT laws have been shown to negatively affect women's rights organizations, hindering the civic space for advocacy, the advancement of gender equality, the empowerment of women, and delivery of equality and rights protection to women and girls.⁴⁶

How to uphold these rights in a counter-terrorism strategy or policy

A strategy or policy should set out the safeguards that are in place and required to ensure that policies on the monitoring of public spaces and public surveillance that can limit freedom of peaceful assembly and association are strictly necessary and proportionate.⁴⁷

Additionally, a strategy or policy should recognize that national proscription of organizations must not be used to suppress or deny the rights to freedom of association and of peaceful assembly, or as a means of quashing political dissent, silencing unpopular or minority views or limiting the peaceful activities of civil society.⁴⁸ It should also make clear that organizing or participating in a peaceful assembly cannot be criminalized under counter-terrorism laws.⁴⁹

Any CFT policy or strategy should start from the premise that most not-for-profit organizations present no or low risk of terrorist financing. A policy or strategy should reiterate that any CFT measures should comply with international human rights norms and standards; include human



rights benchmarking in CFT policies and programs; explicitly include unambiguous exemptions for humanitarian activities; and enhance coordination among government entities on CFT measures, including investigation and prosecution of terrorist financing suspects.⁵⁰ A policy or strategy should also ensure a diverse and inclusive not-for-profit sector – in particular, women-led civil society organizations – is consulted to develop risk-based and targeted CFT measures.

1.2.8 RIGHTS OF THE CHILD

The Convention on the Rights of the Child (CRC) is the treaty covering all aspects of a child's life. The human rights discussed in other sections of this toolkit also apply to children, but there are additional protections specific to children that States must respect and fulfil, including in the context of counter-terrorism.

What is the relevance of these rights to counter-terrorism responses?

Children have continued to be detained in large numbers for their actual or alleged association with armed groups designated as terrorist organizations for national security reasons.⁵¹ Rights of the child are increasingly ignored in the treatment of children, such as lowering the minimum age of criminal responsibility for certain offences, trying children charged with terrorism offences in adult courts or before special counter-terrorism or military courts, and violating due process rights including those specific to children.⁵² Counter-terrorism legislation and measures often fail to distinguish between children and adults.

Armed groups designated as terrorist organizations have targeted children for recruitment and use; constrained or denied girls' access to education, health care and public life; and abducted, raped and committed other forms of sexual and gender-based violence against children.⁵³

How to uphold these rights in a counter-terrorism strategy or policy

It is important for any counter-terrorism strategy or policy to explicitly recognize the rights of children, including those set out in the CRC and its optional protocol on the involvement of children in armed conflict. Children who have been recruited and used by armed groups designated as terrorist organizations – which is a grave violation of international law – regardless of their role, must be treated as victims foremost and in accordance with their rights and needs under international law.⁵⁴ Children should be considered and treated primarily as victims of terrorism.⁵⁵

A strategy or policy should reaffirm the child's best interest as a primary consideration⁵⁶ in any decisions about the child and in any counter-terrorism actions. This includes those children who may be accused of terrorism offences.⁵⁷ It should recognize the special protection and safeguards required when investigating children for a terrorist offence. A strategy or policy should reaffirm a State's obligation to refrain from charging and prosecuting children for expressions of opinion or mere membership in or association with a non-State armed group, including those designated as terrorist groups, and prioritize their recovery and social reintegration.⁵⁸



States should explicitly exclude children from national counter-terrorism and security legislation and ensure that children who are above the minimum age of criminal responsibility and may have committed terrorism-related offences are treated exclusively within child justice systems with full respect for child justice guarantees, rather than within military, intelligence or national security courts. Where no such specialized systems exist, justice sector personnel trained in child justice standards and in interacting with children should be assigned.

A counter-terrorism strategy or policy should also reaffirm the State's legal commitment to the detention of children only as a measure of last resort and "for the shortest appropriate period of time"⁵⁹ and to prioritizing non-custodial measures as alternatives to detention, including at the pre-trial stage. States should not use administrative or preventive detention of children or extended pre-trial detention for the purposes of countering terrorism.

A strategy or policy should further recognize a State's responsibility for children who are their nationals and are detained on security-related offences or for association with designated terrorist groups, including children born to their nationals. States concerned should facilitate the voluntary and safe repatriation and reintegration of children allegedly associated with such groups, including those with suspected family ties to terrorist groups, in line with the principle of non-refoulement, with respect for the best interests of the child and in accordance with international law.⁶⁰ Any reintegration programmes for child victims and witnesses of terrorist acts should be age- and gender-sensitive.

2. Considering how the strategy or policy may impact different groups, particularly those at risk of discrimination

This section introduces key questions for policy officials that could help identify and assess the effects and impacts of a counter-terrorism strategy or policy, including cross-cutting issues on different groups, particularly those at risk of discrimination.

2.1 Gender and intersectional analysis

Incorporating a gender analysis including women's rights and the rights of gender-diverse persons could help to identify, assess and address the gendered impacts of a counter-terrorism strategy or policy. Key questions to consider are:⁶¹

- How does the strategy or policy differently impact the human rights of men, women, girls, boys and gender-diverse persons? How does this intersect with other potential forms of discrimination based on race, ethnicity, religion or political opinion, for example?
- Does the analysis identify and examine the positive and/or negative implications of the strategy or policy on different genders, especially women?
- Does the analysis informing and included in the strategy or policy use disaggregated data (by sex and gender) and information which is collected in an inclusive manner?



- Does the strategy or policy use gender stereotypes or stereotypical gender norms about roles of women and men within the family, society, economy, society or public life? For example, portraying women's role in countering terrorism on the basis of their position within their communities and their families may reinforce stereotypical gender norms about roles of women within the family.
- Does the analysis identify and address counter-terrorism measures that unduly penalize or discriminate, directly or indirectly, against individuals on the basis of gender or gender stereotypes, including intersecting grounds – for example, surveillance measures that expressly or indirectly affect women belonging to a religious group?
- Does the strategy or policy include attention to sexual and gender-based violence committed in the context of terrorism and counter-terrorism?
- Does the analysis involve identifying the concerns of women and lesbian, gay, bisexual, transgender and intersex individuals in local contexts and ways to address these?

2.2 Analysing discriminatory effects and impacts

Identifying and analysing potential discriminatory effects and impacts of a counter-terrorism strategy or policy on human rights will help policy officials identify adverse impacts early in the design phase (before any decision-making) and address these by adjusting or changing the strategy or policy as required. Key questions to consider are:⁶²

- Identify whether any groups are affected by the strategy or policy on the grounds of, for example, race, ethnicity, religion, gender, political opinion or nationality. How are they affected? What types of treatment are they subjected to? How does this differ from that accorded to other persons?
- Have the effects and impact of the proposed strategy or policy been examined and assessed to identify any potential discriminatory content or consequences before any decisions have been taken and before it is implemented?
- Does the analysis provide information on individuals and groups that are more affected by a strategy or policy? Are relevant data collected and disaggregated to help identify discrimination – for example, by race, ethnicity and religion – in addition to age, sex and gender?
- How is implementation monitored to detect unintended impacts on certain groups – for example, racial, ethnic or religious groups, or women?



3. Assessing risks to human rights from counter-terrorism strategy or policy

This section sets out key questions that could be used to assess the risks to human rights from a counter-terrorism strategy or policy in order to help ensure that the strategy or policy is risk informed and mitigation measures are put in place at the outset.

Risks to human rights could arise as a strategy or policy is being implemented or if the conditions for implementing the strategy or policy change. If a human rights risk cannot be effectively managed, the proposed counter-terrorism strategy or policy should be improved upon or not adopted ([Table 1.1](#)).

Table 1.1: Template for assessing and managing risks to human rights

<p>Identify the risks to human rights in relation to the counter-terrorism strategy or policy</p>	<p>What is the risk being assessed? Name the risk.</p> <p><i>It may help to assess each risk separately and use the template for each risk associated with a policy or measure. Risks may entail human rights violations or proximity to human rights violations resulting from the policy or strategy, or a risk of discrimination or harm to particular communities.</i></p>
<p>Analyse and assess the risks to human rights to better understand how the counter-terrorism strategy or policy may negatively impact on human rights</p>	<ul style="list-style-type: none"> ● What is the likelihood of the risk, based on available information? ● What is the impact of the risk if it occurs? <i>Identify the significance of the impact on who or what, and the consequences. Special attention needs to be given to grave risks such as violation of the rights to life or liberty, and the prohibition of torture.</i> ● What are the factors that will contribute to increasing the likelihood of the risk occurring? What are the factors that will affect the risk?
<p>Identify groups or communities affected by the strategy or policy</p>	<ul style="list-style-type: none"> ● Which groups or communities may be affected or disproportionately impacted by the counter-terrorism strategy or policy? ● How are they affected? ● Does it amount to discrimination?
<p>Identify risk indicators</p>	<ul style="list-style-type: none"> ● What are the indicators of the risk of harm to human rights occurring? ● What data or information can be used to monitor/identify the potential risk to human rights, and how reliable and comprehensive are the data? ● What information can be used in deciding the current likelihood of the risk occurring? ● How often should these indicators be monitored?
<p>Identify mitigation measures</p>	<ul style="list-style-type: none"> ● What mitigation measures can be put in place and taken to effectively manage the identified risk to human rights? ● Describe how these can work.
<p>Monitor risk assessment and mitigation measures</p>	<ul style="list-style-type: none"> ● How often do the risk assessment and mitigation measures need to be monitored and reassessed? ● What information is needed for monitoring and evaluation? ● How will it be carried out and recorded?



4. Is the proposed strategy or policy limiting or restricting a human right? What rights cannot be derogated?

This section provides policy officials with guidance on legitimate limitations of human rights in countering terrorism and the derogation of rights during a public emergency.

To comply with international human rights law, counter-terrorism policy and measures limiting human rights should be provided by law, targeted and address a concrete legitimate aim, such as averting a specific threat to public safety or national security; and be necessary and proportionate for the protection of such aim in a democratic society, and not discriminate. They should also be limited, focused on specific locations and times.⁶³

Limitations made must include proper safeguards against arbitrary or abusive action by the State and ensure the essence of the human right in question is not impaired.⁶⁴

How to uphold in a counter-terrorism strategy or policy

A strategy or policy should reaffirm that any limitations to human rights should be prescribed by law; restricted only under strict conditions set out in international human rights law; and that even in response to a terrorism or national security threat, certain human rights can never be restricted. It may also be useful to describe in a strategy or policy how these determinations are made.

4.1 The test for limiting human rights

The following are essential questions to examine:

- What is the proposed counter-terrorism measure?
- What is the *legitimate aim* of the limitation?
- What is the *legal basis* for the proposed measure?
- Is the proposed measure necessary?
- Is the proposed measure proportional?
- Does the proposed measure violate the right to non-discrimination?

4.1.1 WHAT IS THE PROPOSED COUNTER-TERRORISM MEASURE?

- What type of measure is being proposed? What are the objectives of the proposed measure? Explain the importance of the objective(s) to be achieved.



- Which human right(s) does the proposed measure engage? Is the right non-derogable? If yes, it cannot be restricted, and any attempt to do so is incompatible with international human rights law.
- How effective is the measure likely to be in addressing the problem? How will the measure counter an actual or potential terrorist threat? What gaps are there in the evidence supporting the measure?
- How will this measure protect other human rights?

4.1.2 WHAT IS THE **LEGITIMATE AIM OF THE LIMITATION**?⁶⁵

- What is the precise nature of the threat? What evidence is there of the threat? What gaps are there in the evidence or issues with its reliability?
- Is it necessary to address one of the aims in the ICCPR respective articles to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others? Does it fall within one of these aims?
- How will the limitation protect against the threat to one of these aims?

4.1.3 WHAT IS THE **LEGAL BASIS FOR THE PROPOSED MEASURE**?⁶⁶

- Is there a domestic law authorizing the proposed limitation? If not, the measure is unlawful.
- If yes, are the law and the relevant provision that provide for a limitation **clear, precise** and **foreseeable**? Does the provision specify in sufficient detail the circumstances in which the limitation pertaining to the right is permitted? Does it enable someone to foresee that a particular behaviour or action is unlawful?
- Are the law and the relevant provisions **accessible**?
- What, if any, **adequate safeguards** are set out in the law to prevent illegal or abusive limitations on human rights?
- Are there any **effective remedies** set out in the law to enable redress by someone affected by the limitation if they believe it to be unlawful, unnecessary, disproportionate or discriminatory?

4.1.4 IS THE PROPOSED MEASURE NECESSARY?⁶⁷

The proposed measure must be necessary in the pursuit of its pressing objectives under the legitimate aim to be achieved, and the restriction must be shown not to impair the democratic function of the society.

- Describe the specific human rights that are limited by the measure.
- Explain that the legitimate purpose of the proposed measure cannot be achieved otherwise than by restricting human rights.



- Explain how the proposed measure will meet its objective and weigh the measure against the necessity for it.
- Are there other less intrusive measures available? If there is more than one measure that could reasonably be expected to serve the purpose of the limitation, the least restrictive measure must be chosen. If a more intrusive measure is selected, explain why the less intrusive measure is insufficient.

4.1.5 IS THE PROPOSED MEASURE PROPORTIONAL?⁶⁸

For a restriction to be proportional, the harm caused by such a measure must not outweigh the benefit of achieving its objective.⁶⁹

- What is the appropriateness of the measure? Is it appropriate to achieve its protective function?
- What is the impact of the proposed counter-terrorism measure on the identified right(s) being limited?
- Assess whether the proposed measure exceeds what is necessary to achieve the objective and address the problem identified.
- Explain how the proposed action is proportionate to the interest to be protected.
- What safeguards should accompany a measure to reduce the risks to the human right(s) being restricted? What safeguards are in place to protect against arbitrary or abusive use of the measure?

4.1.6 DOES THE PROPOSED MEASURE VIOLATE THE RIGHT TO NON-DISCRIMINATION⁷⁰

- Does the measure involve differential treatment on the basis of race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status?
- Does the proposed measure have the purpose or effect of impairing the equal enjoyment of rights?
- Is the different treatment/impact proportionate? Does the proposed action exceed the level required for its realization? A legitimate aim may never be justified by reference to discriminatory stereotypes.

4.2 Derogations and public emergency

Some rights – such as the right to life; the prohibition against torture and ill-treatment; the right to non-discrimination; freedom of thought, conscience and religion; the principle of legality in criminal law; and the prohibition of advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence⁷¹ – cannot be derogated from (suspended), even during states of emergency which threaten the life of the nation. They continue to apply in all situations.



ICCPR Article 4 allows for derogations from certain rights in a public emergency with certain safeguards:⁷²

- Measures derogating from ICCPR provisions must be of an exceptional and temporary nature. Before a State party invokes Article 4, it must demonstrate that the situation amounts to a public emergency which threatens the life of the nation, and it has officially proclaimed a public emergency. Domestic laws and constitutional provisions should not allow derogations beyond those situations covered by ICCPR Article 4, and not every crisis is a public emergency which threatens the life of the nation.
- State parties must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all the measures derogating from the covenant are strictly required by the exigencies of the situation (proportionality principle).
- Domestic laws and constitutional provisions must not allow derogations from the non-derogable provisions of the covenant set out in ICCPR Article 4.
- State parties may not derogate from their duty to treat all persons, including persons deprived of their liberty, with humanity and respect for their human dignity.
- The protection of rights explicitly recognized as non-derogable in Article 4, para. 2, must be secured by procedural guarantees, including judicial guarantees.⁷³
- Even during an armed conflict, measures derogating from ICCPR provisions are allowed only if and to the extent that the situation constitutes a threat to the life of the nation.⁷⁴
- State parties may not resort to emergency powers or implement derogating measures in a manner that is discriminatory or that violates other obligations they have undertaken under international law.
- States cannot invoke ICCPR Article 4 to justify acting in violation of international humanitarian law, or peremptory norms of international law – for instance, by taking hostages or imposing collective punishments, through arbitrary deprivations of liberty or unacknowledged detention, or by deviating from fundamental principles of fair trial, including the presumption of innocence.⁷⁵

How to uphold the obligation in a counter-terrorism strategy or policy

A strategy or policy should refer to the constitutional and other provisions of law that govern the proclamation of a public emergency and the exercise of emergency powers. It should demonstrate that the specific measures taken pursuant to the derogation are required by the urgency of the situation that threatens the life of the nation. A strategy or policy should make clear the duration, geographical coverage and material scope of the public emergency measures. It should also provide thorough justification for the decision to proclaim a public emergency and for any specific measures based on such a proclamation. A strategy or policy should demonstrate that the measures taken do not involve discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. A strategy or policy should also demonstrate how any measures derogating from ICCPR provisions are consistent with the State's obligations under other international law, particularly international humanitarian law.



5. What steps to take to increase transparency, oversight and accountability in counter-terrorism strategy and policy

This section sets out a checklist of questions on openness of counter-terrorism legislative and policy processes, government roles and responsibilities, and oversight and accountability bodies and mechanisms that should be included in a counter-terrorism strategy and policy and also in a wider context of counter-terrorism.

Transparency contributes to promoting accountability⁷⁶ and provides information to the public on what a State is doing to address terrorism, who the responsible ministry/agency/department and senior officials are, and which bodies and mechanisms independently oversee and hold accountable the work of different counter-terrorism authorities. Setting this out in a strategy or policy is important for good governance and can help increase public confidence in State efforts and actions.

In counter-terrorism, there will be some information and data that remain classified including personal data, aspects of the counter-terrorism policy process, and some national security information pertaining mainly to the work of the intelligence and security agencies. This should not be unduly relied on as reasons to prevent or limit transparency.

- How open is counter-terrorism legislative and policy processes?
- Who in government is responsible?
- What reporting requirements exist?
- What internal institutional oversight bodies and procedures exist within government?
- What independent oversight and accountability exist?

5.1 How open is counter-terrorism legislation?

- Is the legal framework underlying counter-terrorism measures accessible to the public? This includes relevant laws, regulations and executive orders.
- Is the counter-terrorism strategy or policy accessible to the public?
- Are there opportunities for public and/or parliamentary consultation on draft laws, regulations, strategies and policies?
- What new laws, provisions or regulations have been introduced since the last counter-terrorism strategy or policy was developed?

5.2 Who in government is responsible?

A counter-terrorism strategy or policy should make clear which senior official(s) and which agency is responsible for the following roles in counter-terrorism:



- Leads and/or coordinates the State's overall counter-terrorism response
- Oversees or coordinates the design, implementation and evaluation of a counter-terrorism strategy or policy
- The contribution of armed forces (if applicable)
- The role of the criminal justice system
- The intelligence agencies' contribution
- The role of border, migration and custom authorities
- The role of financial regulators
- The role of police
- The role of prisons and correction authorities
- Local government involvement
- The roles of any State actors in assisting and supporting victims of terrorism
- The role of any State actors in preventing and countering violent extremism conducive to terrorism
- Leads on drafting and/or commenting on legislation related to counter-terrorism
- Communication to the public on where and how they may notify authorities of terrorist-related activity
- Engagement with civil society and other stakeholders in the design, implementation and evaluation of counter-terrorism strategy or policy
- Oversees the rights of the child in relation to counter-terrorism
- International cooperation and activities

Recognizing that many governments employ a multi-agency approach to preventing and countering terrorism, there could be a number of ministries, departments and agencies involved. A fuller description, which includes the main types of actions that each is responsible for, and the procedures and mechanisms for inter-agency coordination, would be valuable.

5.3 What reporting requirements exist?

- Does government report to Parliament or a parliamentary committee on its counter-terrorism laws, policy or strategy, and how often?
- Is consideration of human rights included in that reporting? If yes, how are they considered?
- Are these reports publicly available and accessible? Or can information and these reports be accessed through freedom of information requests? Or are these reports covered by official secrets or State secrets legislation that prevents release for a specific duration of time?
- Do ministers go before parliamentary committees or Parliament to explain their decisions?
- Do parliamentary committees receive public submissions and appearances by experts and civil society?



5.4 What internal institutional oversight bodies and procedures exist within government?

There may be internal institutional oversight bodies and procedures, including within a particular ministry, department or agency, which can also be referred to in a strategy or policy when speaking about their work or a measure that the related authority implements. These are common within the police, intelligence and security agencies, and the military.

5.5 What independent oversight and accountability exist?

Independent oversight of counter-terrorism is critical to ensure the proper exercise of counter-terrorism powers and to guard against their misuse, address human rights violations, and safeguard civic space in the context of preventing and countering terrorism.

A strategy or policy should make clear which domestic mechanisms and bodies have a mandate and/or functions for the independent oversight of counter-terrorism measures. It would also be useful if a strategy or policy highlights any collaboration between different bodies and mechanisms undertaken to provide comprehensive oversight of human rights impacts of counter-terrorism measures.

Specialized processes could be required to ensure adequate oversight and accountability of the intelligence and security agencies due to their classified nature and work.

Below are some examples to check in your country and to consider establishing if these mechanisms are not available:

- Independent bodies and mechanisms
- Parliamentary or congressional committees
- Judicial oversight

5.5.1 INDEPENDENT BODIES AND MECHANISMS

Which bodies or mechanisms exist in your country that have oversight functions related to counter-terrorism? How can their decisions be enforced? What is the extent of their independence?

The following as well as others will be relevant:

- A National Human Rights Institution (NHRI), which is a State-mandated body that is independent of government and has a broad constitutional or legal mandate to protect and promote human rights across a range of civil, political, economic, social and cultural rights.
- National Ombudsperson, Public Complaints Commission, Investigatory Powers Commission and a Children's Ombudsperson are some examples of independent and impartial ombudsperson bodies established to advise public authorities on their conduct and support individuals in their complaints against public authorities.



- A national preventive mechanism, which monitors all places of detention based on international standards.
- Independent police, security and intelligence oversight bodies that are responsible for overseeing the work of law enforcement and receiving any complaints or allegations against the conduct of the police.
- Independent statutory reviewers of counter-terrorism legislation, empowered to periodically review the operation of laws and their compatibility with human rights law.
- Military mechanisms or bodies for oversight and accountability of the military include military ombudsmen and inspector-generals.

5.5.2 PARLIAMENTARY OR CONGRESSIONAL COMMITTEES

Which parliamentary or congressional committees have oversight of the government's counter-terrorism work? How does government consider and address recommendations made by these committees? How does the work of these committees inform policy design, implementation and evaluation?

There is likely to be more than one committee depending on the statutory responsibilities – for example, oversight of the intelligence and security services, the justice sector, the police, human rights etc.

5.5.3 JUDICIAL OVERSIGHT

Judicial independence is critical in overseeing counter-terrorism measures. The judiciary plays a crucial role in ensuring that counter-terrorism measures and actions comply with legal standards and human rights.

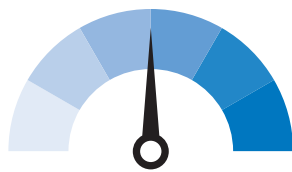
Determine which courts (and what level), if any, have jurisdiction over the following:

- Scrutinize requests for surveillance measures and warrants based on clear evidence and international human rights law
- Scrutinize requests to designate individuals and groups as terrorists or terrorist organizations based on clear evidence and international human rights law
- Review the lawfulness of arrest, detention of suspects/accused of terrorist offences, and the detention order
- Ensure suspects/accused have access to a lawyer, an interpreter where needed and family members
- Safeguard against torture or ill-treatment and ensure humane conditions of detention
- Review the legality, including the constitutionality, of counter-terrorism laws and policies
- Access to justice, redress and reparations for anyone who claims being a victim of a human rights violation resulting from a counter-terrorism measure or action



The independence and capabilities of independent oversight and accountability bodies and mechanisms to carry out their mandate and functions effectively can be measured using several key characteristics as illustrated in [Diagram 1.2](#).⁷⁷

Diagram 1.2: Indicators of independence of oversight and accountability mechanisms



Independence

- Independence should be set in law
- Legal guarantee of the autonomy of the body and officials, immunity from civil or criminal proceedings for discharging official duties, powers to conduct investigations and compel authorities to provide information
- Budgetary independence should be secured in law
- Appointment, work and staff should be free of control, including political interference
- These bodies must be able to perform their work without interference as they decide how best to fulfil their mandate
- Members should be reflective of the diversity of society



Resource

- Adequate financial and human resources to carry out the work of the mandate
- Adequate expertise necessary to carry out the mandate and functions of the body or mechanism
- Adequate infrastructure, technology and other technical resources



Access mandate

- Access to regular reports and information that is necessary for the effective oversight of the subject
- Access to classified information where necessary; this could require establishing processes to ensure bodies and mechanism have access to classified records where high levels of security clearance are required, and specific procedures on a confidential access
- Access to facilities such as places of detention for announced and unannounced monitoring visits
- Access to witnesses, which may include summoning law enforcement and other personnel

6. Where to find information by UN human rights mechanisms on counter-terrorism

This section points to where information on human rights relevant to counter-terrorism issues provided by UN bodies and mechanisms can be found and refers to the key international human rights treaties ([Diagram 1.3](#)) and other applicable international law.

6.1 The interpretation and application of international human rights law by UN human rights mechanisms

UN human rights mechanisms include:⁷⁸



- Special procedures of the Human Rights Council
- Treaty bodies
- Universal Periodic Review (UPR) of the Human Rights Council

They house a wealth of information, advice and recommendations on how to implement rights in international human rights treaties and are useful resources to assist policy officials in their work to integrate human rights in counter-terrorism strategy and policy. They can be easily accessed using the Office of the United Nations High Commissioner for Human Rights (OHCHR) Universal Human Rights Index (UHRI) shown [below](#).

6.1.1 SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

UN human rights special procedures are independent experts mandated by the Human Rights Council to report and advise on human rights from a thematic or country perspective.

A key mandate is the **Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism** who has done extensive work on a wide range of counter-terrorism issues. This includes visits to countries to examine national frameworks and advise on their compliance with international human rights law and relevant treaties. The Special Rapporteur also regularly publishes reports on a range of human rights and counter-terrorism issues.

Other special procedures mandate-holders have also produced reports on human rights that are relevant to counter-terrorism issues, including:

- Working Group on arbitrary detention
- Special Rapporteur on freedom of peaceful assembly and of association
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Special Rapporteur on the situation of human rights defenders
- Special Rapporteur on the right to privacy
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on the independence of judges and lawyers

6.1.2 TREATY BODIES

Treaty bodies are the committees of independent experts who review reports by State parties on their application of the provisions of the core



Find out:

- About **country visits** – if your country has been visited by the Special Rapporteur, and the findings and recommendations from that visit
- About **thematic issues** and **annual reports** – if the issue(s) you are working on has been covered and what has been recommended by the Special Rapporteur
- About **comments on legislation and policy** – if laws and policies in your country have been commented on and what has been said by the Special Rapporteur



Find out:

How has your State implemented its obligations under these treaty bodies?

- Search for your State's periodic reports on implementation of human rights obligations under the different treaties, which contain relevant human rights in countering terrorism. Also check the treaty body's concluding observations that respond to these reports to learn of particular concerns and recommendations.
- Consult the international organizations desk or department in the Ministry of Foreign Affairs and/or Attorney General's Office which typically work on reports and communications with the UN human rights mechanisms for information related to human rights in counter-terrorism on the latest communications to and from the different bodies and mechanisms.



Find out: About your [State's progress](#) to implement the recommendations made during the UPR process.

human rights treaties.⁷⁹ They issue concluding observations (concerns and recommendations) after they have considered a State's report, which is submitted periodically.⁸⁰

Many States have also accepted the jurisdiction of treaty bodies to receive and make decisions on complaints from individuals affected by the State's conduct, and to make individual recommendations for remedying any human rights violations.

Each treaty body publishes its interpretation of the provisions of its respective human rights treaty in the form of general comments or general recommendations. The general comments/recommendations cover a wide range of subjects, and provide general guidance on information that should be submitted in State reports relating to specific articles of the treaty. General comments have also dealt with wider, cross-cutting issues, such as the rights of persons with disabilities, violence against women and the rights of minorities.⁸¹ These general comments play a key role in assisting States in implementing their treaty obligations and the application of international human rights law, including in the context of counter-terrorism. For example:

- Human Rights Committee General comment No. 36 on ICCPR Article 6: Right to life
- Human Rights Committee General comment No. 37 on ICCPR Article 21: Right of peaceful assembly
- Human Rights Committee General comment No. 34 on ICCPR Article 19: Freedoms of opinion and expression
- Committee on Enforced Disappearances (CED) General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women
- Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials

6.1.3 UNIVERSAL PERIODIC REVIEW OF THE HUMAN RIGHTS COUNCIL

UPR is a process at the UN Human Rights Council that involves a periodic peer review every four and a half years of Member State's human rights record. It provides each State the opportunity to report on the actions it has taken to improve the human rights situation in its country and receive recommendations from other Member States.⁸²



6.2 Key international human rights treaties

Key international human rights treaties (and their corresponding treaty body) most relevant to counter-terrorism is illustrated in [Diagram 1.3](#).



Find out: When your State became a party to these key international human rights treaties using the [OHCHR's Status of Ratification Dashboard](#).

Diagram 1.3: Key international human rights treaties





International human rights law is also found in customary international law. It is applicable regardless of whether a State is a party to a human rights treaty or not. It is universally accepted that the prohibitions of torture, slavery, genocide and racial discrimination, and the right to self-determination are customary international law.⁸³

Other relevant international law

Other relevant international law is also applicable in the context of addressing terrorism:

- International humanitarian law is the body of international law that governs the conduct of armed conflict. It applies both to armed forces and to non-State armed groups. International humanitarian law prohibits in armed conflict most acts that would be called “terrorist” if committed in peacetime and are criminalized as “terrorist” in domestic legislation and international conventions addressing terrorism.⁸⁴
- International refugee law is the body of law which provides a specific legal framework for the protection of refugees by defining the term refugee, setting out States’ obligations to them and establishing standards for their treatment.
- International conventions relating to the prevention and suppression of specific aspects of terrorism such as offences linked to civil aviation or hostage-taking contribute to the global legal regime against terrorism and provide a framework for international cooperation.⁸⁵
- International criminal law is grounded in treaties such as the Rome Statute of the International Criminal Court, which, depending on the facts and circumstances, contain various offences that may include terrorist conduct.⁸⁶

It is outside the scope of this tool to provide guidance on the application of these bodies of international law in the context of counter-terrorism.

OHCHR Universal Human Rights Index

You can search reports, concluding observations and recommendations made by special procedures, treaty bodies and UPR using the UHRI as illustrated in [Diagram 1.4](#). This search will generate some immediate findings – for example, from a specific treaty body such as the Human Rights Committee regarding the State’s definition of terrorism. It is important to note that a wider mechanism and thematic search will generate more results than may be relevant.



Diagram 1.4: How to search the OHCHR Universal Human Rights Index

Search the OHCHR Universal Human Rights Index (UHRI)

The screenshot displays the OHCHR.org website's search interface for the Universal Human Rights Index. At the top, there is a navigation bar with the OHCHR logo, the text 'UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER', and the title 'Universal Human Rights Index'. To the right of the title are links for 'About', 'Search', 'Countries', 'SDGs', and 'HR 75 pledges'. A language dropdown is set to 'English'.

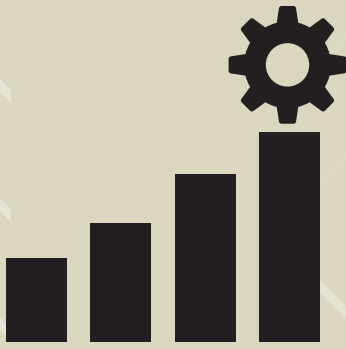
Below the navigation bar is a search bar with several filter tabs: 'Country', 'Mechanism', 'Human Rights Themes', and 'Concerned persons/groups'. A 'Text Search' input field and a 'Reset' button are also present. Underneath these filters is a 'More Options' section with a dropdown for 'Select one or more SDG's'.

The main content area is divided into several panels. On the left, the 'Country' dropdown is open, showing a list of countries from Afghanistan to Bahamas. The 'Mechanism' dropdown is also open, listing various human rights mechanisms like UPR, CAT, CCPR, CED, CEDAW, CERD, CESC, CMW, CRC, CRC-OP-AC, and CRC-OP-SC. The 'Human Rights Themes' dropdown is open, showing categories such as 'General framework of implementation', 'Scope of international obligations', 'Cooperation with human rights mechanisms & requests for technical assistance', and 'Inter-State cooperation and assistance'. The 'Concerned persons/groups' dropdown is open, listing groups like 'Children', 'Children in vulnerable situations', 'Civil society', 'Disappeared persons', 'Domestic workers', 'Educational staff & students', 'Human rights defenders & activists', 'Indigenous peoples', 'Internally displaced persons', and 'Judges, lawyers and prosecutors'.

On the right side, there are additional filters: 'Filter by Region' with a 'Region' dropdown, 'Filter by Document' with 'Document Symbol' and 'Document Type' dropdowns, and 'Show results from-to' with 'From' and 'To' date pickers. There are also checkboxes for 'Display only recommendations' and 'Display only observations'.

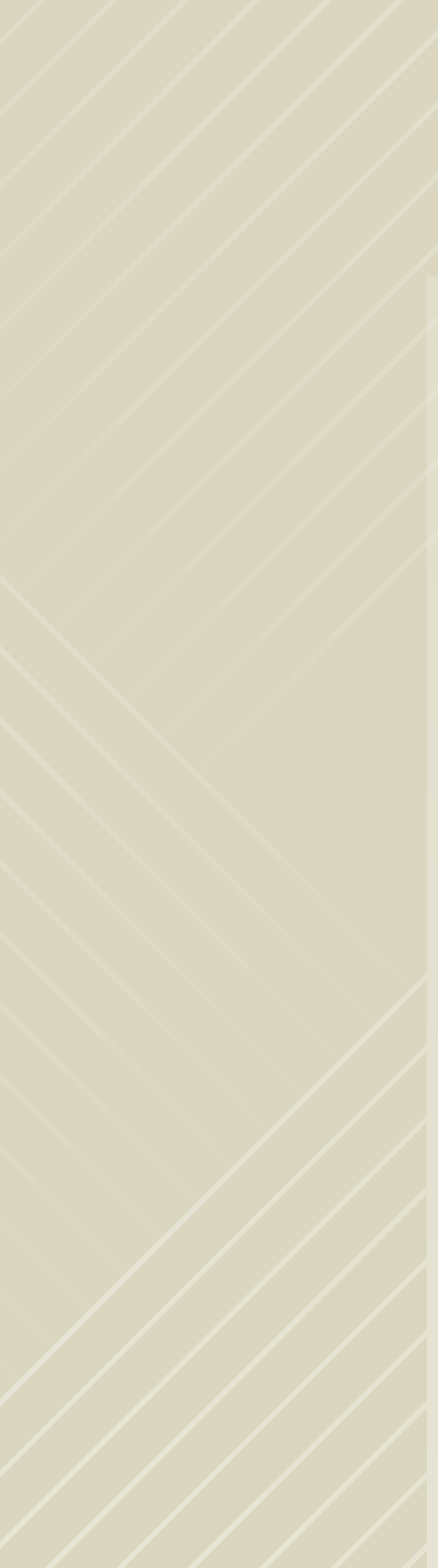
Use the drop-down tabs on the [OHCHR Universal Human Rights Index](#) website to tailor your search.

This screenshot shows the 17 Sustainable Development Goals (SDGs) grid from the OHCHR website. The grid consists of 17 colorful icons, each representing a goal: 1. No Poverty, 2. Zero Hunger, 3. Good Health and Well-being, 4. Quality Education, 5. Gender Equality, 6. Clean Water and Sanitation, 7. Affordable and Clean Energy, 8. Decent Work and Economic Growth, 9. Industry, Innovation and Infrastructure, 10. Reduced Inequalities, 11. Sustainable Cities and Communities, 12. Responsible Consumption and Production, 13. Climate Action, 14. Life Below Water, 15. Life on Land, and 16. Peace, Justice and Strong Institutions.



TOOL 2

**Building institutional
human rights
specialist capacity in
counter-terrorism**



This tool provides policy officials, decision makers and ministers with guidance on how to build institutional human rights specialist capacity in counter-terrorism strategy and policy.

Topics covered:

- What is human rights specialist capacity?
- The importance of institutionalizing human rights specialist capacity
- When to use human rights specialist capacity
- Where to obtain human rights specialist capacity
- The roles and responsibilities of human rights specialist capacity
- What is needed to institutionalize human rights specialist capacity



1. What is human rights specialist capacity?

Diagram 2.1: Examples of human rights specialist capacity needed in counter-terrorism

HUMAN RIGHTS SPECIALIST CAPACITY:

The knowledge, experience and skills (**specialist**) as well as the mandate and resources (**capacity**) to support and strengthen the integration of human rights in counter-terrorism responses

Human rights in counter-terrorism



There are a range of human rights issues relevant to counter-terrorism that a specialist capacity could help integrate in a proposed strategy or policy or raise concerns that need addressing. A specialist capacity could help ensure new or existing strategies or policies as well as training curricula are consistent with a State's international human rights obligations. It could provide expertise and recommendations on human rights to guide and inform decision makers. In addition to these roles, specialist capacity could assist in developing and delivering training for policy officials, law enforcement, security and other personnel to increase understanding and respect for international human rights norms and standards.

AI and digital technologies



As States increasingly turn to artificial intelligence (AI) and digital technologies (including surveillance, biometrics and facial recognition technology) in countering terrorism, the protection of human rights will be critical to keep pace with their evolving use and application. Specialist capacity could help policy officials better understand the impact AI and digital technologies have on human rights – such as the rights to privacy, equality and non-discrimination, and freedom of expression – and help ensure that any counter-terrorism responses are human rights-compliant and that there are adequate safeguards in place (OHCHR, [A/HRC/51/17](#), 4 August 2022, paras. 56–57).

Gender



The different human rights implications for men, women, boys, girls and gender-diverse people in terrorism and counter-terrorism necessitates specialist capacity. Understanding women's rights, gender constructs, using a gender lens and being gender-responsive can help policy officials in assessing the implications of counter-terrorism actions and measures for different genders.

Children



Knowledge of rights of the child in the context of counter-terrorism requires specialist capacity, particularly in treating children primarily as victims and giving primary consideration to their best interests. Child rights expertise in the justice system, child recruitment and use by terrorist groups – which is a grave violation – and the impact of and appropriate responses to child “association” with terrorist groups through, for example, family ties could help ensure that counter-terrorism actions are consistent with a State's legal obligations and good practices in child protection.

Data protection



The handling of personal data must be based on clear and accessible laws and regulations to govern how data may be gathered, stored, shared, processed and deleted in accordance with international human rights law. The collection of data in counter-terrorism is likely to limit the right to privacy, for example, and may impact equality and non-discrimination. Specialist capacity could help make clear to decision makers the complexities of data protection in counter-terrorism and ensure that any counter-terrorism action complies with the right to privacy and data protection standards and there are sufficient safeguards, oversight and remedies (OHCHR, [A/HRC/39](#), 29 August 2018, para. 61).

Persons with disabilities



Understanding the impact of terrorism or counter-terrorism measures on persons with disabilities who have been affected by a terrorist attack or counter-terrorism operations would benefit from specialist capacity. This could ensure that protection of their human rights is given the necessary attention by policymakers and institutions, strengthen their participation in government decision-making on counter-terrorism responses, and increase access to information on services and support available to them as victims of terrorism or human rights violations.

Source: Drawn from [Office of the United Nations High Commissioner for Human Rights, Global Alliance of National Human Rights Institutions and United Nations Development Programme \(2016\)](#).



2. The importance of institutionalizing human rights specialist capacity

It is important to institutionalize human rights specialist capacity in the context of counter-terrorism as it can assist a State to:

- Implement its international human rights law obligations in counter-terrorism actions. This includes implementing its obligations in accordance with international courts' case law, decisions, concluding observations, general comments and recommendations by United Nations (UN) human rights mechanisms (see [Tool 1, section 6](#)).
- Ensure that non-derogable rights such as the right to life and the prohibition on torture are guaranteed at all times.
- Ensure that any restrictions or limitations on human rights are provided by law and in line with the prerequisites of legitimate aim, necessity, proportionality and non-discrimination (see [Tool 1, section 4.1](#)).
- Implement constitutional and national laws, particularly human rights guarantees, in a manner consistent with international human rights law.
- Consider and address any potential harmful impacts on the human rights of specific groups and communities.
- Inform a government's risk management approach, anticipating and mitigating negative effects and impacts on human rights and right-holders, i.e. the public and/or specific groups.
- Bring credible, timely and cogently argued views on the risks and challenges generated by certain laws, strategies and policies, and fast-breaking actions, such as responding to terrorist acts or threats.
- Clearly understand and explain issues, challenges and complexities that arise in relation to human rights and counter-terrorism.
- Improve engagement with civil society organizations, including human rights defenders and victims of terrorism and victim organizations, and reduce friction and strengthen trust with communities.
- Strengthen a State's understanding and efforts to address the conditions conducive to terrorism, which could contribute to a more comprehensive and sustainable counter-terrorism strategy or policy.
- Support senior officials/decision makers to ensure human rights are consistently and properly integrated into strategic planning and oversight of counter-terrorism.



3. When to use human rights specialist capacity

To make it effective, human rights specialist capacity (including the various examples in [Diagram 2.1](#)) should be utilized at the outset of a process to develop or review counter-terrorism strategy or policy, so the relevant human rights can be identified early, potential human rights concerns or challenges can be raised quickly, and human rights analysis can inform and be included in strategy or policy design.

Human rights specialist capacity should be used across counter-terrorism strategy or policy design, implementation and evaluation, as well as training. These stages of the process are rarely distinct and often overlap and should feed back into one another. Continually and concurrently utilizing specialist capacities throughout, and drawing on the three-pronged approach ([Diagram 2.2](#)) across the process, will bring the most benefit to strengthening human rights in strategy or policy.

4. Where to obtain human rights specialist capacity

In-house specialist capacity. A staff member placed in the responsible counter-terrorism department or agency could help ensure the involvement of the specialist capacity in the day-to-day work of counter-terrorism. This requires the official taking part in all key decision-making. If government does not have the resources to establish a new post immediately, it could train existing staff – including by drawing on the capacities set out below (in-government or external specialist capacity) – to assist with knowledge and training. Budgeting for specialist capacity should be included in future budget planning.

Human rights training for counter-terrorism government officials involved in strategy or policy design, implementation and evaluation should be a priority even with an in-house specialist capacity.

In-government specialist capacity. Policy officials can draw on existing human rights specialist capacities from elsewhere in government. Most, if not all, States have a Ministry or Department of Justice or equivalent, which is likely to have relevant human rights and constitutional rights expertise that can be drawn on and bolstered. Some countries have a dedicated Ministry of Human Rights or a Ministry of Women’s Affairs which can be utilized. The Attorney-General’s Office is an important source of knowledge on constitutional rights and freedoms, and human rights in domestic laws. A Foreign Ministry may have relevant expertise, while an

Diagram 2.2: A three-pronged approach

In-house specialist capacity

Establishing an in-house human rights specialist capacity in the department or agency leading or coordinating counter-terrorism

In-government specialist capacity

Utilizing internal resources from elsewhere in the government such as a Human Rights Ministry, a human rights office or department in the Justice Ministry, or a Ministry of Women, the Ministry of Foreign Affairs etc., or drawing on the role and functions of the legislative branch of government

External specialist capacity

Utilizing external resources from outside government such as the National Human Rights Institution, civil society, academics and experts



Immigration Ministry may also have expertise in international refugee law and the Defence Ministry could be relevant on international humanitarian law.

Specialist capacity could also be utilized to provide human rights advice to law enforcement operational and senior commanders engaged in counter-terrorism operations.

Beyond the executive, Parliament or the legislative branch of government plays a vital role in the oversight of counter-terrorism policy or strategy, which can be utilized to inform policy or strategy design, implementation and evaluation. Drawing on the specialist capacity from the legislative branch – which is uniquely positioned to support government in its responsibility to respect, protect and promote human rights,⁸⁷ both in drafting and reviewing laws, strategy or policy through parliamentary or congressional committees – could be beneficial.

External specialist capacity. This could include drawing on independent public bodies, such as the National Human Rights Institution (NHRI), civil society organizations, academics, or research centres and institutions – for example, those focused on constitutional rights, human rights issues and/or covering related counter-terrorism topics – to obtain specialist capacity.

Human rights mechanisms or procedures at the international and regional levels may be able to provide technical assistance, including legislative drafting and training.



5. The roles and responsibilities of human rights specialist capacity

This section recommends the roles and responsibilities of human rights specialist capacity for each aspect of the three-pronged approach.

5.1 In-house specialist capacity (within the counter-terrorism lead or coordinating department or agency)

Human rights specialist capacity inside the counter-terrorism lead or coordinating department or agency could take the form of one or more staff members whose post has a human rights remit and expertise.

The post-holder should be involved in the day-to-day work of strategy and policy design, implementation and evaluation, working with and alongside other members in the policy and other teams.

Such specialist capacity should be made known to all in the department or agency so that they are valued, utilized and regarded as an integral team member.

This post(s) should be incorporated into the office's mandate, mission and structure. Post-holders should also be of sufficient seniority to effectively influence the work of the office.

Ministers in government may need to make decisions on a short deadline – for example, if counter-terrorism policy is being formulated in response to a terrorist attack or a perceived or potential terrorism threat. In such a situation, in-house specialist capacity can provide immediate expertise and guidance on human rights.

Sometimes additional specialization or expertise may be needed, and the in-house specialist capacity can be pivotal in identifying where to find these and what is needed to draw on these resources.

Although governments will have legal experts on national laws, criminal law and international law – including in the lead counter-terrorism department or agency, or in other ministries or departments such as Justice or Foreign Affairs – knowledge of international human rights law is a core skill set for this specialist capacity to be effective.



In-house human rights specialist capacity could include several roles and responsibilities:

- Providing leadership on international human rights norms and standards in counter-terrorism strategy and policy design, implementation and evaluation
- Identifying, analysing and assessing human rights issues and challenges that should be considered in the formulation of a counter-terrorism strategy or policy
- Providing human rights input into the design of strategy or policy
- Advising policy officials and decision makers on the State's international human rights law obligations and constitutional rights and freedoms, provided they are consistent with international human rights law
- Advising policy officials and decision makers on where, when, how and why counter-terrorism policy proposals may not be consistent with the State's human rights obligations
- Enabling the application of international human rights norms and standards in data collection, disaggregation, research and analysis as part of the process of design, implementation and evaluation of counter-terrorism strategy and policy
- Carrying out and contributing to monitoring and evaluation, and impact assessments of counter-terrorism responses
- Identifying, liaising and utilizing specialist capacity on issues from across government and outside government
- Analysing political, humanitarian and other developments to provide more depth and understanding on conditions conducive to terrorism

5.2 In-government specialist capacity (internally within government)

Across the executive branch, different ministries or departments will likely have duties and functions that are relevant to human rights and could provide specialist capacity. For example:⁸⁸

- Attorney-General's Office
- Ministry or Department of Justice
- Ministry of Social Welfare, Social Affairs or Social Development
- Ministry of Women or Women's Affairs or Gender
- Ministry of Human Rights
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Defence
- Immigration Department or Ministry



It is important to find out which posts in the different ministries or departments have relevant functions and portfolios and embed the cooperation into the actual workstreams of the relevant parts of government. This could help highlight where specialist capacity can be drawn from and how it can be utilized; the arrangements could be set out in a terms of reference or working agreement. Collaborative work across government agencies to utilize human rights specialist capacity in counter-terrorism strategy and policy should be recognized and encouraged.

The addition of specialist capacity from elsewhere in government has the benefit of contributing to a multidisciplinary approach to policy and cross-government working.

The provision of human rights specialist capacity at this level could work in several ways:

- Actively participating in early and ongoing strategy or policy discussions to identify the types of human rights relevant to the counter-terrorism response being discussed
- Producing human rights analysis and providing information and data to inform policy design, implementation and evaluation
- Commenting on and ensuring international human rights norms and standards are adequately integrated into policy proposals or strategy before decisions are taken
- Reviewing, commenting and providing human rights inputs on policy or strategy drafts

Parliamentary or congressional committees

Parliamentary or congressional committees oversee the work of different parts of government on different areas or issues. A human rights, justice or security-related parliamentary or congressional committee may likely cover terrorism and counter-terrorism. Parliament can also create ad hoc or special commissions to address specific aspects related to counter-terrorism.

The different types of work that these committees carry out to implement their oversight functions could be used to inform and include in counter-terrorism strategy or policy design, implementation and evaluation. This could also include joined-up work or joint inquiries. Government should utilize the work of different committees that are looking at these issues and not just rely on one.

Parliamentary committees could contribute specialist capacity by:

- Providing feedback relating to human rights on a counter-terrorism strategy or policy proposals
- Advising on international human rights law for specific counter-terrorism draft laws or draft legal provisions ahead of their being presented to Parliament
- Scrutinizing draft counter-terrorism laws as they proceed through Parliament or Congress
- Scrutinizing implementation and efficacy of counter-terrorism strategy, policy or law
- Conducting inquiries and receiving submissions on a particular terrorism or counter-terrorism topic



5.3 External specialist capacity (external resources from outside government)

There are several resources outside of government that could provide human rights specialist capacity such as the NHRI, the UN and Parliament.

5.3.1 NATIONAL HUMAN RIGHTS INSTITUTION

An NHRI is a public body that is independent of government and has a legal mandate to promote and protect human rights at the national level. It carries out a number of key functions to promote and protect human rights:⁸⁹

- Recommend, provide opinions, prepare reports and draw attention to any situation of human rights violations and propose initiatives to end such situations
- Promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party
- Encourage ratification of international human rights instruments
- Contribute to State reports to UN bodies and committees and regional institutions
- Assist in the formulation and implementation of programmes for the teaching of, and research into, human rights
- Raise awareness on human rights through information and education

The full independence of NHRIs is key for them to be effective and recognized by the international community. The Paris Principles set out the standards they should adhere to.⁹⁰

5.3.2 UNITED NATIONS ENTITIES

The UN entities are present and run programmes in many countries and territories around the world. Different UN entities provide technical cooperation and assistance on human rights, women's rights, rights of the child and counter-terrorism as part of their work supporting States to promote and protect human rights. These include the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), UN Women, the United Nations Office of Counter-Terrorism (UNOCT), Counter-Terrorism Committee Executive Directorate (CTED), the United Nations Office on Drugs and Crime (UNODC) and others.

5.3.3 CIVIL SOCIETY ORGANIZATIONS, THINK TANKS, UNIVERSITIES, ACADEMICS, OR INDIVIDUAL EXPERTS

Civil society organizations – including women-led organizations, human rights defenders, faith-based organizations, think tanks, universities, academics and experts – have expertise in subject areas directly related or relevant to addressing terrorism and counter-terrorism actions.



Some are focused on specific subject areas and have a high level of expertise on specific human rights issues and/or specific counter-terrorism issues. Also, community and local civil society organizations often see first-hand the effects and impacts of terrorism and counter-terrorism on local groups and communities and can provide direct knowledge and experience.

Academic and civil society organizations' research and expertise can inform and improve government strategy or policy and can provide up-to-date information and data on relevant subject areas. Research can be commissioned at any stage of the policy cycle, which may require resources and a budget.

Utilizing these kinds of human rights specialist capacity could involve a range of options:

- Consulting diverse civil society, including women-led organizations, to identify the relevant human rights issues and challenges on a counter-terrorism strategy or policy
- Requesting the preparation of a report to inform a government strategy or policy, providing human rights approaches to counter-terrorism work or recommending how to use human rights to address an identified issue or concern
- Commissioning a human rights impact assessment of a counter-terrorism measure(s)
- Obtaining advice on human rights indicators to evaluate the impact of counter-terrorism measures
- Seeking critical and constructive input and feedback on a draft or review of a strategy or policy

[Tool 3](#) provides more information on how civil society can contribute to counter-terrorism strategy and policy processes.

6. What is needed to institutionalize human rights specialist capacity

Recommended actions for the institutionalization of human rights specialist capacity in counter-terrorism responses include:

- Public presidential or executive government or ministerial commitment to institutionalizing human rights specialist capacity in counter-terrorism
- Buy-in from leadership and management to drive forward the involvement of human rights specialist capacity in strategy and policy processes
- Communicating to officials and staff working on counter-terrorism the importance and value of utilizing human rights specialist capacity
- Generating the uptake of human rights specialist capacity among staff and across the key departments and agencies responsible for counter-terrorism
- Cultivating an institutional culture that accepts, values and proactively seeks to utilize human rights specialist capacity



Tool 2: Building institutional human rights specialist capacity in counter-terrorism

- Implementing international human rights norms and standards in counter-terrorism strategy and policy
- Developing clear policies or procedures for using and involving human rights specialist capacity that outline the rationale, commitment and the how, when and from where
- Attributing authority to the involvement of the human rights specialist capacity in counter-terrorism strategy and policy processes
- Monitoring and evaluation to effect learning and improvements to strengthen the institutionalization and utilization of human rights specialist capacity
- Examining lessons learned from counter-terrorism strategies or policies and holding those responsible to scrutiny and account
- Allocating sufficient funding and resources for human rights specialist capacity and establishing ongoing capacity-building programmes to strengthen skills and knowledge of staff involved in counter-terrorism
- Strengthening international and regional cooperation to build commitments, strengthen capacity building, and exchange good practices and lessons learned.

The checklist in [Diagram 2.3](#) can be used a starting point to institutionalize human rights specialist capacity.

**Diagram 2.3: Checklist for human rights specialist capacity**

- 
- Is there human rights expertise or specialist capacity within the counter-terrorism lead or coordinating department or agency? If yes, what does it look like and how is it integrated? Is it sufficient? How could it be strengthened?
 - Do you know when and from where to ask for and obtain human rights specialist capacity?
 - When and where (at what points) in the process of developing or reviewing counter-terrorism strategy or policy is human rights specialist capacity currently used?
 - Are human rights referred to in internal project management tools, templates or guidelines on developing counter-terrorism strategy and policy?
 - Is the human rights specialist capacity actively promoted by the leadership and management in a counter-terrorism lead or coordinating department or agency?
 - Are other parts of government consulted for their human rights expertise and inputs on counter-terrorism strategy and policy? If yes, from where and whom? What does this specialist capacity look like and how is it used?
 - What funding or resources have been allocated to support the establishment of in-house specialist capacity or secure specialist capacity from elsewhere in government or outside of government?
 - Are there instances when different types of expertise may be brought in from outside government in counter-terrorism strategy and policy? From where? When? What type of expertise is sought?
 - Is there sufficient engagement (and transparency in engaging) with external actors and partners in the strategy or policy design, implementation and evaluation? (See [Tool 3](#).)



TOOL 3

Strengthening government engagement with civil society in counter-terrorism



This tool provides policy officials with guidance on strengthening government engagement with civil society in counter-terrorism strategy and policy.

Topics covered:

- Why is it important for governments to engage with civil society on counter-terrorism?
- The impact of counter-terrorism on civil society and civic space
- Creating the legal and policy framework for a safe and enabling environment
- Practical steps to strengthen government engagement with civil society
- The role of other actors in facilitating government engagement with civil society on counter-terrorism
- Checklist for effective engagement with civil society



1. Why is it important for governments to engage with civil society on counter-terrorism?

The ability for communities, including civil society, to participate and express views is crucial for peace and development⁹¹ and for realizing human rights at the national level.⁹² Repeated attempts to restrict civic space and exclude individuals and groups from expressing their views, freely assembling, creating associations and participating in decision-making are most often a prelude to a general deterioration of the political situation and further human rights violations,⁹³ and can render societies vulnerable to the conditions conducive to terrorism and violence.⁹⁴ Conversely, engagement by government with civil society in meaningful, inclusive and safe ways can help improve the effectiveness, legitimacy and transparency of its counter-terrorism laws, strategy, policies and operations.⁹⁵ Participation of civil society in public affairs, including in shaping counter-terrorism decision-making, is also protected by international human rights law.

Engaging civil society can help improve counter-terrorism strategy and policy design, implementation, and evaluation. Policymakers can:

- Learn from and better understand victims and communities with direct experience of the effects and impacts of terrorism and counter-terrorism measures, and how to address these to inform strategy and policy
- Ensure a diverse and wide range of voices, knowledge and expertise informs and is included in decision-making and implementation of counter-terrorism measures

Engaging civil society can help build legitimacy in government's counter-terrorism actions. It can:

- Contribute to restoring and rebuilding the public's and communities' trust in national agencies, including law enforcement and security forces by involving citizens in shaping security and stability for society
- Create an enabling environment for civil society and communities to engage and help ensure that counter-terrorism responses are more responsive to the needs of communities

Engaging civil society can help increase transparency of government counter-terrorism responses. It can:

- Create more openness in government and counter-terrorism processes and contribute to scrutiny of strategy and policy to ensure they are properly designed, implemented and evaluated
- Increase information, understanding and acceptance among the public of government's counter-terrorism efforts and actions, which in turns promotes legitimacy



2. The impact of counter-terrorism on civil society and civic space

Civic space and counter-terrorism

Civic space is the environment that enables people and groups – civil society actors – to participate in the political, economic, social and cultural life of their societies.⁹⁶ This space though is shrinking in many countries as a result of States using and misusing counter-terrorism measures to repress, criminalize and stigmatize the work of civil society actors, particularly those defending human rights.⁹⁷ The United Nation's Special Rapporteur on human rights in counter-terrorism has documented at length the chilling effect that the misuse of counter-terrorism measures has on the legitimate work of civil society in many countries around the world.⁹⁸ To reverse this damaging trend, States should make concrete efforts to enable the safe, inclusive, early and meaningful participation of civil society in the development and implementation of measures to address terrorism.

Despite the potential positive outcomes identified above for government engagement with civil society, counter-terrorism efforts by States are being used to impede civil society engagement and limit their legitimate work.⁹⁹ These often do not comply with a State's obligations under international human rights law and run counter to creating a safe and enabling environment for civil society participation.

Counter-terrorism efforts by States that have impeded civil society engagement and work include:¹⁰⁰

- Wrongfully labelling and criminalizing civil society actors – including those who disagree with or criticize the State or the government – as “terrorists”, “sympathizers of terrorist groups”, or “associated” with terrorism or “violent extremism”
- Imposing disproportionate financial requirements and restrictions on sources of funding, including from international donors
- Restricting the registration of specific associations, including those receiving foreign funding or groups working on human rights
- Limiting the types of activities that civil society can legitimately carry out and applying criminal sanctions for unregistered activities
- Unnecessary or disproportionate restrictions on peaceful assemblies and criminal prosecution of peaceful protesters
- Unnecessary, disproportionate or discriminatory provisions in legislation governing freedoms of expression and association, or the disproportionate negative impact of these laws on some groups
- Search and seizure of property and equipment and/or forced office closures
- Arbitrary arrests and detentions
- Using civil society actors, particularly those providing community services, to collect intelligence or inform on individuals and groups for counter-terrorism authorities¹⁰¹



Civil society actors have also been subjected to harassment, intimidation and reprisals by State and non-State actors, such as:¹⁰²

- Threatening phone calls and social media messages
- Online and offline surveillance
- Physical assaults and attacks
- Sexual violence
- Gender-specific threats of violence
- Theft or destruction of property
- Smear campaigns and stigmatization
- Unlawful use of force against protesters
- Kidnappings and enforced disappearances
- Torture and other ill-treatment
- Killings

Women's human rights defenders face all of the challenges generally experienced by human rights defenders. However, female defenders require particular attention, as they are under different pressures from those confronted by men and often face gender-specific threats and violence more than their male counterparts, such as rape and sexual violence.¹⁰³

3. Creating the legal and policy framework for a safe and enabling environment

The right to participate in public affairs is the right of citizens and civil society to participate in political processes and decisions that affect their lives. This right is enshrined in Article 25 of the International Covenant on Civil and Political Rights¹⁰⁴ as well as other international human rights instruments. It includes the right to take part in the **conduct of public affairs**, which relates to “the exercise of political power, in particular the exercise of legislative, executive, and administrative powers”.¹⁰⁵

Creating a safe and enabling environment is the responsibility of multiple State actors. This tool is for the executive government, Parliament, and specific ministries and departments relevant to counter-terrorism and how they can contribute to creating an enabling environment through the practical steps set out below.



The right to participate in public affairs in international human rights instruments

- Article 21 of the Universal Declaration of Human Rights
- Article 25 of the International Covenant on Civil and Political Rights
- Article 7 of the Convention on the Elimination of all Forms of Discrimination Against Women
- Article 12 of the Convention on the Rights of the Child
- Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination
- Article 29 of the Convention on the Rights of Persons with Disabilities
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

States must ensure that the right to participate in public affairs has been adequately incorporated into domestic law or the constitution. Additionally, adopting a strong policy stance to reflect this can help communicate a government's intention. This can be done by making the participation of civil society actors a national priority and publicly pledging support for early and meaningful civil society engagement in counter-terrorism strategy or policy processes.¹⁰⁶

Other human rights are also essential for civil society engagement and participation. These include freedom of expression and opinion, including access to information; freedom of association and peaceful assembly; as well as rights of equality and non-discrimination. States should give effect to these rights and create a safe and enabling environment for civil society to participate and defend human rights.¹⁰⁷

Furthermore, States should repeal restrictive and discriminatory legislation related to non-governmental organization (NGO) registration laws or access to domestic and/or foreign funding. This would contribute to creating the conditions and means, including financial, for civil society to engage in counter-terrorism processes.

A State must also enact and enforce laws and measures to prevent, address, investigate and provide redress and effective remedies to victims of all acts of intimidation, attacks and reprisals against civil society.¹⁰⁸ Publicly pledging a zero-tolerance approach to reprisals against civil society and adopting strong policy positions to counter stigmatizing public discourse of civil society actors – in particular, human rights defenders and marginalized voices that are often targeted for their activism and their work – would signal a government's commitment to these issues.



Key principles of effective engagement in counter-terrorism

For effective implementation of the right to participate in public affairs, States should be guided by these principles:¹⁰⁹

- **Do no harm.** This is a key principle for any engagement with civil society and is particularly relevant to civil society actors who are victims. Victim participation must be voluntary, they must be permitted to withdraw as needed, and their participation must not be tied to the availability of any services or the likelihood of investigations and prosecutions. There is a potential risk of victim re-traumatization, so interactions must be supported by competent professionals well-versed in trauma-informed and victim-centred practices.
- **Safe and enabling environment for engagement.** This environment, both online and offline, is essential for the exercise of the right to participate in public affairs and public freedoms. Civil society should be able to contribute and be critical without fear for their safety or being targeted as a result. It is about the conditions that allow and enable civil society to thrive and the openness of civic space in a society.¹¹⁰
- **Informed consent and voluntary.** Participation of any civil society actors with government should always be based on informed consent, meaning the government fully explains the engagement (purpose, scope, nature etc.), ensures this has been understood (through asking questions to check understanding) and obtains the consent – i.e. agreement – of the individual to participate in the process. Participation should also be voluntary, so no civil society actor feels compelled or coerced to participate in the process.¹¹¹
- **Inclusive, equal and diverse engagement.** This refers to ensuring and enabling the engagement and participation of a variety of civil society actors from across society without any discrimination.
- **Early, timely and periodic engagement.** This means involving civil society from the outset before establishing new or revising an existing counter-terrorism strategy, policy or law. Engagement should also be timely and periodic.
- **Meaningful engagement.** This refers to the extent to which civil society actors are able to safely engage, and the extent to which their expertise and contributions are valued, their contributions inform decision-making and/or are implemented.¹¹² The more scope there is for civil society to contribute to counter-terrorism strategy or policy, the more meaningful the participation and engagement is likely to be. This in turn promotes legitimacy of the government's decision-making.



4. Practical steps to strengthen government engagement with civil society

4.1 Who to engage with

4.1.1 ENGAGE WITH A WIDE RANGE OF CIVIL SOCIETY ACTORS

Civil society consists of individual and collective actors that engage in forms of public participation around shared interests, purposes or values.¹¹³ Civil society actors can be local, national, regional or international. There can be many different types of civil society actors engaged in a wide range of activities that are relevant to the sphere of counter-terrorism work.

Engagement should not be confined to those areas of strategy or policy that relate to the role of civil society in implementing counter-terrorism responses, which typically are areas in the prevention space – for example, the provision of services, community resilience or cohesion activities.

4.1.2 TYPES OF CIVIL SOCIETY ACTORS

- NGOs and not-for-profit organizations
- Trade unions/trade unionists, labour organizations and professional associations for journalists, judges, lawyers, students and magistrates
- Faith groups, faith-based communities, including different denominations, and religious leaders
- Social movements such as peace, pro-democracy and climate movements
- Coalitions and networks of organizations and actors
- Victims of terrorism and counter-terrorism and their community groups and associations
- Human rights defenders such as human rights activists, lawyers, women activists, land and environmental activists
- Grassroots and community groups, associations and organizations, community leaders
- Academic institutions, universities and other public or policy institutes and think tanks
- Youth, rural-based, indigenous peoples, women's groups and lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) groups and associations
- Practitioner organizations providing services to address conditions conducive to terrorism
- Online activists and bloggers



It is important to proactively reach out to civil society actors such as those:

- Who have direct experience or are closely affected by terrorist attacks such as victims of terrorism, their families and communities
- Who are disproportionately impacted by counter-terrorism measures – for example, marginalized or affected communities and minorities
- Whose voices, views and experiences represent or are from marginalized, often ignored, or under-represented groups and communities, including:
 - Ethnic, racial and religious minorities.
 - Children and young people¹¹⁴
 - Persons with disabilities
 - Elderly
 - Rural communities
 - Indigenous peoples¹¹⁵
- Who are unlikely to participate because they are not affected by terrorism or counter-terrorism, or their work is not related, but who nonetheless may have an interest in engaging

Any engagement needs to take into account existing gender inequality and gender dynamics in society to ensure women’s voices are fully included. For example, women may need to be consulted specifically or separately so that they are able to participate fully. Government can consult women-led organizations on how to ensure the equal, meaningful and full participation of women and women-led civil society organizations.

UN Model Legislative Provisions on Victims of Terrorism¹¹⁶

The Model Legislative Provisions contain a host of issues and good practices on protecting the rights and supporting the needs of victims of terrorism and including measures to protect victims and their privacy, as well as victim-sensitive training for officials dealing with victims.

It is important to avoid engagement becoming a “ticking the box” of civil society inclusion. Drawing up fair and transparent criteria for engagement with diverse actors can help avoid mistrust about the process. Mistrust about the engagement process usually happens when there are imbalanced consultations – for example, only consulting civil



Find out:

- Who are the main civil society actors and organizations?
- Are certain actors more visible than others?
- Who is in the room and who is not?
- Who gets to speak and who does not?
- Whose voices do you usually hear?
- Whose voices do you not hear?
- What barriers to participation do some groups face?
- Who are at particular risk of discrimination or exclusion, in society at large, from engagement efforts or from counter-terrorism measures?
- Are some civil society actors at risk of isolation or exclusion due to their locations, such as those from rural areas, or lack access to technology?
- Are civil society actors from poor areas able to participate?
- Are certain voices targeted, subjected to violence, threatened or stigmatized by government or non-state actors?



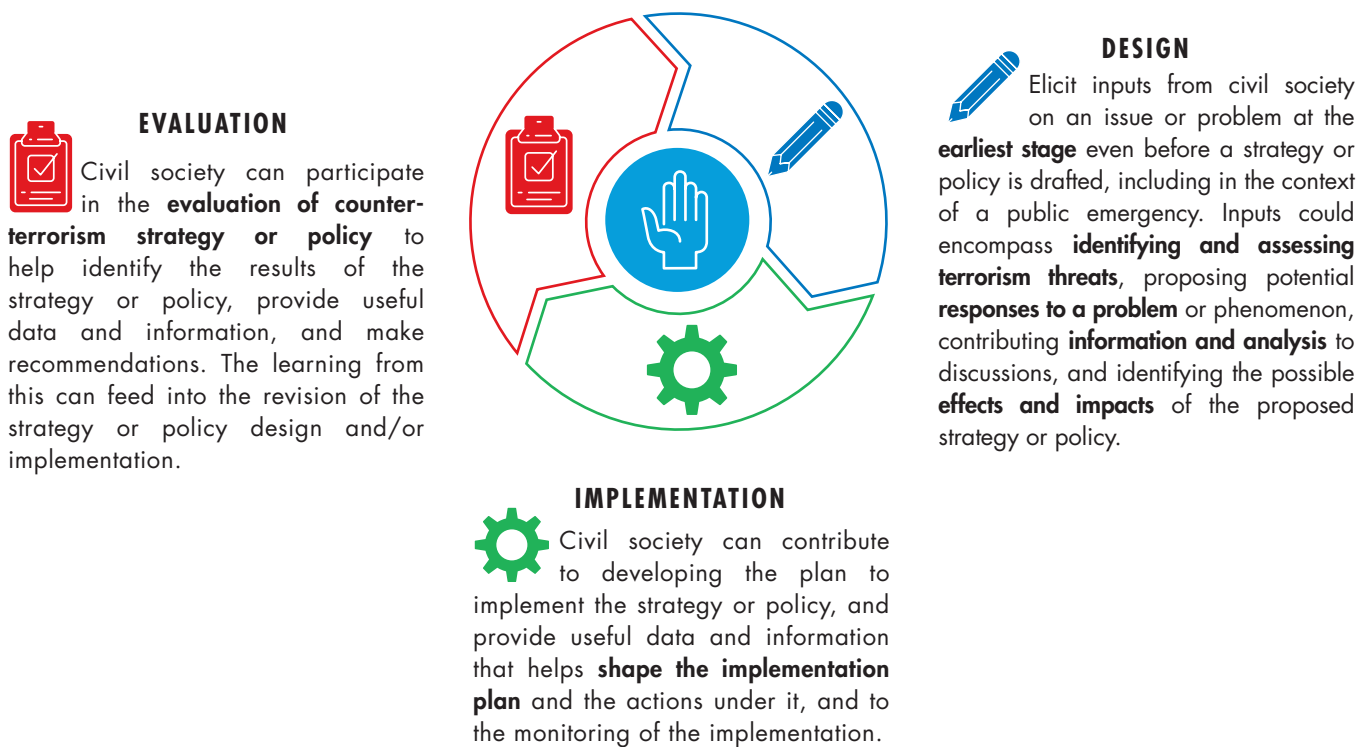
society actors that are more aligned with or accommodating to the government, or whose voices have been heard before,¹¹⁷ or who are most visible or well-funded.

It could help to carry out analysis of the risks associated with engagement to avoid creating tensions through unbalanced engagement between key communities and actors within those communities.

4.2 When to engage

Engagement is not linear – civil society should be engaged early and across the strategy or policy process and at each key phase of decision-making. Engagement could also ensure the experiences and expertise of civil society in addressing and countering terrorism are included as proposed in [Tool 2, section 5.3.3](#). See [Diagram 3.1](#) for the different points at which civil society can be engaged in the counter-terrorism strategy or policy process.

Diagram 3.1: Civil society engagement in the counter-terrorism strategy or policy process



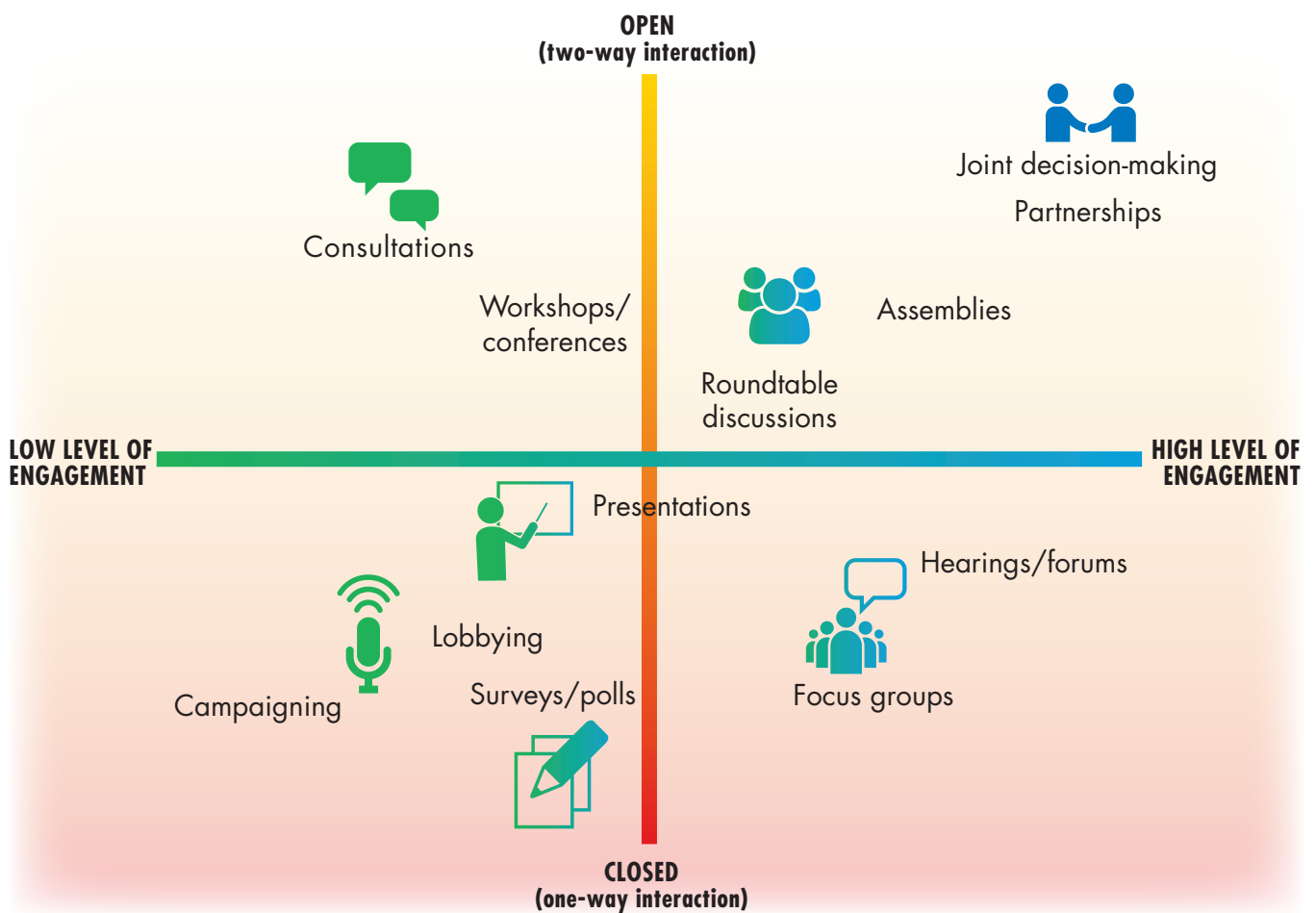


4.3 What types of engagement to use

Engagement is generally considered a continuum of different methods or types of engagement to give effect to the right to participate in public affairs. Closed engagement may be needed for confidentiality when sensitive issues are being discussed and/or for the privacy, confidentiality and safety of participants including civil society actors. This is in keeping with creating a safe environment and the **do no harm** approach. Engagement can be online or offline and in-person. [Diagram 3.2](#) provides an illustration of some of the different types of engagement.

Each type of engagement has its advantages and challenges and can serve different purposes at different stages of the strategy or policy process. There could be platforms and consultations to collect ideas and proposals from civil society, surveys and polls to test policy ideas and policy options, and written feedback on drafts of counter-terrorism strategy or policy. Some examples follow:

Diagram 3.2: Different types of civil society engagement



Source: Inspired by [Bond \(2019\)](#).



- **Focus groups** usually bring together a small group of individuals, representatives of civil society or the public to gauge their opinions. Focus groups usually occur as a one-off and may provide a snapshot of a situation/issue. They could be conducted in person or online and could be organized to take place across different geographical regions in urban and rural communities as their small size makes holding them physically manageable, although time is required to organize them. A skilled facilitator is needed to get opinions from all or many of the participants, to ensure the session is not dominated by one or two strong opinions.¹¹⁸
- **Online consultation** asks for views and opinions on one or a range of policy options or proposals. It is a low-cost way of engaging people, as there is no need to hire a venue or pay for travel and accommodation expenses for participation. It allows for many individuals to participate and is seen as a quick and easy way of engagement, although it excludes those who are unable to access or navigate the internet. It usually occurs as a one-off or as part of a series through different stages of the policy cycle. It affords more equal treatment of participants through the numbers that can attend and has the potential for all participants to have an equal voice. It will likely be organized so participants can respond to a series of questions – perhaps with time available for a brief conversation, although this will be limited in scope and time by the nature of the engagement.¹¹⁹
- **Dialogue** aims to engage through the sharing and exchange of opinions, debating of points, and promoting of cooperation or collaboration. An ongoing and regular dialogue with civil society actors can help build relations, trust and confidence between those participating as well as create common ground. It may involve several stakeholders or several hundred participants, and the financial costs depend on the size and regularity of the meetings. Dialogue is useful for intensive deliberation, especially on difficult issues, which are usually better discussed through face-to-face meetings. However, regular dialogue may likely be limited to the same civil society actors for it to be practical, and may capture only points of agreement on a particular policy and not necessarily other points of disagreement.¹²⁰ Regular and structured policy dialogue with civil society actors could occur on specific issues.

Easy-to-use, accessible and secure online platforms

- With the increase in use of digital technologies, online platforms can offer an easy-to-use and accessible way of participating in a meeting, consultation or workshop.
- Platforms should be secure and easily accessible, and civil society should be made fully aware of the security arrangements and features of the online platform.
- The level and strength of connectivity should also be considered, as some participants may be logging on from areas where internet infrastructure is less developed.
- Consider cultural and language barriers (e.g. for minorities and indigenous peoples) and how to enable access for persons with visual, hearing or other disabilities – for example, using common screen readers and captioning to support users.



4.4 Access to information about the engagement

Access to information is essential for meaningful engagement. The key to effective civil society engagement is clarifying the purpose and objectives, scope and parameters of the engagement, and providing information on the strategy or policy on which consultation is sought.

Information about the engagement should be provided in an accessible format and language, which may include in minority languages and formats accessible to persons with disabilities to enhance the inclusiveness of the participation of a diverse civil society, such as real-time captioning, sign language, subtitling, audio description options etc.

Draft and final agendas, consultation documents and papers, information notes and briefings should be made available using tools and means that reach all the audiences early and are easy to access regardless of device and network capacity.

Be clear about how the government will respond to and address feedback from engagement, including by creating feedback channels for systematic, timely and ongoing inputs. It is critical to be open and transparent about the way the inputs received will be considered and/or used.

A potential barrier to engagement between government and civil society is the extent of classified or sensitive information. Nevertheless, there remains considerable scope for engagement even on such aspects of counter-terrorism.

4.5 Who is doing the engagement?

Government should be open and transparent about who is leading the engagement and who is facilitating engagement on issues of addressing and countering terrorism, particularly given the sensitivities around these subjects. The presence of government or security officials may have a negative effect, such as intimidating participants.

It is important to communicate clearly to participants:

- The public authority/part of government responsible for leading the engagement
- The ministry/department or agency responsible for making the decisions, particularly with regard to how and what inputs and feedback from civil society engagement will be taken into account and/or included in the strategy or policy
- The identity (name, position and department) of the officials or civil servants who are carrying out the actual engagement with civil society – for example, who is chairing or facilitating a particular meeting, consultation, workshop etc.

Government and civil society could discuss and decide together who would be suitable to chair or lead a particular engagement. Alternatively, an independent expert facilitator or other organization (see [section 5.3](#)) could be brought in to facilitate engagement.



4.6 Using safe channels for engagement

There are several immediate steps that can be taken to provide safe channels for engagement on counter-terrorism. These include:

- Allowing anonymous submissions or representations to be made
- Applying the Chatham House Rule to a meeting or consultation whereby participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed¹²¹
- Having closed meetings with stakeholders
- Holding remote meetings to avoid the risk of exposure that may be increased by travelling to the consultation venue
- Using secure communication platforms to reduce the risk of communications being intercepted¹²²
- Using digital technologies and channels that ensure safe access to and sharing of information¹²³
- Limiting access to information about civil society organization participation to only those who need to carry out the engagement, and sharing with civil society organizations that will have access to their information
- Ensuring that informed consent is obtained for the collection and use of personal data of civil society actors and are kept safe and securely
- Ensuring that civil society actors participating in any government engagement are not subsequently monitored

It is important to pay particular attention to the protection needs of those engaging from groups at risk of attacks, intimidation and reprisals such as journalists, human rights defenders – particularly women human rights defenders – young people and community leaders. Such actors could face attacks, intimidation and reprisals from terrorist groups or State actors. Care needs to be taken to avoid making civilians and communities vulnerable as a result of their participation in counter-terrorism efforts.

Ahead of the engagement, it is important to establish and communicate clear channels for reporting threats/intimidation, attacks and reprisals, and requesting and receiving protection. These channels should ensure that individuals are able to report allegations to authorities separate from those that may be involved in the engagement in some way. Information should also be provided on reporting allegations to United Nations (UN) offices in country such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), UN treaty bodies and special procedures, an NHRI, a national preventive mechanism or other independent oversight bodies. A government could establish a mechanism for rapid response for civil society actors at risk of attacks or reprisals for engaging on terrorism and counter-terrorism issues.¹²⁴



Protecting civil society actors¹²⁵

States should uphold their human rights obligations to protect civil society actors from attacks, intimidation and acts of reprisal for carrying out their legitimate work and should develop specific protection mechanisms for victims, witnesses and human rights defenders. All forms of protection should be looked at. States could make available **emergency assistance grants** for safety and security training (including digital safety training and secure devices), and for the emergency relocation of those at risk. **Diplomatic interventions** for individuals at risk is also an option. States could also **work closely with civil society partners and protection networks** with expertise in the protection of civil society actors. Ensuring accountability and access to remedy for victims of violations remains a key condition for creating a safe and enabling environment.

4.7 Promoting engagement¹²⁶

A range of methods can be used to promote engagement and encourage participation, particularly where government is aiming to engage with many civil society actors across the country, including victims of terrorism and their associations.

National and local media (television, print and especially radio) can play a useful role in broadcasting calls and opportunities and disseminating information about the purpose, scope and time frame for the engagement – and even the questionnaires or issues to be discussed ahead of the actual engagement. A press release, tailored to different regions and audiences, could be a useful start to disseminate information about the engagement.

Social media and the internet can be utilized to disseminate and share information about engagement and potentially serve as a platform to conduct some engagement.

It is critical, though, to avoid public and media reporting on engagement events that may expose or endanger participants who may have to move across conflict areas, for example.

Mitigating against the proliferation of misinformation or “fake news” that may be perpetuated is a challenge for government, but ensuring information is published and disseminated through official channels could help. To this end, government could consider setting up an official engagement and consultation webpage(s) (ideally secure and encrypted) hosted on the websites of the relevant ministries or entities.

Informing the rest of government, Parliament and independent bodies such as the NHRI would also help to disseminate information about an engagement.



4.8 Addressing feedback

Addressing input from engagement with civil society in an open and transparent manner is important in making the engagement meaningful and fostering transparency and participation.

The provision of feedback by government to civil society following engagement could set out clearly what has been taken on board and what has not, explaining the reasons why not. Government should show how inputs from the engagement informed or were integrated into the strategy or policy, which is important for building confidence. Feedback could also include how information gathered during the engagement was used, how it had an impact, and how it informed the policy and decision-making and implementation.

It is useful to include a breakdown of responses by type – for example, X number of written submissions – and include engagement details, so those who did not attend or participate can see that it formed part of the engagement process. For example, a report can be published which includes the nature and number of inputs or contributions received and provides evidence of how the participation was considered.

Including the questions or issues asked or discussed contributes to transparency about the process. Government could consider publishing full responses unless requested otherwise by the contributor due to sensitive or confidential information, or if it may put others at risk, which is particularly salient in the context of any discussions on counter terrorism.

Government should provide a time frame within which civil society can expect to hear back. The length of time could be proportionate to the time frame for drafting or reviewing the strategy or policy. Feedback should be disseminated in a timely, comprehensive and transparent manner through both offline and online means.

4.9 Funding and resources to enable engagement

To support civil society participation in counter-terrorism processes, government should allocate budget and resources to organize engagement between government and civil society.

Remuneration and expenses for travel and accommodation to facilitate the participation of a diverse and inclusive civil society could be offered if an individual or organization does not have the means to cover such expenses.



5. The role of other actors in facilitating government engagement with civil society on counter-terrorism

5.1 National Human Rights Institution

A fully independent NHRI could help to enable engagement with civil society in counter-terrorism.

NHRIs often engage with the executive branch of government on a formal and regular basis to support States to uphold their human rights commitments.¹²⁷ NHRIs also regularly cooperate with civil society actors including NGOs, human rights defenders, victims and victim associations.

An NHRI can act as a bridge between government and civil society, which could help contribute to creating a safe and enabling environment for engagement with civil society. This could take the form of organizing and hosting different types of engagement in its space to provide an impartial environment for consultations or dialogue; or conducting focus groups, workshops or other events and collating the information received to impart to government in an anonymized manner. Many NHRIs have offices throughout the country which could also be utilized for outreach and hosting of events at the local level.

5.2 United Nations system

The UN system can contribute to facilitating and enabling government engagement with civil society through its good offices.¹²⁸

The UN could bring together key stakeholders from government and civil society for discussions through regular workshops, meetings and conferences on terrorism and counter-terrorism issues. UN entities working on specific terrorism and counter-terrorism and related issues – such as OHCHR, the United Nations Office of Drugs and Crime (UNODC), the United Nations Office of Counter-Terrorism (UNOCT), the Counter-Terrorism Committee Executive Directorate (CTED), the United Nations Development Programme (UNDP) and others – could strengthen the participation of civil society in their work and enable greater scope for civil society input into UN work, especially at the national level with States, on these issues. Increasing communication and the transparency of opportunities and processes for civil society to participate in discussions can help build confidence between civil society and UN entities and offer model approaches and practices for governments.

5.3 Parliament or Congress

Parliament's legislative role includes drafting and adopting counter-terrorism laws, conducting parliamentary hearings and consultation in developing/amending law. In doing so, Parliaments and parliamentarians often work with civil society actors on a range of local and national issues – which could be extended to engaging on human rights, terrorism and counter-terrorism issues.



Parliament could help strengthen the links and partnerships with civil society and help identify entry points into parliamentary business on these issues, which would increase the role and scope of civil society's participation.

Parliament and parliamentarians can represent and share the voices, views and perspectives of civil society actors – who will often be their constituents – in its meetings and discussions with the executive branch of government.

6. Checklist for effective engagement with civil society

Some questions to ascertain current efforts to help enhance government engagement with civil society on counter-terrorism issues are:

- What does current engagement with civil society look like? What is involved, and how is it structured?
- For what purpose does the government consult with civil society? How does the government facilitate regular engagement? Where is there room to strengthen and improve engagement?
- How can the government contribute to creating a safe and enabling environment for engagement with civil society on counter-terrorism issues?
- How can the government ensure it reaches a diverse and wide-ranging civil society? What are the reasons civil society may be reluctant to engage with the government on counter-terrorism issues? How can the government address these barriers?
- Does the government use input to shape counter-terrorism strategy and policy? How does it use such input to shape counter-terrorism strategy and policy?
- How does the government currently respond to input received from civil society? How does it inform civil society of what input it has used and what input it has not used? How does the government respond to disagreement or critical feedback or input from civil society?
- What role, if any, do external actors such as the NHRI play in facilitating engagement between a government and civil society on counter-terrorism issues?
- What current resources are allocated at the national or local level to enable government engagement with civil society on counter-terrorism responses?

The checklist in [Diagram 3.3](#) can be adapted depending on the method or type of engagement.

**Diagram 3.3: Checklist for effective civil society engagement**

BEFORE

- Map civil society actors to understand who is doing what on counter-terrorism.
- Identify clear, transparent and objective criteria for selecting participants.
- Carry out a risk analysis of reprisals and intimidation and possible tensions between key communities and actors.
- Agree with civil society on the scope, modalities and structure for the engagement.
- Clearly outline and ensure common understanding of the purpose, objectives and expected outcomes of the engagement.
- Promote engagement well in advance, with sufficient time for inputs.
- Disseminate information (including on protection measures) in advance in accessible formats and languages.
- Obtain informed consent on the use and retention of participants' data.

DURING

- Ensure safe offline, in-person and online access and channels for civil society to participate.
- Ensure accessibility to information and documents for the engagement.
- Ensure skilled facilitators or moderators to ensure balanced and inclusive discussions.
- Design structured sessions that encourage active participation.
- Ensure accurate documentation and records of civil society's contributions and inputs.

AFTER

- Provide timely and specific feedback to civil society actors on how their inputs contributed to decision-making or why certain suggestions were not incorporated.
- Publish a detailed summary of the engagement results, including how they align with the final strategy or policy.
- Recommend improvements and actively incorporate into future engagement.
- Consider follow-up engagements to maintain an ongoing dialogue with civil society.

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 78. Office of the United Nations High Commissioner for Human Rights, Universal Human Rights Index, <https://uhri.ohchr.org/en/about>.
 79. United Nations Human Rights Treaty Bodies, United Nations Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en; see also United Nations Human Rights Treaty System, Factsheet No.30/Rev.1, 2012, p. 19, <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf>.
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86. [Office of the United Nations High Commissioner for Human Rights \(2008a\)](#), p. 15.
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91. [United Nations \(2020\)](#), p. 4.
92. United Nations Secretary-General, The Highest Aspiration: A Call to Action for Human Rights, 2020, p. 3.
93. [United Nations \(2020\)](#), p. 3.
94. See [United Nations Human Rights Special Procedures \(2023\)](#), p. 10.
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96. Civic space is the environment that enables people and groups to participate meaningfully in the political, economic, social and cultural life of their societies. States shape the legal and policy space within which people express views, assemble, associate and engage in dialogue with one another and with authorities about issues that affect their lives, from the quality of basic services to better institutions and respect for fundamental freedoms. Civil society actors – including human rights defenders, women advocate, children, young people, members of minorities and indigenous people, trade unionists and journalists – should be able to express themselves freely in full security and effect change peacefully and effectively. See [United Nations \(2020\)](#), p. 3; and Office of the United Nations High Commissioner for Human Rights, A Practical Guide for Civil Society, Civil Society Space and the United Nations Human Rights System, 2014, p. 5, https://www.ohchr.org/sites/default/files/CS_space_UNHRSysstem_Guide_0.pdf.
97. [United Nations Human Rights Special Procedures \(2023\)](#), p. 6.
98. [United Nations Human Rights Special Procedures \(2023\)](#).
99. See [United Nations Human Rights Special Procedures \(2023\)](#), p. 82.
100. Report of the United Nations High Commissioner for Human Rights on Terrorism and Human Rights (2020), A/HRC/45/27, 9 September 2020, para. 16, <https://www.ohchr.org/en/documents/report-high-commissioner-human-rights-terrorism-criminal-accountability>; [Office of the United Nations High Commissioner for Human Rights \(2022c\)](#), para. 16; and [United Nations Secretary-General \(2021\)](#), paras. 22–26; [United Nations Secretary-General \(2023c\)](#), paras. 17–24.
101. See [United Nations Human Rights Special Procedures \(2023\)](#), p. 50.

102. Office of the United Nations High Commissioner for Human Rights, A Practical Guide for Civil Society, Civil Society Space and the United Nations Human Rights System, pp.14–16, https://www.ohchr.org/sites/default/files/CS_space_UNHRSystem_Guide_0.pdf; and Office of the United Nations High Commissioner for Human Rights, <https://www.ohchr.org/en/reprisals>.
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104. Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) To have access, on general terms of equality, to public service in his country.
- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
105. Human Rights Committee, General comment No. 25, CCPR/C/21/Rev.1/Add.7, 27 August 1996, para. 5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.7&Lang=en.
106. [United Nations Secretary-General \(2022\)](#), para. 17.
107. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 December 1998, General Assembly resolution 53/144, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>.
108. A State’s human rights obligations to provide access to remedy are enshrined in International Covenant on Civil and Political Rights Article 2(3); also see Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144, 9 December 1998, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 15 December 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>; and [United Nations \(2020\)](#).
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110. A safe and enabling environment includes, but is not limited to, these conditions: (a) conducive legal, institutional and administrative framework; (b) seriously addressing impunity for human rights violations; (c) provision of access to justice, fair trial and remedies; (d) strong independent and effective national human rights institutions; (e) effective protection policies and mechanisms; and (f) safe and open access to the United Nations and international and regional human rights bodies, without fear of intimidation and reprisals. See, for example, [Office of the United Nations High Commissioner for Human Rights \(2018\)](#), p. 6; [United Nations \(2020\)](#); [United Nations Human Rights Council \(2013\)](#).
111. Office of the United Nations High Commissioner for Human Rights, Manual on Monitoring, Basic principles of human rights monitoring, <https://www.ohchr.org/sites/default/files/Documents/Publications/Chapter02-MHRM.pdf>.

112. [United Nations Human Rights Special Procedures \(2023\)](#), p. 82.
113. [Office of the United Nations High Commissioner for Human Rights \(2008b\)](#), p. vii.
114. Youth are defined as persons between the ages of about 15 and 24, <https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>.
115. [United Nations Expert Mechanism on the Rights of Indigenous Peoples \(2011\)](#).
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122. [United Nations Secretary-General \(2023b\)](#), para. 23.
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125. [United Nations Secretary-General \(2023b\)](#); and United Nations Secretary-General, Report of the Secretary-General Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/48/28, 29 September 2021, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.
126. Drawn from Report of the United Nations High Commissioner for Human Rights, Civil society space: engagement with international and regional organizations, A/HRC/44/25, 20 April 2020, paras. 37–47.
127. European Network of National Human Rights Institutions, <https://ennhri.org/echr-implementation/nhri-engagement-with-the-executive-branch/#:~:text=In%20several%20Member%20States%2C%20NHRIs,key%20in%20improving%20implementation%20records>.
128. The United Nations Secretary-General's Call to Action for Human Rights, launched in 2020, reaffirms the promise of the Universal Declaration of Human Rights that the pursuit of fundamental rights and freedoms is at the heart of the work of the United Nations, and makes public participation and civic space a priority area. Under the auspices of the Call to Action, the United Nations has adopted a system-wide Guidance Note on Protecting and Promoting Civic Space, with a focus on improved participation of civil society in UN work, greater protection of civil society actors at risk, and promotion of enabling civic space and participation in national decision-making processes. See https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf; and Report of the Secretary-General, Our Common Agenda, <https://www.un.org/en/common-agenda>.

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