

A human rights approach to preventing and countering violent extremism in Aotearoa



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Te Kāhui Tika Tangata
Human Rights Commission

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Introduction

- 1 The Human Rights Commission (the Commission) has prepared this paper at the request of the Department of Prime Minister and Cabinet (DPMC) to inform DPMC's co-ordination of the Government's response to recommendations made by the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on March 15 2019 (the Royal Commission), in particular the Government's obligation to ensure counter-terrorism efforts conforms to Aotearoa New Zealand's domestic and international human rights obligations.¹
- 2 DPMC have requested that the Commission's analysis include the following:
 - Assist the sector in developing more holistic and rights-respecting approaches to prevention [covered in Part 1 of the paper];
 - Analysis on how human rights are impacted by the proposed Strategic Framework for preventing and countering violent extremism [covered in Part 2]; and
 - Recommendations to address, mitigate or overcome any identified areas of interest or concern [covered in Part 3].

Background

- 3 The atrocities committed on the Masjidain in Ōtautahi Christchurch² on 15 March 2019 led to the tragic loss of 51 lives and the injury of dozens of others. This act of terror has demonstrated the need for the Government to respect and protect the human rights of all New Zealanders.³
- 4 Following the attack on Christchurch Masjidain and release of the Royal Commission's final report, it is evident that significant gaps existed within the relevant public sector agencies responsible for the counter-terrorism effort.⁴ There is an opportunity now to address those gaps by developing a rights-respecting Strategic Framework to prevent and counter violent extremism (PCVE), and to ensure that human rights play a critical role in the Strategic Framework.

1 Recommendation 2(g), [Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019](#).

2 Linwood Islamic Centre and Masjid Al Noor respectively.

3 Including migrants, asylum seekers, refugees and protected persons in Aotearoa New Zealand.

4 In its final report, the Royal Commission found that there was an "inappropriate concentration of resources on the threat of Islamist extremist terrorism" and that that concentration was not based on an informed assessment of the threats of terrorism associated with other ideologies. The Royal Commission also found that the relevant public agencies should have turned their attention towards the threat of extreme right-wing terrorism in response to the sharp increase in far-right activity internationally. See Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, at p. 593.

- 5 The Commission recognises that government agencies face a complex task in their aim to tackle the spread of violent extremism and to reduce the threat of terrorism in the long term. States have human rights obligations to protect life, and by extension, have a duty to take effective measures to counter terrorism and violent extremism. At the same time, such measures may have a limiting effect on human rights, such as imposing significant restrictions on an individual's freedom of thought, speech, movement, and association. It is therefore crucial that human rights and Te Tiriti o Waitangi are at the forefront of the proposed Strategic Framework.
- 6 Within this context, ensuring non-discrimination is essential. Indigenous peoples, racial, ethnic and religious minorities are particularly susceptible to, and over-targeted by, PCVE strategies. These groups are vulnerable to discriminatory perceptions that they are likely to be the perpetrators of terrorist activities, rather than the target of terrorists. In Aotearoa New Zealand, this was reflected in the Royal Commission's finding that, prior to the 15 March 2019 terrorist attacks, an "inappropriate" level of the government's intelligence and security resource was directed at the Muslim community. An unfortunate corollary to this form of discrimination by the State can be the development of mistrust in government institutions and authority within the communities marginalised by those practices.⁵
- 7 A rights-based approach also ensures that victims of rights violations, whether as a result of violent extremism or discriminatory counter measures targeted at them, are able to access and enjoy effective remedies.⁶
- 8 The Commission acknowledges the survivors, whānau and communities impacted by terrorism and violent extremism in Aotearoa New Zealand.

Purpose

- 9 The purpose of this paper is to provide a human rights and Te Tiriti-based perspective on efforts aimed at preventing and countering violent extremism to inform DPMC's proposed Preventing and Countering Violent Extremism Strategic Framework (the Strategic Framework).
- 10 The Strategic Framework is based on engagements conducted with "a range of different groups and people about what the issue and challenge of radicalisation and violent extremism means to them". The Strategic Framework identifies five areas as central to taking a principles-based approach:
 - Take a uniquely Aotearoa New Zealand perspective, grounded in Te Tiriti o Waitangi;
 - Actively involve all parts of society;
 - Reflect that building social cohesion is foundational to preventing and countering violent extremism;
 - Continuously build knowledge and evidence; and
 - Build trust and confidence with communities.

5 Amnesty International *A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-Terrorism in Europe* (2021) Amnesty International and the Open Society Foundations at p. 89.

6 See New Zealand Human Rights Commission. *Reflections on the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain On 15th March 2019: Human rights of affected whānau, survivors and witnesses to accountability and remedies in the aftermath of the Report* (2021).

- 11 Based on these engagements, five key outcomes are identified for the Strategic Framework:
- Protecting and supporting individuals that are down, or heading down, a path of radicalisation to violence;
 - Countering messages of hate and intolerance that promote violent extremist ideologies and behaviours and/or seek to undermine our democracy;
 - Creating a safe online environment mitigating risks of radicalisation;
 - Building awareness and understanding of radicalisation and extremism; and
 - Building resilience of individuals, whānau and communities to respond to extremism where it exists and where it may emerge.
- 12 This paper identifies, at a high level, the rights that are likely to be engaged by the Strategic Framework and ensuing PCVE measures and makes recommendations for DPMC's consideration.⁷
- 13 The question of which rights are affected, and extent to which those rights are impacted, is highly context specific. It is also important to understand where and how these rights intersect. The UN Special Rapporteur on the promotion and protection of human rights while countering terrorism (Special Rapporteur on counter-terrorism and human rights) has observed that “an intersectional approach to reflecting the experiences of [PCVE] measures demonstrates how experiences of human rights violations and discrimination are compounded” across a range of social identities including race, ethnicity, religion, disability, sexual orientation and identity, and gender.⁸
- 14 This paper does not attempt to cover all issues that exist within the PCVE field, nor does it attempt to address the full range of human rights that may be impacted by the Strategic Framework in an exhaustive way. Furthermore, this paper does not address the enforcement and surveillance powers aimed at countering terrorism.⁹
- 15 The Commission notes and maintains its independence as an Independent Crown Entity while undertaking this piece of work. The Commission has a wide range of functions and powers under the Human Rights Act 1993, including to advocate and promote respect for human rights.¹⁰ As such, the Commission will continue to monitor the implementation of counter terrorism and PCVE laws, policies and strategies against Te Tiriti and human rights.

Definitional challenges

- 16 In its draft Strategic Framework, DPMC underlines and defines key terms including “terrorism”, “violent extremism”, “extremism” and “radicalisation”.

7 The Commission emphasises that this paper should not be taken in lieu of a comprehensive human rights impact or risk assessment, but rather this paper sets out a human rights perspective in PCVE efforts.

8 *Human rights impacts of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family* A/HRC/46/36 (22 January 2021) at [3].

9 The Commission has produced submissions on intelligence and security laws and policy which cover these matters. See for example, New Zealand Human Rights Commission *Submission on the Independent Review of Intelligence and Security Services* (2015), New Zealand Human Rights Commission *Submission on Counter-Terrorism Legislation Bill* (2021), New Zealand Human Rights Commission, *Submission on Countering Terrorist Fighters Legislation Bill* (2014).

10 Section 5, Human Rights Act 1993.

- 17 The Commission notes that international human rights guidance is critical of strategies that fail to define terms such as “violent extremism”, “extremism”, “terrorism”, and “radicalization”.¹¹ There is a risk that conflating terrorism with violent extremism can result in overly broad PCVE measures being applied to conduct that may not amount terrorism. The Special Rapporteur on counter-terrorism and human rights has stated that “the lack of definitional clarity is only one of the reasons that preventing and countering violent extremism challenges human rights in complex and multiple ways”.¹² Equally, definitional issues arise to broad notions of “public safety” and “national security”.¹³
- 18 Careful attention must be paid towards ensuring that terms and definitions are clear. Reliance on poorly defined or ambiguous concepts risks the overbroad application of State measures against religious minorities, human rights defenders, indigenous groups and peaceful separatists.¹⁴ This can have counter-productive consequences. Clear definitions mitigate against the potential misuse of PCVE strategies and enable the formation of more effective, human rights consistent approaches that can be accurately measured for adequacy.¹⁵

11 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/HRC/31/65* (29 April 2016) at [35], and *Human rights impact of policies and practices aimed at preventing and countering violent extremism A/HRC/43/46* (21 February 2020) at [15]. The Commission also notes the importance of defining the terms “deradicalisation” and “disengagement” as they are core components relevant to the PCVE Strategic Framework.

12 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11, at [15]. In addition, The Human Rights Council has warned that broad national definitions and the use of the term ‘violent extremism’ as a basis for the adoption of new strategies prove even more hazardous for human rights than the term ‘terrorism’ (see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [35]).

13 At [35].

14 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [21].

15 Dr. Thissen, C. (2019) *Preventing Violent Extremism While Promoting Human Rights: Toward a Clarified UN Approach*. International Peace Institute at p. 6.

1 Developing PCVE Strategy – Engagement and Approach

- 19 This Part identifies aspects of the human rights-based approach that should be applied by the Government when developing its PCVE Strategic Framework.
- 20 International experience has demonstrated that PCVE strategies can have negative measurable effects leading to highly intrusive and discriminatory measures, with devastating consequences for marginalised groups. The protection and advancement of human rights is therefore an indispensable part of a successful long-term PCVE strategy.¹⁶
- 21 PCVE strategies should be based on the human rights principles and values set out and founded in the Universal Declaration of Human Rights and United Nations Charter¹⁷ and elaborated upon in the international human rights treaty framework, and which are centred on the protection of fundamental human rights and the promotion of peace.
- 22 The Global Counter-Terrorism Strategy is an instrument to enhance national and international efforts to counter terrorism. The Strategy is composed of four pillars that provide helpful guidance when considering measures to prevent and counter violent extremism:¹⁸
- Pillar I recognises that compliance with human rights is necessary to address long-term conditions conducive to the spread of terrorism;
 - Pillar II recognises the obligations of states to apprehend, prosecute and extradite perpetrators of terrorist acts, subject to obligations under human rights law, refugee law, and international human rights law;
 - Pillar III requires states to take measures to build capacity to combat terrorism; and
 - Pillar IV requires states to take practical steps to prevent and combat terrorism through respecting human rights and the rule of law.
- 23 A former Special Rapporteur on counter-terrorism and human rights has noted that two pillars; namely pillars I and IV, address some of the key elements of countering and preventing violent extremism, yet these pillars attract the least attention in terms of implementation compared to the more operational and security focused pillars II and III.¹⁹

16 Scheinin *Report of the UNSRCT – Ten areas of best practices in countering terrorism A/HRC/16/51* (22 December 2010), at [12].

17 Articles 1 (1), 1 (2), 1 (3), Article 13 (2), Article 55, Article 76, United Nations Charter.

18 *UN Global Counter-Terrorism Strategy A/RES60/288* (20 September 2006).

19 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [48].

- 24 To be effective, PCVE measures need to be distinct from the security aspect of countering terrorism. The former Special Rapporteur on counter-terrorism and human rights has recommended that States focus on pillars I and IV in doing so, as they are the “only holistic, effective and sustainable approach” to this issue.²⁰
- 25 Attention must also be given to ensuring that the Strategic Framework is grounded in human rights and Te Tiriti, so that it reflects the unique Aotearoa New Zealand context. A human rights and Te Tiriti-based approach is one that recognises that Te Tiriti commits the government to realising human rights²¹ and that the government is obligated by international human rights commitments to honour Te Tiriti.²²

Tangata whenua and Te Tiriti o Waitangi

- 26 As a Te Tiriti o Waitangi partner, the Government should develop all aspects of PCVE strategy with Māori. Any development of policy should ensure the realisation of the rights of tangata whenua to have Te Tiriti honoured, as reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).²³ A Te Tiriti approach must involve upholding and respecting the tino rangatiratanga and self-determination of tangata whenua to determine and lead their own solutions. It also means engaging with tangata whenua in all stages of the design and drafting of PCVE strategy and any programmes that may follow the implementation of the strategy.²⁴
- 27 Recognising the tino rangatiratanga authority and responsibilities held by tangata whenua, including those of manaakitanga and kaitiakitanga are important concepts to note, given that terrorist activity in Aotearoa New Zealand is ultimately carried out on indigenous land. The Permanent Forum on Indigenous Rights heard that indigenous people have a role to play in peace and security for this very reason, as well as the fact that terrorist and extremist activity threatens the lives of indigenous peoples and their ability to partner with governments in the establishment of institutions to protect their rights.²⁵

Marginalised communities

- 28 The importance of empowering vulnerable and minority groups in building resilience against the threat of violent extremism cannot be overstated. Such groups are at higher risk of experiencing the impact of PCVE measures.²⁶ As such, it is vital that the government instil trust in these communities. Working collaboratively and building trust with historically marginalised communities can provide valuable insight to governments in understanding the core of the issues they are seeking to prevent.²⁷ An approach based on empowerment requires that communities are directly and adequately resourced to deliver community-led education programmes or other initiatives.

20 At [48] and [56].

21 Kāwanatanga, Article One of Te Tiriti o Waitangi, see Wai 2417 Whāia te Mana Motuhake at 2.4.2(2), at p. 25: “It is a given that as part of the right to govern, it is the Crown’s responsibility to comply with its own laws. This is an essential element of good government.”

22 Article 37, UNDRIP.

23 Article 37(1), UNDRIP.

24 Article 18, UNDRIP.

25 UN Permanent Forum on Indigenous Issues *Indigenous Peoples’ Role in Peace, Security ‘Underappreciated’, Demands Greater Focus, Human Rights Expert Says, as Permanent Forum Continues Session HR/5459* (20 April 2021).

26 *Human rights impact of policies and practices aimed at preventing and countering violent extremism* above, n 11 at [42].

27 At [21].

- 29 The government should be proactive in creating spaces to converse with marginalised communities where they are able to voice their concerns and have their views heard, particularly in the PCVE field.²⁸ Acknowledging and incorporating the input from these communities in the development of the Strategic Framework and related programmes is essential if further discrimination and marginalisation is to be avoided.

Civil society

- 30 The engagement and participation of civil society organisations (CSO) should also be a feature of the developmental process of both PCVE policies as well as prevention programmes. The Special Rapporteur on counter-terrorism and human rights has noted the failure of policymakers to take into account knowledge and information on local political grievances, underlying drivers of conflict, structural instability, and political tensions over resource allocation as unforgivable.²⁹
- 31 Civil society are also key players in deradicalisation and recovery efforts in the aftermath of violent extremist and terrorist activity and can play a role in building bridges between the Government and communities. CSOs include a wealth of diverse expertise including advocates, researchers, academics and educators, and therefore engaging CSOs can play a crucial part in prevention programmes. The establishment of the National Centre of Research Excellence for Preventing and Countering Violent Extremism, He Whenua Taurikura, is likely to play a key role in informing the development of such programmes. It will be important for the Centre's work and research findings to be promoted and made widely available to communities and CSOs working in this area.

Victims of terrorism

- 32 Engagements should also be conducted with victims of terrorism and violent extremism.³⁰ The UN has recognised victims of terrorism as a key component in effective counter-terrorism measures and countering the appeal of terrorism.³¹ Victims of terrorism, their representatives, and victims' groups should be enhanced and provided with ongoing training and forums to exchange good practices and explore alternative approaches.³² The UN has emphasised need for policies on preventing and countering terrorism that are more victim-centric and emphasise the victims' role in prevention.³³

28 At [21].

29 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11 at [20].

30 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (resolution 60/147), adopted 16 December 2005. Clause 8 provides that "*For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*"

31 International Day of Remembrance of and Tribute to the Victims of Terrorism A/RES/72/165 (25 January 2018) and see UN Global Counter-Terrorism Strategy, above, n 18, at [8].

32 United Nations Office on Drugs and Crime *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015) New York: United States of America at [226].

33 Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy A/74/677 (7 February 2020).

Children and young people

- 33 Young people will play a key role in promoting peace and harmonious relations in society.³⁴ Often targeted for recruitment and radicalisation to violent extremist organisations, our youth must be empowered to build resilience to safely prevent and counter the spread of violent extremism, particularly in a digital environment.³⁵
- 34 This issue engages the Government's duties under the Convention on the Rights of the Child, which provides for the right of children and young people to access information, especially information aimed at the promotion of their health, well-being and social/cultural benefit.³⁶ The Convention goes on to provide that States should “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.”³⁷
- 35 The Committee on the Rights of the Child has recently noted that training and advice on the appropriate use of digital devices should be given to relevant actors including educators and parents. Such training or guidance should take into account the research on effects of digital technologies on children's development.³⁸ This should include support for young people from refugee and migrant communities. Currently, nearly half of the refugee quota is aged under 18 and it is essential that they are provided with well-resourced, tailored settlement support.
- 36 Engaging with rangatahi should also be a priority in the effort to prevent and counter violent extremism.³⁹ Further to the participation requirements of the Convention, Government should seek the views of children and young people, and give them due weight, when developing the Strategic Framework in relation to their rights in relation to the digital environment.⁴⁰

Women and girls

- 37 There is growing recognition of the pivotal role that the views, perspectives and participation of women, must play in countering terrorism and preventing violent extremism.
- 38 The Special Rapporteur on counter-terrorism and human rights has noted her concern that “women and girls bear heavy and unseen burdens resulting from both the direct and indirect impacts of counter-terrorism law and practice”.⁴¹ Despite this, the Special Rapporteur has drawn attention to the under-representation of women in the counter-terrorism sector itself and in doing so has emphasised that “counter-terrorism law and policy,

34 The United Nations General Assembly's Plan of Action to Prevent Violent Extremism calls for particular attention to be paid to youth, who make up approximately 1.8 billion of the world's population, and the need for youth to be supported as they promote values of peace to counter violent extremism and ideologies. See *Plan of Action to Prevent Violent Extremism A/70/674* (24 December 2015) at [52].

35 See *General Comment No.25 (2021) on children's rights in relation to the digital environment CRC/C/GC/25* (2 March 2021).

36 Article 17 and 17(a), Convention on the Rights of the Child.

37 Article 17(e), Convention on the Rights of the Child.

38 At [15].

39 See Security Council resolution 2250 (2015) on Youth, Peace and Security; United Nations Youth Strategy, and United Nations Global Counter-Terrorism Strategy which encourages Member States and UN entities to consider instituting mechanisms to involve youth in the promotion of a culture of peace, tolerance and intercultural and interreligious dialogue and develop, as appropriate, an understanding of respect for human dignity, pluralism and diversity, including, as appropriate, through education programmes.

40 General comment No.25 (2021) on children's rights in relation to the digital environment, above n 35, at [17].

41 *Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family*, above, n 8 at [5].

particularly in formal and elite settings, national and international, occur in spaces which are dominated by male actors and informed by gendered stereotypes.”⁴²

- 39 She accordingly has observed that “improved gender representation can have significant positive effects on the design, delivery and oversight of counter-terrorism law and practice including for women and girls”⁴³ and recommended that States “adequately and consistently incorporate a gender perspective into counter-terrorism law and policy across all areas.”⁴⁴
- 40 Other UN institutions have similarly reflected upon the need for a gendered approach to counter-terrorism efforts. The UN Secretary-General has remarked on “the disproportionate and devastating impact of terrorism on the rights and agency of women and girls, which undermines the overall resilience of communities.”⁴⁵ The Secretary-General has also pointed to the need for the misogyny that underpins the discourse and objectives of terrorists and associated gender-based violence to be “further understood and specifically tackled”.⁴⁶ The potential impact of violent extremism on women and girls is discussed in further detail in Part 2.

Sexual orientation, gender identity or expression, and sex characteristics

- 41 Evidence is demonstrating that hate crimes committed on the basis of sexual orientation, gender identity or expression, and sex characteristics (SOGIESC) is increasing.⁴⁷ Violence based on actual or perceived SOGIESC is both domestic and global. Although progress has been made in this area; including civil unions, marriage equality, and the banning of conversion practices, the root causes of violence based on SOGIESC are yet to be properly addressed. With increasing concern, United Nations bodies and experts have noted that the pathologizing of trans and gender diverse people continues to be one of the root causes behind the human rights violations against them.⁴⁸
- 42 Trans men, trans women, and non-binary people in Aotearoa New Zealand report feeling unsafe in their communities in rates similar to women in the general population,⁴⁹ demonstrating that the gendered impact of safety extends to gender minorities. The Commission has long advocated for hate speech legislation to be extended to protect SOGIESC communities, who experience violent extremist hostility.⁵⁰

42 At [4].

43 At [5].

44 At [39(b)].

45 Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, above n 33 at [38].

46 At [38].

47 *Report to the Human Rights Council by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity A/HRC/38/43* (11 May 2018) at [38].

48 See United Nations Office of the High Commissioner for Human Rights Press Release, “Embrace diversity and protect trans and gender diverse children and adolescents”, International Day against Homophobia, Transphobia and Biphobia”(17 May 2017).

49 Counting Ourselves was a 2018 survey on the health and wellbeing of trans and non-binary people in Aotearoa New Zealand. See p. 76. https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves_Report-Dec-19-Online.pdf

50 See New Zealand Human Rights Commission (2020) *Prism: Human rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Aotearoa New Zealand – A report with recommendations*. Wellington: New Zealand, and New Zealand Human Rights Commission (2021) *Ministry of Justice Proposals against incitement of hatred and discrimination* Wellington: New Zealand.

- 43 It is crucial that the Government engage with SOGIESC communities to understand the prevalence of violent extremist ideology that targets these groups to inform its PCVE strategy.

Supporting communities to address radicalisation

- 44 De-radicalisation efforts are a crucial component in any PCVE strategy. It is paramount that adequate resourcing and support are provided for both perpetrators and the communities in which they live or need to be integrated into. Government support for holistic, culturally appropriate community-based pastoral services for those vulnerable to radicalisation is essential.⁵¹
- 45 Academics, experts and civil society organisations should also inform and contribute to the policy design process, particularly in relation to domestic factors and drivers of violent extremism.⁵² However, caution must be taken with the so called “whole of society” approach, where certain members of the community such as teachers, families, religious leaders and medical professionals are tasked with primary responsibility for detecting signs of radicalisation. Such policies are susceptible to overreporting and discriminatory profiling and are at risk of giving rise to human rights breaches.⁵³
- 46 It is vital to note, as outlined by the Human Rights Council, that abuses of human rights, including discrimination, might create an environment in which people are vulnerable to radicalisation and recruitment by violent extremist groups.⁵⁴ The root causes of contemporary violent conflicts have been found to be usually intimately linked to breaches of the human rights of minority communities.⁵⁵ Communities should be engaged in the design and implementation of PCVE strategy and programmes to reflect the context-specifics of violent extremist drivers.⁵⁶

Strengthening social cohesion

- 47 While causes of radicalisation are nuanced, there are certain factors that have been attributed to the radicalisation of individuals, including stigmatisation and the stereotyping of certain communities, discrimination, and marginalisation. These factors can act as barriers to social inclusion, thereby increasing the risk of radicalisation of individuals.⁵⁷ Social inclusion is deeply connected with human rights and can be understood as having an equitable opportunity to participate in everyday activities. Social inclusion can be supported by ensuring people have the social, economic, cultural, and political resources needed to

51 See for example, Jehan Casinadar “The makings of terrorist – and the people who tried to help him” *Stuff* (online ed, 11 September 2021).

52 United Nations Development Programme *Preventing Violent Extremism Through Promoting Inclusive Development, Tolerance and Respect for Diversity* (2016) Norway UNDP.

53 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11, at [32].

54 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [26].

55 Human Rights Council *Forum on Minority Issues Fourteenth session A/HRC/FMI/2021/1* (23 September 2021) at p.2.

56 UN Office of the High Commissioner for Human Rights *Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism* (2003) at p. 5.

57 RAN Centre of Excellence Radicalisation Awareness Network *Guidelines for young activists: how to set up a PCVE initiative* (March 2019) at p. 5.

take up opportunities in everyday activities.⁵⁸ The RAN Centre of Excellence Radicalisation Awareness Network identify other drivers of radicalisation including:⁵⁹

- **Individual sociopsychological factors**, such as a sense of injustice, anger and frustration resulting from rigid binary thinking and conspiracy theories promoted through propaganda;
- **Cultural and identity issues**, such as cultural marginalisation, resulting in alienation and a lack of a sense of belonging; and
- **Role of social media** in connecting people with extremist views.

48 Social inclusion and the strengthening of social cohesion in societies is therefore integral to any approach to mitigate social exclusion, which can progress to embracing extremist ideology, that can in turn lead to radicalisation. A University of Birmingham paper compared social cohesion initiatives to counter violent extremism, finding that community-based social cohesion programmes were widely effective.⁶⁰ In particular, the study found that counter-narratives created and disseminated by trusted community leaders were a prominent protective factor against violent extremism.⁶¹

49 The United Nations Development Programme highlights eight drivers that can result in violent extremism:⁶²

- impact of global politics;
- economic exclusion and limited opportunities for upward mobility;
- political exclusion and shrinking civic space;
- inequality;
- injustice;
- corruption and the violation of human rights;
- disenchantment with socioeconomic and political systems;
- rejection of growing diversity in society;
- weak State capacity and failing security; and
- a changing global culture and the banalization of violence in the media and entertainment.

50 Reducing the threat of violent extremism is a complex challenge for governments and societies as a whole.⁶³ The instructive joint United Nations and World Bank study in 2018 on inclusive approaches to preventing violent conflict found that the main drivers of

58 Ministry of Social Development (2020) *Social inclusion in New Zealand: Rapid Evidence Review* at p. 9. See also *Plan of Action to Prevent Violent Extremism*, above, n 34 at [34] in which the Secretary General highlighted that a lack of economic, social and cultural rights provide opportunities for violent extremists.

59 *Guidelines for young activists: how to set up a P/CVE initiative*, above n 57 at p. 5.

60 Idris, I. *Community cohesion projects to prevent violent extremism* (2 July 2019) University of Birmingham.

61 At p.2.

62 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11 at [20].

63 Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, above, n 33 at [29].

instability globally are group-based grievances around exclusion and injustice.⁶⁴ The study observed that “[i]t is when an aggrieved group assigns blame to others or to the state for its perceived economic, political, or social exclusion that its grievances may become politicized and risk tipping into violence”, and that even a mere perception of exclusion can evolve into group-based grievances.⁶⁵ Addressing exclusion and inequality is therefore key to any prevention strategy.

- 51 The Ministry for Social Development’s *Rapid Evidence Review*, refers to international evidence that associates poverty and income inequality with social exclusion and indicates that long-term progress towards building social inclusion will require all people having adequate material resources to participate fully in society.⁶⁶ This reinforces the importance of taking a holistic approach to social inclusion policies that has regard to social and economic rights such as the right to an adequate standard of living, the right to a decent home, and the right to accessible education.
- 52 A deep understanding of the drivers of violent extremism in Aotearoa New Zealand, as informed by communities, is essential to the long-term success of the Strategic Framework.

64 United Nations and World Bank Group (2018) *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* at p.109

65 At p.109 and 130.

66 Social Inclusion in New Zealand, above, n 58 at p. 39.

2 The Human Rights Impacted by a PCVE Strategy

Non-discrimination

(Te Tiriti o Waitangi art 3 | UDHR art 1, 2, 7 | ICCPR art 2, 3, 26 | ICESCR art 2, 3 | CEDAW art 2 | CERD art 2 | NZBORA s 19 | HRA Parts 1A & 2)

- 53 The right to freedom from discrimination is a fundamental human rights principle protected in the core international human rights treaties and in our domestic human rights legislation.⁶⁷ The prohibition on discrimination applies to policies and practices of the state to prevent and counter violent extremism. Non-discrimination must be a key consideration in assessing the impact of PCVE strategies on human rights.
- 54 Internationally, the expanding tranche of policies and practices that are justified on national security grounds often serve as a platform for both direct and indirect discrimination.⁶⁸ The Special Rapporteur on counter-terrorism and human rights has reported that discriminatory counter-terrorism and PCVE measures have been criticised for targeting certain groups and communities, particularly based on religious grounds.⁶⁹ In the post-9/11 environment, Muslims and those perceived to be Muslim have been the subject of disproportionate state scrutiny.
- 55 States must avoid associating violent extremism with any culture, religion, ethnic group, nationality, or race.⁷⁰ Effective strategies should not be based on misconceptions about the groups that are most susceptible to violent extremism,⁷¹ but should be based on sound evidence to reflect radicalisation indicators and effective preventative initiatives in the Aotearoa New Zealand context. PCVE measures targeting specific ethnic or religious groups carry the risk of an upsurge of discrimination and racism.⁷²

67 Section 19, New Zealand Bill of Rights Act 1990; The prohibited grounds of discrimination are outlined in s 21 Human Rights Act 1993.

68 Indirect discrimination occurs when a facially neutral policy has a disproportionate impact on a group or person because of a particular characteristic of that group or person that corresponds with a prohibited ground of discrimination. See s 65, Human Rights Act 1993.

69 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11 at [28].

70 In its 2015 *Submission on the Independent Review of Intelligence and Security Services*, the Human Rights Commission underlined that the 2013 and 2014 legislative reforms to intelligence and security failed to address racial profiling in surveillance operations, noting that both civic education initiatives and community development approaches that avoid stigmatisation of particular communities are essential components of any security framework (at [16]. See also Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighters Phenomenon of the Global Counterterrorism Forum.

71 For example, the Royal Commission found that there was an inappropriate concentration of resources towards the threat of Islamist extremism by the intelligence and security agencies before the 15 March Attacks, and that that inappropriate concentration was not based on an informed assessment of the threats of terrorism associated with other ideologies.

72 UN Office of the High Commissioner for Human Rights *Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism*, above, n 56 at p.5.

Tangata whenua and the rights of Indigenous peoples

(Te Tiriti o Waitangi | UNDRIP | ICCPR art 2, 4, 26, 27 | ICESCR art 1 | CERD art 2, 4, 5, 6, 7)

- 56 The Government has specific obligations to Māori under Te Tiriti o Waitangi as the founding constitutional document of Aotearoa New Zealand. As discussed above at paragraph 26, the Government must enable tangata whenua to exercise their tino rangatiratanga and self-determination in relation to these issues, and meaningfully engage with Māori in the design, delivery, and ongoing monitoring and evaluation of PCVE strategies, to ensure it is compliant with Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples.
- 57 As tangata whenua and indigenous peoples of Aotearoa New Zealand, Māori make up and represent a unique group who are particularly susceptible to the overreach of government. Against the backdrop of historical factors such as colonisation, dispossession and racial discrimination, Māori are at risk of falling victim to negative impacts of PCVE strategy that has the potential to exacerbate intergenerational harm and distrust of the state.⁷³ In relation to the Urewera “terror raids” in 2007, Moana Jackson observed that the raids, which brought hurt and fear into the lives of innocent people, “created a legacy of mistrust that will not be easily remedied”.⁷⁴
- 58 It is against this historical context that the Government must consider in the development of PCVE measures, as they present unique challenges for tangata whenua as a distinct group living with the enduring effects of colonisation and intergenerational harm.
- 59 Government must also consider and actively protect the rights of tangata whenua as potential targets of violent extremism, noting that internationally, the “drastic increase in attacks and acts of violence against, criminalisation of and threats aimed at indigenous peoples” has attracted grave concern, and has been the subject of recent UN reports.⁷⁵ Concerns have also been raised by Indigenous rights advocates in Aotearoa New Zealand, noting that the preconditions discussed in those reports “as the pre-conditions for killings are exactly the conditions we are experiencing in Aotearoa right now”.⁷⁶

Religion and identity

(UDHR art 2, 18 | ICCPR art 2, 4, 18, 26, 27 | CERD art 2, 4, 5, 6, 7)

- 60 Religious minorities are particularly at risk of being targeted by PCVE measures. Following the 9/11 Terrorist Attacks, religious and ethnic minorities have come under particular scrutiny by state agencies responsible for the counter-terrorism effort.⁷⁷

73 For example, unlawful Police conduct towards the Tūhoe community during the Urewera Raids.

74 Jackson, M. (2008) cited in Sluka, J. *The Rūatoki Valley ‘Antiterrorism’ Police Raids: Losing ‘Hearts and Minds’ in Te Urewera* (2010) Sites: New Series Vol 7 No. 1 at p. 57.

75 *Report of the Special Rapporteur on the rights of indigenous peoples A/HRC/39/17* (10 August 2018) at [4], see also Human Rights Council (2020) *Final warning: death threats and killings of human rights defenders and Report of the Special Rapporteur on the situation of human rights defenders A/HRC/46/35* (24 December 2020).

76 [Joint statement to the EMRIP 14th session by Tina Ngata on behalf of Seventh Generation Fund for Indigenous Peoples and the Aotearoa Independent Monitoring Mechanism](#)

77 Research in the United Kingdom suggests that the greatest public hostility and prejudice is focused on those who are visibly identifiable as, or perceived to be, Muslims, including non-Muslims such as Sikhs wearing turbans. See Choudhury, 2010; Sheridan and Gillett, 2005; Ameli et al., 2004, cited in *The Impact of Counter-Terrorism Measures on Muslim Communities* (2011) Equality and Human Rights Commission, Durham University at p.8.

- 61 While there is widespread anti-Islamic bias in the PCVE field, there is a lack of empirical data to support the assumption that religious ideology supports terrorism.⁷⁸ Radicalisation is a highly localised and personal process and should not be viewed as being associated with religion. The Special Rapporteur on counter-terrorism and human rights has observed that individual psychology is significant, along with loss of trust in politicians, political system, and security agencies' repressive approaches.⁷⁹
- 62 In Aotearoa New Zealand, the Royal Commission found that there was an “inappropriate concentration of resources on the threat of Islamist extremist terrorism” and that that concentration was not based on an informed assessment of the threats of terrorism associated with other ideologies.⁸⁰ Put simply, members of the Muslim community were subject to disproportionate scrutiny by those responsible for the counter terrorism effort.
- 63 The Special Rapporteur also cautioned that many counter terrorism programmes and practices were directly contributing to the violation of human rights at the national level.⁸¹

Ethnicity

- 64 While ethnicity should be considered as often overlapping with religion and identity, and intersecting with Indigenous rights, it is important to consider the impact of PCVE measures on other ethnic minorities as distinct groups in Aotearoa New Zealand, including migrants, asylum seekers and refugees.⁸² Of particular application are the objectives of the Global Compact for Migration, endorsed by the UN General Assembly and supported by the New Zealand Government.⁸³ The Global Compact provides for objectives to “empower migrants and societies to realize full inclusion and social cohesion” and “eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration.”⁸⁴
- 65 Particular consideration should also be paid to local political grievances to best understand the drivers of violent extremism and where it is likely to be directed.⁸⁵ For example, the COVID-19 pandemic itself has seen a rise in hateful speech and xenophobia, particularly directed towards Chinese and Asian-looking people. The rise of far-right ideology and white supremacy groups have capitalised on the COVID-19 crisis to increase their support base, including by fuelling social polarisation.⁸⁶ As the joint UN and World Bank Study notes, today's violent extremist groups are taking advantage of divisions among groups and building opportunist alliances to an unprecedented degree.⁸⁷ Similar to the role civil society can play in building bridges between community and government, so too can ethnic community leaders.

78 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above n 11 at [18].

79 At [19].

80 Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, at p. 610.

81 United Nations Office of the High Commissioner for *Human Rights Human Rights Council discusses the protection of human rights while countering terrorism* (4 March 2020).

82 See *CCPR General Comment No. 15 The Position of Aliens Under the Covenant (11 April 1986) at [1] and [7] and Report of the Secretary-General – Human Rights of Migrants A/74/271* (2 August 2015) at [6].

83 UN General Assembly, 73rd Session, 60th and 61st meetings GA/12113, (19 December 2018).

84 Global Compact for Safe, Orderly and Regular Migration, Final Draft, 11 July 2018, Objectives 16 and 17.

85 See for example, *It Happened Here: Reports of race and religious hate crime in New Zealand 2004-2012* (2019) New Zealand Human Rights Commission, Wellington.

86 *Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy A/75/729* (29 January 2021) at [10].

87 *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* above, n 64 at p.22

Women and girls

(CEDAW art 2, 3, 7, 8)

- 66 There is a need for particular consideration of both the impact of violent extremism on women and girls, as well as the impact of efforts to prevent and counter violent extremism, on women and girls.
- 67 The UN Security Council has recently highlighted the unique impact of terrorism and violent extremism on women and girls, including in the context of their health, education and participation in public life, and made good practice recommendations for States to address the issue better.⁸⁸ The Special Rapporteur on counter-terrorism and human rights has noted significant gaps in practice for addressing the specific needs of women and girls as victims, citing studies confirming that women who are victims of terrorism experience and manifest trauma differently from men and have different social, psychological and material needs.⁸⁹
- 68 PCVE measures can have a disproportionate impact on women and girls and families through the employment of mainstream gender stereotyping.⁹⁰ The Special Rapporteur has noted that counter-terrorism policymakers not only suffer from a “diversity crisis” along gender and race lines, especially at the highest levels of decision-making, but also function within institutionalised cultures of misogyny and gender bias that perpetuate gender inequality and cultures of impunity.⁹¹
- 69 Special consideration should also be afforded to children’s rights and the rights to education and health, insofar as implementation of any PCVE programmes in schools, education facilities and health providers are concerned.

Freedom of expression, movement, thought, conscience, religion, association and assembly

Freedom of expression (UDHR at 19 | ICCPR art 19 | NZBORA s 14)

- 70 Freedom of expression is an essential foundation of a democratic society. New Zealand courts have observed that the right is “as wide as human thought and imagination”⁹² and “a basic aspect of the New Zealand democratic system.”⁹³
- 71 The right to freedom of expression applies “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive, but also to those that might deeply offend”.⁹⁴ The right to receive information and opinions is also a component of the right to freedom of expression.⁹⁵

88 *Human rights impacts of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family above*, n 8 at [31].

89 At [31].

90 At [6]. See also Global Counterterrorism forum, *Good Practices on Women and Countering Violent Extremism*

91 *Human rights impacts of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family above*, n 8 at [6].

92 *Mooney v Film and Literature Board Review* [2000] 2 NZLR 9 at [15]

93 *Brooker v Police* [2007] 3 NZLR 91 at [114].

94 *General Comment No 34 Article 19: Freedoms of opinion and expression* CCPR/C/GC/34 (21 July 2011) at [11].

95 Butler, A. & Butler, P. *The New Zealand Bill of Rights Act: a commentary* (Lexis Nexis, Wellington, 2015) at [13.7.32] “[t]he right to receive information prevents the state from restricting a person from receiving information that others may wish or may be willing to impart to her or him.”

- 72 However, it is not an absolute right. The International Covenant on Civil and Political Rights (ICCPR) provides that there are circumstances in which the right to freedom of expression may be limited, such as for the protection of national security.⁹⁶
- 73 While expression that amounts to hatred and incitement to hostility or violence may be restricted, great care must be taken to ensure that any measures that may limit the right to freedom of expression is vested in a clear, accessible legal instrument and have a legitimate purpose that is both necessary and proportionate to the threat it is targeted at.⁹⁷
- 74 The UN Human Rights Committee has held that any measures that might restrict freedom of expression “may not put in jeopardy the right itself” and reflect the “universality of human rights and the principle of non-discrimination.”⁹⁸

Freedom of opinion, thought, conscience, religion, movement, association and assembly (UDHR art 18, 19, 20 | ICCPR art 12, 18, 19, 20, 21 | NZBORA ss 13, 15, 16, 17, 18)

- 75 Everyone has the right to hold views and opinions on any issue without fear of reprisals. Freedom of thought, conscience and belief, including the adoption of belief, has been described by the UN Human Rights Committee as “far-reaching and profound” and not subject to limitation.⁹⁹
- 76 However, the Committee has held that a distinction exists between the right to hold beliefs and the right to manifest them. Manifestation of belief may be subject to limitations if it incites discrimination, hostility or violence or where lawful, proportionate limitations are “necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others”.¹⁰⁰
- 77 The Special Rapporteur on counter-terrorism and human rights has observed that measures which seek to restrict the entry or internal movement of groups of individuals deemed more likely to be “extremists”, can have a serious impact on a wide range of their rights, including freedom of movement; presumption of innocence and right to due process; right to protection for family and private life; right to liberty and security of the person; freedom of religion, belief, opinion, expression and association.¹⁰¹ Such measures can also have a serious impact on the rights of refugees to protection under the 1951 Convention on the Status of Refugees.¹⁰²
- 78 The Special Rapporteur on counter-terrorism and human rights noted that such restrictive measures are very broadly defined or that are far removed from the actual commission of acts of violence risk interfering with freedom of expression, religion or belief, and freedom of assembly and association.¹⁰³

96 Art 19(3)(b), ICCPR. In Aotearoa New Zealand, the NZBORA recognises that the right to freedom of expression (as with other rights protected under the NZBORA) can be subject to “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”, see *Wall v Fairfax* [2017] NZHRRT 17 at [171].

97 *General Comment No 34 Article 19: Freedoms of opinion and expression*, above, n 94 at [35].

98 At [21] and [32].

99 *General Comment No 22. (48) (art. 18) CCPR/C/21/Rev.1/Add.4* (27 September 1993) at [3].

100 At [7] and [8].

101 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [41].

102 At [41].

103 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [37] and [41].

Privacy

(UDHR art 12 | ICCPR art 17 | Privacy Act 2020)

- 79 While the right to privacy is not included in the New Zealand Bill of Rights Act 1990, it is important to note that it is a protected human right under Article 17 of the ICCPR and is acknowledged as such under the Privacy Act 2020.
- 80 PCVE measures have the potential to intrude upon the right to privacy, particularly so in the context of electronic mass surveillance, data interception and practices which seek bulk access to digital communications. The Special Rapporteur on counter-terrorism and human rights has held that the State's obligations under Article 17 includes an obligation to respect the privacy and security of digital communications.¹⁰⁴
- 81 Any measures which might interfere with a person's privacy must not be arbitrary and comply with the ICCPR principles of legality, necessity and proportionality.¹⁰⁵ In relation to countering terrorism, the Council of Europe's Guidelines on human rights and the fight against terrorism provides that data collection and processing:¹⁰⁶
- Are governed by appropriate provisions of domestic law;
 - Are proportionate to the aim for which the collection and the processing were foreseen; and
 - Are subject to supervision by an external independent authority.
- 82 Independent oversight and transparency about the use and sharing of personal information is paramount to avoid the perception that PCVE strategies are simply another arm of security and intelligence agencies as opposed to genuine efforts to foster social cohesion.¹⁰⁷

The rights of victims of violent extremism and terrorism

(UDHR art 8 | ICCPR art 2 | NZBORA s 27)

- 83 The first obligation of the state is to protect the lives of its citizens and of all individuals within its territory.¹⁰⁸ The rights of victims should be considered in a broad range of contexts; including direct, indirect, secondary, and potential victims of terrorism.¹⁰⁹
- 84 It is well established that the impact of victimisation is often great and far reaching, and can include physical and psychological injury, as well as financial and social cost.¹¹⁰ The specific rights to an effective remedy for victims of terrorism under 2.3 of the ICCPR and corresponding state duties are set out in the UN Basic Principles.¹¹¹ The Principles not only

¹⁰⁴ At [40].

¹⁰⁵ Human Rights Committee, *General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* CCPR/C/21/Rev.1/Add. 13 (26 May 2004) at [6].

¹⁰⁶ Office of the United Nations High Commissioner for *Human Rights Human rights, Terrorism and Counter-Terrorism* Fact Sheet No. 32 (2008) Geneva, United Nations.

¹⁰⁷ *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11 at [32]. See also New Zealand Human Rights Commission *Submission on the Independent Review of Intelligence and Security Services* (2015) at [7]-[11].

¹⁰⁸ Article 6, ICCPR.

¹⁰⁹ *Framework principles for securing the human rights of victims of terrorism* A/HRC/20/14 (4 June 2012) at [11].

¹¹⁰ United National Office for Drug Control and Crime Prevention Handbook on Justice for Victims (1999) at p.4-6.

¹¹¹ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* A/RES/60/147 (2006).

establishes the duty of states to provide reparatory or compensatory relief to victims, they also establish duties of:

- a satisfaction, which includes the processes aimed at stopping violations from occurring in the future;
- b guarantees of non-repetition, which includes reviewing and reforming laws, as well as promoting mechanisms for preventing, monitoring and resolving injustice and conflicts; and
- c rehabilitation measures, which include medical, psychological care, and other social services.

85 Accountability and a holistic range of remedial avenues should be central to any response to victims of terrorism and violent extremism. A human rights-based PCVE strategy should reflect this.

Responding to violent extremism and terrorism

86 Furthermore, in cases where PCVE measures result in rights being breached, avenues that provide accountability and remedy must be available. This should include victim-centric, culturally appropriate, and trauma-informed complaints services for receiving, assessing and responding to such complaints.

The right to rehabilitation and social reintegration

(ICCPR, art 10)

87 Deradicalisation, disengagement and rehabilitation programmes in the PCVE arena are a key component in creating sustainable movements for a more secure and peaceful society.¹¹² Efforts in this space should proactively and actively promote and protect human rights and the rule of law.

88 The Commission acknowledges recommendations 29 and 31 of the Royal Commission's final report which calls for the Ministry of Social Development to develop a social cohesion strategic framework with civil society and local government as well as the development of measures and indicators of social cohesion. Strengthening social cohesion can be a key tool in the PCVE approach as it seeks to eliminate extremist ideologies from the roots before it has a chance to flourish through misinformation or disinformation.

89 While investment in national social cohesion programmes as a means to create harmonious relationships across diverse communities in Aotearoa New Zealand is essential, priority should also be given to ensuring that sustainable de-radicalisation programmes are available to work with those individuals and groups who have developed extremist and violent ideologies.¹¹³ Government agencies should accordingly work in partnership with mana whenua, tangata whenua, expert civil society organisations and communities to develop human rights-compliant, age- and gender- sensitive de-radicalisation programmes aimed at the rehabilitation and social re-integration of individuals and groups who have been radicalised.¹¹⁴ As investment and expertise in this area is relatively new, collaboration across the responsible Government agencies will also be important. These work programmes must also comply with international and domestic human rights standards and obligations.

112 Bowen, J. and Jawai, A. (2017) *Why Preventing Violent Extremism Needs Sustaining Peace* International Peace Institute at p. 3.

113 See for example, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [15]-[16].

114 See Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders.

- 90 International human rights standards provide guidance on purposes for systems and institutions that play a part in preventing crimes and rehabilitating perpetrators. The ICCPR, for example, provides that “the essential aim” of the corrections system should be “reformation and social rehabilitation”.¹¹⁵ Adequate resourcing of programmes that rehabilitate radicalised prisoners should accordingly be prioritised.
- 91 The Mandela Rules¹¹⁶ provide general human rights guidance regarding rehabilitative treatment and reintegration to society following detention. This includes acknowledging that the purposes of imprisonment in protecting society and reducing crime can only be achieved if it is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.¹¹⁷ The Mandela Rules provide that the treatment of those detained must encourage their self-respect and develop their sense of responsibility.¹¹⁸
- 92 The United Nations General Assembly’s Plan of Action to Prevent Violent Extremism also emphasises that pathways to build trust between Government and communities to prevent real or perceived marginalisation and exclusion in PCVE efforts must be sought when undertaking this work¹¹⁹ The Plan of Action provides useful recommendations for deradicalisation and rehabilitation efforts including:¹²⁰
- Reforming national legal frameworks and penitentiary systems to ensure the security of inmates, personnel and facilities and establish procedures to prevent and counter radicalization in prisons based on human rights and the rule of law;
 - Introduce disengagement, rehabilitation and counselling programmes for persons engaged in violent extremism which are gender-sensitive and include programmes for children to facilitate their reintegration into society.
- 93 These programmes must be in full compliance with international human rights norms and standards, including the rights to freedom of movement, freedom of expression and privacy, gender equality and the principle of non-discrimination.

Monitoring and oversight of implementation

- 94 Oversight of PCVE strategies and programmes is a crucial component of monitoring compliance with human rights standards.
- 95 Following implementation of PCVE programmes stemming from the Strategic Framework, these should also be monitored for efficacy in order build a knowledge base in understanding the drivers of violent extremism. International experience has demonstrated the need for evidence collection, methodology and robust monitoring to plug any gaps in assessment of PCVE practices’ impact on the ground.¹²¹

115 Article 10, ICCPR.

116 Also known as the United Nations Minimum Rules for the Treatment of Prisoners. Adopted by the UN General Assembly on 17 December 2015, A/RES/70/175.

117 Mandela Rules, Rule 4.1.

118 Mandela Rules, Rule 91.

119 *Plan of Action to Prevent Violent Extremism*, above, n 34 at [50].

120 At [50 (f)] and [50 (g)].

121 *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, above, n 11, at [16].

3 Conclusions and Recommendations

- 96 In conclusion, the government's efforts to counter violent extremism must be firmly grounded in human rights and Te Tiriti if they are to be effective and sustainable.¹²²
- 97 The Commission stresses the need for of diversity and inclusion within the government sector agencies responsible for developing and monitoring PCVE policies. A lack of cultural, ethnic and gender diversity can result in blind spots in strategic practice. It is crucial that state powers are exercised in a non-discriminatory manner. A workforce that reflects the diversity of Aotearoa New Zealand is more likely to counter institutional bias and gain greater trust from minority and vulnerable communities that historically hold mistrust towards government and its agencies.
- 98 Caution must be taken in any programmes where individuals or communities are referred or reported to an agency for being in need of intervention, education, therapy or rehabilitation due to being perceived as being vulnerable to radicalisation or violent extremism. International experiences in such programmes raises concern over how individuals, including children, or communities are identified in the first place.
- 99 Measures aimed at PCVE can stigmatise and further marginalise communities, thereby increasing the risk of undermining the support that the Government needs to be successful in the implementing their strategies. Policies that are rights-affirming will have long-term success in preventing and countering violent extremism and terrorism.

¹²² *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, above, n 11 at [33].

Overarching principles

- 1 The Strategic Framework should be centred on:
 - a Express adherence with the state's human rights and Te Tiriti duties and obligations;
 - b building capacity of civil society and communities most likely to be affected by efforts to counter violent extremism;
 - c building resilience in communities against the threat of violent extremism; and
 - d tackling the underlying conditions that are conducive to terrorism.

A clear distinction needs to be made between PCVE measures and the security aspect of countering terrorism.

- 2 PCVE measures should be informed by an intersectional approach to human rights, as informed by race, religion, disability, sexual orientation and identity, gender, and other social identities.
- 3 Definitions of terms such as “violent extremism” that informed and applied to are not vague, but clearly defined.

Recommendations on human rights approach to the development of the Strategic Framework

- 4 PCVE measures must comply with the state's human rights duties. Measures that may restrict or limit human rights in any way must conform with the principles of legality, necessity, proportionality and non-discrimination.
- 5 To this end, a human rights policy should be developed to guide agencies in the implementation of the Strategic Framework.
- 6 All PCVE policy and legal measures must be clear and made accessible to the public.
- 7 The Strategic Framework should ensure that accountability, complaints and remedial avenues are available for individuals/groups whose rights are breached either as victims of violent extremism or as a result of measures to prevent and counter violent extremism.
- 8 The participation of tangata whenua must be included in all stages of the design and drafting of the Strategic Framework and any programmes that following implementation.
- 9 The Government should also engage regularly and in a meaningful way with marginalised communities, including direct and indirect victims of violent extremism, and those most likely to be impacted by efforts to counter violent extremism.

- 10 The Government should consider the creation of reference groups for Māori, ethnic communities, SOGIESC communities, youth, and women to provide inclusive representation in all levels of decision making, including in relation to potential prevention programmes, in the effort to prevent and counter violent extremism.
- 11 To this end, the Strategic Framework should reflect, and the Government should remain alert to, all potential drivers and conditions conducive to violent extremism, including socioeconomic drivers, that threaten social cohesion in Aotearoa New Zealand:
 - a These socioeconomic drivers, including poverty and inequality, should be addressed by the promotion and protection of economic (i.e. workers’) rights, and social rights, such as the rights to an adequate standard of living, a decent home, health care and protection, and education, all of which are binding on the New Zealand government in international law.
- 12 Cultural, ethnic and gender diversity, competency, and demonstrated knowledge of and expertise in human rights and Te Tiriti o Waitangi should be reflected in workforce recruitment and continuing professional development practices:
 - a Involved in the design and development of the Strategic Framework and any other PCVE strategies;
 - b Involved in the implementation phase of the Strategic Framework, including the development of and working on relevant initiatives and programmes; and
 - c Involved in monitoring, evaluation and review of the Strategic Framework’s ongoing efficacy and human rights compliance.

Recommendations on implementing a human rights-based Strategic Framework

- 13 Development of an action plan which emphasises proposed de-radicalisation and disengagement work programmes or the development of a rehabilitation and reintegration framework which adheres to human rights principles.
- 14 The Strategic Framework and any other PCVE measures adopted should be actively monitored and evaluated against human rights compliance, and regularly reviewed for effectiveness.