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Input to Professor Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

The Protection of Human Rights by Regional Organizations when Countering Terrorism

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The Charity & Security Network (C&SN) thanks the Special Rapporteur for the opportunity to submit input on the important topic of the protection of human rights by regional organizations when countering terrorism.

C&SN is a resource and advocacy center for nonprofit organizations focused on defending the civil society space from overreaching national security measures. Our mission is to promote and protect the ability of nonprofits to carry out effective programs that support human rights, peacebuilding, aid civilians in areas of disaster and armed conflict, and build democratic governance. Our network includes a broad cross-section of lawyers, nonprofit professionals, human rights defenders, and civil society actors working on humanitarian aid, development, peacebuilding, human rights, and civil liberties across the globe. Our members have cited counter-terrorism mechanisms, including those by regional organizations, as a major barrier to their ability to operate. Consequently, we are encouraged by the Special Rapporteur’s interest in bringing this topic forward to the 79th session of the United Nations General Assembly (UNGA).

To inform this submission, C&SN held two roundtables with twenty-five representatives from civil society organizations (CSOs) who raised key issues surrounding the protection of human rights by regional organizations when countering terrorism, in addition to receiving written inputs included therein. Accordingly, the regional organizations mentioned in the input below include: the Financial Action Task Force (FATF) and FATF-Syle Regional Bodies (FSRBs); the Economic Community of West African States (ECOWAS); the African Union (AU); the European Union (EU); the Islamic Military Counter Terrorism Coalition (IMCTC); the Shanghai Cooperation Organization (SCO) and Associated Member States; and “Unofficial” Regional Counter-terrorism Organizations in the United States (U.S.).

Our goal in this submission is to bring together common concerns and trends on the human rights impacts of regional organizations with counter-terrorism mandates on civil society operations and organizations across a wide geographical range. We include the impacts of informal regional groups, and the ways that agreements like security cooperation and diplomacy can form unofficial regional frameworks that further impact civil society.

In addition to partners who chose to remain anonymous, this input is submitted by C&SN jointly

with Access Now, the Bridges Faith Initiative (BFI), the Global Center on Cooperative Security (Global Center), Human Rights in China (HRIC), the Human Security Collective (HSC), Muslim Advocates, Muslims for Just Futures (MJF), the Philanthropy Europe Association (Philea), and Spaces for Change (S4C).

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The Role of Regional Organizations in the Global Counter-terrorism and Human Rights Framework

Regional organizations serve as partners to national and broader international human rights and counter-terrorism efforts. They can operate as a bridge between an international body and a Member State, shaping counter-terrorism and human rights policies to better fit the unique needs of a region.¹ Done well, human-rights-based counter-terrorism strategies from regional organizations can meet the context-specific needs and nuances of a region, and can even shape broader human rights policy by adopting novel approaches to human rights issues and pushing for greater human rights standards.² Done poorly, however, regional organizations can support the misuse of counter-terrorism policies to crack down on civil society and can even legitimize Member States' violations of human rights norms.³

Within counter-terrorism efforts, States often create instruments and frameworks that employ vague legal definitions and further support their ability to circumvent obligations to international human rights law (IHRL) at large.⁴ This has frequently manifested in the criminalization of political critics, journalists, human rights defenders (HRDs), and activists at large who are deemed terrorists or extremists in order to legitimize their persecution and silencing. This is fundamentally at odds with establishing legal frameworks centered around human rights, and holding individual governments accountable.

Regional organizations are especially poised to address these human rights violations due to the recognition of their position by States, capacity for court proceedings, and commitment to advancing human rights. In attempting to build a human-rights-centered counter-terrorism framework, analyzing the legal and policy measures within prominent regional organizations and how they can contribute to this effort is critical.

Regional Organizations' Counter-terrorism Mandates Have Broad and Variable Impacts on Civil Society and Human Rights

The breadth of regional organizations that have counter-terrorism policies or mandates is immense, and includes everything from large multilateral organizations like the African Union (AU) to more targeted organizations that focus on a narrower issue or geographic area, like the Economic Community of West African States (ECOWAS).

The impact of regional organizations varies greatly depending on the region and organization. While some major regional organizations like the European Union (EU) can assert great

¹ Eric Rosand, Alistair Millar, & Jason Ipe. "The Role of Regional Organizations in Promoting the Human Rights Framework in the Strategy," *Human Rights and the Implementation of the UN Global Counter-Terrorism Strategy*, pp. 12-13. Global Center on Cooperative Security (2008). <http://www.jstor.com/stable/resrep20284.6>

² See, e.g., the African Charter on Human and Peoples' Rights's recognition of the rights of peoples as well as individuals, African Charter on Human and Peoples' Rights. Jul. 1979, Articles 20-26. https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

³ OHCHR. "Call for inputs on the Protection of Human Rights by Regional Organizations when Countering Terrorism." <https://www.ohchr.org/en/calls-for-input/2024/call-inputs-protection-human-rights-regional-organizations-when-countering>

⁴ UN Office on Drugs and Crime. "Defining Terrorism." <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html>. Accessed Jul. 11, 2024.

influence on their members, many regional organizations, like the Multinational Joint Task Force (MNJTF) in the Sahel,⁵ suffer from a lack of influence or institutional capacity.⁶ In the latter cases, regional organizations can be unwilling to push human rights issues with Member States due to outsized influence by certain donor members or out of concern for political reprisal. This can lead to regional organizations – even those that have explicit human rights mandates – being unwilling or unable to act against States that violate these norms.⁷ In these situations, the regional organizations sometimes reward poor behavior by Member States, by serving as a “rubber stamp” for accountability.

During C&SN’s consultations for this submission, partner organizations noted the following human rights impacts on civil society by regional organizations when countering terrorism for the Special Rapporteur’s consideration.

The Financial Action Task Force and FATF-Style Regional Bodies

In the sphere of anti-money laundering and countering the financing of terrorism (AML/CFT), the FATF is the global standard setter.⁸ However, only 40 members comprise FATF’s global policy-making table; in order for the regional level to support the global network, FATF also comprises nine FSRBs.⁹ These include:

- The Financial Action Task Force of Latin America (GAFILAT);¹⁰
- The Caribbean Financial Action Task Force (CFATF);¹¹
- The Inter Governmental Action Group against Money Laundering in West Africa (GIABA);¹²
- The Central Africa Anti-Money Laundering Group (GABAC);¹³
- The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG);¹⁴
- The Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL);¹⁵
- The Middle East and North Africa Financial Action Task Force (MENAFATF);¹⁶

⁵ International Crisis Group. “What Role for the Multinational Joint Task Force in Fighting Boko Haram?” Jul. 7, 2020. <https://www.crisisgroup.org/africa/west-africa/291-what-role-multinational-joint-task-force-fighting-boko-haram>.

⁶ Rosand, supra n. 1 at 17.

⁷ See e.g. Abigail Grace. Cornell International Affairs Review Vol. 10 No. 1. “Quantifying China’s Influence on the Shanghai Cooperation Organization.” 2016. <http://www.inquiriesjournal.com/articles/1513/quantifying-chinas-influence-on-the-shanghai-cooperation-organization#:~:text=China%20helps%20maintain%20the%20political.large%20countries%20and%20small%20ones>.

⁸ Financial Action Task Force. <https://www.fatf-gafi.org/en/countries.html>.

⁹ Ibid.

¹⁰ FATF. Financial Action Task Force of Latin America (GAFILAT). <https://www.fatf-gafi.org/en/countries/global-network/financial-action-task-force-of-latin-america--gafilat-.html>. Accessed Jul. 10, 2024.

¹¹ FATF. Caribbean Financial Action Task Force (CFATF). <https://www.fatf-gafi.org/en/countries/global-network/caribbean-financial-action-task-force--cfatf-.html>. Accessed Jul. 10, 2024

¹² FATF. Inter Governmental Action Group against Money Laundering in West Africa (GIABA). <https://www.fatf-gafi.org/content/fatf-gafi/en/countries/global-network/inter-governmental-action-group-against-money-laundering-in-west.html>. Accessed Jul. 10, 2024.

¹³ FATF. GABAC. <https://www.fatf-gafi.org/en/countries/global-network/gabac.html>. Accessed Jul. 10, 2024.

¹⁴ FATF. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). <https://www.fatf-gafi.org/en/countries/global-network/eastern-and-southern-africa-anti-money-laundering-group--esaamlg.html>. Accessed Jul. 10, 2024.

¹⁵ FATF. Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). <https://www.fatf-gafi.org/en/countries/global-network/committee-of-experts-on-the-evaluation-of-anti-money-laundering-.html>. Accessed Jul. 10, 2024.

¹⁶ FATF. Middle East and North Africa Financial Action Task Force (MENAFATF). <https://www.fatf-gafi.org/en/countries/global-network/middle-east-and-north-africa-financial-action-task-force--menafa.html>. Accessed Jul. 10, 2024.

- The Eurasian Group (EAG);¹⁷ and
- The Asia/Pacific Group on Money Laundering (APG).¹⁸

A set of high-level principles and objectives governs the relationship between FATF and the FSRBs.¹⁹ The first principle set out is that “The FATF is the only standard-setting body and the guardian and arbiter of the application of its standard...”,²⁰ making it clear that the FSRB mandate extends to the implementation of the FATF standards.

The FATF states in its standards that CFT rules and regulations should “be implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international law, in particular international human rights, international refugee law and international humanitarian law.”²¹ They do not include, however, any guidance on how this should be done. One of the four main findings of the Unintended Consequences workstream, initiated by the FATF in 2021 to address the irrefutable evidence of the negative impacts of the FATF standards on civil society, was that its standards are being misused to justify laws that violate wider fundamental human-rights provisions, especially due process and procedural rights.²²

Indeed, FATF standards such as Recommendation 8 (R.8), the recommendation that focuses specifically on nonprofit organizations (NPOs), historically mischaracterized nonprofits as vulnerable to terrorist financing abuse, which created a chilling effect in the financial sector and was weaponized by some States to shrink civil society.²³ The most recent revision to R.8 and its accompanying Best Practice Paper (BPP) was in November 2023, and this updated recommendation states:

“Complying with the FATF Recommendations should not contravene a country’s obligations under the Charter of the United Nations, and international law, in particular, international human-rights law, international refugee law and international humanitarian law...Implementation of R.8 should respect and observe fundamental human rights and freedoms, such as freedom of opinion, expression, religion or belief, and freedom of peaceful assembly and of association.”²⁴

As the Global NPO Coalition on FATF has demonstrated repeatedly, FATF and FSRB assessors on country Mutual Evaluation teams do not take into account these international human rights imperatives and obligations while assessing a country on its financial integrity frameworks.²⁵ Given

¹⁷ FATF. Eurasian Group (EAG). <https://www.fatf-gafi.org/en/countries/global-network/eurasian-group--eag-.html>. Accessed Jul. 10, 2024.

¹⁸ FATF. Asia/Pacific Group on Money Laundering (APG). <https://www.fatf-gafi.org/en/countries/global-network/asia-pacific-group-on-money-laundering--apg-.html>. Accessed Jul. 10, 2024.

¹⁹ Financial Action Task Force. *High-Level Principles and Objectives for FATF and FATF-style Regional bodies*. Feb. 2019. <https://www.fatf-gafi.org/content/dam/fatf-gafi/Global-Network/High-Level%20Principles%20and%20Objectives%20for%20FATF%20and%20FSRBs.pdf.coredownload.pdf>.

²⁰ Ibid. at p. 1.

²¹ Financial Action Task Force. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*. Nov. 2023, pp. 60 - 61. <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

²² FATF. *High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards*. Oct. 2021. <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf>

²³ Charity & Security Network. “Barriers to Cross-Border Nonprofit Operations and The Role of the Financial Action Task Force.” May 27, 2015. https://charityandsecurity.org/issue-briefs/fatf_what_nonprofits_need_to_know/.

²⁴ FATF. *Best Practices: Combating Terrorist Financing Abuse of Non-Profit Organizations*. Nov. 2023, p. 18. <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf>

²⁵ Global NPO Commission on FATF. <https://fatfplatform.org/>.

that FSRBs follow FATF's lead on matters of implementation, it is incumbent on FATF to provide more details on what implementing its standards with reference to existing IHRL obligations would look like and what legal avenues of accountability there are.

Additionally, there remains a large disconnect between FSRB functioning and regional human rights mechanisms. Even where regional mechanisms are well-developed, like within the Council of Europe's Commissioner for Human Rights²⁶ and the European Court of Human Rights (ECtHR),²⁷ both non-judicial institutions, and Latin America's Inter-American Commission on Human Rights (IACHR), "a principal and autonomous organ of the Organization of American States (OAS)",²⁸ these mechanisms are not engaged in helping FSRBs implement CFT rules in accordance with human rights. Consequently, it is incumbent on the FSRBs to engage with these regional mechanisms to ensure that the FATF standards are being implemented in a way that is compliant with human rights and fundamental freedoms.

Where regional human rights mechanisms are still emerging, how these mechanisms are shored up and thus how they can then interface with FSRBs, is as much a matter of resources and capacity as it is political will, and should be taken into equal consideration as their framework is solidified.

Examples include:

- The African region, where there is a need for consolidation of regional human rights mechanisms;²⁹
- The Middle East and North Africa (MENA) region, where regional human rights mechanisms are still emergent;³⁰ and
- The Asian region, where regional human rights mechanisms are non-existent, save sub-regional political, economic, or cultural organizations that focus on human rights, such as the [ASEAN] Association of Southeast Nations Intergovernmental Commission on Human Rights (AICHR).³¹

FATF and FSRBs have immense influence on civil society and counter-terrorism at the regional level. A stronger relationship between FSRBs and human rights organizations and mechanisms is necessary to prevent the abuse of this influence.

Recommendations Relating to FATF and FSRBs

²⁶ Council of Europe Portal. *Commissioner for Human Rights*. 2024. <https://www.coe.int/en/web/commissioner/the-commissioner/mandate>.

²⁷ Council of Europe Portal. *Commissioner for Human Rights*. 2024. <https://www.coe.int/en/web/commissioner/the-commissioner/mandate>.

²⁸ OAS, IACHR, Inter-American Commission on Human Rights. "What is the IACHR"? 2024. <https://www.oas.org/en/IACHR/jsForm?File=en/iachr/mandate/what.asp>

²⁹ International Justice Resource Center (IJRC). African Human Rights System. <https://ijrccenter.org/regional/african/>. Accessed Jul. 1, 2024.

³⁰ Hassnaa Amghar. Global Campus Open Knowledge Repository. "Regionalization of human rights: towards an Arab human rights system? :the [sic] Charter, the Bodies, and the Court saga". 2015. <https://repository.gchumanrights.org/items/134ea156-b1ed-40e4-9375-2ea42b3d51f1>.

³¹ AICHR, ASEAN Intergovernmental Commission on Human Rights. "About AICHR: Structure, Work and History of the AICHR." <https://aichr.org/about-aichr-2/>. See also Vitit Muntarbhorn. "Regional Mechanism(s) for Human Rights Protection in Asia and the Pacific:

Contextuality, Actuality, Opportunity". Paper on the occasion of the Asia-Pacific Regional Dialogue for Human Rights 75 to be held on 11 October 2023 in Bangkok, Thailand. <https://bangkok.ohchr.org/wp-content/uploads/2023/10/Regional-Mechanism-for-Human-Rights-Protection-in-Asia-and-the-Pacific-Professor-Emeritus-Vitit-Muntarbhorn.pdf>.

- **FATF:** FATF should provide an overview of different avenues for legal accountability, such as courts and treaty bodies, for stakeholders affected by CFT policies. This should be implemented in and through FATF’s publications. Concrete examples of case law generated from these avenues on human rights violations in the context of CFT policies should be laid out.
- **FATF & FSRBs:** The distance between regional human rights mechanisms and FSRBs creates an environment rife with governmental abuse of counter-terrorism frameworks. In India, for example, authorities have used FATF frameworks coupled with disinformation and censorship tactics to crack down on dissent.³² FATF should partner with FSRBs and develop mechanisms to address state-level weaponization of the FATF standards outside of countries’ Mutual Evaluation process.
- **UN Agencies:** The UN Counter-Terrorism Executive Directorate (CTED) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) draft guidance on “Ensuring respect for human rights while taking measures to counter the financing of terrorism” is due to be published soon. Upon publication, this should be operationalized throughout the FATF system, including through the training of assessors for Mutual Evaluation processes. It is equally important to note that for meaningful change to take place, any such guidance needs to be hardwired within the FATF methodology and process, thereby also trickling down to the FSRB level.
- **Human Rights CSOs and HRDs:** CSOs and HRDs should target and engage with FSRBs to ensure that assessments of countries are taking into account the fact that CFT rules and regulations are human rights compliant. This could be implemented via a strategic and meaningful engagement between human rights CSOs and FSRBs on what implementing CFT rules and regulations in light of jurisdictions’ human rights obligations looks like.

The Economic Community of West African States

ECOWAS is a regional organization that comprises 15 West African states whose primary aim is to advance economic development, increase standards of living, and further economic cooperation within its Member States.³³ ECOWAS also has the ability to respond to security issues via the ECOWAS Standby Force (ESF), an arrangement that is part of the broader African Standby Force (ASF) network, and serves as a pathway to deploy multilateral forces throughout the region.³⁴ In the wake of increased instability and a wave of coups in the region, ECOWAS is expanding its security mandate and plans to increase its ability to respond to regional conflicts by establishing a standby peacekeeping force to combat terrorism.³⁵ ECOWAS operates through its political bodies, such as the Authority of Heads of State and Government³⁶ which provides oversight and direction on regional policies and initiatives, and a three-pronged governance structure comprised of the Legislature, the Executive, and the

³² Charity & Security Network. “India: Stop Abusing Counterterrorism Regulations.” Nov. 3, 2023.

<https://charityandsecurity.org/financial-action-task-force/india-stop-abusing-counterterrorism-regulations/>.

³³ ECOWAS. “About ECOWAS.” <https://www.ecowas.int/about-ecowas/>. Accessed Jul. 10, 2024.

³⁴ AU Peace and Security Department. *African Peace and Security Architecture (APSA) 2010 Assessment Study*. 2010, pp. 43-45. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20African%20Peace%20and%20Security%20Architecture.pdf>.

³⁵ Ope Adetayo. Reuters. “West Africa’s ECOWAS bloc needs up to \$2.6 billion a year for security force.” Jun. 27, 2024.

<https://www.reuters.com/world/africa/west-africas-ecowas-bloc-needs-up-26-billion-year-security-force-2024-06-27/>.

³⁶ ECOWAS. “Authority of Heads of States.” <https://www.ecowas.int/authority-of-heads-of-states/>. Accessed Jul. 10, 2024.

Judiciary.³⁷ ECOWAS monitors the implementation of its decisions and policies by Member States through various mechanisms, including regional meetings, reports, and periodic reviews. This ensures that Member States uphold their commitments to regional counter-terrorism mechanisms, strategies, and norms.³⁸

The primary commitments to addressing counter-terrorism and preventing/countering violent extremism (P/CVE) in the ECOWAS region is the “ECOWAS Political Declaration and Common Position Against Terrorism”.³⁹ It includes the “*ECOWAS Counter-terrorism Strategy and Implementation Plan*” (ECOWAS CT Strategy), and the objective of both instruments is to prioritize the conditions for wellbeing and economic development, while eliminating and preventing terrorism throughout the region.⁴⁰ The ECOWAS CT Strategy and Declaration strive to lay “a common operational framework for action”⁴¹ via implementation of existing counter-terrorism mechanisms, including at the regional, international, and continent-wide level.⁴² While the Declaration emphasizes regional cooperation and collective security measures, it does not contain detailed provisions for the protection of human rights. It does, however, strongly discourage Member States from violating the human rights of its citizens under the aegis of counter-terrorism,⁴³ and presents preventing human rights abuses as one of the ways to address the root causes of terrorism, in accordance with the UN General Assembly’s 2006 “Global Counter-Terrorism Strategy” (GCTS).⁴⁴

The ECOWAS CT Strategy highlights the importance of democratic practices and the protection of human rights, and requires that action taken by Member States to combat terrorism “...do not infringe on these rights, except under the emergency conditions allowed under national law.”⁴⁵ It encourages Member States to “Adopt and, where necessary, review and strengthen policies to ensure transparency, equality, inclusivity and broad-based representation of various segments of society...in all government’s political and economic platforms.”⁴⁶ It also encourages Member States to “implement a zero-tolerance policy against racism and other forms of discrimination based on ethnicity, gender, or religion”.⁴⁷

GIABA, a specialized institution within ECOWAS that also doubles as an FSRB, has the mandate of strengthening the capacity of Member States towards the control and prevention of regional money laundering and terrorist financing, in adherence to international standards on AML/CFT.⁴⁸ ECOWAS and GIABA promote legal and technical cooperation among Member

³⁷ ECOWAS. “Governance Structure.” <https://www.ecowas.int/governance-structure-2/>. Accessed Jul. 10, 2024.

³⁸ ECOWAS. *ECOWAS Political Declaration and Common Position Against Terrorism*. Section IV: Implementation Mechanisms, Paragraph 27, pg. 40, <https://ecowas.int/wp-content/uploads/2022/08/POLITICAL-DECLARATION-ENG..pdf>.

³⁹ *Ibid.*

⁴⁰ Martin A Ewi. Institute for Security Studies. ISS Today. “The new ECOWAS Counter-Terrorism Strategy and its implications for West Africa.” 13 March 2013. <https://issafrica.org/iss-today/the-new-ecowas-counter-terrorism-strategy-and-its-implications-for-west-africa>.

⁴¹ ECOWAS *supra* n. 38 at Section II, para. 17, p. 23.

⁴² Ewi *supra* n. 40.

⁴³ ECOWAS *supra* n. 38 at Section I, para. 5, p. 17.

⁴⁴ *Ibid.*, at Section II, para. 21.

⁴⁵ ECOWAS. *Counter-Terrorism Strategy Implementation Plan*. p. 7. <https://ecowas.int/wp-content/uploads/2022/08/IMPLEMENTATION-PLAN-CT.pdf>.

⁴⁶ *Ibid.*, at p. 2.

⁴⁷ *Ibid.*

⁴⁸ Giaba. “About Giaba: Background.” <https://www.giaba.org/about-giaba/index.html>. Accessed Jul. 10, 2024.

States to combat money laundering, terrorist financing, and related crimes.⁴⁹ This cooperation generally aligns with international humanitarian law (IHL) principles, such as respect for due process, non-discrimination, and protection of human rights in legal proceedings.

The ECOWAS Commission serves as the multinational institution “...tasked to realize the mission, vision and objectives set under the ECOWAS Protocols, to help achieve the mandate,” in addition to enhancing regional multinational enterprises and community development programs.⁵⁰ Within the ECOWAS Commission, the Regional Security Division (RSD) serves both as the Commission’s focal point for counter-terrorism issues and coordinates the implementation of the ECOWAS CT Strategy.⁵¹ The RSD also reviews Member States’ reports and passes these on to the Authority of Heads of State and Government for their policy guidance and direction. They also conduct outreach to Member States on the ECOWAS CT Strategy’s effective implementation.⁵²

Furthermore, ECOWAS, through its Department of Political Affairs, Peace and Security (PAPS), has developed “Guidelines on Women, Peace and Security”, which includes promoting the meaningful participation of women in peacebuilding and conflict resolution and prevention efforts across West Africa.⁵³ As part of its global agenda, WPS “...aims to ensure the participation and leadership of women and women’s organizations in developing strategies to counter violent extremism and terrorism.”⁵⁴ Likewise, the ECOWAS “Guidelines on Women, Peace and Security” align with international frameworks such as UN Security Council Resolution (UNSCR) 2242 (2015),⁵⁵ which intimately (and regrettably) tied the WPS agenda to counter-terrorism agendas.⁵⁶

While ECOWAS recognizes the importance of integrating human rights considerations into its counter-terrorism strategies, gaps remain in dedicated expertise, resource allocation, and coordination that affect the implementation of its guidelines. Continued efforts are needed to strengthen human rights protections within counter-terrorism frameworks across West Africa. Additionally, although ECOWAS is making concerted efforts towards combating terrorism in the region, they are neglecting to address the factors responsible for creating the conditions conducive to terrorism. As laid out in the “Eighth Review of the UN’s Global Counter-terrorism Strategy” (2023), these conditions include “prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socioeconomic

⁴⁹ Olajide O. Akanji. SAGE. Insight on Africa. “Sub-regional Security Challenge: ECOWAS and the War on Terrorism in West Africa.” 2018, p. 101. <https://journals.sagepub.com/doi/pdf/10.1177/0975087818805842>.

⁵⁰ ECOWAS Commission. “The Commission”. <https://www.ecowas.int/institutions/the-commission/>. Accessed Jul. 10, 2024.

⁵¹ ECOWAS supra n. 38 at Section IV para. 28, p. 41.

⁵² Ibid. Ppara.28, p. 41.

⁵³ ECOWAS Commission. ECOWAS Department of Political Affairs, Peace and Security (PAPS). “Guidelines on Women, Peace and Security.” December 2020. Pg. 5. https://www.un.org/shestandsforpeace/sites/www.un.org/shestandsforpeace/files/ecowas-guidelines-on-women_peace-and-security-eng1.pdf.

⁵⁴ Ibid. pg. 49.

⁵⁵ UN Security Council. *Resolution 2242 (2015)*. 13 Oct. 2015. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2242.pdf.

⁵⁶ UN Security Council. Meetings Coverage and Press Releases. “Security Council Unanimously Adopts Resolution 2242 (2015) to Improve Implementation of Landmark Text on Women, Peace, Security Agenda.” SC/12076. 13 Oct. 2015. <https://press.un.org/en/2015/sc12076.doc.htm>; see also International Crisis Group. Briefing No. 5. Gender and Conflict. “A Course Correction for the Women, Peace and Security Agenda”. 9 Dec. 2020. <https://www.crisisgroup.org/th/node/15169>.

marginalization and lack of good governance.”⁵⁷ Despite incorporating human rights standards, some Member States of ECOWAS are struggling to make significant progress in implementing these standards, particularly in the counter-terrorism arena.

Finally, ECOWAS collaborates closely with specialized institutions like the African Union (AU), the World Bank, the EU, the United Nations (UN), and many countries both internal and external to Africa.⁵⁸ In 2015, ECOWAS and the U.S. government (USG) committed to a four-year (2015 – 2019) agreement on development and security. The focus of this agreement was “strengthening democratic institutions, enhancing trade and investment as well as peace and security, including Trans-Saharan Counterterrorism Partnership (ECOWAS 2016a).”⁵⁹ This collaboration includes joint initiatives, information sharing, and coordination efforts to enhance effectiveness and accountability in regional counter-terrorism activities.⁶⁰ In addition, ECOWAS partnered with the ISS to conduct a “National Counter-Terrorism Training Course” for Benin, Côte d’Ivoire, Mali, Mauritania, Niger, and Senegal.⁶¹

The African Union

The AU is a cross-continental organization comprising of all 55 Member States throughout the African continent, with a vision for “An Integrated, Prosperous and Peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.”⁶² The organization has built a comprehensive counter-terrorism framework that has evolved over time.

Its predecessor, the Organization of African Unity (OAU) began work on counter-terrorism by adopting the “Resolution on the Strengthening of Cooperation and Coordination among African States”, which “pledged to fight the phenomena of extremism and terrorism.”⁶³ This Resolution was adopted in the OAU’s 28th Ordinary Session in 1992. The early discussion of counter-terrorism at the then OAU reaffirmed Member States’ commitment to stopping terrorism for their own benefit and the benefit of other States and acknowledged the State as the primary building block or source of action within the counter-terrorism context.⁶⁴ The sole mention of people in this document is in the preamble, where it acknowledges challenges that can hinder the building of a democratic society based on the desires of the people. The Resolution does not specifically mention human rights or focus on the relationship between governments and their people. Moreover, its references to Article II sub-paragraph 1; Article III subparagraphs 2, 3, and 5; and,

⁵⁷ UN General Assembly. *The United Nations Global Counter-Terrorism Strategy*. Resolution adopted by the General Assembly on 22 June 2023. “The United Nations Global Counter-Terrorism Strategy eighth review.” A/RES/77/298.3 July 2023, p. 8. <https://documents.un.org/doc/undoc/gen/n23/189/01/pdf/n2318901.pdf?token=Jz3FszAnR9oRpiPW6&fe=true>.

⁵⁸ Akanji *supra* n. 49 at p. 101.

⁵⁹ *Ibid.*

⁶⁰ Samuel Anyanwu. *Federal Ministry of Information & National Orientation. Government of Nigeria. “ECOWAS, U.S renew partnership for security, development in West Africa.”* Dec. 14, 2016. <https://fmino.gov.ng/ecowas-u-s-renew-partnership-security-development-west-africa/>.

⁶¹ Institute for Security Studies. “ECOWAS National Counter-Terrorism Training Course for Senegal.” <https://issafrica.org/training/ecowas-national-counter-terrorism-training-course-for-senegal/>.

⁶² African Union. “About the African Union.” <https://au.int/en/overview>. Accessed Jul. 10, 2024.

⁶³ African Center for the Study & Research on Terrorism (ACSRT). “The African Union Counter Terrorism Framework.” Para. 1. caert.org.dz/official-documents/AU-CT-Framework.pdf. Accessed 20 June 2024.

⁶⁴ African Union. *Resolution on the Strengthening of Cooperation and Coordination Among African States*. Jul. 1992. https://archives.au.int/bitstream/handle/123456789/708/AHG%20Res%20213%20%28XXVIII%29%20_E.pdf?sequence=1&isAllowed=y.

Article VI of the “OAU Charter” reaffirm that the focus of this document is non-interference in State affairs and respect for their sovereignty.⁶⁵

During the 30th Ordinary Session in 1994, the OAU adopted the “Declaration on the Code of Conduct for Inter-African Relationships.”⁶⁶ In contrast to the above Resolution, this Code included a human rights focus, with various points regarding protecting people against discrimination, fostering peace and cooperation amongst states, and increasing transparency within its security measures.⁶⁷ In the 35th Ordinary Session, the OAU enhanced this work by adopting the “1999 OAU Convention on the Prevention and Combating of Terrorism” (CPCT).⁶⁸ There are only two mentions of human rights in this document: first in its introduction which condemns terrorism as “a serious violation of human rights”, and secondly in Article 22.⁶⁹ This latter article states that “Nothing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples Rights.”⁷⁰ The inclusion of Article 22 makes it clear that the Charter explicitly wanted to protect and reaffirm their acknowledgment that counter-terrorism efforts are not meant to abrogate the rights of people at large. Moreover, though this document does not explicitly include other discussions of human rights, it does reaffirm the UN’s “Declaration on Measures to Eliminate International Terrorism” as well as the “Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism,” which mention the importance of human rights in this area.⁷¹ This, along with its reaffirmation of the “African Charter on Human and Peoples Rights,” whose focus is rights at large, makes it clear that this declaration is aware of human rights violations that could occur in pursuit of counter-terrorism and preempts this concern by making clear that the position of the AU is that of support for human rights, including in counter-terrorism spaces.⁷²

In 2011, the African Assembly of Heads of State and Government, which serves as the AU’s decision and policy-making body,⁷³ adopted the “African Model Law on Counter Terrorism.”⁷⁴ This model explicitly reaffirms human rights in the preamble, stating that it is “REAFFIRMING that the fight against terrorism must be carried out in accordance with international law, including international human rights, refugee, and humanitarian law.”⁷⁵ It also develops the expected legal standard for certain technological instruments. More specifically, in regard to surveillance the model law requires governments to have an order from a competent court or tribunal, prior to conducting surveillance.⁷⁶ The reaffirmation of human rights and inclusion of

⁶⁵African Union. OAU Charter, 25 May 1963, au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf

⁶⁶ASCRT supra n. 64.

⁶⁷ University of Minnesota Human Rights Library. “Declaration on a Code of Conduct for Inter-African Relations, Assembly of Heads of State and Government, Thirtieth Ordinary Session, Tunis, Tunisia, 13-15 June 1994.” hrlibrary.umn.edu/africa/INTAFN.htm. Accessed 20 June 2024.

⁶⁸African Union. *OAU Convention on the Prevention and Combating of Terrorism*. Dec. 1994.

<https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>

⁶⁹ Ibid at pp. 2, 17. .

⁷⁰ Ibid., at Article 22., p. 17.

⁷¹ Ibid., at p. 1.

⁷² Ibid. at p. 2.

⁷³ African Union. “The Assembly”. <https://au.int/en/assembly>. Accessed Jul. 10, 2024.

⁷⁴ UN Office of the African Union (UNOAU). “Counter Terrorism.” unoau.unmissions.org/counter-terrorism. Accessed Jul. 10, 2024.

⁷⁵ African Union. Comm Repository. “The African Model Anti-Terrorism Law.” Preamble, p. 7, archives.au.int/bitstream/handle/123456789/8313/african-model-law-E.pdf?sequence=1&isAllowed=y.

⁷⁶ Ibid. at Article 40(1)(a), p. 33.

safeguards help prevent an abuse of power, although that is wholly dependent on Member State judiciaries' ability to oversee governmental agencies.

Over time the AU has continued to rework and create new legal instruments. As new technologies continue to emerge, these have highlighted and focused more on digital rights, while each adopted Resolution remains consistent in their dedication to human rights. It is important to note that while this submission draws upon examples, these examples are non-exhaustive, and there are other relevant legal instruments in the AU system.

The European Union

The EU is an economic and political body, comprised of 27 European countries, that aims to prevent conflicts and pursue peace,⁷⁷ and holds the values and principles of “freedom, democracy, equality and the rule of law, promoting peace and stability”.⁷⁸ The European Commission (EC) serves as the EU’s executive body and is responsible for proposing and monitoring the implementation of new policies and laws, representing EU interests globally, and EU budget management.⁷⁹

The EC adopted “A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond” in December 2020 aimed at combating terrorism and terrorist threats at the level of the EU.⁸⁰ It includes ways to address counter-terrorism financing as well, building on the EC’s 2016 “Action Plan for Strengthening the Fight Against Terrorist Financing.”⁸¹ While this 2016 “Action Plan” mentions fundamental rights, it does so less frequently and fails to center human rights to the same extent as the 2020 “Counter-Terrorism Agenda”. The latter centers on fundamental rights, noting how “inclusive and rights-based foundations of our Union are our strongest protection against the threat of terrorism”⁸² and that an “inclusive and welcoming society fully respectful of the rights of all is a society where terrorists will find it more difficult to radicalise and recruit.”⁸³

A timeline of EU and EC policies on counter-terrorism includes:⁸⁴

- 2005: EU Counter-terrorism Strategy;

⁷⁷ James McBride. Council on Foreign Relations. Backgrounder. “How Does the European Union Work?” March 11, 2022. <https://www.cfr.org/backgrounder/how-does-european-union-work>.

⁷⁸ EU. Principles, countries, history. “Principles and values.” https://european-union.europa.eu/principles-countries-history_en. Accessed Jul. 10, 2024.

⁷⁹ European Union. “About the European Commission: Role of the European Commission.” https://commission.europa.eu/about-european-commission_en. Accessed Jul. 10, 2024.

⁸⁰ European Union. “Factsheet of the Counter-Terrorism Agenda: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond.” Dec. 2020. https://home-affairs.ec.europa.eu/document/download/18d91d9a-a26b-4055-900e-96e30e888ba2_en?filename=20201209_counter-terrorism-agenda-eu_en.pdf

⁸¹ European Commission. “Action Plan for Strengthening the Fight Against Terrorist Financing.” Feb. 2, 2016. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0050>.

⁸² European Commission. “A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond.” Dec. 9, 2020, pg 24. https://home-affairs.ec.europa.eu/document/download/9b54c533-139a-4662-99cf-b5f72220bb18_en?filename=09122020_communication_commission_european_parliament_the_council_eu_agenda_counter_terrorism_po-2020-9031_com-2020_795_en.pdf

⁸³ Ibid.

⁸⁴ European Union. Migration and Home Affairs. “Counter terrorism and radicalisation.” https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation_en#:~:text=2020%20Counter%2DTerrorism%20Agenda%20for.and%20respond%20to%20terrorist%20threats.

- 2015: European Agenda on Security;
- 2015: European Counter Terrorism Centre (ECTC);
- 2017: Directive on Combating Terrorism; and
- 2020: EU Security Union Strategy.

Likewise, a timeline of EU and EC policies on CFT includes:⁸⁵

- 2015: Anti-Money Laundering Directive;
- 2017: Directive on Combatting Terrorism;
- 2018: Amendments to the 4th Anti-Money Laundering Directive;
- 2018: Regulation on Controls on Cash Entering or Leaving the EU;
- 2018: Regulation on the Mutual Recognition of Freezing Orders and Confiscation Orders;
- 2019: Regulation on the Introduction and the Import of Cultural Goods;
- 2019: Directive Facilitating the Use of Financial and Other Information for the Prevention, Detection, Investigation, or Prosecution of Certain Criminal Offenses; and
- 2024: EU AML/CFT Package; comprising of an AML/CFT Regulation (AMLR), a Sixth Anti-Money Laundering Directive (AMLD6), the Regulation which establishes the Anti-Money Laundering Authority⁸⁶, and a 2015 Regulation on Transfers of Funds recast (Regulation 2015/847/EU)⁸⁷.

Some regional organizations directly reference human rights in their counter-terrorism mandates or strategies but fail to fully incorporate human rights principles into all aspects of their counter-terrorism work. The Council of Europe is comprised of 46 European States, houses both the ECtHR and the European Convention on Human Rights (ECHR), and was established to promote human rights, the rule of law, and democracy.⁸⁸ The overall objectives and aims of the Council of Europe Committee on Counter-Terrorism's (CDCT) "Council of Europe Counter-Terrorism Strategy" (2023 - 2027), is to combat terrorism through three key pillars: Prosecution, Protection, and Prevention.⁸⁹ Each of these areas emphasizes the need to fully comply with human rights principles as determined by international law and organizations, the ECHR, and case law from the ECtHR.⁹⁰

However, according to partners, other EU guidelines fail to explicitly include counter-terrorism policies that ensure human rights are properly integrated. The June 2024 updated "EU Guidelines on Children and Armed Conflict" (CAAC), for example, only mention counter-terrorism and human rights once despite calls from civil society to reflect the interconnection of the CAAC and counter-terrorism, and the need to properly integrate children's rights and human

⁸⁵ European Union. Migration and Home Affairs. "Fight Against the Financing of Terrorism." Feb. 2, 2024. https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation/fight-against-financing-terrorism_en.

⁸⁶ Council of the EU. "Anti-money laundering: Council adopts package of rules." May 30, 2024.

<https://www.consilium.europa.eu/en/press/press-releases/2024/05/30/anti-money-laundering-council-adopts-package-of-rules/>.

⁸⁷ PWC. "Strengthening the core. The new AML/CFT Package." June 4, 2024. <https://www.pwc.com/mt/en/publications/tax-legal/the-new-eu-aml-cft-package-strengthening-the-core.html>.

⁸⁸ Council of Europe Portal. The Council of Europe in Brief. Do Not Get Confused. "Council of Europe."

<https://www.coe.int/en/web/about-us/do-not-get-confused>.

⁸⁹ Council of Europe Committee on Counter-Terrorism (CDCT). "Council of Europe Counter-Terrorism Strategy (2023-2027)." 1456th Meeting. Feb. 8, 2023. <https://search.coe.int/cm/?i=0900001680a9ad67>.

⁹⁰ Ibid.

rights into counter-terrorism policies.⁹¹ This cannot be achieved, however, without proper implementation of these Guidelines by the EU and its Member States. Additionally, there are issues with Member State capacity, and the updated CAAC guidelines will not be effective unless the EU commits to this capacity building.

While the EU has worked to include human rights protections in its regional counter-terrorism coordination and organizations, there is still work to be done on incorporating these protections into additional arenas, like the CAAC, that interact with counter-terrorism in a less direct way.

Further, digital and technological developments by the EU impact AML/CFT policies, without regard for the impacts on civil society. For example, the recently published “EU AML/ CFT Package” will likely have a significant impact on the nonprofit sector. Among these potential impacts and issues of concern is that, effective July 2027, crowdfunding platforms and crypto-asset service providers will be considered obliged entities, meaning they need to comply with customer due diligence requirements.⁹² These new EU compliance standards will affect civil society and philanthropy funding and financial transactions by prioritizing even greater compliance burdens for nonprofits that work to deliver assistance in complex and conflicted settings where designated terrorist groups operate, over prioritizing a commitment to human rights.

The EU’s 2022 “Supranational Risk Assessment Report” (SNRA) on the “risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities”⁹³, analyzes AML/CFT risks and lays out an accompanying comprehensive action plan.⁹⁴ According to EU partners, the 2022 SNRA lacked transparency and inclusiveness as it failed to involve the NPO sector in the consultation process. An update of the 2022 SNRA is foreseen for 2024, and civil society has yet to be included in this update as well.

The Islamic Military Counter Terrorism Coalition

The IMCTC is a multinational alliance formed in 2015, headquartered in Riyadh, Saudi Arabia, and initiated by the Kingdom of Saudi Arabia to enhance the collective counter-terrorism efforts of Islamic nations.⁹⁵ The Coalition aims to counter extremist ideologies, educate the public on terrorism’s dangers, prevent terrorist financing, and provide relief and military support.⁹⁶ Despite these goals, the Coalition, like many regional counter-terrorism and security organizations, faces political and structural challenges. Inconsistent participation from Member States and a lack of universal membership raise political concerns; Indonesia, the country with the largest Muslim population, and Algeria, the country with Africa’s largest Muslim military, have failed to

⁹¹ European Union. “EU Guidelines on Children and Armed Conflict.” June 25, 2024.

<https://www.eeas.europa.eu/sites/default/files/documents/2024/EEAS-EU-Guidelines-CAAC.pdf>.

⁹² Council of the EU *supra* n. 87.

⁹³ European Commission. Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities. Oct. 27, 2022.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0554>.

⁹⁴ *Ibid.*

⁹⁵ IMCTC. A Brief History. <https://www.imctc.org/en/AboutUs/Pages/default.aspx>. Accessed Jun. 27, 2024.

⁹⁶ IMCTC. Strategic Objectives. <https://www.imctc.org/en/AboutUs/goals/Pages/default.aspx>. Accessed Jul. 1, 2024.

join.⁹⁷ Additionally, major Shia countries are missing from the Coalition (including Iraq, Iran, and Syria), fueling regional concerns that the IMCTC could be used as an anti-Iran, anti-Shia, pro-Sunni political tool of Saudi Arabia.⁹⁸ In regards to structural concerns, an overemphasis on military solutions in the IMCTC's strategic approach neglects the socio-economic and political drivers of terrorism.⁹⁹

IMCTC comprises 42 States with 28 Member State delegates at IMCTC headquarters.¹⁰⁰ The IMCTC's strategic approach emphasizes international collaboration and coordination in counter-terrorism, which is crucial given the transnational nature of terrorism.¹⁰¹ The IMCTC does not explicitly include mandates or policies that are specifically focused on the protection of human rights within their operational strategies. Additionally, while the Coalition's mission involves promoting moderation and combating extremist ideologies, there is no detailed framework ensuring that counter-terrorism efforts align with international human rights standards. This omission raises concerns about potential human rights violations during counter-terrorism operations, such as arbitrary detentions, torture, or suppression of free speech. Additionally, there is no mention of refugee law or specific measures to protect displaced persons resulting from counter-terrorism operations.

Partners note that the IMCTC's strategic approach also raises several concerns when viewed through the lens of international human rights standards in counter-terrorism. The IMCTC does not have a detailed counter-terrorism strategy publicly available on its website in any official languages (Arabic, English, or French), and many of the documents that are available are both brief and vague. Noting this, several concerns emerge from the information that is available to the public. The heavy reliance on military solutions can lead to human rights violations if not managed carefully. Indeed, this happens across contexts with securitized approaches to counter-terrorism. The IMCTC's strategic approach to counter-terrorism emphasizes using military operations to deter aggression, but lacks detailed measures to ensure the protection of human rights during these operations or detailed guidelines and mechanisms to ensure these operations strictly adhere to IHL and human rights standards, such as the principles of distinction, proportionality, and necessity. The publically accessible information does not provide a detailed framework to ensure that counter-terrorism measures do not infringe on fundamental human rights, such as freedom of expression, assembly, the right to privacy, and the right to a fair trial. This omission can lead to abuses and undermine the legitimacy of counter-terrorism efforts.

The IMCTC's strategic approach and priorities also fail to adequately address the socio-economic and political drivers of terrorism. Factors such as poverty, political disenfranchisement, social inequality, and lack of education all amount to the root causes of

⁹⁷ Kamal Alam & Wajahat S. Khan. The Royal United Services Institute (RUSI). "Saudi Arabia's Islamic Anti-Terrorism Effort: A Coalition of the Willing or an Anti-Iran Front?" 6 Dec., 2017. <https://rusi.org/explore-our-research/publications/commentary/saudi-arabias-islamic-anti-terrorism-effort-coalition-willing-or-anti-iran-front>.

⁹⁸ Ibid.

⁹⁹ "Islamic Military Counter-Terrorism Coalition. "Minsters and Experts Outline How IMCTC Will Combat Terrorism Across Four Key Strategic Domains." <https://www.saudiembassy.net/sites/default/files/Relevant%20commentary%20from%20subject%20matter%20experts%20who%20attended.pdf>.

¹⁰⁰ IMCTC. Member Countries. <https://www.imctc.org/en/AboutUs/MemberCountries/Pages/default.aspx>. Accessed Jun. 27, 2024.

¹⁰¹ IMCTC. About IMCTC. <https://www.imctc.org/en/AboutUs/Pages/default.aspx>. Accessed Jun. 27, 2024.

terrorism in the member countries.¹⁰² The IMCTC also lacks robust mechanisms for transparency and accountability, such as independent oversight bodies, clear reporting requirements, and avenues for redress for victims of counter-terrorism operations.¹⁰³ Effective counter-terrorism efforts require transparent processes and accountability for actions taken by state and non-state actors. Without these mechanisms, there is a risk of abuses going unreported and unpunished, which can erode public trust and international support. The current IMCTC approach to civil society engagement lacks a formal and structured process for meaningful engagement. There is no clear evidence of systematized mechanisms or platforms designed for civil society engagement within the IMCTC framework. While IMCTC offers a community e-participation page on its website to gather public feedback,¹⁰⁴ the provided details do not indicate that these inputs are systematically integrated into policymaking or operational strategies and cannot replace formal consultations and partnerships with CSOs and non-governmental organizations (NGOs).

The absence of accountability mechanisms, such as independent oversight bodies or processes for transparent reporting, further erodes IMCTC's human rights framework. Accountability ensures that counter-terrorism measures do not infringe on fundamental rights and freedoms, maintaining the legitimacy and effectiveness of the Coalition's efforts.

Recommendations for IMCTC

- Given the potential for military actions to cause displacement, it is crucial for IMCTC to have strategies in place that ensure the protection and humane treatment of refugees and internally displaced persons (IDPs).
- These strategies should include coordination with international bodies like the United Nations High Commissioner for Refugees (UNHCR) and adherence to the principles of non-refoulement and safe asylum.¹⁰⁵
- A comprehensive counter-terrorism strategy should be developed to include robust initiatives aimed at improving governance, promoting economic development, supporting civic space, and ensuring social justice.¹⁰⁶ The current IMCTC strategy seems to under-prioritize these critical areas, potentially limiting its long-term effectiveness.
- The IMCTC lacks action plans in line with UNSCR 1325¹⁰⁷ on Women, Peace and Security (WPS). This absence indicates a gap in incorporating gender perspectives and the role of women in the IMCTC's strategic approaches to counter-terrorism.
- The IMCTC's strategic approach to counter-terrorism should incorporate safeguards to prevent overreach and misuse of counter-terrorism laws and policies. This includes

¹⁰² See, e.g., United Nations Development Programme. *Preventing Violent Extremism Through Promoting Inclusive Development, Tolerance and Respect for Diversity*. 2016, pp. 4-5.

<https://www.undp.org/sites/g/files/zskgke326/files/publications/Discussion%20Paper%20-%20Preventing%20Violent%20Extremism%20by%20Promoting%20Inclusive%20Development.pdf>.

¹⁰³ IMCTC. A General Framework of Counterterrorism in Light of Strategies.

<https://www.imctc.org/en/eLibrary/TerrorismIssues/Pages/TerrorismIssues7.2.2023.aspx>.

¹⁰⁴ IMCTC. E-Participation. <https://www.imctc.org/en/eParticipation/Pages/default.aspx>. Accessed Jun. 27, 2024.

¹⁰⁵ UNHCR. "Access to territory and non-refoulement." Dec. 11, 2023. <https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement#:~:text=The%20principle%20of%20non%2Drefoulement%20applies%20to%20both%20refugees%20and,relevant%20Government%20authorities%20or%20UNHCR.>

¹⁰⁶ UN Human Rights Special Procedures. Global Study on Counter-terrorism and Civic Space, "The Human Path." 2023. <https://defendcivicspace.com/the-human-path/>.

¹⁰⁷ See UN Women. "Women, Peace and Security and the UN Security Council." <https://wps.unwomen.org/security-council/>. Accessed Jul. 10, 2024.

defining terrorism and related terms narrowly and precisely, in line with international legal standards, to prevent their application beyond genuine terrorist activities.

- The IMCTC should develop robust mechanisms for transparency and accountability, such as independent oversight bodies, clear reporting requirements, and avenues for redress for victims of counter-terrorism operations.
- The IMCTC should develop effective engagement opportunities for civil society that include regular, structured consultation processes and participatory mechanisms where civil society actors can voice concerns, provide insights, hold organizations accountable, and influence decision-making processes.

The Shanghai Cooperation Organization and its Member State, China, Undermine Human Rights in Their Approach to Counter-terrorism

How China implements the SCO's counter-terrorism standards in national law

The SCO, founded in 2001, is an intergovernmental organization composed of China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan.¹⁰⁸ The 2001 “Shanghai Convention on Combating Terrorism, Separatism and Extremism” equates these three concepts as closely interrelated targets for cooperative action within the SCO counter-terrorism framework.¹⁰⁹ This formulation, which has become highly politicized within China and other SCO Member States, closely mirrors China’s “Three Evils” doctrine (terrorism, ethnic separatism, and religious extremism)¹¹⁰ and is formulated broadly to include crimes against the State. In the “International Convention for the Suppression of the Financing of Terrorism”, the UN limits terrorist offenses to acts violating treaties and “[a]ny other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict...”.¹¹¹ The Shanghai Convention does not impose this limit on the application of counter-terrorism measures.¹¹² Furthermore, terrorism, separatism, and extremism are all considered extraditable offenses within the SCO framework.¹¹³

According to partners, China had and continues to have an outsized role in shaping the SCO’s counter-terrorism infrastructure. As an SCO founding member, and one of its largest and most globally influential members,¹¹⁴ China’s approach to counter-terrorism is evident in the SCO’s counter-terrorism model, which prioritizes cooperative enforcement of domestic counter-

¹⁰⁸ Shanghai Cooperation Organization. “General Information.” Jan. 9, 2017. <https://eng.sectsc.org/20170109/192193.html>.

¹⁰⁹ UN. “Shanghai Convention on Combating Terrorism, Separatism and Extremism,” in *International Instruments Related to the Prevention and Suppression of International Terrorism*. Jan. 2019, pp. 427-436. <https://www.un-ilibrary.org/content/books/9789210477024s004-c021>.

¹¹⁰ For a more detailed description of China’s counter-terrorism strategy, see: Enshen Li. “Fighting the “Three Evils”: A Structural Analysis of Counter-Terrorism Legal Architecture in China.” 33 *Emory Int’l L. Rev.* 311 (2019). <https://scholarlycommons.law.emory.edu/eilr/vol33/iss3/1>.

¹¹¹ UN. *International Convention for the Suppression of the Financing of Terrorism*. 1999, at Article 2. <https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf>.

¹¹² UN, *supra* n. 110.

¹¹³ International Federation for Human Rights (FIDH). *Shanghai Cooperation Organisation: A Vehicle for Human Rights Violations*. Sep. 2012, at pp. 5-6. https://www.fidh.org/IMG/pdf/sco_report.pdf.

¹¹⁴ Gisela Grieger. European Parliamentary Research Service. *Briefing: China’s leading role in the Shanghai Cooperation Organization*. PE 564.367, Jun. 2015. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/564367/EPRS_BRI\(2015\)564367_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/564367/EPRS_BRI(2015)564367_EN.pdf).

terrorism policy¹¹⁵ and criminalizes a broad swathe of activities. The SCO's lack of a rights-based approach fundamentally undermines peace, security, and human rights within the SCO Member States, as well as regionally and globally. From its inception and development, human rights challenges were embedded in the SCO architecture, including threats to privacy, undermining of due process protections, and non-refoulement protections.¹¹⁶

China has sought to undermine the protection of human rights within the SCO in relation to counter-terrorism measures

China's "14th Five-Year Plan" (FYP) (2021 – 2025) places a renewed emphasis on national security.¹¹⁷ This internal view of national security that China implements is being exported and is reflected in China's agreements with SCO Member States. In addition to multilateral agreements made within the framework of the SCO, China has ratified its own set of bilateral treaties with the majority of Member States of the SCO on key areas of concern such as "Fighting the Three Forces,"¹¹⁸ Extradition,¹¹⁹ Judicial Assistance,¹²⁰ and "Friendly Relations & Cooperation."¹²¹ These treaties, practically identical in form and substance to all countries involved, reinforce the SCO's own goals and reference terrorism. They appear to serve the purpose of creating a legal structure outside of and parallel to the SCO. They are thus a vehicle for China to influence the national security-oriented development of legislation both within the SCO Member States and beyond the SCO itself.

China has actively utilized the "Shanghai Convention on Combating Terrorism, Separatism and Extremism" to facilitate the extradition of individuals accused or suspected of acts of terrorism, separatism, and extremism from SCO Member States. SCO Member States Kyrgyzstan, Tajikistan, and Pakistan, a member of the Regional Anti-terrorist Structure of the Shanghai Cooperation Organisation¹²² (SCO RATS) – the permanent SCO body that serves as the SCO's coordinating center, provides multilateral cooperation, and works on regulator and legal frameworks to counter extremism, terrorism, and separatism, integrating relevant provisions into national law – have all facilitated the extradition of Uyghurs as well as ethnic Kazakhs and Kyrgyz individuals back to China, where they face persecution on religious and ethnic

¹¹⁵ FIDH. Concept of Cooperation Between SCO Member States in Combating Terrorism, Separatism, and Extremism—Unofficial Translation. Jun. 5, 2005. <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/Concept-of-Cooperation-Between-SCO>.

¹¹⁶ See e.g. Human Rights in China (HRIC). Whitepaper: Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization. Mar. 2011. https://www.hrichina.org/en/file/2923/2011-hric-sco-whitepaper-fullfae8.pdf?token=YePzrrilgaL2ik-RfF_2luU21GMfn2lijy-iFcE6M95g.

¹¹⁷ UNDP. "Issue Brief - China's 14th Five-Year Plan." July 23, 2021. <https://www.undp.org/china/publications/issue-brief-chinas-14th-five-year-plan>.

¹¹⁸ China Internet Information Center. "Presidents of SCO Countries Sign Pact to Battle Three Forces." Jun. 2001. <http://www.china.org.cn/english/2001/Jun/14746.htm>.

¹¹⁹ Safeguard Defenders. "China Expands System of Extradition Treaties." Jan. 25, 2023. <https://safeguarddefenders.com/en/blog/china-expands-system-extradition-treaties>.

¹²⁰ The Supreme People's Court of the People's Republic of China. "China's judicial assistance." 2015. https://english.court.gov.cn/2015-07/21/c_761707.htm.

¹²¹ See, e.g., Reuters. "Russia, China extend friendship and cooperation treaty -Kremlin." Jun. 28, 2021. <https://www.reuters.com/world/china/russia-china-extend-friendship-cooperation-treaty-kremlin-2021-06-28/>.

¹²² Regional Anti-terrorist Structure of Shanghai Cooperation Organisation. About SCO RATS. "Background and Mission." <https://ecrats.org/en/about/history/>.

grounds.¹²³ These cases highlight how the SCO is being actively used by its Member States to advance their own domestic and bilateral legal and national security frameworks around counter-terrorism.

The SCO does not provide sufficient information to the public about its counter-terrorism activities

The SCO is difficult to research and provides very little information about its counter-terrorism strategy and approach; the available information tends to be either vague or un-translated from the original Russian or Chinese. The SCO website¹²⁴ is difficult to navigate as the main sections within it are unsearchable, with no method of filtering or sorting other than by date. The SCO RATS website¹²⁵ is better, but still inadequate. Its section on conferences has not been updated since late 2022 and includes information on only three meetings.¹²⁶ Similarly, there is only one announcement, dated September 30th, 2022, found on the site.¹²⁷ The sections “News,”¹²⁸ “Analysis and Comments”¹²⁹, and “Facts of terrorism”¹³⁰ have been frequently updated, but contain little substantive information on the SCO’s counter-terrorism activities. As a result, the SCO RATS website is essentially a journalistic endeavor as opposed to an inter-governmental counter-terrorism information center. Furthermore, many key documents regarding SCO RATS are only available in Russian, despite the working languages of the SCO being both Russian and Chinese.¹³¹ SCO meetings are also semi-closed door and have little public and civil society engagement. This opaqueness in information sharing from both the SCO and the SCO RATS raises questions about their activities, strategies, policies, and approaches to counter-terrorism, and their lack of resources across Member State languages creates inaccessibility.

Finally, there is a lack of transparency regarding which organizations the SCO considers terrorist organizations, and there is no clear database to find such information. It is also difficult to determine what factors qualify an organization as “terrorist” under the SCO framework. In the “SCO Convention”, Article 1(1)(a) defines terrorism as any act recognized as an offense according to the Convention’s Annex,¹³² but the Annex itself is unavailable on either the SCO or SCO RATS website (and only available from other sources in Russian¹³³).

The SCO’s limited engagement with civil society on counter-terrorism and P/CVE issues

¹²³ See, e.g., FIDH. *Shanghai Cooperation Organisation: A Vehicle for Human Rights Violations*. Sep. 2012, at pp. 16-21. https://www.fidh.org/IMG/pdf/sco_report.pdf.

¹²⁴ SCO. The Shanghai Cooperation Organization. <https://eng.sectsc.org/>. Accessed Jul. 1, 2024.

¹²⁵ RATS. Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization. <https://ecrats.org/en/>. Accessed Jul. 1, 2024.

¹²⁶ RATS. “Conferences and Meetings.” <https://ecrats.org/en/press/conferences/>. Accessed Jul. 1, 2024.

¹²⁷ RATS. “Announcements.” <https://ecrats.org/en/press/announcements/>. Accessed Jul. 1, 2024.

¹²⁸ RATS. “News.” <https://ecrats.org/en/press/news/>. Accessed Jul. 1, 2024.

¹²⁹ RATS. “Analysis and Comments.” https://ecrats.org/en/security_situation/analysis/. Accessed Jul. 1, 2024.

¹³⁰ RATS. “Facts of terrorism.” https://ecrats.org/en/security_situation/facts_of_terrorism/. Accessed Jul. 1, 2024.

¹³¹ Instituto de Relaciones Internacionales. Universidad Nacional de la Plata. *Charter of the SCO*. Art. 20. https://www.iri.edu.ar/publicaciones_iri/manual/Doc.%20Manual/Listos%20para%20subir/ASIA/SHANGAI-ORG/charter_shanghai_cooperation_organization.pdf

¹³² UNHCR. RefWorld. “Shanghai Convention on Combating Terrorism, Separatism and Extremism.” Jun. 15, 2001, Article 1(1)(a). <https://www.refworld.org/legal/agreements/radr/2001/en/66812>

¹³³ Eurasia Group. “Приложение к Шанхайской конвенции о борьбе с терроризмом, сепаратизмом и экстремизмом,” в Шанхайская Конвенция о Борьбе с Терроризмом, Сепаратизмом и Экстремизмом (“Annex to the Shanghai Convention against Terrorism, Separatism and Extremism,” in the Shanghai Convention on the Fight Against Terrorism, Separatism, and Extremism). https://eurasiagroup.org/files/uploads/files/International_legal_documents/Conventions/shanghai_conv.pdf.

The SCO's engagement with civil society regarding counter-terrorism and P/CVE is sparse.¹³⁴ A majority of its activities are internal among its Member States or within international organizations like the UN.¹³⁵ The SCO's primary method of engaging with civil society is through attending fora and conferences held by external parties.¹³⁶ The SCO also holds joint high-level special events with the UN annually, which can be attended by a limited and privileged selection of civil society groups, such as the International Committee of the Red Cross (ICRC).¹³⁷

Member State weaponization of the SCO: China

China's national implementation of the SCO counter-terrorism standards is not consistent with IHRL. Many of China's counter-terrorism rules and guidelines conflate activities expressing dissent with acts of terrorism.¹³⁸ Furthermore, it prioritizes the repression of populations susceptible to terrorism activities over the actual prevention of terrorism.¹³⁹ In terms of implementation on the ground, China's counter-terrorism approach neither lives up to its own nor international legal standards of non-discrimination.

In 2011, Uyghur journalist and refugee Arshidin Israil was extradited from Kazakhstan to China, where he faced terrorism charges.¹⁴⁰ Israil had worked for Radio Free Asia, where he reported on Uyghur protests in China. While most cases of extradition are hard to track and identify, reports show that over 400 Uyghurs have been extradited to China.¹⁴¹ The SCO's no-questions-asked extradition treaties, purportedly in the name of counter-terrorism cooperation, have enabled China to easily find and identify Uyghurs who have fled due to persecution.¹⁴²

¹³⁴ The UN notes the potential for contributions of civil society organizations to the SCO, but places emphasis on the State's leading role in combating terrorism, separatism and extremism. See UN. "The Role of the Shanghai Cooperation Organization in Counteracting Threats to Peace and Security," in *UN Chronicle*. Oct. 2017, No. 3 Vol. LIV 2017, Prevention. <https://www.un.org/en/chronicle/article/role-shanghai-cooperation-organization-counteracting-threats-peace-and-security>.

¹³⁵ See generally SCO. "Media about SCO." <https://eng.sectsco.org/media/>. Accessed Jul. 1, 2024.

¹³⁶ *Ibid.*; see also e.g. the Oct. 2019 Conference "Combating terrorism: Cooperation without borders," which included the International Committee of the Red Cross (SCO. "Cooperation in eliminating the "three scourges" will always be a top priority for the SCO, Rashid Alimov said at a conference in Tashkent." Oct. 31, 2019. <https://eng.sectsco.org/20181031/480015.html>); the Sep. 2018

Taihe Global Civilisations Forum, which included public activist participation (SCO. "SCO Secretary-General: "Dialogue between civilisations is an important tool for combating terrorism and extremism." The Taihe Global Civilizations Forum opens in Beijing." Sep. 7, 2018. <https://eng.sectsco.org/20180907/463913.html>); the May 2019 Central Asian Internet Governance Forum, attended by various NGOs. "SCO participation at the 4th Central Asian Internet Governance Forum: Internet for Increasing Capacities in Central Asia." May 16, 2019 <https://eng.sectsco.org/20190516/540999.html>); and, the Sixth Moscow Conference on International Security, attended by non-governmental experts and representatives of the academic communities. (SCO. "It is only by coordinating measures and collective efforts that we can effectively combat terrorism and new security challenges," SCO Secretary-General Rashid Alimov said at a plenary meeting of the 6th Moscow Conference on International Security." Apr. 27, 2017. <https://eng.sectsco.org/20170426/261527.html>).

¹³⁷ See e.g. SCO. "The UN Commission on Narcotic Drugs has opened in Vienna. The SCO Secretary-General will present SCO views on the global problem of narcotics." Mar. 13, 2017. <https://eng.sectsco.org/20170313/227078.html>; SCO. "Vladimir Norov: "The SCO remains committed to providing a reliable framework for Eurasia's integrated and indivisible security architecture." New York hosts the third UN-SCO high-level special event." Nov. 20, 2019 <https://eng.sectsco.org/20191120/602170.html>.

¹³⁸ For examples and case studies, see Human Rights Watch. "Freedom of Expression," in *China 2023 World Report*. 2023. <https://www.hrw.org/world-report/2024/country-chapters/china#eaa21f>.

¹³⁹ See, e.g., repression of Uyghurs in Xinjiang, Lindsay Maizland. Council on Foreign Relations. "China's Repression of Uighurs in Xinjiang." Sep. 22, 2022. <https://www.cfr.org/background/china-xinjiang-uyghurs-muslims-repression-genocide-human-rights>.

¹⁴⁰ "Kazakhstan Extradites Uyghur Journalist," Radio Free Europe/Radio Liberty, Jun. 7, 2011. <https://www.rferl.org/a/kazakhstan-uyghur-journalist-extradition/24227475.html>.

¹⁴¹ Bradley Jardine. "Great Wall of Steel: China's Global Campaign to Suppress the Uyghurs." Wilson Center, 2022. <https://www.wilsoncenter.org/book/great-wall-steel>.

¹⁴² *Ibid.*

Further, internet sovereignty and digital authoritarianism have been a component of the SCO's approach through the "Agreement on Cooperation in the Field of International Information Security,"¹⁴³ as well as the 2017 Convention of the Shanghai Cooperation Organization on Combating Extremism, wherein the Members agreed to monitor the media and the internet "with a view to identifying in a timely manner and suppressing the spread of extremist ideology."¹⁴⁴ As Sarah McKune and Shazeda Ahmed argue in their article in the International Journal of Communication 12, *The Contestation and Shaping of Cyber Norms Through China's Internet Sovereignty Agenda*, Russia and China's approaches to internet sovereignty are promoted through the SCO, creating a regional norm.¹⁴⁵ The SCO RATS itself has hosted SCO anti-cyberterrorism exercises in China.¹⁴⁶

Recommendations for SCO

To address the SCO's lack of commonplace methods of public engagement, the SCO should:

- Create a forum to foster direct dialogue with civil society regarding SCO activity.
- Create a mechanism for receiving public complaints regarding the activities and policies of its Member States, as well as enacting an accompanying body to address these complaints.
- Allow civil society to attend SCO meetings and conferences as guest attendees.
- Consult with civil society organizations, in compliance with Article 4 of the "SCO Convention" which allows for consultation with organizations upon mutual consent by the Parties.¹⁴⁷

"Unofficial" Regional Organizing and Implementation of Counter-terrorism Measures

It is important to recognize the influence of "unofficial" regional organizing and regionally motivated actions and counter-terrorism strategies, as they have significant impacts on communities experiencing marginalization. Even in the absence of a formal regional organization, the Special Rapporteur should consider how informal regional agreements, relationships, and counter-terrorism practices by States impact human rights, and how some unofficial counter-terrorism practices and measures are regionally coordinated. Therefore, institutions with broad regional and geographic influence, such as the U.S.' Department of Homeland Security (DHS), which plays a large role in the North American region's overall counter-terrorism measures,¹⁴⁸ and the Counterterrorism Bureau within the U.S. Department of

¹⁴³ NATO Cooperative Cyberdefense Center of Excellence (CCDCOE). *Agreement Between the Member States of the Shanghai Cooperation Organization on Cooperation in the Field of International Information Security (Unofficial Translation)*. 2008. <https://ccdcoe.org/uploads/2018/10/SCO-090616-IISAgreement.pdf>.

¹⁴⁴ International Instruments Related to the Prevention and Suppression of International Terrorism. *Convention of the Shanghai Cooperation Organization on Combating Extremism*. Jun. 2017, p.458 at Art. 7(2)(6). https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/ f_html/Convention_of_the_Shanghai_Cooperation_Organization_on_combating_Extremism.pdf.

¹⁴⁵ Sarah McKune & Shazeda Ahmed. International Journal of Communication 12., "The Contestation and Shaping of Cyber Norms Through China's Internet Sovereignty Agenda." International Journal of Communication 12 (2018). <https://ijoc.org/index.php/ijoc/article/view/8540>.

¹⁴⁶ Xinhua Net. "SCO anti-cyber-terrorism drill held in China." Dec. 12, 2019. http://www.xinhuanet.com/english/2019-12/12/c_138626263.htm.

¹⁴⁷ UNHCR. RefWorld. "Shanghai Convention on Combating Terrorism, Separatism and Extremism." Jun. 15, 2001, Article 4. <https://www.refworld.org/legal/agreements/radr/2001/en/66812>.

¹⁴⁸ See e.g. DHS. "Office of Intelligence and Analysis Partner Engagement." <https://www.dhs.gov/office-intelligence-and-analysis-partner-engagement>. Accessed Jul. 9, 2024 (outlining DHS' coordination with states, national organizations, and the private sector

State¹⁴⁹ should be held accountable to human rights standards and their practices should be documented and monitored in the same manner as official regional organizations with counter-terrorism mandates like those mentioned above.

Formal government and diplomatic allyships can lead to informal regional and local coordination on surveillance and other counter-terrorism measures that affect civilians and civil society. The Los Angeles Police Department (LAPD), for example, has recently purchased (with help from DHS) advanced surveillance systems developed by Israeli intelligence.¹⁵⁰ Additionally, for decades, U.S. law enforcement agencies have received surveillance and intelligence directly from both Israeli think tanks and the Israeli Defense Force (IDF), Israel's national military, that has then been used to monitor pro-Palestinian U.S.-based activists.¹⁵¹ Law enforcement across the U.S. also received training targeting so-called "Muslim extremists" from pro-Israel groups – training that targets pro-Palestinian voices within the U.S.¹⁵² The use of these trainings, technology, and intelligence has led to substantial rights violations, including privacy rights and protections of freedoms of speech and religious expression. It is also damaging to sound law enforcement practices and creates a pipeline of disinformation that routinely originates with right-wing conspiracies and is amplified by the "official" voices of law enforcement.¹⁵³

Other regional influencers have also supported rights violations. This is particularly difficult to track when it is done via informal networks of cooperation, as they are often based on back-door diplomacy and nondisclosure. Recently, the Anti-Defamation League (ADL),¹⁵⁴ an anti-Palestinian organization¹⁵⁵ known for weaponizing antisemitism,¹⁵⁶ has announced that it "partners" with DHS to surveil and suppress Palestinian and pro-Palestinian voices across the U.S.¹⁵⁷ The ADL has publicly remarked on its close working relationship with DHS,¹⁵⁸ and the ADL Center on Extremism (COE) shares intelligence with U.S. law enforcement.¹⁵⁹ This "intelligence" includes information on CSOs and peaceful student protestors,¹⁶⁰ and encourages a government crackdown on human rights advocates and humanitarian organizations that support Palestine. This is further evidence that DHS and the ADL are teaming up to silence movements instead of preventing terrorism.¹⁶¹

across the region); DHS. "Information Sharing." <https://www.dhs.gov/information-sharing>. Accessed Jul. 9, 2024. (outlining DHS' partnerships with domestic, regional, and international organizations).

¹⁴⁹ U.S. Department of State. "Programs and Initiatives." <https://www.state.gov/bureau-of-counterterrorism-programs-and-initiatives/>. Accessed Jul. 10, 2024.

¹⁵⁰ Joey Scott. Knock LA. "LAPD Is Using Israeli Surveillance Software That Can Track Your Phone and Social Media." Nov. 27, 2023. <https://knock-la.com/lapd-is-using-israeli-surveillance-software-that-can-track-your-phone-and-social-media/>.

¹⁵¹ Jason Wilson. The Guardian. "US police agencies took intelligence directly from IDF, leaked files show." Dec. 8, 2023. <https://www.theguardian.com/us-news/2023/dec/08/us-police-agencies-idf-files-blueleaks>.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ ADL. "Who We Are." 2024. <https://www.adl.org/about/who-we-are>.

¹⁵⁵ Speri, Alice. The Intercept. "How the ADL's Anti-Palestinian Advocacy Helped Shape U.S. Terror Laws." February 21, 2024. <https://theintercept.com/2024/02/21/adl-palestine-terrorism-legislation/>.

¹⁵⁶ See, e.g., Drop the ADL. "The ADL is Not an Ally: A Primer." <https://droptheadl.org/the-adl-is-not-an-ally/>. Accessed Jul. 9, 2024.

¹⁵⁷ Anti-Defamation League. "Partnering with Law Enforcement." <https://www.adl.org/partnering-law-enforcement>.

¹⁵⁸ Anti-Defamation League. "ADL Statement on Secretary Alejandro Mayorkas." Jan. 2, 2024. <https://www.adl.org/resources/press-release/adl-statement-secretary-alejandro-mayorkas>.

¹⁵⁹ ADL *supra* n. 138

¹⁶⁰ Anti-Defamation League. "Anti-Israel Activism on U.S. Campuses, 2022-2023." <https://www.adl.org/resources/report/anti-israel-activism-us-campuses-2022-2023>.

¹⁶¹ The ADL also coordinates internationally with the Israeli government, and frequently serves as a tool for the Israeli government to silence critics within the United States. See e.g. James Bamford. The Nation. "The Anti-Defamation League: Israel's Attack Dog in the US." Jan. 31, 2024. <https://www.thenation.com/article/society/adl-israel-criticism-antisemitism-claims/>.

Unofficial Regional Human Rights Mechanisms: The Case of the U.S.

In the U.S., there is a particular tension between regional and global human rights mechanisms and the reality of human rights. While most areas, including North America, have formal regional bodies that focus on human rights and have some level of influence (even if only on paper) on Member States, the U.S. holds itself apart from these mechanisms. A party to only three of the major international human rights treaties,¹⁶² there is a long history of American exceptionalism when it comes to human rights¹⁶³ and the UN in general.¹⁶⁴ In regards to regional participation in human rights organizations and mechanisms, U.S. participation is dismal. For example, the U.S. is not part of the American Convention on Human Rights (Pact of San José, Costa Rica), which serves as “an international treaty that contemplates the rights and liberties that must be respected by States Parties”, while many of its regional counterparts are.¹⁶⁵ Further, “The United States is one of the few OAS Member States that has not yet ratified the American Convention on Human Rights nor has accepted the jurisdiction of the Inter-American Court of Human Rights”.¹⁶⁶ The U.S. does however, engage in moral grandstanding by paying lip service to the importance of regional human rights mechanisms, such as their June 2024 statement at the “Commemoration of the 65th Anniversary of the Creation of the Inter-American Commission on Human Rights.”¹⁶⁷

The U.S. is not alone in the use and influence of these “unofficial” regional networks; across geographies and issue areas, governments and other actors experience regional influence. This is particularly true when it comes to oppressive counter-terrorism laws and the targeting of CSOs.

Unofficial Regional Human Rights Mechanisms: The Case of India & the U.S.

Weaponized disinformation serves as a tool for oppressive governments and organizations to rally unofficial regional cooperation organizations to silence dissent. For example, the Bharatiya Janata Party (BJP), the Hindu nationalist party of Indian Prime Minister Narendra Modi, reportedly has an extensive network of coordinated social media operations that it utilizes to spread disinformation and hate across India, the region, and the diaspora.¹⁶⁸ This disinformation

¹⁶² ACLU. Treaty Ratification. <https://www.aclu.org/issues/human-rights/treaty-ratification>. Accessed Jun. 26, 2024.

¹⁶³ Steven Walt. Foreign Policy. “The Myth of American Exceptionalism,” Oct. 2011. <https://foreignpolicy.com/2011/10/11/the-myth-of-american-exceptionalism/>

¹⁶⁴ See e.g. Michael Ignatieff, “Introduction,” American Exceptionalism and Human Rights, Princeton University Press, 2003 pp. 3-11. <https://www.jstor.org/stable/j.ctt7skx6>.

¹⁶⁵ Inter-American Court of Human Rights. What is the I/A Court H.R.? “What is the American Convention?” and “Which States are Part of the American Convention?” 2024. https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en#:~:text=The%20States%20that%20have%20ratified,Peru%2C%20Suriname%2C%20and%20Uruguay.

¹⁶⁶ Harvard University. Real Colegio Complutense. “The United States and the Inter-American System of Human Rights: Is There a Way Forward?” March 23, 2016. <https://rcc.harvard.edu/event/united-states-and-inter-american-system-human-rights-there-way-forward>.

¹⁶⁷ U.S. Mission to the Organization of American States. “Commemoration of the 65th Anniversary of the Creation of the Inter-American Commission on Human Rights.” June 25, 2024. <https://usoas.usmission.gov/commemoration-of-the-65th-anniversary-of-the-creation-of-the-inter-american-commission-on-human-rights/>.

¹⁶⁸ Gary Shih. The Washington Post. “Inside the vast digital campaign by Hindu nationalists to inflame India.” Sep. 26, 2023. <https://www.washingtonpost.com/world/2023/09/26/hindu-nationalist-social-media-hate-campaign/>.

can, by design, easily push followers toward radicalization and violence.¹⁶⁹ Many of India's populations experiencing minoritization have been targets of this disinformation machine, including India's Muslim population. A report by the Islamic Council of Victoria found that 55% of the Muslim hate-speech globally across all social media platforms originates from Indian users.¹⁷⁰ The BJP has utilized this unofficial regional cooperation to extend its reach and promote violence towards its dissidents, including Sikh, Muslim, and Kashmiri¹⁷¹ activists and critics of Prime Minister Modi,¹⁷² around the globe.

This disinformation doesn't just affect those living in India; Hindu-nationalist disinformation campaigns by the BJP have spread with the Indian diaspora community. In the U.S., this Hindu-nationalist propaganda has also been connected to a right-wing, anti-immigrant agenda.¹⁷³ Groups such as the Immigration Voice, the Skilled Immigrants in America Coalition, and the Republican Hindu Coalition (RHC), have formed unofficial regional cooperation that capitalize on "model minority" narratives to separate Indian immigrants from other immigrant and diaspora groups, and to support nationalist American figures like Steve Bannon.¹⁷⁴ U.S.-based groups like the Hindu American Foundation (HAF) also use lawfare attacks to silence organizations and individuals that are fighting against the spread of Hindu nationalism.¹⁷⁵ The nationalist hate spread by the BJP is amplified by these unofficial regional coordinations and allows the influence of Hindu nationalism and Prime Minister Modi to grow both within the Indian immigrant community in the U.S. and within the wider American population.

This campaign by the Indian government is also demonstrative of how governments can use a combination of official and unofficial coordination regionally to defy human rights law and principles. The utilization of regional disinformation and censorship is particularly effective due to the Indian government's dual use of this unofficial cooperation and official regional organizations like the FATF and FSRBs.

Unofficial Regional Human Rights Mechanisms: The Case of Israel

The Israeli government has many formal security and intelligence-sharing agreements with governments around the world, but its largest formal partnership is with the United States.¹⁷⁶

¹⁶⁹ SALDEF. Virtually Vulnerable: Exposing the Human Cost of Digital Harassment. Feb. 2024, pp. 3-5. <https://saldef.org/wp-content/uploads/Tech-Censorship-Diasporic-Landscape-Report-v2.pdf>.

¹⁷⁰ Islamic Council of Victoria. Islamophobia in the digital age: a study of anti-Muslim tweets. Oct. 2022. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4227488.

¹⁷¹ Al Jazeera. "Social media giants accused of 'silencing' Kashmir voices." Oct. 1, 2021.

<https://www.aljazeera.com/news/2021/10/1/kashmir-report-accuses-us-social-media-giants-of-censorship>.

¹⁷² Ryan Grim, Murtaza Hussain. The Intercept. "Elon Musk's Twitter Widens its Censorship of Modi's Critics." Mar. 28, 2023. <https://theintercept.com/2023/03/28/twitter-modi-india-punjab-amritpal-singh/>.

¹⁷³ See e.g. Savera. "100+ Organizations Stand Against Hindu Supremacy." Mar. 24, 2024. <https://www.wearesavera.org/press-releases/100-organizations-stand-against-hindu-supremacy/>.

¹⁷⁴ National Council of Asian Pacific Americans. Power, Platform, and Politics: Asian Americans and Disinformation. 2022, at pp. 26-28. https://www.asianamdisinfo.org/wp-content/uploads/2022/08/AsianAmDisinformation_LandscapeReport2022-1.pdf.

¹⁷⁵ See, e.g. Indian American Muslim Council. "D.C. court dismisses US-based Hindu right-wing group's defamation case against activists." Dec. 21, 2022. <https://iamc.com/d-c-court-dismisses-us-based-hindu-groups-defamation-case-against-activists/>.

¹⁷⁶ For an overview of U.S./Israel relations and the history of this relationship see Chris McGreal. The Guardian. "US wasn't always Israel's strongest ally – what changed and why?" Nov. 16, 2023. <https://www.theguardian.com/us-news/2023/nov/16/why-israel-allies-explainer#:~:text=The%20US%20was%20the%20first,strongest%20military%20and%20diplomatic%20ally.>

These strategic alliances have been linked to human rights and humanitarian abuses, including the use of U.S. weapons in violation of IHL.¹⁷⁷

These official alliances, however, are not the only way that regional cooperation impacts human rights and civil society; unofficial regional cooperation contributes to the cross-border persecution of pro-Palestinian voices and the silencing of dissent supporting Palestinian lives and freedom.¹⁷⁸ Unofficial regional cooperation has enabled governments of Member States to crack down on pro-Palestinian dissent and repress freedom of expression. Coordinated digital surveillance has allowed States to persecute pro-Palestinian dissidents across borders, and the regional coordination of groups looking to silence pro-Palestinian speech and dissent has allowed for a greater abuse of counter-terrorism policies to violate human rights.¹⁷⁹

The government of Israel has also backed U.S. organizations and private actors who abuse the U.S. Material Support law in various U.S. courts¹⁸⁰ to carry out lawfare attacks on pro-Palestinian groups and to advocate against the Boycott, Divest, and Sanctions (BDS) movement.¹⁸¹

The regional influence of organizations that suppress pro-Palestinian voices extends beyond the U.S. For example, the International Holocaust Remembrance Alliance (IHRA)¹⁸² has worked within regional frameworks to implement a highly problematic definition of antisemitism. The IHRA definition states that criticism of Israel is antisemitic,¹⁸³ and endangers protected free speech.¹⁸⁴ The effort to implement this speech- and activism-chilling provision has been taken up in over 40 countries,¹⁸⁵ and regional organizations, like the Jewish Federations of North America (JFNA),¹⁸⁶ which coordinated support for U.S. legislation implementing the IHRA definition, have influenced this spread at a regional level.

Unofficial Regional Human Rights Mechanisms: The Case of the Sahel and Eurasia

¹⁷⁷ See e.g. Ellen Knickmeyer, Aamer Madhani & Matthew Lee. AP. "US says Israel's use of US arms likely violated international law, but evidence is incomplete." May 11, 2024. <https://apnews.com/article/us-israel-gaza-war-nsm-international-law-c83b6f39ce2799e5d2c473a337e2f857>.

¹⁷⁸ Wilfred Chan. The Guardian. Israel-Gaza war. "'The Palestine exception': why pro-Palestinian voices are suppressed in the US." Nov. 1, 2023. <https://www.theguardian.com/world/2023/nov/01/palestine-us-activism-firings-speech>.

¹⁷⁹ Tamara Kharroub. Arab Center for Washington DC. "Systematic Digital Repression: Social Media Censoring of Palestinian Voices." Jun. 8, 2021. <https://arabcenterdc.org/resource/systematic-digital-repression-social-media-censoring-of-palestinian-voices/>.

¹⁸⁰ See Charity & Security Network. Material Support. <https://charityandsecurity.org/issue-areas/material-support/>. Accessed Jul. 9, 2024.

¹⁸¹ See e.g. U.S. Campaign for Palestinian Rights. "Press Release: Supreme Court Rejects Attempt to Silence USCPR's Human Rights Advocacy." Jan. 22, 2024. <https://uscpr.org/press-release-supreme-court-rejects-attempt-to-silence-palestinian-human-rights-advocacy/>. See also Chris McGreal. The Guardian. "Zionist group uses US anti-terrorism laws to sue Palestinian activists." Jan. 20, 2023. <https://www.theguardian.com/world/2023/jan/20/zionist-group-anti-terrorism-laws-palestinian-activists-jnf-bds>.

¹⁸² IHRA. <https://holocaustremembrance.com/>. Accessed Jul. 1, 2024.

¹⁸³ IHRA. "What is Antisemitism?" <https://holocaustremembrance.com/resources/working-definition-antisemitism>. Accessed Jul. 1, 2024.

¹⁸⁴ ACLU. "LETTER: Reject Definitions of Antisemitism that Encompass Protected Speech." Feb. 6, 2024. <https://www.aclu.org/documents/reject-definitions-of-anti-semitism-that-encompass-protected-speech>.

¹⁸⁵ American Jewish Committee. "Adoption of the Working Definition." <https://www.ajc.org/adoption-of-the-working-definition>. Accessed Jul. 1, 2024.

¹⁸⁶ Jewish Federations of North America. "17 Jewish Organizations Push for Passage of Antisemitism Awareness Act." Feb. 21, 2024. <https://www.jewishfederations.org/fedworld/jewish-federations-460460>.

Beyond even unofficial agreements, there is also an issue of regional influence by Member States. Governments within a region influence each other; sometimes this can drive positive human rights efforts, but sometimes this can legitimize dangerous and repressive laws and counter-terrorism policies. In the Sahel, for example, oppressive administrative and regulatory measures have been imposed on humanitarian organizations in Member States across the region.¹⁸⁷ In Eurasia, Russian-influenced “foreign agent” laws have begun to propagate across the region, including new laws in Georgia¹⁸⁸ and Kyrgyzstan¹⁸⁹ that crack down on dissent and the freedom of speech.

Common Themes and Lessons Learned Across Regional Organizations and Coordinated Regional Action Implementing Counter-terrorism Measures

Regional organizations should engage meaningfully with civil society

While some regional organizations have robust civil society relationships, many – intentionally or otherwise – distance themselves from civil society and the scrutiny and accountability engagement may bring.

Examples of Good Practice: The Case of Intergovernmental Authority on Development

An example of good engagement with civil society by regional organizations that a partner raised during one of C&SN’s roundtables to inform this submission is the civil society trainings and interaction by the Intergovernmental Authority on Development (IGAD) in Eastern Africa. IGAD works to advance regional integration and cooperation towards prosperity, security, and peace for its Member States through stability, resilience, and sustainable development.¹⁹⁰ While the IGAD’s mandate originally focused on development cooperation,¹⁹¹ it has taken on a large peace and security mandate in the past 20 years.¹⁹² IGAD regularly initiates trainings for civil society in the IGAD region, such as the 2023 civil society forum in South Sudan to engage women and youth from across civil society in conflict resolution and negotiations.¹⁹³ Despite these positive efforts, even IGAD – an organization that includes direct engagement with civil society in its mandate – faces the fundamental dilemma of many formal regional organizations: some of IGAD’s operations and processes fall into a state-centric approach that inherently makes engagement with non-state actors (NSAs) and civil society difficult.¹⁹⁴

¹⁸⁷ Information on File with Author - Non-public Study.

¹⁸⁸ Emil Avdaliani. Carnegie Politika. “Georgia’s Foreign Agent Law Could Presage a Geopolitical Realignment.” May 17, 2024. <https://carnegieendowment.org/russia- Eurasia/politika/2024/05/georgia-protests-geopolitics?lang=en¢er=russia- Eurasia>.

¹⁸⁹ Committee to Protect Journalists. “Kyrgyzstan president signs Russian-style ‘foreign agents’ law.” Apr. 2, 2024. <https://cpj.org/2024/04/kyrgyzstan-president-signs-russian-style-foreign-agents-law/#:~:text=Under%20the%20law%2C%20the%20nonprofits,to%20almost%20unrestricted%20administrative%20control.%E2%80%9D>.

¹⁹⁰ Intergovernmental Authority on Development. “IGAD Vision and Mission Statements: Mission and Goal.” 2024. <https://igad.int/about/?tab=the-history>. Accessed Jul. 2.

¹⁹¹ Intergovernmental Authority on Development. “About IGAD.” <https://igad.int/about/?tab=the-history>. Accessed Jun. 26, 2024.

¹⁹² Intergovernmental Authority on Development. “Peace & Security.” <https://igad.int/peace-security/>. Accessed Jun. 26, 2024.

¹⁹³ Intergovernmental Authority on Development. “IGAD Mediation Support Unit Concludes a workshop for Civil Society Organizations Forum inception.” <https://igad.int/igad-mediation-support-unit-concludes-a-workshop-for-civil-society-organizations-forum-inception/#:~:text=Civil%20Society%20Organizations%20Forum%20inception.%20June%2015%2C,Sudan>. Accessed Jun. 26, 2024.

¹⁹⁴ Mesay Gobena. New Security Beat. “Climate Security in The Horn: Crafting a Broader Role for Non-State Actors in IGAD.” <https://www.newsecuritybeat.org/2023/02/climate-security-horn-crafting-broader-role-non-state-actors-igad/>.

Examples of Good Practice: The Inter Governmental Action Group against Money Laundering in West Africa

Additional regional organizations that regularly engage with civil society are ECOWAS and the GIABA. GIABA has over time engaged CSOs in its processes, including organizing AML/CFT workshops¹⁹⁵ and involving civil society in its Mutual Evaluation process.¹⁹⁶ More recently, GIABA was appointed as one of the members of the Nigerian Tri-Sector Dialogue, a multisectoral dialogue that brings together the banking, civil society, and government sectors to address issues of bank de-risking, to promote financial access, and to provide guidance on FATF recommendations and implementation of the standards.¹⁹⁷ Nigeria is the first country in the Majority World to host a Tri-Sector Dialogue, and given how rare it is for FSRBs to participate in these, it highlights GIABA's commitment to partnering with civil society.

GIABA has also provided some level of technical training and assistance to Member States in the area of AML/CFT, including the installation of AML/CFT analytical software and user training of the software for Ghana's Financial Intelligence Centre (FIC);¹⁹⁸ holding a Regional Capacity-Building Workshop for GIABA Member States on the Empowerment of National AML/CFT Coordination Mechanisms;¹⁹⁹ and, holding regional workshops on strengthening the implementation of the GIABA CFT strategy.²⁰⁰ GIABA has also conducted Virtual Biennial Policy Dialogues on the Impact of Supervision on Compliance by Reporting Entities, which "focus[ed] on the rule of law-based structural foundations in applying a wide range of sanctions that facilitates enforceability of other enforceable means (OEMs) to improve the compliance ratings on Supervision (IO #3) and Preventive Measures (IO #4)."²⁰¹

Examples of Good Practice: The ECOWAS Community Court of Justice

There are clear examples of regional organizations successfully intervening when Member States violate human rights in their counter-terrorism strategies, such as the 2020 case brought by Togolese civil society against the Togo government²⁰² in the ECOWAS Community Court of Justice. The Court is a judicial and legal institution within ECOWAS that "play[s] a strategic role in establishing and sustaining an enabling legal environment for the achievement of Community aims and objectives."²⁰³ Amid anti-government protests, the Togo government shut the internet down and employed excessive and unnecessary force against protestors.²⁰⁴ Civil society members brought them to task and the Court rejected Togo's national security-centered

¹⁹⁵ Spaces for Change. "S4C Participates In GIABA's Regional Workshop for Civil Society Organizations." Sep. 2018. <https://spacesforchange.org/s4c-participates-in-giabas-regional-workshop-for-civil-society-organizations/>

¹⁹⁶ Spaces for Change. "Nigerian CSOs Meet FATF/GIABA Assessors." Nov. 17, 2019. <https://spacesforchange.org/nigerian-csos-meet-fatf-giaba-assessors/>.

¹⁹⁷ Spaces for Change. "Tri-Sector Dialogues Kick Off in Nigeria." May 5, 2024. <https://spacesforchange.org/tri-sector-dialogues-kick-off-in-nigeria/>.

¹⁹⁸ GIABA. "Republic of Ghana." Accessed Jun. 26, 2024. <https://www.giaba.org/member-states/ghana.html>.

¹⁹⁹ GIABA. GIABA 2023 Annual Report. 2023 p. 37.

<https://www.giaba.org/Frame/pdfviewer%7C%7C2f4867f5eb84f4fc743069eebe5e01a27c80da7a69eda0c68cb891ad0639af29%7C%7CANNUAL%20REPORT%202023.pdf>.

²⁰⁰ *Ibid.*, at 60.

²⁰¹ *Ibid.*, at 37.

²⁰² Media Defense. "Landmark Judgment: ECOWAS Court Finds Togo Violated FoE with Internet Shutdown." Jun. 25, 2020. <https://www.mediadefence.org/news/landmark-judgment-ecowas-court-finds-togo-violated-foe-with-internet-shutdown/>.

²⁰³ ECOWAS. The Community Court of Justice. "Vision Statement." 2019. <http://www.courtecowas.org/about-us-2/>.

²⁰⁴ Media Defense, *supra* n. 202.

justification for their internet shutdown, ruling that it violated individual's rights. The ECOWAS Community Court of Justice followed with a consistent and strong line of rulings across Member States in support of internet access in the face of government restrictions, even those ordered on national security grounds.²⁰⁵ This is one of many instances where regional organizations did not allow States to disregard their obligation to international human rights, even in light of a State claiming national security concerns.

Further engagement with civil society is necessary for all regional organizations to ensure they are meeting their human rights responsibilities while implementing counter-terrorism policy. This engagement must be more than a "tick-box" exercise. Meaningful engagement means equitable, inclusive, and, where safe, institutionalized partnerships. Engagement should also include mechanisms for not only input by civil society but accountability mechanisms for those receiving the input as well, to ensure that regional organizations are complying with and championing IHRL while countering terrorism.

²⁰⁵ Media Defense. "ECOWAS Court condemns internet shutdown in Guinea.", Media Defence, 31 Oct. 31, 2023., <https://www.mediadefence.org/news/ecowas-court-condemns-internet-shutdown-in-guinea>. See also Global Freedom of Expression. Columbia University., "Internet Shutdowns in International Law.", Global Freedom of Expression, Columbia University, 2023. , at https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/07/GFoE_Internet-shutdowns-in-international-law.pdf.