

# In Harm's Way: Gender and Human Rights in National Security

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## INTRODUCTION

The last twenty years have seen remarkable shifts in the relevance of gender and human rights in the national security arena. In the decade after the events of 9/11, policymakers across the globe sidelined both gender and human rights perspectives.<sup>1</sup> Subsequently, governments committed to take gender into account in national security.<sup>2</sup> Yet unlike some other areas of international governance, which see gender through the lens of human rights, gender issues were largely decoupled from human rights concerns.<sup>3</sup> Paradoxically, even those approaches that tried to connect gender to human rights, by arguing, for example, that gender equality itself should be a security tactic,<sup>4</sup> have undermined rights.

However, despite these complexities and the omnipotence of national security practices, the consequences of these shifts are underexamined.<sup>5</sup> This Article traces these shifts and the approaches to gender and human rights that underscore them. It centers the concept of gendered security harms—the idea that

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1. See generally JAYNE HUCKERBY & LAMA FAKIH, CTR. FOR HUMAN RIGHTS & GLOB. JUSTICE, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM (2011), <http://chrjg.org/wp-content/uploads/2012/07/locatinggender.pdf>.

2. See generally Jayne Huckerby, *Feminism and International Law in the Post-9/11 Era*, 39 FORDHAM INT'L L.J. 533 (2016) (tracing the uptick in attention to gender in counter-terrorism frameworks) [hereinafter Huckerby, *Feminism and International Law*]; Fionnuala Ní Aoláin and Jayne Huckerby, *Gendering Counterterrorism: How to, and How Not to—Part I*, JUST SECURITY (May 1, 2018), <https://www.justsecurity.org/55522/gendering-counterterrorism-to/> (explaining the recent attention to gender in counter-terrorism architecture and programs) [hereinafter Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I*].

3. See Fionnuala Ní Aoláin & Jayne Huckerby, *Gendering Counterterrorism: How to, and How Not to—Part II*, JUST SECURITY (May 3, 2018), <https://www.justsecurity.org/55670/gendering-counterterrorism-to-part-ii/> [hereinafter Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*].

4. *Id.*

5. For analyses of the gender, human rights, and legal implications of national security beyond the immediate 9/11 moment, see generally HUCKERBY & FAKIH, *supra* note 1; Jayne Huckerby, *Gender, Counter-Terrorism and International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM 163 (Ben Saul ed., 2014) [hereinafter Huckerby, *Gender, Counter-Terrorism and International Law*]; Fionnuala Ní Aoláin, *The 'War on Terror' and Extremism: Assessing the Relevance of the Women, Peace and Security Agenda*, 92 INT'L AFFAIRS 275 (2016).

the national security arena is informed by “gendered assumptions, gendered labels, and gendered hierarchies”<sup>6</sup> and that it in turn can adversely shape these assumptions and hierarchies, as well as differently impact persons of different genders. It draws on this concept of gendered security harms not only to trace the effects of these shifts in national security practice, but also to help illuminate how gender and human rights were differently defined and valued at various junctures.

A few preliminary points will help to frame the discussion. The Article takes as a starting point that all government national security policies must comply with international human rights law,<sup>7</sup> including by incorporating a gendered analysis of these policies.<sup>8</sup> It uses the term “gender” to refer to a social construct of attributes associated with masculinities and femininities rather than “sex,” which focuses only on biological differences.<sup>9</sup> It recognizes gender as being inextricably linked to human rights, in part because it “permeates the context in which human rights abuses take place.”<sup>10</sup> At the same time, this Article is informed by an understanding that, notwithstanding these connections, in practice, human rights can be advanced in ways that are deeply antithetical to gender equality.<sup>11</sup> Finally, it understands gender and human rights questions to be implicated by a wide array of national security practices, including “security-based” measures aimed at countering terrorism, as well as those approaches directed at preventing or countering violent extremism (P/CVE).<sup>12</sup>

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6. Laura Sjoberg, *Feminist Security and Security Studies*, in THE OXFORD HANDBOOK OF INTERNATIONAL SECURITY 45–46 (Alexandra Gheciu & William C. Wohlforth eds., 2018).

7. See, e.g., Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Freedoms While Countering Terrorism), *Rep. of the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 56(c), U.N. Doc. A/HRC/31/65 (Apr. 29, 2016) (emphasis omitted) [hereinafter U.N. Doc. A/HRC/31/65].

8. See, e.g., Martin Scheinin (Special Rapporteur on the Promotion and Protection of Human Rights and Freedoms While Countering Terrorism), *Rep. of the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 21, U.N. Doc. A/64/211 (Aug. 3, 2009) (the author was involved in the research and writing of this report) [hereinafter U.N. Doc. A/64/211].

9. For application of this definition of gender in the context of analyzing the human rights impacts of counter-terrorism and in feminist security studies, see, e.g., *id.* ¶¶ 20–22; Sjoberg, *supra* note 6, at 45–46.

10. Letter from Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions to the Int’l Law Comm’n (Nov. 30, 2018), <https://www.ohchr.org/Documents/Issues/SexualOrientation/LetterGender.pdf>.

11. RATNA KAPUR, GENDER, ALTERITY AND HUMAN RIGHTS 15 (2018) (stating that “women’s rights advocacy is moving further and further away from its promised goal of freedom in the context of human rights.”).

12. U.N. Secretary-General, *Plan of Action to Prevent Violent Extremism*, ¶ 6, U.N. Doc. A/70/674 (Dec. 24, 2015) [hereinafter U.N. Doc. A/70/674]. There is no universal definition of the terms “terrorism,” “violent extremism,” “extremism,” “counter-terrorism,” “preventing violent extremism,” or “countering violent extremism.” This Article uses the term P/CVE to capture a set of programs that are largely preventative in approach. See *id.* (describing the “need to take a more comprehensive approach which encompasses not only ongoing, essential security-based counter-terrorism measures, but also systematic preventive measures which directly address the drivers of violent extremism that have given rise to the emergence of these new and more virulent groups”). Additionally, P/CVE programs are designed to tackle violent extremism, a phenomenon that is understood as both “wider”

The remainder of the Article proceeds as follows. Part I provides an account of the post-9/11 absence of an explicit consideration of either gender or human rights. Part II covers how national security increasingly considered gender but not from a human rights perspective. Part III examines those efforts to connect both gender and human rights with national security. Within each of these parts, the Article analyzes how the terms gender and human rights have been defined and applied and identifies the effects of these approaches. Part IV then details some key features of the current landscape of gendered security harms, looking at the locations of such harms, the forms they take, and some challenges in measuring them.

### I. GENDER AND HUMAN RIGHTS IN THE POST-9/11 MOMENT

National security practice in the first decade after 9/11 failed to explicitly integrate either gender or human rights concerns.<sup>13</sup> On the one hand, the evacuation of human rights in the post-9/11 moment was ubiquitous. Widespread practices of secret detention, rendition, and torture across the globe ensued, as did ongoing impunity for these acts. At the same time, States also resisted any overt scrutiny of the gender dimensions and effects of their policies. Instead, gender was “simultaneously everywhere and nowhere” in countering terrorism.<sup>14</sup> Gender was omnipresent because of the pervasive underlying assumptions that terrorists were men and that militarized and other traditionally “masculine” responses to violence were required.<sup>15</sup> But gender was simultaneously absent as strategies were often gender-neutral on their face.<sup>16</sup> Moreover, during this period, governments did not analyze whether their policies had any adverse gendered effects, whether

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(*id.* ¶ 4) than and “conducive to” terrorism (*id.* ¶ 2; S.C. Res. 2178, ¶ 15 (Sept. 24, 2014)). However, it recognizes that, in practice, the distinctions between “security-based counter-terrorism measures” and preventative approaches are increasingly blurred, including because the terms “violent extremism” and “terrorism” are now “often used interchangeably and without a clear delineation of the boundaries between them.” U.N. Doc. A/HRC/31/65, *supra* note 7, ¶ 13. And also, because “[t]hrough often characterised as the ‘soft’ cousin of counter-terrorism initiatives, strategies to counter violent extremism contain their own tangible risks for human rights.” *Id.* ¶ 17. Additionally, the relationship between measures that counter, versus those that prevent, violent extremism is also unclear, in part because the definition of these terms varies across jurisdictions. *See, e.g.*, GLOB. COUNTERTERRORISM FORUM, GOOD PRACTICES ON COMMUNITY ENGAGEMENT AND COMMUNITY-ORIENTED POLICING AS TOOLS TO COUNTER VIOLENT EXTREMISM 1 (2009) (“[CVE] initiatives tackle conditions conducive to radicalization into violent extremism with the ultimate aim of denying terrorist groups new supporters and recruits. The strategies and tools that governments and civil society organizations use to counter violent extremism vary, reflecting differing conditions and settings.”).

13. *See, e.g.*, Jayne C. Huckerby & Margaret L. Satterthwaite, *Introduction*, in *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES 1* (Margaret L. Satterthwaite & Jayne C. Huckerby eds., 2013) (citations omitted) (“It is accepted feminist knowledge that the ‘War on Terror’ abounds with gendered narratives, illustrated, for example, in the post-9/11 era with the U.S. government and its allies launching a war in Afghanistan in part to ‘save’ Afghan women. However, the gender and human rights dimensions and impacts of counter-terrorism measures outside of this moment are largely undocumented and under-theorized.”); Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I*, *supra* note 2.

14. Huckerby, *Gender, Counter-Terrorism and International Law*, *supra* note 5, at 164.

15. *Id.*

16. *Id.*

that be on persons or on gendered hierarchies or stereotypes. Instead, governments focused on terrorists' harms against women<sup>17</sup> rather than those that might come from their own decision-making.<sup>18</sup> This focus on women's vulnerability and the narrative of "saving" women from terrorists also gave impetus to, and justification for, a series of "hard" counter-terrorism measures, including military action.<sup>19</sup> As I have argued elsewhere, this failure to take gender into account was remarkable as the post-9/11 decade was also the time of core gains in international law on gender and human rights.<sup>20</sup> However, while both areas—security and gender—were ascendant in global politics, each track proceeded largely in parallel.

During this period, governments also took a restrictive stance on how they understood the term "gender" when it came to the national security arena. Specifically, governments rejected the effort to scrutinize national security policies under the long-standing United Nations (U.N.) approach of defining gender as a social construct that was not synonymous with "sex" or women.<sup>21</sup> This much was made clear by the adverse response to the 2009 report of the then-U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>22</sup> That report uses this social definition of gender to fully track the gender and human rights dimensions and impacts of counter-terrorism measures.<sup>23</sup> By not limiting gender to women—and integrating gender with the human rights lens—the report showed how, in the name of counter-terrorism, governments had perpetrated a host of gendered human rights violations against women, men, and lesbian, gay, bisexual, transgender, and

17. See, e.g., Ratna Kapur, *Un-Veiling Women's Rights in the 'War on Terrorism'*, 9 DUKE J. GENDER L. & POL'Y 211 (2002) (identifying the ways in which an appeal to rescuing women's rights in Afghanistan enabled military intervention). See also Huckerby, *Feminism and International Law*, *supra* note 2, at 556 (noting that the focus on women as victims has the effect of "marginalizing the experience of other targets of violent extremists, such as gay men or religious minorities").

18. Huckerby, *Feminism and International Law*, *supra* note 2, at 562 (arguing that "the focus on women's victimhood at the hands of terrorists, . . . along with a formalist impulse to address only men as victims of counter-terrorism, created the perfect storm for silence on State violations of women's rights and gender equality in counter-terrorism efforts"). See also HUCKERBY & FAKIH, *supra* note 1, at 9; Fionnuala Ní Aoláin, *Situating Women in Counterterrorism Discourses: Undulating Masculinities and Liminal Femininities*, 93 B.U. L. REV. 1085, 1121 (2013).

19. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 548 ("[I]n practice, counter-terrorism and CVE policy regularly use images of women's vulnerability and harm, including as a means to justify counter-terrorism actions."). See also *id.* at 547–51 (tracing the narratives of gendered victimhood and vulnerability in the aftermath of 9/11 as well as the effects of these constructions).

20. See generally Huckerby, *Feminism and International Law*, *supra* note 2; Huckerby, *Gender, Counter-Terrorism and International Law*, *supra* note 5, at 164.

21. See Huckerby, *Feminism and International Law*, *supra* note 2, at 566–67 (noting that this embrace of gender was particularly confronting because "the concepts were being applied by a non-gender-specific part of the United Nation's institutional machinery . . . in a report to a non-human rights body."). See also *id.* at 562–67; Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I* *supra* note 2; Dianne Otto, *Transnational Homo-Assemblages: Reading 'Gender' in Counter-terrorism Discourses*, 4 JINDAL GLOBAL L. REV. 79, 82 (2013).

22. U.N. Doc. A/64/211, *supra* note 8.

23. *Id.* ¶¶ 20–22.

intersex (LGBTI) individuals, from the border to the battlefield.<sup>24</sup> As such, the report was at once a major dissonance to governments whose national security policies were imbued with a focus on “saving” women from terrorism, and an affront because it used a social definition of gender as part of the human rights scorecard on national security decision-making.

During this period, these overarching features—the absence of human rights, the “heavy but stealthy gendering”<sup>25</sup> of national security, and a resistance to an interpretation of gender beyond women—was consequential. The result was a series of policies that differently and adversely impacted men, women, and those of diverse gender identities and sexual orientations. Three general types of measures—and corresponding impacts—can be observed. One set of these impacts came when States engaged in gendered actions that violated human rights. This included, for example, when States designed and implemented interrogation techniques to specifically humiliate male suspects due to assumptions about what was particularly harmful to Muslim masculinities.<sup>26</sup> Or when States used counter-terrorism laws to crack down on women’s rights defenders seeking gender equality in their communities.<sup>27</sup>

Second, there were a series of adverse human rights impacts that came from States failing to address how policies might have gendered human rights effects because of how, in the new post-9/11 environment, gender might produce “distinct vulnerabilities and risks linked to the way societies organize male and female roles.”<sup>28</sup> These can be best understood as examples of States’ gender-blindness on security, combined with a lack of respect for human rights. Some examples of this include the failure to address how national security measures that targeted men also had broader gendered effects. This includes, for example, when development measures were adopted based on risk rather than need and focused on supporting the livelihoods of young men, rather than women, in ways that reinforced discrimination in local communities.<sup>29</sup> Other examples of this gender blindness involved a failure to anticipate—or remedy—discriminatory human rights impacts from counter-terrorism measures that were gender-neutral. Counter-terrorism financing policies that were neutral on their face but discriminatory in practice because they cut off funding to women’s organizations that are typically nascent, small, and grassroots, are one example.<sup>30</sup> Increasingly stringent border security measures that make it harder for transgender persons to change identity documents is another.<sup>31</sup> Third, there were limited examples where

24. U.N. Doc. A/64/211, *supra* note 8.

25. Huckerby, *Gender, Counter-Terrorism and International Law*, *supra* note 5, at 164.

26. See U.N. Doc. A/64/211, *supra* note 8, ¶¶ 44–45.

27. *Id.* ¶¶ 27–28.

28. Agnes Callamard (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Rep. of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, on a Gender-sensitive Approach to Arbitrary Killings*, ¶ 21, U.N. Doc. A/HRC/35/23 (June 6, 2017).

29. See, e.g., HUCKERBY & FAKIH, *supra* note 1, at 38.

30. See generally DUKE LAW INT’L HUMAN RIGHTS CLINIC & WOMEN PEACEMAKERS PROGRAM, TIGHTENING THE PURSE STRINGS: WHAT COUNTERING TERRORISM FINANCING COSTS GENDER EQUALITY AND SECURITY 36–41 (2017) [hereinafter TIGHTENING THE PURSE STRINGS], <https://web.law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf>.

31. See, e.g., U.N. Doc. A/64/211, *supra* note 8, ¶ 48.

States did seek to integrate a gender perspective in counter-terrorism approaches but did so in ways that were not human rights-centric, and instead relied on, and generated, harmful stereotypes. The example that is most prominent during this period is focusing on the role of mothers to combat “radicalization” and identify “at risk” family members because of an assumption that mothers were inherently peaceful and at the center of their families.<sup>32</sup>

## II. THE MOVE TO ADOPTING A GENDERED APPROACH TO NATIONAL SECURITY

From a gender and human rights perspective, if the decade after 9/11 can be understood as “a decade lost,”<sup>33</sup> the subsequent period tells quite a different story. Here, governments found gender—although not necessarily human rights—in both terrorism and their response to it. There were five key openings that enabled the incorporation of gender in national security: the growth of policies to prevent or counter violent extremism; the linking of the women, peace, and security (WPS), counter-terrorism, and P/CVE agendas; a perceived uptick in women joining violent groups; the specter of terrorist violence against women; and buy-in to the idea of gender equality as a national security tactic.<sup>34</sup>

Turning to the first of these factors: from 2010 onward, governments increasingly moved from “hard,” post hoc counter-terrorism toward what was referred to as more “soft” tactics, such as rule of law, human rights, and development that were seen as part of preventative, holistic, and upstream efforts to tackle violence.<sup>35</sup> P/CVE was the umbrella term for these “soft” broad efforts. There has recently been significant concern—that this Article shares—that these so-called soft measures actually have had coercive effects.<sup>36</sup> What was important about this shift from a gender perspective is that it enabled more consideration of gender precisely because these “soft” areas of government policy-making (for example, development) were historically more open to gender analysis than

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32. See, e.g., HUCKERBY & FAKIH, *supra* note 1, at 21, 26.

33. See generally *id.*

34. See generally Huckerby, *Feminism and International Law*, *supra* note 2, at 569–84 (tracing the “conjoining of women’s rights and national security agendas”). See also Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I*, *supra* note 2 (for further detail on the timeline of measures taken to incorporate gender and counter-terrorism and P/CVE).

35. See *supra* note 12 and accompanying text.

36. See, e.g., U.N. Doc. A/HRC/31/65, *supra* note 7, ¶ 17; Fionnuala Ni Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Rep. of Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on the Role of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders*, U.N. Doc. A/HRC/40/52 (Mar. 1, 2019) [hereinafter U.N. Doc. A/HRC/40/52] (addressing the impact of both counter-terrorism measures and those to prevent or counter violent extremism on civic space); Fionnuala Ni Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Rep. of Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism*, U.N. Doc. A/HRC/43/46 1 (Feb. 21, 2020) [hereinafter U.N. Doc. A/HRC/43/46] (advanced edited version that “addresses the global and national effects of the widespread use of policies and practices aimed at preventing and countering violent extremism”).

traditional security spheres, such as the military or law enforcement.<sup>37</sup> One measure of the extent of this integration is the 2016 U.N. Secretary General's Plan of Action to Prevent Violent Extremism, which includes a dedicated section on "[g]ender equality and empowering women."<sup>38</sup> Another is that UN Women—the U.N. body dedicated to gender equality—joined the U.N. Counter-Terrorism Implementation Task Force, a core piece of the U.N.'s counter-terrorism and P/CVE architecture.<sup>39</sup>

Second, the women, peace, and security agendas and counter-terrorism and P/CVE agendas increasingly intersected. This was particularly happening from 2015 onwards with the adoption of U.N. Security Council Resolution 2422 calling for "greater integration" of the agendas.<sup>40</sup> Third, the phenomenon of women joining ISIS and other visible Jihadi organizations encouraged governments to look more closely at the links between women and terrorism rather than just at the roles of women in terrorism's response or as its victims.<sup>41</sup> Fourth, there has been an increasing focus on the gendered abuses perpetrated by proscribed non-State actors, which genders national security policy by requiring consideration of female victims of terrorist groups.<sup>42</sup> This impetus has recently continued through an analysis of the link between trafficking in persons (particularly sex trafficking of women) and other transnational organized criminal activities such as terrorism.<sup>43</sup> Finally, the idea of "feminism-as-counter-terrorism" gained increasing traction.<sup>44</sup> This presented the promotion of women's rights as being not just the

37. See HUCKERBY & FAKIH, *supra* note 1, at 13 ("[T]his move toward a more holistic and 'soft' approach to countering terrorism broadens the role and stake women and sexual minorities have in counter-terrorism efforts. . . ."); Huckerby, *Feminism and International Law*, *supra* note 2, at 552 ("[O]ne key consequence of a more recent move toward 'soft' practices in countering terrorism and violent extremism has been an upswing in efforts to promote security initiatives that include women." See also *id.* 572–73). See generally Huckerby, *Gender, Counter-Terrorism and International Law*, *supra* note 5.

38. U.N. Doc. A/70/674, *supra* note 12, ¶ 53.

39. Huckerby, *Feminism and International Law*, *supra* note 2, at 554.

40. See S.C. Res. 2242 ¶ 11 (Oct. 13, 2015) (calls for "greater integration" of the women, peace, and security, and counter-terrorism and countering violent extremism agendas). See generally Huckerby *Feminism and International Law*, *supra* note 2, at 573–75 (addressing the intersection of women, peace, and security agenda, and the national security agenda).

41. See, e.g., Jayne Huckerby, *The Complexities of Women, Peace, Security and Countering Violent Extremism*, JUST SECURITY (Sept. 24, 2015), <https://www.justsecurity.org/26337/womens-rights-simple-tool-counterterrorism/> [hereinafter, Huckerby, *The Complexities of WPS and CVE*]; Jayne Huckerby, *Gender, Violent Extremism, and Countering Violent Extremism*, JUST SECURITY (Mar. 3, 2015), <https://www.justsecurity.org/20620/gender-violent-extremism-countering-violent-extremism-cve/>. See generally JOANA COOK & GINA VALE, FROM DAESH TO 'DIASPORA': TRACING THE WOMEN AND MINORS OF ISLAMIC STATE, INTERNATIONAL CENTRE FOR THE STUDY OF RADICALISATION (2018).

42. Huckerby, *Feminism and International Law*, *supra* note 2, at 547–51 (addressing the ways in which constructions of gendered victimhood and vulnerability have informed national security policy).

43. See, e.g., S.C. Res. 2462 (Mar. 28, 2019); S.C. Res. 2388 (Nov. 21, 2017); S.C. Res. 2331 (Dec. 20, 2016); S.C. Res. 2253 (Dec. 17, 2015); S.C. Pres. Statement 2015/25 (Dec. 16, 2015); S.C. Res. 2242 (Oct. 13, 2015); S.C. Res. 2195 (Dec. 19, 2014); Press Release, Security Council, Unanimously Adopting Resolution 2368 (2017), Security Council Reaffirms Its Resolve to Combat Terrorism, U.N. Press Release SC/12917 (July 20, 2017), <https://www.un.org/press/en/2017/sc12917.doc.htm>.

44. See, e.g., Barbara Ehrenreich, *A New Counterterrorism Strategy: Feminism, in STOP THE NEXT WAR NOW: EFFECTIVE RESPONSES TO VIOLENCE AND TERRORISM* 78 (Medea Benjamin & Jodie Evans eds., 2005)

right but the smart thing for security policy.<sup>45</sup> In practical terms, these factors have involved governments looking at the following areas:<sup>46</sup> to engage in “gender-sensitive research and data collection on the drivers of radicalization for women;”<sup>47</sup> to address the “impacts of counter-terrorism strategies on women’s human rights and women’s organizations;”<sup>48</sup> to assist female victims of terrorism;<sup>49</sup> and to encourage women’s gender equality and “empowerment” and “the participation and leadership of women and women’s organizations in

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(“So here in one word is my new counterterrorism strategy: feminism.”). See Vasuki Nesiah, *Feminism as Counter-Terrorism: The Seduction of Power*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 13, at 127 (critiquing this framing of feminism as counter-terrorism). See generally JANET HALLEY, SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM 31–35 (2006) (critiquing feminism’s “bad faith” in not scrutinizing its investment in governance).

45. Huckerby, *Feminism and International Law*, *supra* note 2, at 575–76. See generally for further examples, GLOB. COUNTERTERRORISM FORUM, ADDENDUM TO THE GCTF GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM, WITH A FOCUS ON MAINSTREAMING GENDER (2019), <https://www.thegctf.org/LinkClick.aspx?fileticket=jA1tbXKhobE%3D&portalid=1>; UN WOMEN, GENDER MAINSTREAMING, PRINCIPLES DIMENSIONS AND PRIORITIES FOR PVE (2019), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/gender-mainstreaming-principles-dimensions-and-priorities-for-pve-en.pdf?la=en&vs=5046> (the author was involved in the process that preceded this document); GLOB. COUNTERTERRORISM FORUM, GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM (2015), <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Good-Practices-on-Women-and-CVE.pdf> (the author was involved in the Organization for Security and Co-operation in Europe process that preceded this document); Naureen Chowdhury Fink et al., *The Roles of Women in Terrorism, Conflict, and Violent Extremism: Lessons for the United Nations and International Actors* (2013), [https://www.globalcenter.org/wp-content/uploads/2013/04/NCF\\_RB\\_LS\\_policybrief\\_1320.pdf](https://www.globalcenter.org/wp-content/uploads/2013/04/NCF_RB_LS_policybrief_1320.pdf).

46. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I*, *supra* note 2.

47. See S.C. Res. 2242, *supra* note 40, ¶ 12. See also GOOD PRACTICES ON WOMEN AND COUNTERING VIOLENT EXTREMISM, *supra* note 45, at 3, 5–6 (citing Good Practices #2, #8, and #9); RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 231 (2015), [https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20\(1\).pdf](https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20(1).pdf) (the author contributed to the background of this study); U.N. Doc. A/70/674, *supra* note 12, ¶ 53(b). See also UN WOMEN, WOMEN AND VIOLENT RADICALIZATION IN JORDAN (2016), <https://www.unwomen.org/en/digital-library/publications/2016/7/women-and-violent-radicalization-in-jordan>.

48. See S.C. Res. 2242, *supra* note 40, ¶ 12. See COOMARASWAMY, *supra* note 47, at 231; U.N. Doc. A/70/674, *supra* note 12, ¶ 53(b).

49. See, e.g., Phumzile Mlambo-Nguka, Under-Secretary-Gen. of the United Nations and Exec. Dir. of UN Women, Remarks at the High-level Meeting on “Global Leadership – Local Partnerships: Women’s Leadership and Gender Perspectives on Preventing and Countering Violent Extremism” (Sept. 20, 2016), <https://www.unwomen.org/en/news/stories/2016/9/speech-by-executive-director-on-womens-leadership-in-preventing-and-countering-violent-extremism>; H.E. Ambassador Koro Bessho, Permanent Representative of Japan, Statement to the United Nations at the Panel Discussion on the “Global Counter-Terrorism Strategy: Advancing Women’s Participation and Leadership” (Mar. 12, 2018), [https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism.ctitf/files/StatementbyAmbassadorBessho\\_JAPAN\\_CSW\\_12March.pdf](https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism.ctitf/files/StatementbyAmbassadorBessho_JAPAN_CSW_12March.pdf).

developing strategies to counter terrorism and violent extremism,"<sup>50</sup> including in security institutions,<sup>51</sup> civil society,<sup>52</sup> and as mothers.<sup>53</sup>

However, an underappreciated consequence of this uptake of gender is that it has not necessarily been good for human rights, including women's rights. The reasons for this are twofold. The first is that "gender" has in practice meant "women"<sup>54</sup> (often Muslim women) and has relied on a series of stereotypes of women as peaceful and maternal. Second, this attention to gender has had a complicated relationship to human rights. In some instances, gender has been siloed from human rights and gender equality.<sup>55</sup> At the same time, gender has also been connected to human rights in ways that have led to empowering the State—including "the security and sexual surveillance apparatus governing gender"—rather than ensuring gender equality.<sup>56</sup> This is particularly true for two areas that are explored further in Part III: the promotion of gender equality and women's empowerment as a national security tactic<sup>57</sup> and the use of a gender equality lens to encourage greater attention to female terrorists, but without ensuring full human rights protections for suspects.

On the first factor, it has been correctly observed that "the majority of CVE work incorporating gender perspective primarily addresses the inclusion of women and/or girls."<sup>58</sup> To understand how this happened means tracing where

50. See S.C. Res. 2242, *supra* note 40, ¶ 13. See also U.N. Doc. A/70/674, *supra* note 12, ¶ 53(c)–(d); S.C. Pres. Statement 2014/21, ¶ 11 (Oct. 28, 2014).

51. See, e.g., JOANA COOK, A WOMAN'S PLACE: US COUNTERTERRORISM SINCE 9/11 (2019).

52. See Chikodiri Nwangwu et al., *Femininity is Not Inferiority: Women-Led Civil Society Organizations and "Countering Violent Extremism" in Nigeria*, 21 INT. FEMINIST J. OF POL. 168, 177 (2019) (identifying such activities as involving women-led civil society organizations undertaking the "provision of relief materials, protest marches, press conferences, advocacy visits to major stakeholders, socio-economic services, rehabilitation of critical infra-structure and participation in early warning workshops"). See also Eleanor Gordon & Jacqui True, *Gender Stereotyped or Gender Responsive? Hidden Threats and Missed Opportunities to Prevent and Counter Violent Extremism in Bangladesh and Indonesia*, 164 RUSI J. 74 (2019).

53. See, e.g., Edith Schaffler & Ulrich Kropiunigg, *Mothers Against Terror*, 6 PER CONCORDIAM: J. EUR. SEC. & DEF. ISSUES 19 (2015).

54. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3 ("While the U.N. counter-terrorism architecture and, to some degree, States, know they have to gender their counterterrorism and P/CVE approaches, there is very little idea of what this actually means in practice. As a result, gender is treated as synonymous with women . . ."). See also Emily Winterbotham & Elizabeth Pearson, *Different Cities, Shared Stories: A Five-Country Study Challenging Assumptions Around Muslim Women and CVE Interventions*, 161 RUSI J. 54 (2016).

55. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

56. See KAPUR, *supra* note 11, at 16 (arguing that "rights discourse" has "translated into a general tightening of the sexual security regime," and has "enabl[ed] a broader justification for the establishment of security regimes and the unleashing of military and 'civilizing' missions in developing countries in the name of women's rights."). See also Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 341 (2006) (describing the "successes" of "governance feminism" as embodying "very state-centered, top-down, sovereigntist feminist rule preferences").

57. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

58. Winterbotham & Pearson, *supra* note 54, at 54.

gender is mobilized, by whom, and to what end. Significantly, much of the push to add a gender perspective to national security came from security actors rather than gender experts.<sup>59</sup> This meant the ways that gender was taken into account were often both “amateur” (not much more than a version of “add women and stir”) and utilitarian (designed to make security policy better rather than inherently inclusive).<sup>60</sup> Because security, not gender equality, was the main rationale and because security, rather than gender, experts led the charge on this, this also laid the way for harmful gender stereotypes to form the basis of decision-making. This includes stereotypes of women as “peaceful”<sup>61</sup> and programs focused on mothers<sup>62</sup> that trade on highly-gendered and problematic images of women’s vulnerability and maternal nature.

Additionally, this focus on “women” rather than gender has generated a new set of harmful blind spots in national security decision-making. These failures mean, for example, that there is an absence of analysis of the broader societal conditions (including of patriarchy) in which women experience, undertake, and combat all forms of violence. Policy-making spaces that analyze violence also often sideline the development of preventative strategies that address the role of masculinities in violence.<sup>63</sup> And when it comes to both gender-based violations by terrorist groups and from State national security policy, while it is difficult to get States to address impacts on women, it is even more challenging to convince governments to protect male and LGBTI victims from gender-related abuses. In these ways, it is increasingly evident that this focus on “women” means—either unintentionally or otherwise—sidelining genuine, broader feminist inquiry into the status quo of unequal gendered power relations that profoundly shape how individuals experience terrorism and its response. Additionally, because “gender” in practice translates to a focus on not all women, but on Muslim women, gendered security policies have had adverse intersectional effects. Indeed, modern national security policies at various junctures approach Muslim women as mothers,<sup>64</sup> as in need of empowerment, and/or also potentially dangerous agents themselves. A series of intersectional gendered harms flow from these terms of engagement.<sup>65</sup>

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59. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

60. *Id.*

61. See, e.g., BELQUIS AHMADI & SADAF LAKHANI, U.S. INST. OF PEACE, AFGHAN WOMEN AND VIOLENT EXTREMISM: COLLUDING, PERPETRATING OR PREVENTING? 12 (2016), <https://www.usip.org/sites/default/files/SR396-Afghan-Women-and-Violent-Extremism.pdf> (“Existing interventions are often based on assumptions about the role of women as inherent peacebuilders.”).

62. EMILY WINTERBOTHAM, TONY BLAIR INST. FOR GLOB. CHANGE, DO MOTHERS KNOW BEST? HOW ASSUMPTIONS HARM CVE (2018), <https://institute.global/insight/co-existence/do-mothers-know-best-how-assumptions-harm-cve> (“Many CVE schemes have centred on mothers having the innate and physical ability, as main care-givers, to be better able to spot signs of radicalization.”).

63. See, e.g., ELIZABETH PEARSON, TONY BLAIR INST. FOR GLOB. CHANGE, WHY MEN FIGHT AND WOMEN DON’T: MASCULINITY AND EXTREMIST VIOLENCE (2018), <https://institute.global/insight/co-existence/why-men-fight-and-women-dont-masculinity-and-extremist-violence>.

64. See generally Katherine Brown, *Gender and Counter-Radicalization: Women and Emerging Counter-Terror Measures*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 13, at 36.

65. See generally SHAKIRA HUSSEIN, FROM VICTIMS TO SUSPECTS: MUSLIM WOMEN SINCE 9/11 (2019); Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of*

While “most strategies to counter violent extremism are generic” on paper, “they tend to target specific groups determined to be most ‘at risk’ of being drawn to violent extremism” in practice.<sup>66</sup>

The second core reason why this gendering of national security is potentially so harmful is that governments have also largely evacuated human rights from the process and/or used human rights to provide cover for approaches that do not actually advance gender equality. Examples of governments sidelining rights while also gendering national security policies are abundant. One example is in the policy-making that encourages women’s participation in counter-terrorism and P/CVE. This has sidelined rights in that promoting women’s engagement has rarely been premised on the human rights to non-discrimination and equality. Instead, it focuses on the strategic rationale that it leads to a more comprehensive understanding of the causes of violent extremism, as well as more localized and credible strategies to build resilience.<sup>67</sup> Another example of how rights are sidelined is in those government approaches that promote women’s rights as not just the right but the smart thing to do in national security policy. This downplays rights by presenting women’s rights as conditional and a means to the end of counter-terrorism and enhancement of State power rather than an end in and of themselves.<sup>68</sup> These types of framings work to detach the goals of women’s inclusion and gender mainstreaming from substantive equality agendas in ways that can make it difficult, without more, to see them as successful from a feminist and human rights perspective.<sup>69</sup>

Another example of how rights are diminished in gendered approaches to national security lies in the area of policy-making for female victims of terrorism. While governments talk of the importance of ensuring victims’ rights, ongoing impunity for terrorist actors is instead the norm. Frequently, rather than guaranteeing the full range of victim’s rights (including sexual and reproductive rights), States instead punitively regulate women’s sexual and reproductive health by denying access to abortion for rape victims.<sup>70</sup> A recent trend that further highlights this de-prioritization of rights is that some States are now not just doing a lazy version of gender without rights, but are instead treating gender and human rights as options to choose between when it comes to making national security policy.<sup>71</sup> Under this approach, governments actually preference a gender lens over a human rights one, seemingly on the understanding that integrating women in national security policy will give them credibility but also will be less burdensome and restrictive than ensuring that their security approaches comply with human

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*Intersectionality*, 9 HASTINGS RACE & POVERTY L. J. 191 (2012); Nadine Strossen, *Freedom and Fear Post-9/11: Are We Again Fearing Witches and Burning Women?*, 31 NOVA L. REV. 279 (2007).

66. U.N. Doc. A/HRC/31/65, *supra* note 7, ¶ 43 (citation omitted).

67. Huckerby, *Feminism and International Law*, *supra* note 2, at 555–56. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

68. Huckerby, *Feminism and International Law*, *supra* note 2, at 556.

69. *Id.*

70. See Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

71. *Id.* (“In other words, countries looking to show bona fides on counter-terror treat adding women as the low-hanging fruit compared with ensuring human rights and present the two approaches as alternate choices, such that agreeing to gender mainstream lets them off the hook when it comes to rights.”).

rights.<sup>72</sup> A final measure of this ongoing elevation of gender over human rights perspectives is that States are still not addressing the adverse gendered human rights effects of security measures. Indeed, not all of the areas of policy focus mentioned above—women as perpetrators and victims of terrorism, as well as agents in counter-terrorism and P/CVE who might also experience adverse human rights impacts from national security—get equal attention from policymakers.<sup>73</sup> Particularly, governments and other actors have markedly de-prioritized the policy strand that requires them to address the “impacts of counter-terrorism strategies on women’s human rights and women’s organizations.”<sup>74</sup> This consistent evacuation of rights is particularly damaging because it is occurring at the very moment that contemporary national security measures risk further gendered harms, as discussed further below.

Crucially, many of these examples of sidelining rights simultaneously involve the State trying to co-opt rights language to expand and enhance counter-terrorism measures. For example, while ignoring the rights of female victims of terrorism in practice, States use this focus on women’s vulnerability and the narrative of “saving” women from terrorists as a pretext for further coercive measures that center the State.<sup>75</sup> This next section explores in more detail two areas where governments have explicitly put gender and human rights together in national security in ways that are ultimately antithetical to gender equality.

### III. GENDER AND HUMAN RIGHTS IN NATIONAL SECURITY

This phenomenon of national security policy adversely impacting gender equality and other gender-related rights is true even for those areas that have explicitly sought to put gender and human rights together. Of the different areas of policy-making focused on women described above, two stand out for how much they notionally seek to integrate a gender perspective that centers women’s agency. The first is promoting gender equality and women’s empowerment as a national security tactic, as well as emphasizing promotion of women’s participation in security roles.<sup>76</sup> The second is using a feminist perspective to encourage greater attention to women’s engagement in proscribed groups.

Before looking at each of these policy strands, it is helpful to recall the normative backdrop to them. Part of the reason that gender equality and national security became linked in the first place was because of the concern that the aftermath of 9/11 might cause gain reversals in the area of women’s rights.<sup>77</sup> This

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72. *Id.*

73. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part I*, *supra* note 2.

74. *Id.*

75. *See, e.g.*, Huckerby, *Feminism and International Law*, *supra* note 2, at 548.

76. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

77. *See, e.g.*, Huckerby, *Feminism and International Law*, *supra* note 2, at 543 (noting “one core theme—either implicit or explicit—in many feminist accounts of the post-9/11 era is that of gain reversal”). *See also id.* at 546–47. *See generally* Halley et al., *supra* note 56, at 40 (identifying the “incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power” in the early twenty-first century); HALLEY, *supra* note 44 (tracing the influence of feminism globally and in the United States); Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 MICH. J. INT’L L. 1 (2008–

linking also borrowed the general rationale from the women, peace, and security space that “peace is inextricably linked with equality between men and women.”<sup>78</sup> The corollary of asserting this was to then argue that “an increase in women empowerment and gender equality has a positive effect on countering extremism, as it does similarly in peace building.”<sup>79</sup> In practice, the emphasis on feminism-as-counter-terrorism is encapsulated by the oft-repeated policy assertion that: “While women do sometimes play an active role in violent extremist organizations, it is also no coincidence that societies for which gender equality indicators are higher are less vulnerable to violent extremism.”<sup>80</sup> Then-U.S. Under Secretary for Civilian Security, Democracy, and Human Rights Sarah Sewall put an even finer point on it in 2016 when she stated that “in reality, CVE is a feminist agenda” and called on women to “seize this opportunity” to “reframe their rights and roles as part of the most salient international security effort of the 21st century.”<sup>81</sup> More recently, women’s empowerment has also been seen as an enabling condition for women’s more successful engagement in these security spaces.<sup>82</sup> This has led to programs such as “community theatre shows, which promote messages of women’s empowerment and community harmony;”<sup>83</sup> “empowerment,” through promotion

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2009) (outlining the impact of organized feminism on international criminal tribunals during the 1990s).

78. See Phumzile Mlambo-Ngcuka & Radhika Coomaraswamy, *Women are the Best Weapon in the War Against Terrorism*, FOREIGN POL’Y (Feb. 10, 2015), <http://foreignpolicy.com/2015/02/10/women-are-the-best-weapon-in-the-war-against-terrorism/>.

79. KRISTA LONDON COUTURE, , CTR. FOR 21ST CENTURY SEC. & INTELLIGENCE AT BROOKINGS, A GENDERED APPROACH TO COUNTERING VIOLENT EXTREMISM: LESSONS LEARNED FROM WOMEN IN PEACEBUILDING AND CONFLICT PREVENTION APPLIED SUCCESSFULLY IN BANGLADESH AND MOROCCO viii (2014) (emphasis omitted), <http://www.brookings.edu/~media/research/files/papers/2014/07/30-gender-conflict-prevention-countering-violent-extremism-couture/women-cve-formatted-72914-couture-final2.pdf>. See also COOMASWAMY, *supra* note 47, at 227 (arguing that there is a link but that “[i]ncreasing recognition of women’s participation and empowerment should not be part of counter-terrorism strategies but a part of the civilian peace agenda.”).

80. U.N. Doc. A/70/674, *supra* note 12, ¶ 53.

81. Sarah Sewall, U.S. Dep’t of State, Under Sec’y for Civilian Sec., Democracy, & Human Rights, Women & Countering Violent Extremism, Remarks at the Commission on the Status of Women in New York City (Mar. 17, 2016), <https://2009-2017.state.gov/j/remarks/254868.htm>.

82. See, e.g., JACQUI TRUE ET AL., UN WOMEN, EMPOWERING WOMEN FOR PEACEFUL COMMUNITIES: EVIDENCE FROM INDONESIA AND BANGLADESH 6 (2018), [https://monash.figshare.com/articles/Empowering\\_women\\_for\\_peaceful\\_communities\\_Evidence\\_from\\_Indonesia\\_and\\_Bangladesh/7125617](https://monash.figshare.com/articles/Empowering_women_for_peaceful_communities_Evidence_from_Indonesia_and_Bangladesh/7125617) (“However, gender discrimination and inequalities in the family and community may inhibit the full realization of women’s agency in P/CVE . . . Thus, to effectively engage with the gendered dynamics of violent extremism and reverse its effect, prevention and response efforts must prioritize women’s rights, empowerment, participation and leadership—both at the community level, as well as in national decision-making.”).

83. *Id.*

of “women’s leadership and economic empowerment;”<sup>84</sup> and supporting women as “mainstream” voices to develop counter-narratives to violence.<sup>85</sup>

While the litany of problems with these approaches in practice have been well-documented, they nonetheless bear repeating here.<sup>86</sup> That presenting women’s rights as a means to an end opens the way for bartering of rights when it is perceived that this will help appease terrorist groups.<sup>87</sup> That such approaches instrumentalize or use women<sup>88</sup> and that when programs targeting women are subsequently dropped this creates a huge fallout for these groups.<sup>89</sup> That securitization of women’s organizations generates backlash when groups are considered too tied to security agendas and removes a non-securitized space for women’s rights advocacy.<sup>90</sup> That women’s rights can be invoked to service repressive international policy responses in counter-terrorism and practice,<sup>91</sup> including through the focus on Muslim women’s empowerment in particular,<sup>92</sup> as well as in other “soft” approaches.<sup>93</sup> And that security policies in the name of women’s rights—such as restrictions on Muslim’s women’s dress justified as being for both security and gender equality goals<sup>94</sup>—can actually create more insecurity

84. See, e.g., *id.* (noting that UN Women has a “four-track approach” to PVE in Asia and the Pacific that involves “empowerment,” through promotion of “women’s leadership and economic empowerment;” increased “participation and leadership” in counter-terrorism and PVE; research on “drivers of extremist violence by sex and its impact on women and girls; and exerting “policy influence” to “[e]nsure national and regional counter-terrorism frameworks integrate gender and are informed by experiences of women”).

85. JAYNE HUCKERBY, CTR. FOR HUMAN RIGHTS & GLOB. JUSTICE, WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K. EXPERIENCES 4 (2012) [hereinafter HUCKERBY, PREVENTING VIOLENT EXTREMISM].

86. See generally Huckerby, *Feminism and International Law*, *supra* note 2; Huckerby, *The Complexities of WPS and CVE*, *supra* note 41; Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

87. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 581; U.N. Doc. A/64/211, *supra* note 8, ¶ 36; HUCKERBY & FAKIH, *supra* note 1, at 28, 207–08.

88. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 80–82; Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

89. HUCKERBY, PREVENTING VIOLENT EXTREMISM, *supra* note 85, at 7.

90. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 579–81.

91. See generally Kapur, *supra* note 17, at 214 (“[T]he ‘War on Terrorism’ and its secondary goal of protecting women has been addressed largely within the rhetoric of religion, civilization, and ‘a just war,’ rather than a concern for women’s human rights. The focus on women’s concerns through the prism of religion and culture not only serves to cast Muslim women as ‘Other,’ it also serves to justify the liberating impulse of military intervention. . .”).

92. Layla Saleh, *(Muslim) Women in Need of Empowerment*, 18 INT. FEMINIST J. POL. 1, 85 (2016) (arguing that “[t]he biopolitical construction of the ‘(Muslim) woman in need of empowerment’ may be considered an extension of the discourses emphasizing ‘saving’ women.”). See also *id.* at 82. (arguing that “perpetuation of this sort of representation of the (Muslim) female subject creates open-ended possibilities for US interventionist policies in the region for years to come . . .”).

93. See Huckerby, *Feminism and International Law*, *supra* note 2, at 555 (“[L]ater, broader, and ‘soft’ national security practices . . . also mobilized and reinforced such gendered images of vulnerability, innocence and care. As such, this more recent account of contemporary counter-terrorism and CVE shows how such images did not shut down the potential for non-military action, but instead dovetailed with it in certain circumstances.”) (citations omitted).

94. See, e.g., Jayne Huckerby, *France’s Burkini Bans Put Muslim Women in Danger*, TIME (Aug. 24,

for women by exposing them to hostile state scrutiny, as well as private backlash.<sup>95</sup> This focus on Muslim women's "empowerment" in national security discourses can also perpetuate "'Islamophobic stereotypes'" that center on Muslim women's inequality.<sup>96</sup>

Despite the thorough documentation of these challenges, the risks of such approaches persist. More recently, some of these risks are present in efforts that seek to demonstrate the links between misogyny and violent extremism.<sup>97</sup> This research, for example, suggests that "misogyny and violent extremism are connected at an individual level."<sup>98</sup> Without commenting on the nature of these conclusions, it is not difficult to anticipate how governments might implement these findings in ways that are antithetical to human rights. For example, one recommendation of this work is that "[e]vidence on individuals perpetrating violence against women or domestic violence needs to inform efforts to counter and prevent violent extremism."<sup>99</sup> Foreseeably, this focus could further discourage reporting by victims because of potential coercive security consequences for domestic abusers (similar effects have been observed in the immigration enforcement context). Securitizing of services for victims of violence can also make them more reluctant to access those services.<sup>100</sup> Focusing on male violence against women may reinforce harmful stereotypes of Muslim men as "violent" and anti-women, as well as further sideline a focus on other forms of intimate partner violence (for example, in same sex partnerships, or violence against men). Indeed, similar problems have come with securitizing other areas of gender-based harm against women, including for example, anti-trafficking responses.<sup>101</sup> Additionally, the finding that "women may support violence perpetrated against themselves or other women . . . and that these women are likely to support violent extremism"<sup>102</sup> risks doubling down on police failure to believe—and in some instances, criminalize—victims because it can encourage seeing women as potential suspects rather than victims themselves. As with the focus on gender-equality-as-security-tactic, such anti-gender-violence-as-security approaches can be superficially appealing because they seek to address a core human rights challenge of violence against women. But ultimately what lies behind these anti-gender-violence-as-security policies is a shortchanged version of gender analysis that decouples counter-terrorism policy from broader feminist analyses of the unequal gendered power relations that accounts for both current gender-based patterns of violence

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2016), <https://time.com/4463743/frances-burkini-bans/>.

95. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3.

96. Winterbotham & Pearson, *supra* note 54, at 59.

97. See generally Melissa Johnston & Jacqui True, *Misogyny & Violent Extremism: Implications for Preventing Violent Extremism*, U.N. WOMEN (2019), [https://arts.monash.edu/\\_\\_data/assets/pdf\\_file/0007/2003389/Policy-Brief\\_VE\\_and\\_VAW\\_V7t.pdf](https://arts.monash.edu/__data/assets/pdf_file/0007/2003389/Policy-Brief_VE_and_VAW_V7t.pdf).

98. *Id.* at 6.

99. *Id.*

100. HUCKERBY, PREVENTING VIOLENT EXTREMISM, *supra* note 85, at 12.

101. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 569–70; see, e.g., Jayne Huckerby, *Unpacking the Trafficking-Terror Nexus*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 13, at 106.

102. Johnston & True, *supra* note 97, at 6.

as well as how State-led responses actually already cause further insecurity for victims.

The second area where gender and human rights are ostensibly conjoined, to the detriment of rights, is in policies that tackle women's involvement in terrorism and violent extremism. Here the complex interplay between gender and rights occurs because a gender equality lens has been used to encourage greater analysis of female engagement in violence, but in ways that do not necessarily ensure human rights protections for suspects. Indeed, a predominant push for this focus has come from actors inspired by, and using, what are notionally gender equality arguments, such as stressing that women can be as violent as men. For example, advocates have decried governments' failure to interrogate the role of masculinity in violence, failure to recognize women's historical engagement in violence, and use of flattening and stereotyped assumptions of women as "innocent" or "victims" who are tricked or married into proscribed groups in ways that overlook their agency.<sup>103</sup>

Undoubtedly, all of these observations are true. Yet, this focus on women's agency in violence has not always been informed by a complete understanding of gender or foregrounded in human rights. It has therefore, in many instances, produced a set of gendered harms, including overly punitive, State-centered responses to female violence. For example, in the case of women who traveled to ISIS, pushback against governments' arguments that all women are "jihadi brides" has, in some instances, been a totalizing and sweeping insistence that all women can be as violent as men. There has also been an unwillingness to examine how conditions—including underlying and structural conditions related to economic and social status, as well as grievances against the State—that lead to recruitment are themselves gendered.<sup>104</sup> This failure to identify where exactly female recruits sit beyond the simple binary of innocent victims and willing terrorists has undermined human rights. It means for example, that governments' decision-making has overlooked mitigating circumstances, including whether the recruits of ISIS themselves were victims of human trafficking.<sup>105</sup> Governments have also developed disproportionately punitive responses to female violence in some cases. Germany's prosecutions of women who have returned from ISIS for the war crime of pillage when men are "predominantly" only charged with the membership in

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103. See generally COOK & VALE, *supra* note 41; COUNTER-TERRORISM COMMITTEE EXECUTIVE DIRECTORATE, GENDER DIMENSIONS OF THE RESPONSE TO RETURNING FOREIGN TERRORIST FIGHTERS: RESEARCH PERSPECTIVES (2019) [hereinafter CTED, GENDER DIMENSIONS]; Elizabeth Pearson & Emily Winterbotham, *Women, Gender and Daesh Radicalisation, A Milieu Approach*, 162 RUSI J. 60 (2017); Jayne Huckerby, Opinion, *When Women Become Terrorists*, N.Y. TIMES (Jan. 22, 2015), <https://www.nytimes.com/2015/01/22/opinion/when-women-become-terrorists.html>.

104. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3 ("Just one example of the costs of gender without human rights is when strategies focus on women's engagement in violence but do so without addressing the role of human rights violations and grievances as conditions conducive or motivations. For example, in overlooking the accounts of European women in ISIS about how alienation and restrictions on their religious practices, like the burqa ban, helped push them into the group, a key opportunity is missed for those concerned with security, as well as rights.").

105. See Jayne Huckerby, *When Human Trafficking and Terrorism Connect*, JUST SECURITY (Feb. 22, 2019), <https://www.justsecurity.org/62658/human-trafficking-terrorism-connect-dangers-dilemmas/>.

and/or support of a terrorist organization is one example.<sup>106</sup> Another human rights fallout from this hyper-agency approach that sees all women as dangerous is the refusal of some governments to repatriate women from Iraq or Syria, as well as children whose mothers are also there.<sup>107</sup> While it is indeed true that women can be terrorists too, this race to the bottom to ensure equally coercive punishment for everyone is fundamentally antithetical to human rights and reinforces States' coercive powers in the counter-terrorism realm.

#### IV. GENDERED NATIONAL SECURITY HARMS IN THE PRESENT MOMENT: SOME CONSIDERATIONS

##### A. Locations of gendered national security harms

Recently, impacts of national security on gender and human rights have become more widespread. Gendered security harms can now be traced in areas ranging from development (for example, livelihood programs for men and boys at the expense of women and girls)<sup>108</sup> to family law (for example, custody orders removing children from mothers because of "radicalization").<sup>109</sup> In large part, this owes to the mission creep of national security itself, as well as failure to give prominence to both gender and human rights as described above. In terms of the mission creep of national security, the terms "terrorism," "violent extremism," and "extremism" are meant to be on a sliding scale, with terrorism being the narrowest range of behavior, and extremism being the widest.<sup>110</sup> But the terms are either not defined or defined over-broadly<sup>111</sup> and are used interchangeably<sup>112</sup> to criminalize a wide swath of legitimate behavior that should not be seen as dangerous. The human rights fallout from this has been gendered. For example, counter-terrorism rules have been used against women's rights defenders.<sup>113</sup> And some governments have sought to label feminism itself as a form of "extremism."<sup>114</sup>

106. See, e.g., Alexandra Lily Kather & Anne Schroeter, *Co-Opting Universal Jurisdiction? A Gendered Critique of the Prosecutorial Strategy of the German Federal Public Prosecutor in Response to the Return of Female ISIL Members: Part I & Part II*, OPINIO JURIS (Mar. 7, 2019), <http://opiniojuris.org/2019/03/07/co-opting-universal-jurisdiction-a-gendered-critique-of-the-prosecutorial-strategy-of-the-german-federal-public-prosecutor-in-response-to-the-return-of-female-isil-members-part-i/>. But see CTED, GENDER DIMENSIONS, *supra* note 103, at 2 ("Research suggests that women tend to receive more lenient treatment in the criminal-justice system, based on (often false) gendered assumptions about their limited agency.").

107. See, e.g., Elian Peltier, *U.K. Takes Back Children from Former ISIS Territory*, N.Y. TIMES (Nov. 22, 2019), <https://www.nytimes.com/2019/11/22/world/europe/britain-isis-children-syria.html>.

108. See, e.g., HUCKERBY & FAKIH, *supra* note 1, at 38.

109. See, e.g., Fatima Ahdash, *The Interaction Between Family Law and Counter-terrorism: A Critical Examination of the Radicalisation Cases in the Family Courts*, 30 CHILD & FAM. L. Q. 389 (2018).

110. See, e.g., U.N. Doc. A/70/674, *supra* note 12, ¶ 4 (violent extremism is conceptually understood to address an even "wider category of manifestations" than "terrorism.").

111. *Id.*

112. U.N. Doc. A/HRC/31/65, *supra* note 7, ¶ 13.

113. U.N. Doc. A/HRC/40/52, *supra* note 36, ¶¶ 53, 58.

114. See, e.g., Megan Specia, *Saudi Anti-Extremist Force Names Feminists as a Target. Briefly*, N.Y. TIMES (Nov. 13, 2019), <https://www.nytimes.com/2019/11/13/world/middleeast/saudi-feminism-extremism-video.html>; *Russia Treating Feminists as 'Extremists' Amid Crackdown on Dissent*,

In addition to these increased openings for coercive gendered national security crackdowns, this widening of national security practice has another important gendered effect. It creates a greater number of spaces in which rights can potentially be compromised along gendered lines even when the policies themselves are not explicitly coercive. For example, in these spaces, problematic gender stereotypes, particularly those of Muslim women's inequality, can feature in ways that lead to gendered harms. One example is the buy-in to the concept of radicalization as being a consequence of failed integration. This expanded the reach of P/CVE and meant that security policies could get linked to and/or become synonymous with integration agendas that seek to secularize Muslim women as a "fix" for failed integration.<sup>115</sup> Another example is when counter-narratives or messaging programs became part of national security approaches.<sup>116</sup> Here it was governments' conventional wisdom that the most persuasive messengers or "credible" voices were the traditional actors in communities (for example, certain religious leaders) or male "formers;" however, such efforts overlooked the efforts of local women actors to minimize the sway of these voices, as well as the consequences of giving them more of a platform.<sup>117</sup>

## B. Interplays of State and non-State gendered security harms

Gendered harms in the national security space come from a series of complex interplays between non-State violence and official responses, and from incongruences among government policies themselves. On the former, I have previously used the concept of "squeezing" to describe the experience of women and women's organizations being caught between proscribed actors on the one hand, and security policies on the other.<sup>118</sup> One example of this is when States fail to recognize the asylum claims of women who have experienced gender-based abuse by terrorist groups (for example, as slaves or cooks) because such activities are deemed to be material support for terrorism.<sup>119</sup> This punishment of female victims at the very moment that States encourage support of victims of terrorism demonstrates just how precarious women's rights are in this space between the

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INDEPENDENT (Aug. 18, 2017), <https://www.independent.co.uk/news/world/europe/russia-feminists-extremists-putin-crackdown-a7900906.html>.

115. Winterbotham & Pearson, *supra* note 54, at 56 ("In The Netherlands, well-established CVE programmes have been linked to initiatives aimed at the integration of Muslim women through secularisation processes and have been criticised for seeking to impose a particular understanding of equality on women, which many Dutch Muslim women reject." (citing Sarah Bracke, *Subjects of Debate: Secular and Sexual Exceptionalism, and Muslim Women in The Netherlands*, 98 FEMINIST REV. 28 (2011))).

116. Logan Macnair & Richard Frank, *Voices Against Extremism: A Case Study of a Community-based CVE Counter-narrative Campaign*, 10 J. FOR DERADICALIZATION, 147, 150 (2017) (noting "the release of counter-messages and counter-narratives" as part of CVE initiatives).

117. Huckerby, *Feminism and International Law*, *supra* note 2, at 554 (citing HUCKERBY & FAKIH, *supra* note 1, at 27, 107–10).

118. See HUCKERBY & FAKIH, *supra* note 1, at 23; Huckerby, *Feminism and International Law*, *supra* note 2, at 557. See also U.N. Doc. A/64/211, *supra* note 8, ¶ 23 ("Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity.").

119. U.N. Doc. A/64/211, *supra* note 8, ¶ 50; see, e.g., HUCKERBY & FAKIH, *supra* note 1, at 100.

State and terrorist groups. State and non-State actions also intersect in those instances where State security coercion creates additional opportunities for gendered non-State violence. One example is when coercive national security measures that stigmatize Muslim communities generate Islamophobia that then results in private targeting of Muslim women who wear visible signs of religious dress.<sup>120</sup>

However, to fully encapsulate gendered national security harms requires explicitly broadening the concept of squeezing from government qua terrorists to also address squeezing from government qua government. The core way that this State-State squeezing occurs is that national security policies themselves can often be at cross-purposes when it comes to gender and human rights. Sometimes this squeezing happens concurrently. One example of this is the “policy incoherence”<sup>121</sup> that results from the interaction of counter-terrorism financing laws and P/CVE programs that target women. This occurs because “[o]n the one hand, P/CVE increasingly emphasizes the need for grassroots and localized efforts, including the participation of women. On the other, because of rules to combat terrorism financing, those are the very groups that are most difficult to fund.”<sup>122</sup> In other instances, the squeezing of women and women’s organizations is between different eras or iterations of government national security measures. National security programs targeted at women do not occur in a vacuum, yet there can be a tendency among policymakers to move through different approaches without always thinking of the footprint of previous measures.<sup>123</sup> For example, as mentioned above, before women-targeted P/CVE programs were adopted, P/CVE measures that explicitly targeted credible voices, sometimes emboldened actors (including former extremists or religious leaders) in communities in ways that could be inimical to women’s rights.<sup>124</sup> Research also shows the ways in which counter-terrorism and P/CVE has stigmatized Muslim communities and that this has led to some wariness about subsequent programs that then seek to engage women.<sup>125</sup>

### C. Challenges in measuring gendered national security harms

At the very same time as the gendered human rights impacts of national security have become more widespread—including from the very policies that seek to be gendered—and implicate a series of State-State and State/non-State

120. Sabrina Alimahomed-Wilson, *Invisible Violence: Gender, Islamophobia, and the Hidden Assault on U.S. Muslim Women*, 5 WOMEN, GENDER, & FAMILIES OF COLOR 73 (2017); Huckerby, *Gender, Violent Extremism, and Countering Violent Extremism*, *supra* note 41.

121. TIGHTENING THE PURSE STRINGS, *supra* note 30, at 16.

122. *Id.* (citations omitted).

123. See, e.g., HUCKERBY & FAKIH, *supra* note 1, at 14.

124. See, e.g., *id.* at 27, 107–10. See also Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT’L SEC. J. 147, 214 (2014) (noting that community policing “interlocutors, most of whom are men, can further entrench their gatekeeper status,” such that “large segments of Muslim communities, particularly youth and women, could suffer an intra-community subordinating effect of being voiceless and bereft of individual agency”).

125. Winterbotham & Pearson, *supra* note 54, at 58 (identifying CVE fatigue as an “obstacle to working with Muslim women”).

interactions, these impacts have become even harder to identify and track. When it came to documenting the immediate post-9/11 measures and their impacts on gender and human rights, this was a difficult undertaking. Governments had (and still have) a heavy lack of transparency on the human rights outcomes of their security approaches—from invoking arguments about state secrecy to shield actions from scrutiny; to the failure of international and regional institutions to fully press governments on their human rights record; to penalizing human rights defenders that seek to document the fallout of actions taken in the name of counter-terror. Additionally, as mentioned above, governments also had a block on seeing that they might—intentionally or unintentionally—harm women’s rights through the “War on Terror” at the very same time they purported to “save” women from misogynist terrorists. Also relevant is that in the aftermath of the events of 9/11, many human rights advocates’ eyes were trained on violations happening in places like Guantánamo Bay and CIA “black sites.” This was necessary, but as feminists have long-noted, such a focus on government civil and political rights violations against men in places of detention can exclude an accounting of a broader set of gendered harms,<sup>126</sup> such as impacts of non-State violence (for example, terrorism) on women, as well how official security policies that target male family members impact the economic, social, and cultural rights of females. Nonetheless, there were still some familiar tools that were available for initiating attention to gendered impacts of these predominantly “hard,” post-hoc measures; primarily the work that had been done to document the impact of “disappearances” on female family members, or the impacts of conflict and post-conflict on women and girls.

Yet tracking the gender and human rights impacts of widening national security practices (such as those that stem from P/CVE measures) is a slightly different—as well as larger—undertaking. Some of these challenges are related to programmatic features of P/CVE measures. P/CVE and even counter-extremism programs often involve areas where there are usually otherwise very good and important reasons for confidentiality (for example, in custody cases, decisions by social workers, and in schools). Additionally, transparency is hampered by one of the hallmarks of P/CVE which is the devolution of programs from national to more local or community-based levels. This has necessarily meant a greater role for an increasing array of governmental actors who have not historically been involved in national security issues and who may have difficulty assessing threats based on wide or opaque definitions of “terrorism,” “violent extremism,” and “extremism.” At the same time, such localized decision-making may receive less public scrutiny through the usual accountability tools, including litigation. Additionally, program implementors may explicitly seek to hide the security funding of their programs from beneficiaries,<sup>127</sup> which has significant implications for their human rights.

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126. See, e.g., Huckerby, *Feminism and International Law*, *supra* note 2, at 561. For the argument that focusing on male victims of counter-terrorism deprioritized women’s experience as victims of terrorism, see generally Karima Bennouna, *Terror/Torture*, 26 BERKELEY J. INT’L L. 1, 40 (2008); Meredith Tax, *Women Have Rights Too*, GUARDIAN (Dec. 13, 2010), <http://www.theguardian.com/commentisfree/cifamerica/2010/dec/13/international-criminal-court-moreno-ocampo>.

127. See, e.g., Nosheen Iqbal, “We Acknowledge We Went Wrong”: *Lifestyle Website for Muslim Teens Admits it Should Have Been Clearer About Home Office Funding*, GUARDIAN (Sept. 15, 2019), <https://www.theguardian.com/uk-news/2019/sep/15/lifestyle-website-for-muslim-teens-is-covertly-funded-by-the>

An additional factor compounding the transparency gap when it comes to gendered harms lies in the accepted wisdom that it is “notoriously difficult” to evaluate P/CVE programs, whether they be generic or targeted at women.<sup>128</sup> Further hindering a thorough gender and human rights perspective is also the fact that the evaluation that does take place tends to focus on efficacy rather than rights’ impacts.<sup>129</sup> Additionally, in some cases, because of the ill-defined nature of “terrorism,” “violent extremism,” and “extremism,” as well as their responses, it is genuinely unclear what is being measured. This is particularly the case when it comes to evaluating P/CVE programs, that in some cases, can be for all intents and purposes essentially repackages of existing programs (for example, on conflict prevention or gender equality) albeit through a security lens.<sup>130</sup> In these cases, assessing impact can look like a mish-mash of assessing gender equality goals, alongside P/CVE ones, and sometimes, without a clear theory of change as to how the two might even be linked.<sup>131</sup> Finally, what is rare, indeed almost fully absent, are evaluative efforts that ask, as a starting point, whether communities and/or beneficiaries even want national security programs that target women and/or gender equality.<sup>132</sup> This raises concerns under a gender and human rights-based approach, which requires the centering of the perspectives of those most affected by the adoption of governmental security measures.<sup>133</sup>

#### D. Toward a typology of gendered security harms

It is beyond the scope of the Article to develop a full typology for analyzing gendered national security harms.<sup>134</sup> However, the challenges of measuring harms,

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128. Winterbotham & Pearson, *supra* note 54, at 54.

129. See generally U.N. DEVELOPMENT PROGRAMME & INTERNATIONAL ALERT, IMPROVING THE IMPACT OF PREVENTING VIOLENT EXTREMISM PROGRAMMING, A TOOLKIT FOR DESIGN, MONITORING AND EVALUATION (2018). See also U.N. Doc. A/HRC/43/46, *supra* note 36, at 1 (identifying “the lack of a robust scientific basis for the current policies and practices aimed at preventing and countering violent extremism and the complete absence of human rights-based monitoring and evaluation, including by United Nations entities,” and that “[t]here has been a distinct upsurge in policy and programming addressing the gender dimension of violent extremism, yet there has been no systematic monitoring and evaluation assessing the merits, impacts or human rights compliance of such programming.” *Id.*, ¶ 40).

130. Ní Aoláin & Huckerby, *Gendering Counterterrorism: Part II*, *supra* note 3 (noting that “women’s groups [are] increasingly feeling pressure to reorient their activities to fit a national security objective in order to attract much-needed funding even if this is a mismatch for their programs and beneficiaries”).

131. See, e.g., MOHAMED ABDILATIF, UN WOMEN, ENGAGING WOMEN IN PREVENTING AND COUNTERING EXTREMIST VIOLENCE IN KENYA (2017) (draft report), <https://gate.unwomen.org/EvaluationDocument/Download?evaluationDocumentID=9084>.

132. One exception is Winterbotham & Pearson, *supra* note 54, at n.50 (identifying the research question as: “How wanted and needed are CVE programmes targeting women in the communities they are intended to help?”).

133. See, e.g., International Covenant on Civil and Political Rights, art. 25(a), Dec. 19, 1966, 99 U.N.T.S. 171; Convention on the Elimination of all Forms of Discrimination Against Women, art. 7, Dec. 18, 1979, 1249 U.N.T.S. 13.

134. See Huckerby, *Feminism and International Law*, *supra* note 2, at 567–69 (I have previously developed a tripartite typology for understanding “State-based harms toward women and girls in the

as well as the increasing number of locations of rights violations, mean that some preliminary thoughts should be offered. This Article has presented a variety of different types of gendered security harms that come from different sets of policies. One set can be thought of as policies that are gendered and overtly coercive in that they are intended to crackdown on human rights of persons of different genders. This includes, for example, coercive security practices against men (including disappearances) that also create a host of rights violations against female family members (including for example, coercive interrogations and limited access to services).<sup>135</sup> Punitive policies against women for engagement in violence because of perceived violations of gender stereotypes are another example.<sup>136</sup> Targeted attacks against women's rights defenders or feminism itself in the name of national security is another.<sup>137</sup> Another set of measures is similar in that such policies seek to be gendered, but rather than being part of the "hard" security toolkit, they are meant to be non-coercive or "soft." These policies too can nonetheless have adverse human rights effects, including because they embody harmful or problematic stereotypes of women, particularly Muslim women. This includes programs that target Muslim mothers as antidotes to violence in their families.<sup>138</sup> It can be useful here to think also of development programs that target men and boys because they are perceived to be "at risk" of violence, which then result in less programming for women and girls.<sup>139</sup>

Unlike the two previous types of measures, which might be gendered and pay little attention to human rights, there is a third type of measure that does reference rights but, paradoxically, has adverse impacts. Policies in this group are ones that actually seek to promote women's rights, gender equality, and women's participation as means to the end of ensuring national security. Examples here are policies that seek to "empower" women as security actors but do so without considering gendered conditions in domestic contexts where the policies are being implemented. Such local conditions might make it dangerous and/or counter-productive for women actors to either document or label their work as counter-terrorism or P/CVE because their work runs counter to patriarchal norms and it puts them in too-close proximity to security services.<sup>140</sup> And finally, a series of gendered harms come from those policies which are gender-neutral and where the disregard of human rights may be intentional or non-intentional. Here, gendered harms can come from gender blindness, including the failure to consider the operating conditions in which measures are implemented. This would also

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name of national security" that embodies an intersectional approach and recognizes that "such policies have undermined the rights of women and girls through their focus on men and boys as the subject of counter-terrorism interventions;" "directly discriminated against women and women's rights organizations;" and "involved discriminatory treatment because of a failure to consider the underlying gender dynamics in the operating environments in which measures are being implemented.").

135. See, e.g., U.N. Doc. A/64/211, *supra* note 8, ¶ 30; Ramzi Kassem, *Gendered Erasure in the Global "War on Terror": An Unmasked Interrogation*, in GENDER, NAT'L SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 13, at 15.

136. See *supra* notes 105–107.

137. See *supra* notes 113–114.

138. See *supra* notes 32, 53, 62.

139. See, e.g., HUCKERBY & FAKIH, *supra* note 1, at 38.

140. Huckerby, *Feminism and International Law*, *supra* note 2, at 581.

include, for example, counter-terrorism financing measures that are gender-neutral but in practice discriminatory.<sup>141</sup>

### CONCLUSION

For those concerned with the where, how, and why of when gendered approaches to human rights do—or do not—get mobilized in governance, the field of national security provides a remarkable case study. The account of the role of gender and human rights from the post-9/11 to the present is a complicated, and shifting, one. This Article provides an overview of the interplay between gender, human rights, and national security in three main ways—from no explicit discussion of gender or human rights post-9/11; to a consideration of gender but not from a genuine human rights perspective; to potential openings for a more nuanced analysis of gender and human rights that have somewhat paradoxically generated a new set of gendered human rights violations. While the turn to consider gender as a central part of national security practice was long overdue, this Article makes clear that there are costs when certain concepts of gender move from the margins to more mainstream—or even predominant—areas of decision-making. Some of these costs occur because many of the efforts to gender national security have lacked a full understanding of gender. Indeed, the powerful potential of using gender as a lens has often been lost because policies focus solely on women, rather than undertake a fundamental examination of unequal power relations that shape both violence and its response. Notably, it is in this circumscribed form that gender can become so much more palatable to decision-makers, to the point that for some actors integrating “gender” is seen as an option that is preferable to, and easier than, complying with human rights.

Other costs occur because of the ways in which gender has—or has not—been linked to human rights. In some instances, the uptake of gender has been siloed from human rights. In others, the two have been conjoined in ways that are not furthering of gender equality, but instead generative of new harms including because they encourage State-centric responses that may be punitive. One key way to trace how gender and human rights are mobilized in national security and to what ends is to track gendered security harms. Yet, to date, such harms are far from fully-explored. This failure is particularly marked given their nature and prevalence. Such harms involve complex intersections of State and non-State violence in security settings and include adverse effects not just on persons of different genders, but also on gendered stereotypes and on gendered hierarchies. With the growing scope of national security practice, the harms now occur in places that were not originally anticipated in the immediate aftermath of the events of 9/11 and the national security architecture developed at that time. A full account of the locations, nature, and scale of these gendered security harms, as well as robust frameworks to measure and remedy them, is essential to the analysis of how gender and human rights have featured in national security to date. However, given the increasing attention to gender in national security practices, this analysis is also a critical forward-looking exercise toward understanding what it means to take an integrated gender and human rights-

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141. See generally TIGHTENING THE PURSE STRINGS, *supra* note 30.

based approach to national security in ways that further, rather than undermine, gender equality.