



Universiteit
Leiden

The Netherlands

Global trends in counter-terrorism: implications for human rights in Africa

Duffy, H.

Citation

Duffy, H. (2023). *Global trends in counter-terrorism: implications for human rights in Africa. ISS monograph series*. Pretoria [etc.]: Institute for Security Studies (ISS). Retrieved from <https://hdl.handle.net/1887/3728464>

Version: Publisher's Version

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/3728464>

Note: To cite this publication please use the final published version (if applicable).

Global trends in counter-terrorism

Implications for human rights in Africa

Helen Duffy



Global trends in counter-terrorism

Implications for human rights in Africa

Helen Duffy

Contents

Executive summaryiv

Abbreviations and acronymsvii

Chapter 1

Background and context 1

Terrorism in Africa 1

‘Counter-terrorism’: evolution and threats 2

Other pressing economic, political, natural and social threats 5

Chapter 2

Key trends in counter-terrorism and their implications 9

Recognition of counterproductivity, then business as usual 9

Spreading reach and vagueness of ‘terrorism’ and ‘extremism’ 11

Closing civic space 13

Forever ‘war’ and the militarisation of counter-terrorism..... 14

Securitising migration 19

Arbitrariness and administrative measures: detention, sanctions and citizenship..22

Over-criminalisation and justice gaps 25

Expanding PCVE: positive shift or wolf in a sheep’s clothing?.....31

Technological advances and privacy challenges.....34

Clampdown on press, protest and access to information36

Inequality.....39

Expanding actors: state, private and foreign 41

Evaluation, reparation and addressing impunity..... 44

Chapter 3

Conclusion 49

Legal and policy recommendations 51

Notes57

Executive summary

Terrorism and the ‘war’ on it have been at the centre of international politics for the past 20 years. Terrorism was a reality in Africa long before it shot to the top of the international agenda with the 9/11 attacks on the United States in 2001 and it constitutes a far more serious threat today. In the intervening period, laws, policies, practices and institutions have proliferated around the world and across the continent, with the stated objective of countering ‘terrorism’, ‘extremism’ and an ever broader range of related threats.

While the profound and wide-reaching impact of terrorism is indisputable, there is a steadily growing concern about the human rights and rule of law implications of the burgeoning counter-terrorism (CT) and countering or preventing violent extremism (CPVE) industry. Concerns have also grown exponentially as to its effectiveness. Twenty years after the launch of the so-called war on terror many are wondering whether CT responses are fuelling rather than addressing underlying problems. Is ‘Africa, in some ways, worse for the fix’?¹

Despite concerns, CT and CPVE continue to grow, assuming new forms, broadening in scope and subjecting ever more aspects of daily life to security interventions. Over time exceptional national security laws, policies and practices have been normalised as integral parts of our legal, political and cultural systems.

This monograph seeks to identify key global trends in CT/CPVE and their implications. The report highlights an urgent need to grapple with the impact of expanding CT on democracy, peace, rule of law and human rights in Africa. Many of the issues considered are already priorities for human rights actors across the continent, while others are likely to require urgent legal and policy responses in the near future.

The definitions of ‘terrorism’ and CT today are so broad and the solutions so complex and context dependent, particularly on a vast and diverse continent, that this work cannot be comprehensive or provide specific detailed recommendations. It does, however, flag multiple trends, from the threats of terrorism and ‘counter-terror’ responses to the proliferation of people engaged in them and specific factual, legal and policy developments in a range of global and African contexts and their multi-dimensional impacts. It is intended as an invitation to reflect on the evolving threats and opportunities this landscape presents and to think proactively about the challenges ahead.

The need for a contextual approach to understanding the problems and shaping responses is a recurrent theme. CT is too often perceived as decontextualised, ‘imposed’ (by states or, for example, the United Nations Security Council – UNSC) and as ‘top down’ rather than organic and led by those most affected. The fact that global trends are highlighted should not, therefore, imply a bias towards broad-brush global, or even continental, responses. However, the recognition that problems and priorities vary and issues manifest differently in different circumstances does not detract from the value of stepping back and considering the panorama of emerging trends and their potential implications.

Not all trends identified are negative. There are opportunities and sources of inspiration in areas of evolution, from technological advances and normative developments to shifting awareness and discourse, the engagement of new actors and the innovation and resilience of civil society organisations (CSOs) and communities.

Growing recognition of the limits and counter productivity of much of the practice of CT to date, and the role of the protection of human rights in effective long-term security, are themselves positive trends to be built on. However, many of the same developments and resources that appear to offer a promise for tomorrow are being impeded by CT today.

There is an urgent need to grapple with the profound
impact of expanding CT on democracy, peace,
rule of law and human rights in Africa

This monograph benefitted from desk research and interviews² with local, regional, continental and international actors, who were asked to identify priority trends, challenges and opportunities. There was invaluable input from people from different walks of life and whose focus was thematic or regional, with predominantly African voices complemented by others. The breadth of issues identified reflects the complexity and diversity of the CT and CPVE landscapes. It also reveals remarkable consensus and common concern about the profound implications of 20 years of the war on terror in Africa and what it means for the future.

Chapter 1 highlights preliminary threat trends, starting with a brief exploration of the background of ‘terrorism’ on the continent, including the increasing organised political violence that is far more serious today than it was at the outset of the war on terror.

It includes a brief overview of evolving CT, setting out strategic shifts and broad legal and institutional developments, and flagging human rights and rule of law implications. While vast and varied, paradoxically too much of this growing CT

industry is, itself, now part of the threat landscape that must be addressed. Finally, the chapter explores the intersection with other climatic, political, economic and social trends and their implications for security, intensifying the urgent need for effective responses.

Chapter 2 identifies 13 specific global trends in CT alongside their current or potential implications for human rights. The first is positive, involving the growing recognition of the limits and counter productivity of much CT. Of the trends that follow, some reflect overarching and crosscutting issues or approaches (such as the steadily creeping scope of ‘terrorism’, ‘extremism’ and related concepts, and the ongoing expanding ‘war’ paradigm). Some reveal the changing nature of those engaged in CT, including the role and impact of the private sector and external states. Others relate to specific areas of development, such as over-criminalisation, the securitisation of migration or increasingly arbitrary administrative measures that bypass normal legal processes.

Yet others highlight how specific practices, such as the increased use of lethal force, internet shutdowns or data collection on security pretexts without adequate protection of the rule of law, risk eviscerating particular rights. The unequal impact of the war on terror emerges from across this monograph, and is highlighted as a key trend. The implications for a range of democratic actors and groups, such as CSOs, journalists or the judiciary are exposed by other trends. The final group of trends reflects the dearth of meaningful evaluation, accountability and reparation – a defining trait of the ongoing war on terror which seriously impedes our ability to learn from the past.

Chapter 3 offers concluding reflections on opportunities and threats, and makes overarching recommendations.

Abbreviations and acronyms

ACLED	Armed Conflict Location and Event Data
ACommHPR	African Commission on Human and Peoples' Rights
AI	artificial intelligence
AU	African Union
CHRIPS	Centre for Human Rights and Policy Studies
CPVE	countering or preventing violent extremism
CSOs	civil society organisations
CT	counter-terrorism
DDR	demobilisation, disengagement and reintegration
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EU	European Union
FTFs	foreign terrorist fighters
GCTF	Global Counterterrorism Forum
IDLO	International Development Law Organization
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IS	Islamic State
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
LRA	Lord's Resistance Army
MNJTf	Multinational Joint Task Force
NGOs	non-governmental organisations
NIAC	non-international armed conflicts
OAU	Organisation of African Unity

OSJI	Open Society Justice Initiative
PMSCs	private military security contractors
SRTHR	Special Rapporteur on Terrorism and Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGA	UN General Assembly
UNSC	United Nations Security Council

Chapter 1

Background and context

Terrorism in Africa

Any discussion of ‘terrorism’ in Africa is necessarily clouded by the problematic nature of the term. The label has long been contentious and abused. It was a notorious weapon against anti-colonial and anti-apartheid rights and democracy movements,³ which contributed to African states’ insistence that any international treaty definition must exclude those who fight against colonial domination or in wars of national liberation.⁴ Despite this, in the past 20 years broad approaches to terrorism and CT have proliferated, targeting not only the politically-motivated violence against civilians often associated with terrorism⁵ but an array of legitimate activities.⁶

It is clear, however, that political violence on the African continent, including that committed by non-state ‘terrorist’ groups, is a very real problem and is growing at an alarming rate. Although the numbers of people killed in terrorism attacks globally have waned, in large swathes of Africa they have risen steadily in the past 20 years.⁷

Sub-Saharan Africa was described in 2022 as an epicentre of terrorism, accounting for 48% of global deaths from this cause.⁸ ‘Unprecedented’ levels of terrorist violence in the Sahel⁹ led to terrorism deaths rising one thousand percent between 2007 and 2021.¹⁰ The impact goes far beyond the numbers killed, to the millions living under the control of violent groups or uprooted by them. Boko Haram has left tens of thousands displaced in the Lake Chad basin in the past decade,¹¹ while displacement by al-Shabaab reportedly runs to millions.¹² In Somalia alone it is estimated that more than two million people have been internally displaced and more than 900 000 externally displaced.

The number of affected states is growing. A 2022 assessment suggests that five of the ten countries in the world with the highest terrorism risk are African.¹³ Whereas the continent was the site of relatively few major terror attacks before 9/11, 20 years later it is described as having replaced the Middle East as the centre of gravity of so-called jihadist terrorism. A total of 41% of Da’esh or the Islamic State (IS) related attacks in 2021 were on African soil¹⁴ and the group’s reach is described as a ‘relentless spread across the African continent,’¹⁵ albeit through an array of new and ‘loosely ‘associated’ groups. By 2022, Africa was described as a hub for IS/Da’esh

activity and potentially for a future Da'esh caliphate, given the networks' activity in at least 20 African countries, with more than 20 others being used for logistics and mobilising funds.¹⁶

However, experts also call for perspective in a variety of ways. The global focus on so-called Islamist or jihadist threats in the war on terror may be misleading when violent actors and causes are in fact extremely diverse. The UN Special Rapporteur on Terrorism and Human Rights (SRTHR) has also cautioned that undue focus on one type of terrorism distorts and 'belittles the severity of the danger posed by other groups' such as the right wing terrorism that is rising rapidly in some parts of the globe.¹⁷ The presence of the Lord's Resistance Army (LRA) in Northern Uganda since the 1980s shows that terrorism has long taken many forms on the continent.

Indeed, it has been suggested that much of what is commonly viewed as international terrorism would be better understood as conflicts attributable to local causes and failures to address local grievances and tensions, rather than to the military might and spread of any global terrorist movement.¹⁸

The global tendency to inflate, and to over-simplify the 'terrorist threat' should be avoided.¹⁹ Threats are far from homogenous across the continent, still less across the world. Moreover, while the human, political, social, developmental and economic impact of political violence on Africa is undeniable and multi-dimensional,²⁰ the human and economic cost of terrorism still pales in comparison to that of other forms of violence and causes of death.²¹ Excessive focus on 'terror-related' threats, often influenced by political motivation, media attention and donor prioritisation of CT and PCVE,²² risks distorting perceptions, and as the UN Secretary-General noted, 'doing the terrorists' work for them'.²³

Counter-terrorism: evolution and threats

In the past 20 years the continent, like the rest of the world, has witnessed an explosion of laws, policies, practices and institutions directed at responding to terrorism and, increasingly, preventing terrorist 'threats'. These trends and their human rights implications are at the heart of this report. They include militaristic approaches that lead to escalating violence from a growing range of actors on all sides and notorious violations (such as unlawful killings, torture and disappearances), protected by entrenched impunity. Coercive responses by security forces have dominated CT and popular perceptions of it, undermining trust in state institutions and international actors.²⁴

These approaches are still dominant today but the toolkit has also expanded greatly in the past 20 years, as have the range and numbers of those engaged in CT. Most, if not all, aspects of state apparatus and functions, as well as the resources of international institutions, foreign states, private sector and civil society, are directed at countering the terror threat. There has also been a notable shift

from a responsive (and coercive) to a preventive (and strategic) approach, at least on paper.

This 'preventive' turn in CT policy is positive in principle, but it also poses multiple human rights challenges in practice. It entails crucial recognition of the need to understand and address the 'conditions conducive' to the spread of terrorism, which is reflected in the development of policies on the regional as well as UN levels.²⁵ It has also spawned programmes focused on countering, or preventing, the 'violent extremism' believed to 'lead to terrorism'.²⁶ It has led to vastly increased special powers (of surveillance or investigation, for example), while novel executive measures which have increased state control of financial flows, social organisation or the travel of would-be terrorists, and many others. It stretches the preventive potential of existing law, including criminal law, into the pre-crime space and out to perceived or potential supporters and enablers.²⁷

Despite concerns, counter-terrorism continues to grow, broadening in scope and subjecting ever more aspects of daily life to security interventions

Laws and law-making processes have been transformed, nationally and internationally. Exceptional legal frameworks have proliferated across Africa, as they have elsewhere, involving broad-reaching anti-terrorism laws, in some cases undergirded by states of emergency and emergency legislation. Many of these emergency frameworks have then been extended or applied to other areas, such as the response to COVID-19.²⁸

There are examples throughout this monograph of vague CT legislation that confers exceptional powers while reducing oversight or protections. Hastily adopted legislation that limits the normal democratic process of consultation and review, or increases executive measures that bypass the legislative role entirely, raise concerns about the democratic law-making function.²⁹

The unprecedented role of the UNSC in directing CT, mandating wide-reaching CT measures under the binding Chapter VII of the UN Charter, has been a particularly significant feature of the changing legal landscape in the past 20 years. The hasty processes of adopting such CT resolutions and the failure to define the conduct at which the resolutions were 'targeted', to insist (at least post-9/11) on consistency with International Human Rights Law (IHRL) or to provide meaningful oversight,³⁰ have all been criticised. Despite this, there is no sign that the UNSC's expansive mandating of counter-terrorism is abating.³¹ In addition, international standards have been influenced by the rapid expansion of 'soft law'

on CT/CPVE,³² some helpfully clarifying states' obligations and others arguably watering them down.³³

There is a longstanding legal framework governing human rights and CT in Africa. It includes African anti-terrorism treaties and international treaties relating to particular aspects of terrorism. Some of the latter existed before 9/11 but have been supplemented and their ratification and implementation enhanced since then.³⁴ While there are gaps, such as the lack of a universal terrorism treaty and general agreement on the definition of the contentious term, there are both specific treaties and authoritative 'guidance' on the core elements of terrorism, which, if followed, would narrow any gap.³⁵ Likewise, there has long been a body of human rights obligations applicable to African states, which continues to develop through practice. Binding UNSC resolutions³⁶ and African terrorism treaties³⁷ explicitly state that they must be applied consistently with these obligations (although, as this monograph shows, the reality is often different).

A rule of law problem arises, with counter-terrorism treated as beyond the law, and human rights as a policy option not a binding obligation

The African Charter enshrines duties – to exercise 'due diligence' to prevent and respond to terrorist violence; in doing so, states must protect the full array of economic, social, civil and political rights, applicable at all times, including during crises or emergencies.³⁸ The practice of human rights bodies such as the African Commission, with its Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa,³⁹ have fleshed out the framework. Several interviewees referred to the guidelines as a positive step, both grounded in existing human rights law and developing standards in key areas such as the responsibilities of private actors.⁴⁰

While, as this monograph highlights, there may be areas in which the human rights framework should be strengthened,⁴¹ the consistent message is that the problem is not the lack of law but the lack of respect for it. Several interviewees presented it as a fundamental rule of law problem: CT has been most problematic in its exceptionalism, being treated as an area beyond the law, while the protection of human rights is too often seen as a policy option not 'binding law'.

There have also been changes to the institutional landscape. A vast architecture of CT has developed globally and nationally. The prioritisation of 'CT' within the UN has been much discussed in the context of the organisation's 75th anniversary. This has resulted in what has been termed a 'fourth pillar' of the charter, controversially

drawing many aspects of the important work of the UN under the CT/CPVE umbrella, supported by new or reinforced institutions and agencies.⁴²

While there are also AU and (sub-)regional CT frameworks,⁴³ institutional development has been less pronounced in Africa, though the African Centre for the Study and Research on Terrorism, established by the AU in 2004, has enhanced support for states through research, information and experience sharing.⁴⁴ Some interviewees suggested that more leadership was needed from the AU in this field, though others noted that creating more CT institutions would not necessarily be beneficial. What emerged clearly, however, was the need for more rigorous and effective engagement by African institutions with the human rights implications of states' security policy.

The direct and indirect influence of CT on institutions and organs within states deserves consideration.⁴⁵ New entities, such as units for investigating or prosecuting terror-related offences, have at times, been credited with enhancing law enforcement.⁴⁶ Other novel anti-terror units within intelligence or military bodies or judiciaries have been sources of concern, as are institutional gaps such as the lack of independent oversight of CT legislation or of developing sanctions regimes.⁴⁷ At least as significant are the more subtle shifts in the power, influence and resources of different arms of the state – towards the military and intelligence agencies for example and away from other public actors less visibly at the forefront of CT and international security partnerships.⁴⁸

Threats to democratic institutions are defining issues of our time, globally, and walk in lock-step with certain trends in counter-terrorism. Reducing the scope for judicial and parliamentary oversight,⁴⁹ increasing secrecy, attacks on the courts, CSOs or the media, for example,⁵⁰ have democratic implications that must be considered and addressed. The threats that arise from the broader social impact of CT were also raised by interviewees, as difficult to identify with precision but essential to try to understand and address. As one interviewee noted, in the long term, abusive CT normalises a climate of fear and vulnerability, more docile societies and more muted social responses to many other challenges.⁵¹

Other pressing economic, political, natural and social threats

Threats of terrorism and CT converge with other threat trends across the global and continental panorama, multiplying their impact and the urgent need for effective responses. Poverty, unemployment, food insecurity, limited access to essential services, deepening inequality and developmental deficits are all serious human rights and human security challenges.

They are also identified as key 'conditions conducive' to the spread of terrorism, creating vulnerabilities upon which terrorist groups thrive and limiting social resilience.⁵² This was vividly demonstrated during the COVID-19 pandemic, when

armed groups stepped into the breach in several places, providing health care and basic services,⁵³ taking advantage of dire need and of restrictions on humanitarian actors.⁵⁴ It is also seen in the sharp rise in hunger in Africa following the Ukraine invasion in 2022, and in concerns expressed by African governments that ‘the pandemic and the ongoing aggression against Ukraine have degraded the fiscal capacity of many developing countries,’ benefitting groups such as Da’esh.⁵⁵ If economic inequality, life-threatening hunger and food insecurity continue to grow, as they have in recent years,⁵⁶ this trend is likely to continue.⁵⁷

The global health pandemic has also been used to justify the expansion of security-related exceptional powers and the re-application of CT laws, policies and practices to enforce COVID-19 restrictions. Militarised responses were often the order of the day, at times leading to the same abuses and absence of scientific justification as CT. Widespread use of force, detention and disproportionate restrictions, even when they were counterproductive to the purported health aims, contributed to a genuine health crisis being transformed into a security one.⁵⁸

From Algeria to Zimbabwe and beyond, governments in Africa are accused of using security pretexts to stifle political dissent

The climate change emergency that has already had an impact on human rights and human security in Africa will exacerbate many problems such as water and food insecurity, increased migration, growing inequality, humanitarian crises and conflicts which have been identified as ‘conducive’ to the spread of terrorism.⁵⁹ The combination of climate change and violent extremism has been powerfully depicted as a ‘warning signs flashing red’.⁶⁰ There is already evidence of violent conflict breaking out in the Sahel and the Lake Chad Basin during periods of drought and other extreme weather.⁶¹ In Burkina Faso climate change is reported to have had an impact on conflicts between Fulani nomadic herders and Mossi sedentary farmers,⁶² while in Sudan a convergence of environmental and political factors has, for decades, fuelled conflict and instability.⁶³

Increasing authoritarianism intensifies the threats. Broadly framed CT laws and policies have been the handmaid of repressive regimes globally. Where democratic checks and balances are threatened and safeguards against arbitrariness undermined, the dangers of abusive CT increase. Withdrawal by states from or pushback against international organisations is a development that undermines already limited international oversight.⁶⁴ Criminal organisations thrive where the rule of law, governance and human rights are weak. All are under strain globally.⁶⁵

Other counter trends include a vibrant and persistent level of protest and social organisation. Civil society actors and human rights defenders, and their access to information, communication tools and interconnectedness, have all grown, with great potential to resist repressive laws and engage to shape more effective policies. But social organisation is also threatened by the global clampdown on civic space and human rights defenders, enabled by 'security' legislation.⁶⁶

These diverse intersecting threats and challenges to human security on the continent underscore the need for holistic and strategic responses. Paradoxically though, in the face of complex, overlapping crises and vast challenges, the desire of governments under pressure to be seen to be taking strong and decisive action often prevails over long-term thinking and effective responses.

Chapter 2

Key trends in counter-terrorism and their implications

Recognition of counterproductivity, then business as usual

A remarkable positive global trend in the past two decades has been the widespread shift to a recognition, at least on paper, of the importance of human rights to human security. Relatedly, there has been a growing chorus of voices expressing concern as to the counter productivity of much CT to date.

This shift is reflected in a striking multi-staged transformation at UN level. First, although though human rights were sidelined or ignored by the UNSC in the immediate aftermath of 9/11,⁶⁷ later resolutions made it clear that states must implement resolutions in accordance with IHRL, international humanitarian law (IHL) and refugee law.⁶⁸ The second and fuller shift (epitomised by the UN General Assembly's Global Counter-terrorism Strategy, and reflected in AU and regional institutions),⁶⁹ recognised that human rights and security should not be seen as conflicting but as 'complementary and mutually reinforcing.'⁷⁰

This recognition came with the crucial shift to a focus on 'conditions conducive' to the spread of terrorism and the acknowledgement that denial of human rights, including the full range of economic, social and cultural rights and the right to development, contribute to such conditions. Multiple UN reports have identified 'primary drivers' of violent extremism as including poverty, unemployment and conflict, as well as violations of rights by the state.⁷¹

The latest move, on the same trajectory, was to reframe the relationship by referring to 'human security'.⁷² In the UN, the AU, ECOWAS and other bodies, strategies and plans now commonly reflect the need to move beyond a narrow 'national security' focus to a more holistic 'human security, people-centred, comprehensive, context-specific and prevention-oriented' approach.⁷³

Similarly, violations by state security forces, especially in the context of CT, have been identified as key 'drivers' of violence.⁷⁴ Major reports such as the United Nations Development Programme (UNDP) Report, *Journey to Extremism in Africa: Drivers, Incentives, and the Tipping Point for Recruitment*, identify

personal grievances about abuses by the state as playing a role in 78% of cases studied; this led to the dramatic finding that state action ‘appears to be *the primary factor* finally pushing individuals into violent extremism in Africa’ (emphasis added).⁷⁵

Civil society reports tell a similar story.⁷⁶ Violations and targeted killings by military and police in Nigeria are often described as a ‘turning point’, increasing support for Boko Haram,⁷⁷ while IS and al-Qaeda recruiters in the Sahel stoke resentment and claim that those who join their ranks do so in ‘revenge for extrajudicial executions and other abuses committed by the military and pro-government militias.’⁷⁸ Religious discrimination reportedly enhanced the attraction of al-Shabaab, with foreign recruits reacting to the sense that ‘their religion [is] under threat’.⁷⁹

In addition to local grievances, violations related to the global ‘war on terror’, such as those committed in the notorious Guantánamo detention centre, which has existed for over 20 years, or US torture programmes, are frequently cited as ‘recruitment tools’ for al-Qaeda, while the UN Special Rapporteur on Arbitrary Detention asserted that ‘drones ... replaced Guantánamo as the recruiting tool of choice for militants.’⁸⁰ Specific reports record how US violations have played into the discourse of personal and community grievances in parts of Africa. One opinion piece describes a Kenyan imam accused of incitement:

... seamlessly connect[ing] grievances he felt at home, to those abroad ... referenc[ing] the War on Terror, Guantanamo Bay, abuse, torture and ... the CIA’s programme of secret and unlawful detention. It was obvious that trauma outside of these village communities had been appropriated in order to situate their own grievance.⁸¹

For more than a decade there has been more and less explicit recognition – by UN special rapporteurs,⁸² the Secretary-General’s office,⁸³ the UN General Assembly (UNGA),⁸⁴ UNDP,⁸⁵ the UN’s Counter-Terrorism Committee Executive Directorate, the Organization for Security and Co-operation in Europe and civil society, as well as by African institutions, that respect for human rights is crucial to effective security and that CT violations have fuelled terrorist recruitment.

A remarkable trend has been the recognition of the importance of human rights to human security and of the counter-productivity of much CT

Human rights violations have undermined legitimate security initiatives by exacerbating the lack of trust in security services. Reports from Kenya and Tanzania⁸⁶ and interviews for this project with a prosecutor and a CPVE actor in

Nigeria suggest that terrorism prosecutions, and disengagement efforts, have also been seriously hindered by abusive CT.⁸⁷ Paradoxically, by interfering with access to basic services, humanitarian assistance or the defence of human rights, many CT initiatives have contributed to the ‘conditions conducive to’ the spread of terrorism.⁸⁸

Likewise, multiple reports identify the ongoing failure to address economic, social and cultural rights related ‘root causes’ of violence as the prime reason for the ongoing ‘failure of the war on terror in Africa’.⁸⁹ Notorious violations continue with impunity, or are expanding, breeding scepticism about the ‘lip service’ paid to human rights.⁹⁰ One interviewee suggested that for all the evolution on paper, ‘now, more than ever, human rights is seen as an impediment to countering terrorism.’⁹¹ If lessons had been learned at all, emerging trends suggest that there is a serious risk that they have been forgotten.

Spreading reach and vagueness of ‘terrorism’ and ‘extremism’

An overarching trend, which has an impact on all the issues addressed in this monograph, relates to the long-standing (and increasing) problem of the amorphous scope of the terms ‘terrorism’ and ‘extremism’ and a growing range of associated concepts. Given the attention paid to ‘terrorism’ in the past 20 years, the lack of agreement about its meaning and limits is remarkable.⁹²

It is a matter of debate whether it is desirable or feasible to reach an internationally agreed definition that embraces all forms and contexts of such a politically problematic term.⁹³ But the global and continental reality is that the ever-less-well-defined terms, and their expansive interpretation in practice, present deepening challenges to the rule of law and human rights.

The torrent of binding measures against international terrorism issued by the Security Council after 9/11,⁹⁴ despite the lack of a definition, has been described as ‘opening the hunting season on terrorism without defining the target’. Later, non-binding ‘guidance’ about the parameters of an acceptable definition was given (in UNSC 1566 and by the UN SRTHR), but little heed was paid to it in practice, even, apparently, by the council itself.

Instead, the scope of what was covered by the UNSC resolutions continued to expand, to include more problematic and less defined concepts such as ‘extremism’,⁹⁵ ‘facilitation’, ‘support’, ‘justification’, ‘sympathy’, ‘provocation’ or ‘indirect incitement’ of terrorism or extremism.⁹⁶ The novel designation of ‘foreign terrorist fighters’ (UNSC 2178), despite few of these being ‘fighters’ in any sense,⁹⁷ and the more recent expansion to cover ‘nexus’ crimes (UNSC 2482) broadens that scope still further.⁹⁸

These resolutions sit alongside expansive regional and national approaches, in Africa as elsewhere.⁹⁹ The Organisation of African Unity (OAU) Convention on the

Prevention and Combating of Terrorism (Algiers Convention),¹⁰⁰ adopted before 9/11, and the more recent Malabo Protocol¹⁰¹ embrace broad compound definitions, which refer for their content to national laws. Ultimately, the onus is on states to ensure that there are clear definitions in *national* law, consistent with IHRL.¹⁰² In practice, however, 'over compliance' with resolutions has led to the further expansion of their scope, not the opposite.¹⁰³

This trajectory has myriad rights implications, undermining, as it does, core principles of legality, foreseeability and the quality of law. The result is that some of what is labelled terrorism today is serious crime. Some does not warrant the onerous sanction and stigma of the 'terrorist' label. Some is not wrongful at all. And some involves conduct that, paradoxically, should be celebrated and protected.

Many legitimate activities (including some that are important for human security) are therefore being impeded under the banners of anti-terrorism and national security, with a broader chilling effect. The absurdity of 'terrorism' laws being used against doctors protesting a lack of protective gear to deal with COVID-19 in Egypt in 2020¹⁰⁴ made clear to what extent such ill-defined laws can be, and have been, misapplied, and the dangers for the future.

The legitimacy of the anti-terrorism industry is blighted
by the failure to grapple with the subjectivity and
abuse of 'terrorism' and associated labels

The lack of a clear shared sense of the meaning and limits of the terms 'extremism' and 'terrorism' inevitably undermines international obligations and commitments. With serious doubts as to the meaning and scope of the terms, and divergent applications, it cannot convincingly be asserted by the UNSC that 'any act of international terrorism, constitute[s] a threat to international peace and security,'¹⁰⁵ or by the ECOWAS strategy that terrorism 'cannot ever be justified'. Inter-state obligations to cooperate to prevent terrorism are weakened without shared understanding as to their scope. The force of law, policy and discourse and the legitimacy of the entire industry of anti-terrorism are blighted by the failure to define limits clearly and to grapple with the opportunistic abuse of 'terrorism' and associated labels.

There is an obvious need to halt this trajectory and to take the issue of the definition seriously. But questions arise as to whose ends the flexibility of indefinable serves, and whether there is political will to address the problem?¹⁰⁶ As a former UN special rapporteur noted:

[A]ll too often the Security Council, national governments, or even prosecutors or judges do not appear to care about how international

and national law actually defines terrorism. [It] carries a strong stigma of moral and legal condemnation, to the degree that if it is even mentioned, then the law no longer matters. Depicting someone as a terrorist suffices to legitimize the denial of their human rights or a departure from the ‘technicalities’ of the law.¹⁰⁷

Closing civic space

One of the most deeply troubling cross-cutting trends of global significance is the ‘broad invocation [of CT, CPVE and] national security ... to close civic space.’¹⁰⁸ This has contributed to a harsh ‘crackdown on civil society,’¹⁰⁹ globally and on the continent.¹¹⁰ Broadly cast and flexibly applied CT laws are being used as a repressive tool against political opponents, journalists, human rights lawyers, environmental activists, indigenous peoples, labour organisers, women’s rights groups, protesters and educators, among others.¹¹¹ As the UN Special Rapporteur has noted:

It is no coincidence that the proliferation of security measures to counter terrorism and to prevent and counter violent extremism (PCVE), on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously. In many parts of the world any form of expression that articulates a view contrary to the official position of the state, addresses human rights violations and opines on ways to do things better in accordance with international human rights obligations, constitutes a form of terrorist activity, violent extremism, or a very broad ‘threat to national security’, which often encompasses both terrorism and extremism.¹¹²

Research highlights many manifestations of this in Africa. In reports from Algeria¹¹³ to Ethiopia¹¹⁴ and Egypt,¹¹⁵ from Rwanda¹¹⁶ to Zimbabwe¹¹⁷ and beyond, governments are accused of using CT to stifle legitimate political dissent and opposition. This allows them to exert a security stranglehold on civil society that, increasingly, also takes indirect forms.

Prohibitions on ‘foreign funding’, stricter rules about the registration of non-governmental organisations (NGOs)¹¹⁸ and controls that are justified by references to preventing terrorism and terrorist financing have jeopardised or closed grassroots non-profit organisations, as cases from Uganda, Tunisia and Nigeria illustrate.¹¹⁹ Restrictions on ‘support for terrorism’ and ‘foreign-terrorist’ travel have stifled humanitarian organisations such as those in Nigeria that are accused of ‘diverting aid.’¹²⁰

The implications of the clampdown on civil society and civic space are grave and far reaching. The suppression of the protection of human rights has an impact on the rights of many more than those directly targeted. Using CT to stifle political dissent

and critical debate violates human rights to expression, protest and democratic participation, attacking the functioning of democracy and the ability to mobilise to improve society. Undercutting NGOs affects their ability to provide essential support and services to those most vulnerable. It also flies in the face of growing evidence of the essential role of CSOs, including women's groups, in effective prevention of violence and conflict, and in justice, development and peacebuilding.¹²¹

Africa has vibrant human rights networks. They are recognised as playing a key role in a 'whole of society' response to terrorism, as 'strategies that empower civil society organisations, including religious leaders, women, and youth, as well as vulnerable groups.' They are an essential element in addressing root causes of terrorism 'in a comprehensive manner.'¹²² The clampdown on civil society affects the resilience and reform needed to meet Africa's range of human security challenges.

The need to address the deterioration in already fraught state-CSO relationships has been highlighted as a priority. One AU official suggested the need for a 'culture shift', where CSOs recognise and grapple with the fact that some violent groups have misused NGOs, while states acknowledge the reality of abuse and take civil society seriously as a partner to be empowered, not feared.¹²³

One nascent positive (but still limited) trend is writing explicit humanitarian exceptions into terrorism laws.¹²⁴ Doing so will not solve the problem of over-broad laws but it might mitigate it. The Algiers Terrorism Convention¹²⁵ and the European Union (EU) Counter-Terrorism Directive and some national laws state that humanitarian organisations are not covered by CT laws.¹²⁶ It may be necessary to expand the exceptions to cover 'human rights defenders' more broadly and to ensure that the exceptions are given effect.¹²⁷

Forever 'war' and the militarisation of counter-terrorism

A defining characteristic of the past 20 years has been the categorisation of anti-terrorism actions as part of a 'global war on terror'. The single most common criticism of CT on the African continent is the predominance of coercive militarised approaches. These range from the intensifying force used by and proliferation of those involved in armed conflicts to increasing use of the military and militarised approaches beyond conflict situations, including in CT and PCVE programmes.

This is a longstanding problem. But from the outset of the 'war on terror' African leaders have invoked it opportunistically to justify their own pre-existing militarised responses. Examples are Egyptian President Hosni Mubarak's justification of special security courts/military commissions by reference to Guantánamo,¹²⁸ or Ugandan president Yoweri Museveni's description of the fight against the LRA and his silencing of political opponents as part of the 'war on terror'.¹²⁹

The appropriateness of military force requires a context-specific analysis. While most would accept that military intervention is necessary in some situations,¹³⁰ there are questions about whether ever-greater shows of military might in countries such as Mali¹³¹ or Somalia,¹³² for instance, will, in fact, resolve intractable and escalating conflicts. There is scepticism globally about whether a war on terrorism can be won through military intervention.¹³³

Yet military responses continue to expand. An ever-greater range of actors is using armed force and intensifying conflicts. On the one side are myriad increasingly fragmented non-state ‘terrorist’ armed groups and on the other a proliferation of self-defence militia, mercenaries and others with increasingly uncertain relationships with states. There are also the armed forces of many foreign states from within the continent and beyond and of multilateral associations, the UN and the AU.¹³⁴

From the outset of the ‘war on terror’ African leaders
have invoked it opportunistically to justify their own
pre-existing militarised responses

This dense landscape includes coalitions like the ‘G5 Sahel joint force’,¹³⁵ the African-led Multinational Joint Task Force (MNJTF) in Nigeria¹³⁶ and The African Union Mission in Somalia.¹³⁷ It involves increasing numbers of French troops in Mali,¹³⁸ ‘the [new] forefront of the war on terror,’¹³⁹ and US presence and influence on the continent.¹⁴⁰ Among the many questions that arise from this is the motivation, or security self-interest, of external states and its implications during and after the military presence. The US withdrawal from Afghanistan and the resurgence of the Taliban showcase concerns about foreign military presence and what happens when it ends.

One of the implications of the militarisation of CT is the confusion and conflation of ‘terrorism’ with ‘armed conflict’ and, with it, applicable law. These problems have been a common feature of the international landscape for two decades. Globally, over-inclusive approaches to what constitutes an armed conflict (as epitomised by the ‘war on terror’) sit alongside under-inclusive approaches, where states prefer to label groups ‘terrorist’ rather than recognise them as participants in a conflict, lest this legitimise their role.¹⁴¹

While there are undoubtedly complex factual assessments involved,¹⁴² careful distinctions must be drawn between genuine ‘armed conflict’, to which IHL applies (alongside IHRL), and anti-terrorism activities beyond the conflict, which are governed by IHRL.¹⁴³ However the global-war paradigm has been invoked to provide cover for ‘law of war detention’¹⁴⁴ and lethal targeting, which are not permissible outside armed conflict.

The human rights implications of militarisation are multi-dimensional and complex. Devastating violations have been carried out by security forces, in particular the military, across Africa. In Burkina Faso the number of civilians injured by military personnel in CT operations far surpasses that of the terrorists targeted.¹⁴⁵ Nigerian military activity against Boko Haram has resulted in deaths in military custody, extrajudicial executions, torture, arbitrary detention¹⁴⁶ and unlawful attacks on refugees and vulnerable civilians.¹⁴⁷

AU troops and allied militias have also been accused of indiscriminate attacks, sexual violence and arbitrary arrests and detention.¹⁴⁸ Millions have been displaced by the use of excessive force.¹⁴⁹ The knock-on consequences of high-profile violations in increasing recruitment by and support of terror groups have been noted.¹⁵⁰ Reports and interviews also suggest that the militarised focus of CT has other less direct or visible implications. For example, bolstering military capacity has reportedly come at the expense of investment elsewhere, including in community policing and other human rights and law-enforcement priorities.¹⁵¹

Despite the dubious rights records of the military in many contexts, support for it has increased since 9/11,¹⁵² while human rights compliance and rights-related embargoes or sanctions have been overshadowed by security cooperation agreements.¹⁵³ There has been a trend towards greater training of security forces, especially the military, often paid for by external states seeking CT partners. While in principle this trend is positive, much of the training has been described as seriously deficient in human rights and rule of law content.¹⁵⁴

There is a risk of CT practice normalising killing as a perceived alternative to improving criminal justice systems, detention regimes or reintegration

In some cases the involvement of the military in CT has worsened the widespread problem of lack of accountability,¹⁵⁵ which feeds pervasive assumptions by many within the military and society that violating rights with impunity is 'just what the military does.'¹⁵⁶ The fact that the role of the military has expanded into 'PCVE' operations has undermined these programmes.¹⁵⁷ The UNDP's *Journey to Extremism* report thus concludes that 'a dramatic reappraisal of state security-focused interventions, including more effective oversight of human rights compliance, rule of law and state accountability, is urgently required.'¹⁵⁸

The dominant discourse of 'war' against an amorphous 'enemy' also has broad social implications. Globally it has been used as cover for exceptional emergency powers. It has fed the narrative of 'us versus them', closely linked to the dehumanisation underpinning egregious violations such as torture and arbitrary

detention. Some argue that a pervasive ‘ideology of war’ has contributed to more violent, discriminatory and polarised societies in some parts of the world.¹⁵⁹

The blurring of the boundaries between terrorism and ‘armed conflict’ therefore has wide-reaching legal, political and social implications. Particular trends related to militarisation deserve specific attention, namely the normalisation of lethal force and the impact on peacebuilding negotiations with armed groups.

Normalising lethal force

Respect for the right to life has been a grave casualty of the war on terror. One troubling global trend has been the increased resort by a growing number of states to targeted killings.¹⁶⁰ The problem arises both in conflict situations where targeting rules are not carefully observed and far beyond, where, in terms of IHRL, any loss of life must be an absolutely necessary response to imminent threats.¹⁶¹

Another trend is the development by a growing number of states (and armed groups) of military technology, including lethal drones and automated weapons systems despite a lack of adequate regulation.¹⁶² A third is the muted nature of responses by other states to the increased resort to lethal force or right to life violations. The absence of condemnation, rigorous oversight or accountability contributes to normalising lethal force as a CT response.¹⁶³

Lethal targeting during CT operations has been widespread in Africa. Examples in recent years include ‘a programme of extrajudicial assassinations’¹⁶⁴ and forced disappearances in Kenya,¹⁶⁵ widespread extrajudicial killings during purported ‘counter-terrorism’ operations in the Sahel¹⁶⁶ and Nigeria,¹⁶⁷ lethal force to eliminate ‘terrorist threats’ in Burkina Faso,¹⁶⁸ and attacks on Rwandan political dissidents dubbed terrorists who had taken refuge in South Africa.¹⁶⁹ Although concrete data are elusive, alarmingly high levels of deaths in custody of terror-related suspects have also been reported in several countries.¹⁷⁰

There is a risk of CT practice normalising killing as a perceived legitimate alternative to dealing with the significant challenges of improving criminal justice systems, detention regimes or programmes to reintegrate former members of armed groups into society.¹⁷¹

The legal framework protecting the right to life both within and outside conflicts must be reasserted.¹⁷² The Africa Commission’s General Comment on the right to life makes it clear that the process of taking a life must be legal.¹⁷³ The IHL framework allows for targeting persons who participate directly in active hostilities, but increasingly recognises the need to capture rather than kill, wherever feasible, even in conflict situations.¹⁷⁴ It does not provide a pretext for killing ‘terrorists’. As the UN Special Rapporteur on Extrajudicial Executions notes, reasserting and protecting the right to life involves:

... effective parliamentary and judicial mechanisms to oversee, review and/or approve a State's use of lethal force, domestically and extraterritorially including specifically where the line between combat and non-combat operations is blurred.¹⁷⁵

Impact on peace building and negotiating with armed groups

CT has had a serious impact on the operation of IHL and on peacebuilding in conflict situations in various ways. For example, IHL encourages amnesty for participation in an armed conflict (as opposed to war crimes), in order to incentivise peace.¹⁷⁶ However, the prosecution of those who participate in or support non-international armed conflicts for serious crimes of terrorism often excludes such amnesties and impedes peace negotiations.

'Humanitarian assistance', conflict resolution and peacebuilding have all been hampered by anti-terrorism laws that preclude access to areas controlled by terrorist groups, or prohibit associating with, 'financing' or providing any 'support' for such groups. This has undermined the essential, independent role of IHL actors.¹⁷⁷ The exclusion from some definitions of terrorism of conduct during armed conflict is a positive counter development.¹⁷⁸ The Malabo Protocol is an example of AU leadership in relation to this global problem.¹⁷⁹

There is a trend in Africa towards using peacekeeping operations as a CT/PCVE tool, as is the case with the deployment of peacekeeping missions in Somalia, Mali, the Lake Chad Basin and Mozambique. This reflects a recognition of the importance of peacebuilding in the fight against 'conditions conducive to terrorism'. However, reports also suggest that presenting peacebuilding operations under the rubric of CT/PCVE leads to a problematic 'entanglement' of distinct aims and functions, which has undermined the peace mandate in some situations.¹⁸⁰ One report notes, for example, that the authority of the UN Multidimensional Integrated Stabilization Mission in Mali (which was 'mandated to help restore the authority of a state that is discredited in the eyes of large segments of the population'), has itself been undermined by its proximity to discredited CT missions.¹⁸¹

Engaging with armed groups

An essential dimension of ending violence, negotiating peace and building post-conflict societies is engagement with armed groups. The refusal to engage or negotiate with 'terrorists' has long impeded dialogue, reconciliation and peacebuilding. Legal and policy changes during the 'war on terror' – proscribing access to, support for or 'financing' of banned groups – multiply the problem. There are also extreme examples of peace movements or supporters, including lawyers, IHL educators, academics or advocates who promote engagement with such groups being prosecuted (for 'propagandising for terrorism', for example)¹⁸² or their activities being banned (as 'material support' for terrorism).¹⁸³

The decision by many African states to ‘overlook dialogue with extremist groups’ has been cited as a key policy failure.¹⁸⁴ For example, the governments and leaders of armed groups in both Somalia and Nigeria are criticised for the lack of political will to engage in dialogue.¹⁸⁵

There are global exceptions. One interviewee described ‘legitimisation’ rhetoric giving way in a number of contexts to the pragmatic imperative of engaging with those who exercise power and control, whether or not they are labelled ‘terrorists’.¹⁸⁶ In Africa it has been argued that the experience of ‘low-level’ mediation of small disputes, as in parts of Mali, should be transformed into higher-level negotiations between government and such groups.¹⁸⁷ Support for the role of ‘community-based actors’ in this endeavour is also recognised as crucial, but in practice it is often undermined by CT laws and policies.¹⁸⁸

The refusal to negotiate with ‘terrorists’ has long
impeded peacebuilding, but legal and policy changes
during the ‘war on terror’ multiply the problem

The CT policies and practices of outsiders exacerbate the friction in peace agendas, in Africa as elsewhere. On the 20th anniversary of 9/11, EU policy was criticised for having ‘prioritised ending terror through force and security strategies’ as opposed to the engagement and dialogue that provide ‘the best chance to stop violence long-term and prevent future conflicts’.¹⁸⁹

Removing the legal and political obstacles to peace dialogue with groups in, among other places, Mali, the Lake Chad Basin, Somalia and Mozambique, has been described as potentially transformative. It will be essential to ensure that peacemaking activities are prioritised and that the key goal of peace is not undermined by CT laws, policies and practices.

The growing recognition of the responsibility of organised armed groups under international law makes it timely to rethink approaches to dialogue and may provide opportunities for greater engagement in the future.¹⁹⁰ While practice remains limited, international mechanisms, the African Commission and NGOs are increasingly engaging with armed groups with a view to promoting compliance with IHRL and IHL.¹⁹¹

Securitising migration

In this ‘age of migration’¹⁹² the unprecedented movement of people – and state responses to it – are defining global issues. In Africa migration has increased vastly. Despite disproportionate international focus on migration flows from Africa to Europe, more than 80% of migration takes place within Africa.¹⁹³

It has been noted that our collective understanding of the relationship of migration to terrorism and security remains limited.¹⁹⁴ What is relatively clear is that the inter-relationship is multifaceted. Both terrorism (inside and outside of conflict) and abusive counter-terrorism are leading to increased migration, with millions fleeing terrorist groups and repressive responses.¹⁹⁵

Moreover, however tenuous any 'organic link between international migration and terrorism' might be,¹⁹⁶ fear and political responses to migrants as 'security threats' have been common around the globe, hindering lawful migration and influencing asylum policy and the protection of refugees.¹⁹⁷

Migration law and policy are increasingly infused with counter-terrorism rationale, contributing to hardened borders and overly restrictive policies

Law and policy have become infused with CT rationale, contributing to the global trend towards 'hardened borders and overly restrictive migration policies'.¹⁹⁸ This is epitomised by 'fortress' responses such as the Tunisian government's 'walling',¹⁹⁹ which reflects notorious policies elsewhere.²⁰⁰ Massive detentions of migrants,²⁰¹ profiling based on nationality²⁰² and reinforced border surveillance have grown, with implications for many rights.²⁰³ Heavy-handed approaches are also reflected in an upsurge in the criminalisation of migration.²⁰⁴

The actual and potential impact of these trends must be considered in context. The colonial legacy of artificial, politicised and controversial African borders makes fluidity part of the economic and social life of billions, while ecological, economic and humanitarian realities render it essential for the most vulnerable.²⁰⁵ It has also been suggested that a strict security-related approach to border control may be impossible for certain African states, given the numbers of unapproved routes and the lack of information, data and documentation in some places.

Moreover, a wave of evidence suggests that securitising migration is proving counter productive to security. The SRTHR notes that 'while there is no evidence that migration leads to increased terrorist activity, migration policies that are restrictive or that violate human rights may in fact create conditions conducive to terrorism'.²⁰⁶ In particular, her report adds that policies that:

... build fences, engage in push-back operations, criminalise irregular migration and abandon international legal commitments to refugees, lead to restricted access to safe territory and increased covert movements of people, particularly by traffickers.²⁰⁷

NGOs²⁰⁸ and academics²⁰⁹ have similarly found that coercive migration policies might be longer-term drivers of violent extremism.

The AU's revised Migration Policy Framework for Africa and Plan of Action (2018–2027) also underscores the complementarity of human rights, migration policy and security.²¹⁰ There are noteworthy crossovers between the migration and security strategies, suggesting that focusing on 'root causes', empowering affected communities and adopting a holistic 'human security' approach are essential to both.²¹¹ However, the political reality is that migration and security are reinforcing toxic political issues, with serious implications for human rights and human security.

The importance of effective border management to the prevention of crime, including terror-related crime, is not in dispute, but there is a risk that responses to migration that are based on security considerations will eviscerate the full range of human rights, with a disproportional impact on the most vulnerable. They might also undermine refugee protections, which will be even more essential in the future. There seems little doubt that, both nationally and regionally, policy developments will boom in this area and consideration of lawful, evidence-based and strategic responses will be essential.

The need for African states to 'secure borders' is commonly cited as an international CT priority.²¹² Pressure is only likely to grow with increased pandemic-related health controls and growing attention to curbing the movement of 'foreign terrorist fighters'.

Responses to 'foreign terrorist fighters': repatriation and return

The UNSC has imposed a flurry of responses to so-called 'foreign terrorist fighters' (FTFs).²¹³ UNSC Resolution 2178 obliges states to take various measures to control movement within and across borders, while subsequent resolutions expand and reinforce obligations related to border security and cooperation among states.²¹⁴

The presence of 'foreign fighters' is not new in Africa (or elsewhere). But in recent years the international focus on FTFs travelling to Syria and Iraq has prompted an array of restrictions on movement, as well as other wide-reaching measures (highlighted in this monograph) against ill-defined categories of foreign fighters, facilitators and supporters. This has had serious implications for the full range of human rights globally.²¹⁵

Pressure is also growing on states to repatriate nationals. Some states in North Africa have done so and been commended for it, while others have resisted.²¹⁶ However, in some cases there are serious concerns about the treatment of returnees.²¹⁷ Among the problems are mass detentions and 'treat[ing] all returnees as high risk'.²¹⁸ Increasing engagement with human rights compliant approaches to repatriation will enable countries on the continent to avoid some of the pitfalls that

have been experienced elsewhere (including arbitrary administrative measures and excessive criminalisation).

Arbitrariness and administrative measures: detention, sanctions and citizenship

Resort to ‘administrative measures’ in the CT sphere is on the rise around the world. Administrative measures are generally imposed by the executive and although increasingly onerous and wide reaching in their impact, they are characteristically accompanied by little or no access to information or judicial review.²¹⁹

Some practices, such as arbitrary detention, are mammoth problems in Africa. Others, such as control orders, sanctions or citizenship stripping are, as yet, less prevalent than they are in other parts of the world, but this may change.²²⁰ Three of them deserve particular attention given global trends and their significance for Africa.

Arbitrary detention

Arbitrary detention has been a defining feature of global CT violations, epitomised by Guantánamo, but replicated in many parts of the world. Prolonged arbitrary detention, and dire prison conditions, are a vast humanitarian problem in Africa. Several interviewees referred to them as *the* key human rights violations and threats to human dignity, the rule of law and long-term human security.²²¹

Detention on security grounds, without charge or trial, flies in the face of IHRL’s requirements that any detention must be on lawful grounds, consistent with international law and accompanied by procedural safeguards. Among these safeguards are access to lawyers and medical personnel and the right to challenge the grounds for detention and be tried within a reasonable time or be released. These rights are firmly established in the law and practice of the African Commission among other bodies.²²²

Research also points to the ineffectiveness of incarceration in crime prevention in general and in CT/CPVE specifically. The phenomenon of so-called ‘radicalisation to violence’ in prisons in Africa and elsewhere has been well documented in recent years.²²³

Several interviewees spoke of the need to learn from the Nigerian example, where the detention of thousands of Boko Haram suspects vastly increased the population of already overcrowded prisons.²²⁴ This prompted the creation of CT detention centres ‘for which the Nigeria Prisons Service is not accountable’ and an increase in inhuman and degrading conditions of detention.²²⁵ The remote locations of such prisons, and stigmatisation of those detained at terrorism-related centres (albeit without individual charges), have also led to some being shunned by family and community, impeding disengagement and reintegration strategies.²²⁶

A CPVE community worker suggested that the fact that detainees receive the message that ‘they are not human beings [and] do not have dignity’ prevents them from seeking meaningful alternatives to the lure of armed groups. Massive detentions have also resulted in the effective disappearance of children, increasing the trauma for many.²²⁷

A prosecutor suggested that addressing arbitrary detention is closely aligned to the reform of criminal justice systems, and the lack of sufficient political and resource commitment to invest in the rule of law application of criminal law.²²⁸ It is linked to the urgent need for political leadership to rethink prison policy and reduce overcrowding across the continent and beyond.²²⁹ What is clear is that far-reaching solutions are needed to end the massive arbitrary detentions of low-level supporters, persons against whom there is no evidence of wrongdoing and others caught in the cross hairs between states and proscribed groups.²³⁰ The need to overhaul incarceration policy is widely recognised. Yet mass detentions in response to perceived threats (whether security or COVID-19 related), without legal basis or due process, gather pace.²³¹

Terrorism sanctions and ‘watchlists’

Terrorism sanctions and ‘watchlists’ have proliferated nationally, regionally and internationally since 9/11. One of the latest frontiers in the dispute over listing practices and safeguards is UNSCR 2396, in which the council controversially required UN member states to collect a range of biometric and other data and share it with other states to develop ‘watchlists’ of known and suspected terrorists. Despite well-recognised errors and arbitrariness in the use of sanctions in the CT space,²³² there is a growing appetite for sanctions globally, raising human rights and rule of law challenges..²³³

Solutions are needed to end the massive arbitrary detentions of low-level supporters and persons against whom there is no evidence of wrongdoing

Limiting the movement and resources of organised criminal groups is important and challenging. Significant developments in the past two decades in the capacity to track individuals, groups and the money that sustains them is a positive trend in law enforcement. However, sanctions affect a broad array of rights – movement, property, work, education, access to services, information and due process guarantees to challenge restrictions. Global experience shows that unless sanctions are based on a clear legal framework, for established purposes and with appropriate humanitarian exemptions and safeguards, they will seriously undermine the rule of law and human rights.

The particular experience of ‘terrorist’ sanctions lists at the UN speaks to the danger of overuse, and the importance of independent oversight. After successful judicial challenges to the rights violations involved in the UNSC ‘al-Qaeda sanctions lists’, an independent ombudsperson was appointed and recommended the delisting of many on the list who were not in fact members of al-Qaeda.

Egypt's decision to strip hundreds of their citizenship
on broad national security grounds may be a warning
of what could follow on the continent

The AU should consider how to ensure effective oversight of sanctions regimes. This may include establishing an independent entity with sufficient powers to review the use and implementation of sanctions in Africa, while ensuring that there is sufficient transparency and judicial review to be compliant with human rights and the rule of law.

Reports suggest that there are diverse unintended consequences of sanctions in Africa suggest that need to be better understood and addressed.²³⁴ Additional, emerging concerns relate to the chilling impact on risk-averse private actors of sanctions relating to financing of terrorism and money laundering, which is identified as a growing and acute problem in Somalia, Sudan and Angola, among others.²³⁵ One result is that many individuals, businesses and charities are unable to access essential financial services. Recent experience of listing being used to target NGOs and other legitimate bodies intensifies the rights implications and the urgent need for effective monitoring and oversight of a burgeoning global phenomenon.²³⁶

Restricting citizenship

Stripping people of their citizenship is among the most onerous of the ‘administrative’ measures being employed in a growing number of countries.²³⁷ A wave of related legal and policy changes has been adopted in response to the so-called FTF phenomenon globally.²³⁸ In some countries this has been followed by diplomatic and legal pushback²³⁹ and a more positive move to at least restrict citizenship stripping to, for example, dual nationals or those already convicted of terrorism crimes.²⁴⁰

The Egyptian government’s decision to strip hundreds of people of their citizenship on broad national security grounds²⁴¹ may be a warning of what could follow on the continent.²⁴² The implications could be devastating in Africa, where statelessness has long been a complex problem, with hundreds of thousands having no nationality,²⁴³ and where there has been significant legal reform and progress in the past decade.²⁴⁴

Regrettably, CT practice has exposed the weakness in – and threatens to set back – those reform efforts. Thus the ‘partial reform’ in national laws, whereby half of the 54 African states now forbid deprivation of nationality, is undercut by broad exceptions for national security, ‘crimes against the state’, or even, in some cases, ‘disloyal’ behaviour,²⁴⁵ despite the lack of clarity of these laws and their susceptibility to abuse. The impact of this could be profound.²⁴⁶ Citizenship is ‘a gateway’ to the right to the protection of the law and the full range of human rights. Conversely, citizenship stripping is often the precursor to a wide-reaching deprivation of rights and can lead to effective ‘civil death’.²⁴⁷

States enjoy some discretion to confer nationality and, exceptionally, to withdraw it, but as the African Commission’s Guidelines reflect, international law prohibits statelessness.²⁴⁸ The extent of the rights implications require a strict approach to legal standards and safeguards, yet trends point to citizen-stripping as an executive decision and not subject to judicial challenge. Increasingly, questions also arise about whether depriving citizens of their nationality simply ‘exports’ risks rather than addresses them.²⁴⁹ Short-term benefits, if any, for the state may leave individuals more vulnerable to the influence of terrorist groups in the longer term.

Fear of terrorism, ‘rising nationalism and anti-migrant sentiments’ and CT responses are threatening to undo hard-won gains in the fight against statelessness on the continent.²⁵⁰

Over-criminalisation and justice gaps

Resort to criminal law is often presented as *the* rule of law approach to CT. Criminal accountability for serious acts of terrorism can be crucial to the restoration of the rule of law and confidence in democratic institutions, reparation for victims and addressing cultures of impunity. Moreover, states have a legal duty (or ‘positive obligation’) to investigate and prosecute serious violations by state agents or private actors.²⁵¹

The trend, in UNSC resolutions, the UN Global Strategy, the AU Malabo Protocol, ECOWAS strategy and national laws, to emphasise the role of effective national criminal justice responses to terrorism is therefore understandable and important. However, the legitimacy and effectiveness of criminal law cannot be assumed. It depends on consistency with the basic principles of criminal law inherent in criminal justice systems around the world and with IHRL.

Nullum crimen sine lege, the fundamental principle of legality, requires the recognition of clear, foreseeable, pre-existing crimes. Punishment must be based on and commensurate with *individual culpability* (proved through the accused’s own conduct and intent) and criminal law should be an exceptional or last resort (*ultimo ratio*) and restrictively interpreted in favour of the accused.²⁵² Criminal

processes must be fair at all stages of investigation, prosecution (by a competent, independent, impartial court) and sentencing.²⁵³ Several global trends upend each of these basic principles.

Stretching criminal law

The global trend is to expand the scope of crimes as part of the general effort to exploit the preventive potential of criminal law. The breadth and lack of clarity of definitions of ‘terrorism’ and ‘extremism’ have been noted as one of the key cross-cutting trends,²⁵⁴ which are particularly problematic in the criminal law.

The problem is compounded by a tendency for criminal laws to reach ever further back to ‘pre-crime’ phases²⁵⁵ and further out, to criminalise environments perceived as enabling or supporting terrorism. Much CT criminal law has thus shifted the focus from terrorist acts and the harm they have caused to loose threats that certain people, or even ideas, are deemed to represent.²⁵⁶

International and regional trends have fed this expansion. A key trigger was the UNSC’s unprecedented ‘direction’ of criminal law, requiring states to embrace broad offences and modes of liability such as provocation, incitement and travel to terrorism.²⁵⁷ Some regional arrangements, such as the EU Counter-Terrorism Directive (2017)²⁵⁸ and the Shanghai Cooperation Agreement (with its dubious crimes of ‘Terrorism, Extremism and Separatism’) took this further.²⁵⁹

The misappropriation of criminal law has targeted
legitimate activities and undermined criminal justice
and international criminal cooperation

Vague and broad definitions are not new in Africa. In the OAU Convention a ‘terrorist act’ is ‘any criminal act’ that endangers ‘life’ or ‘freedom’, pursuant to a broad aim (such as ‘promotion’, ‘sponsoring’ of, or ‘contribution’ to such acts).²⁶⁰ A similar approach was reflected in the more recent Malabo Protocol.²⁶¹

The Plan of Action of the AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa goes further, urging states to prosecute people who fall into categories such as ‘mastermind’ and ‘apologist’, and those involved in ‘the printing, publication and dissemination [of press] initiated by apologists of terrorist acts ... prejudicial to the interest and security of any other Member State.’²⁶² Notably, the focus on prejudice to state interests, as opposed to violence to human beings, heightens the susceptibility to political abuse, which is a growing global phenomenon.²⁶³

National criminal laws should provide clarity and specificity, pursuant to IHRL obligations, but the opposite is often the case.²⁶⁴ Whether it is a result of the

opportunistic expansion of criminal law or ‘the sustained international pressure that was exerted on African states to criminalise certain conduct as terrorism after 9/11,’²⁶⁵ the fact is the continent is currently replete with nebulous criminal laws susceptible to and engaged for nefarious use.²⁶⁶

In violation of specific human rights, these laws commonly criminalise expression, association or movement to prohibited areas, with no clear definitions of these terms. Examples include Chad’s crime of ‘advocacy of terrorism’ or ‘publicly acclaim[ing] acts of terrorism’, with no definition of ‘advocacy’ or ‘acclaim’.²⁶⁷

Crimes in Cameroon which carry the death penalty include threats or acts that, although they might have had no effect, pursued broad aims such as seeking to convince another to ‘adopt or renounce a particular position.’²⁶⁸ The Kenyan Prevention of Terrorism Act enshrines 26 ‘preventive’ terrorism offences that ‘prejudice national security or public safety’. Among them are attempting to provide a service for the commission of a terrorist act,²⁶⁹ harbouring,²⁷⁰ or possessing an article connected with an offence.²⁷¹

Broad anti-terrorism legislation in Mozambique²⁷² criminalises travelling, attempting to travel or facilitating travel as preparatory acts of terrorism. In Nigeria financing provisions are so broadly cast – covering, for instance, those who have paid taxes to a terrorist group – that they may revictimise those who live under the rule of such groups.²⁷³

Excessive criminalisation has multiple implications, eroding the basic rule of law requirements upon which the legitimacy of criminal law depends. Many of the laws lack the clarity and specificity, or the individual culpability inherent in an offence, to justify resort to criminal law at all. Many disproportionately restrict rights through criminal prosecution and punishment. They leave all citizens vulnerable to the unforeseeable coercive force of criminal law.

As noted in relation to Nigeria’s Terrorism Act, these criminal laws provide ‘the alibi for repressive governments to classify any form of violent dissent as terrorism.’²⁷⁴ The misappropriation of criminal law has targeted a multitude of legitimate activities and undermined the credibility and power of criminal justice and of international cooperation in the CT field.

Principles, procedures and penalties

Criminal laws cannot be considered in a vacuum but must be seen in the context of the justice systems that enforce them. Deficits in judicial independence in Africa, the reduction in the protection of due process and the increase in the severity of penalties in the CT context, greatly compound the dangers of ballooning criminal laws.²⁷⁵ Global trends towards exceptional approaches to evidence, public trials and punishment are manifest in Africa in various ways.

One example is the resort to ‘special courts and administrative boards’ to prosecute terrorist crimes, undermining standards of independence, impartiality and fair trial.²⁷⁶ Many sources recognise that the use of military courts to try civilians raises serious legitimacy and human rights problems.²⁷⁷ In Africa special ‘state security’ courts for terrorism are not new and have been subject for decades to robust criticism by, for example, the African Commission.²⁷⁸ Despite this, the practice has expanded in the CT space.²⁷⁹

Some states, including Cameroon, have gone so far as to give exclusive jurisdiction to military courts for terrorism cases.²⁸⁰ Heightened secrecy, non-disclosure of information, limited access to counsel and secret evidence all undermine the basic right to a fair trial.²⁸¹ In some cases, as Niger illustrates in practice, referral to ‘special’ terror courts results in cases languishing without trial for decades.²⁸²

Victim centred justice in terrorism trials, or holistic approaches that include reconciliation and reparation, remain underexplored

Other global developments, reflected in Africa, jeopardise the presumption of innocence. For example criminalising travel to certain areas unless the accused can prove a legitimate purpose, risks shifting the burden of proof to the accused.²⁸³ More broadly, the approach to terrorism cases in Nigeria has been described as ‘render[ing] the presumption of innocence a nullity,’²⁸⁴ while Kenyan judicial practice has, commendably, rejected as unconstitutional laws that criminalise the accused based on their ‘likely’ conduct, unless the opposite can be proved.²⁸⁵

Another trend towards an ‘exceptional’ approach to anti-terror criminal law on the continent is the increasingly common practice of automatically denying bail to those accused of terrorism offences.²⁸⁶ This forms part of the extensive use of prolonged detention without trial, noted above. Such arbitrariness is the antithesis of the safeguards inherent in dispassionate criminal ‘justice’. For these reasons criminal law is seen as part of the infrastructure of discrimination and abuse, not a safeguard against it:

[B]eyond the specifics of this or other cases, the lack of transparency and pattern of haphazard arrests, bail policies, and prosecutions have made many Muslims suspicious of political leaders and state institutions ... As a result, extremist and exclusivist Islamic narratives can seem more compelling.²⁸⁷

As safeguards are reduced, penalties increase. Harsher penalties for broad terror-related crimes in many states infringe the requirement that a sentence must be commensurate with the crime, and with the individual's role in it.²⁸⁸

Because of the expanded scope of terror-related offences, which embraces minor forms of contribution, often without clear criminal intent, assumptions about gravity often do not stand up. Under IHRL, courts must take into account all the circumstances in assessing proportionate penalties, yet mandatory sentences, formal sentencing guidelines or informal pressures associated with the use of the ‘terrorism’ label often appear to preclude this.²⁸⁹

In Kenya, for instance, onerous penalties have been handed down to people who have crossed borders in prohibited places, charged with ‘terrorism’ related offences despite the fact that their offences do not relate to terrorism in any way.²⁹⁰ Others have been detained for years for providing ‘false information’, or refusing to inform on terrorist groups who threaten villagers.²⁹¹

There has also been a global upsurge in resort to the death penalty for terrorism-related offences. In some states, such as Chad, where the death penalty had been abolished, it was briefly reintroduced.²⁹² Thus, the criminal process, accompanied by the erosion of fair trial standards in the CT space, increasingly also violates the right to life.²⁹³ Myriad other rights issues arise from excessive custodial sentences in inhumane conditions.²⁹⁴ Meanwhile, insufficient attention is paid to meaningful rehabilitation or to alternatives to imprisonment.²⁹⁵

These shifts in anti-terror criminal laws and practice are impacting on charging policies and practices across the globe. The broad nature of anti-terror laws and the rules governing evidence, defence rights and punishment appear to influence decisions to charge minor offenders with terrorism rather than with more appropriate domestic crimes. Terrorism charges often prevail over those that fall into categories such as crimes against humanity or war crimes, which might, in serious cases, better reflect the gravity of the wrongdoing and the suffering of the victims.²⁹⁶

Terrorism accountability gap

Despite the expansion of criminal law there are still remarkable accountability gaps. In many cases the instigators and leaders of terrorist groups escape criminal accountability, while low-level recruits are charged. The lack of justice meted out to the architects of 9/11 shows how, despite the resources committed to ‘military commissions’, unjust and problematic processes have impeded their conviction.

The landscape in Africa is mixed. On the one hand, the deficit in accountability for serious acts of terrorism was identified by several interviewees as a priority challenge. There are committed, skilled and human-rights-sensitive prosecutors, including interviewees for this project, keen to harness the justice potential of criminal law. While capacity has grown in recent years, which is positive, some pointed to the lack of investment in criminal justice, under-resourcing and a lack of

political will (whether due to corruption or different priorities) impeding the ability to investigate, arrest and hold to account those most responsible.

There are undoubtedly exceptions, which prove that effective criminal prosecutions in the CT context can be achieved. There have been successful, challenging, large-scale criminal prosecutions for serious terror-related offences before regular courts in various parts of the African continent and elsewhere.²⁹⁷ One example is the trial by specialised sections of public prosecutor's offices of those responsible for the Kampala bombings.

Despite prolific developments in criminal law, it is an overused tool in some respects and a vastly underexploited one in others. This selectivity risks undermining its force as a rule of law tool, and its effectiveness. These ever more expansive approaches to criminal law are unimpeded by the legal constraints and safeguards that normally accompany them. Its potential to advance human rights, the rule of law and effective security requires reducing and refocusing criminal law and reinvesting in criminal justice systems.

Embracing victim-centred and alternative 'justice'

There has been progress towards greater participation of victims in criminal proceedings in many parts of the world, including Africa.²⁹⁸ Yet, while victims of terrorism are often cited to justify CT laws and policies, there is little evidence of victim-centred justice in terrorism trials. This has led to calls for a more 'victim-centred approach to prosecuting terrorism,'²⁹⁹ as an aspect of more meaningful accountability, redress and peacebuilding on the continent.

In addition, while the social and community impact of terrorism has been profound and broadly recognised, complementary and holistic justice, including restoration, reconciliation and reparation,³⁰⁰ remain underexplored.³⁰¹ This is especially important where excessive resort to regular criminal law to deal with mass security concerns may be unworkable (in scale) and unstrategic.³⁰²

The third pillar of the ECOWAS Counter-Terrorism Strategy and Implementation Plan³⁰³ focused innovatively on rebuilding society, healing social wounds and 'repair[ing the] social contract' broken by terrorism and CT. However, it failed because of a lack of political will to implement it.³⁰⁴ Concrete examples of good practice have emerged in Africa, where, in Nigeria, for example, disarmament, demobilisation and reintegration (DDR) processes have included a focus on reconciliation and repair.³⁰⁵

The appropriate (and limited) use of amnesty as part of restorative justice processes should also be considered. Amnesty could be extended to the many who are deemed to support terror groups or participate in armed conflict, as opposed to committing serious violations or war crimes.³⁰⁶

To be effective, however, they must meet the challenges that arise in practice. In Somalia, for example, amnesty and a defectors programme aimed at facilitating the return of youths from al-Shabaab, reportedly failed due to the lack of a legal framework and to mistrust and uncertainty.³⁰⁷ Consultative, participatory processes, accompanied by incentives to cooperate and backed up by accountability for serious crimes, could help rebuild community resilience and present attractive alternatives to the massive detentions and collective prosecutions that are currently prevalent.

Expanding PCVE: positive shift or wolf in sheep's clothing?

'Countering violent extremism (CVE)' or, more recently, 'preventing violent extremism (PVE)' programmes³⁰⁸ have proliferated around the world in the past decade.³⁰⁹ This flurry of activity partly reflects the positive shift from responsive and coercive to proactive and preventive approaches discussed above.³¹⁰ In practice, PCVE takes many forms – it is a loose way of gathering a broad array of measures under the benign banner of prevention.

The programmes include a range of invaluable initiatives in Africa, including to create 'off-ramp' opportunities for people to disengage from violence, some in the context of what are often referred to as DDR (disarmament, demobilisation and reintegration/rehabilitation). They also include counter-messaging and intra-community dialogue,³¹¹ educational and social programmes, training and capacity building, peacebuilding and violence prevention, provision of health and legal services and development programmes.³¹² An array of such African initiatives has been recognised as global good practice.³¹³

Alongside recognition of the value of much PCVE is a growing concern that its explosion may have come at a price and should be rethought

While some involve novel methods, others simply reframe other human rights and development work as CPVE – at times to tick boxes and access funding. Yet others are described as a 'repackaging' of CT measures in order to garner acceptability and support.³¹⁴ Alongside recognition of the value of much PCVE is a growing concern that its explosion may have come at a price and should be rethought. A counter trend, in Africa,³¹⁵ Europe,³¹⁶ Asia³¹⁷ and beyond is a growing tendency to discredit the vast CPVE endeavour.

A 2020 Report by the UN SRTHR epitomises this, stridently criticising the fact that more and more aspects of daily life and the UN agenda are subject to security measures.³¹⁸ Similarly, a recent ISS report shows that local practitioners in Africa

resist referring publicly to their work as CVE/PVE for fear of stigma and negative consequences.³¹⁹ The criticism of evolving CPVE is as widespread and diverse as the programmes themselves, but three recurrent features and developments deserve emphasis.

Framing and focus

At the heart of the problem, once again, are subjective, vague and contested concepts. In particular, 'deradicalisation' and 'extremism', or even more problematic sub-categories of 'religious extremism', are fundamentally flawed from a human rights, equality and rule of law perspective. As history attests, many political movements, peaceful opposition groups, artists and others that have been deemed 'radical' and 'extremist' by some have, in fact been critical to progress and evolution.

The scope of PCVE has led to the 'stigmatisation' of an overly broad range of conduct, people and groups, with a divisive social impact.³²⁰ There is also concern that applying the PCVE label to valuable socio-economic programmes (and peace initiatives)³²¹ skews their objectives and exposes them to undue external influence, as well as garnering external support. In some cases it may lead to them being tarnished and their credibility undermined by association with problematic CT.

Targeting 'radicalisation' or 'extremism' shifts the focus from violent conduct to beliefs and ideas. The impact on freedom of thought, conscience and expression is clear. In practice, these terms have often been treated as commensurate with more devout Muslim religious practice, and PCVE policies and practices have been criticised for targeting and disproportionately affecting Muslims, a practice that is at odds with freedom of religion and equality.³²²

There is concern that applying the PCVE label to valuable socio-economic programmes skews their objectives and exposes them to undue external influence

It also plays strongly into propaganda by groups such as Boko Haram, al-Shabaab and IS in Somalia and West Africa.³²³ Concerns have also been expressed that limiting funding to religious or belief communities has 'led to further alienation' and impeded social support for disengagement.³²⁴ By contrast, focusing on 'disengagement' from violence, enabling individuals to redirect their futures, rather than methods that aim to change ideologies or beliefs, has overcome some of the pitfalls of alienating PCVE framing.³²⁵

Several terror groups on the continent target and impede education,³²⁶ underscoring the need to protect and bolster independent educational institutions

at all levels. However, global experience suggests that the right to education has suffered in various ways as PCVE has encroached on educational spaces.³²⁷ Several interviewees described this as particularly problematic, given the essential role of education and teachers in fostering long-term human security. Creating trusted spaces for the expression of opinions and grievances, and developing ‘critical literacy’, including in respect of religious tolerance and debate, are crucial for individual and collective resilience.³²⁸

Negatively stereotyping faith-based education was likewise described as ‘highly counter-productive’.³²⁹ Yet broad reporting requirements imposed on educational, health and social service actors impede access, especially by young people, to guidance and support that could be instrumental in helping them resist the pull of terrorist groups.³³⁰

Selective approaches to ‘conditions conducive’ and disengagement

Another emerging criticism of the approach to PCVE programmes is their selectivity. The UN Special Rapporteur on Terrorism, among others, underscores the neglect of myriad factors recognised as contributing to ‘conditions conducive’ to the spread of terrorism. These include ‘decades of knowledge and data on local political grievances, underlying drivers of conflict, long-term structural instability and political tensions over resource allocation.’³³¹ Economic and social drivers have been de-emphasised, despite the close correlation between high unemployment, multidimensional poverty and the regions most affected by terrorist violence, as the *Journey to Extremism* report highlights.³³²

Similarly, the disengagement and rehabilitation dimensions of states’ obligations³³³ have often been downplayed.³³⁴ Research makes it clear that amnesty and exit strategies are essential,³³⁵ but they depend on the existence of realistic future-oriented options for disillusioned recruits, including ‘job opportunities for them to start the process of rebuilding a civilian life.’³³⁶

As one CVE community operator put it, treating people as human beings with dignity, and the potential to change course, rather than as dangerous enemies, is crucial to the success of any of these programmes. Real investment in ensuring that communities are prepared to meet the complex challenges of ‘reintegrating women, as well as men, back into highly-contested societal contexts’ is crucial, but often neglected.³³⁷

State-led interventions and community leadership

The impact of strategies depends not only on their focus and *modus operandi* but also by *whom* they are developed and implemented. A recurrent concern, expressed by actors from UN to local levels, relates to the ‘top-down’ and state-led nature of much PCVE, which has:

... tended to focus on the formal institutions of States with very little or no attention to traditional and civil society organisations. Yet, in Africa, citizens often trust informal institutions more than the State institutions and such institutions can therefore leverage their relationships to counter the message of radicalisation and mobilisation used to recruit foreign fighters.³³⁸

It has also been noted that some aspects of PCVE (including the problematic 'deradicalisation' framing noted above) were pushed by agendas and actors from beyond the continent.³³⁹

There is growing, and now widespread, recognition of the importance of developing trusted relationships with communities that are 'susceptible' to recruitment (see, for example, the Hague-Marrakech Memorandum of the Global Counterterrorism Forum (GCTF)).³⁴⁰ However, in practice, approaches to community engagement – buzzwords in PCVE – vary greatly. Some are criticised as 'instrumentalising' communities and CSOs for the benefit of the state rather than being voluntary or community led.

Caution must be exercised to ensure the genuine 'empowerment' of 'youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society.'³⁴¹ Instead, many initiatives have been defeated by their association with CVE/PVE programmes that are seen as 'politically motivated'.³⁴² The fact that some women's groups have been forced to act as interlocutors between state led initiatives and communities augments concerns about the potentially harmful gendered effects of PCVE.³⁴³

Valuable human security work is being done across the continent, albeit much of it under the increasingly contested banner of CVE/PVE. Many CSOs have developed holistic approaches tailored to particular situations and conditions, providing vast experience upon which to build strategic responses in other situations.³⁴⁴

Community resilience, and bolstering rather than impeding civil society, including women's and youth groups, will be essential to withstanding and responding to the many threats to human security that lie ahead. There is a real need for meaningful evaluation of the rights implications and effectiveness of the PCVE label being extended to cover an ever-broader range of socio-economic, peacebuilding and CT work.³⁴⁵

Technological advances and privacy challenges

Technological advances in Africa today provide enormous human rights opportunities, from access to information and education to social mobilisation and organisation, evidence gathering and effective law enforcement. Across the globe evolving technology is shaping national security responses in many ways, some of which threaten many human rights.³⁴⁶ Among the still relatively neglected but pressing human rights challenges is the impact of advancing

artificial intelligence (AI), including facial recognition systems, big data platforms and predictive algorithms.³⁴⁷

Globally, the number of states deploying advanced AI surveillance tools to monitor, track and target citizens is rising sharply,³⁴⁸ as is the use of AI and ‘big data’ in ‘predictive policing’, including in CT.³⁴⁹ While there are clear differences in degree, the trend is global, with 75 of 176 countries actively using AI for surveillance.³⁵⁰

While the practice is less pronounced in Africa than in some other regions,³⁵¹ by 2019, 12 African states were using it.³⁵² Various factors, including developing markets in surveillance-related technology from China³⁵³ and Israel,³⁵⁴ the declining cost of AI and data storage among others, suggest that this is the trickle before the flood. Monitoring text messages, geo-tracking and gathering/storing biometric data all have an impact on the right to privacy and may infringe on a host of other rights, most directly, association and expression.³⁵⁵

The laws of most states have not kept pace with trends in surveillance technology and the increased gathering, storing and sharing of information

The implications for political participation and civic space of threats to privacy rights are already apparent. In one case, Huawei technicians in Zambia and Uganda reportedly played a ‘direct role in government efforts to intercept the private communications of [political] opponents’ by ‘intercepting encrypted communications and social media, and using cell data to track their whereabouts.’³⁵⁶ Other states are reportedly using, and expanding, video and facial recognition systems from the same source.³⁵⁷

The vast increase in ‘track and trace’ technology in Africa as a result of the COVID-19 pandemic, and the growth in the use of biometric data in electoral processes, with no privacy and data protections, raise concerns about potential misuse in other situations including the CT context.³⁵⁸ They increase the urgency of strengthening and implementing legal frameworks.

Alongside technological developments are normative trends, some of which exacerbate the risks. For example, UNSC Resolution 2396, adopted under Chapter VII binding authority, imposes wide-reaching and ill-defined obligations on states to:

... develop and implement systems to collect biometric data, which could include fingerprints, photographs, facial recognition, and other relevant identifying biometric data, in order to responsibly and properly identify terrorists, including foreign terrorist fighters.³⁵⁹

While the resolution makes it clear that implementation should be consistent with IHRL, practice does not necessarily follow suit.

Some also suggest that the regional human rights framework is too weak to challenge surveillance, given the omission from the African Charter of the right to privacy.³⁶⁰ However, the right is reflected in other international treaties applicable to African states and is closely related to other rights in the charter and articulated at some length in the African Guidelines on Terrorism and Human Rights.³⁶¹

The IHRL framework provides that surveillance and data collection must be provided for in clear law, that interference with the right to privacy must be necessary and proportionate (which is difficult to reconcile with massive untargeted surveillance or data retention) and that there must be safeguards and judicial oversight.³⁶² Nonetheless, as practice develops, the African Commission and others may need to do more to monitor and benchmark firmly the right to privacy in light of new technologies developing in the CT space.³⁶³ Globally, data protection remains weak and is only codified transnationally in the EU,³⁶⁴ though initiatives are underway to address the issue sub-regionally within Africa³⁶⁵ and there are calls for new guidelines for African states.³⁶⁶

On the national level, the laws of most states have not kept pace with trends in surveillance technology and the increased gathering, storing and sharing of information. Cooperation among states, through gathering and sharing data, can be essential to law enforcement and prevention. But given the extent to which states are actively abusing information and sharing it with other states, it can also be a vehicle for greater abuse. Adequate legal frameworks and timely oversight of the exercise of powers, nationally and supranationally, will be essential.

Clampdown on press, protest and access to information

Ever-widening national security laws and policies that prohibit, block and punish certain forms of speech, and generate a chilling effect, pose daunting threats to free expression and democratic participation. The UN Special Rapporteur on Freedom of Opinion and Expression has called for all states to ‘review and, where necessary, revise national laws, including removal of overly broad definitions of key terms such as terrorism, national security, extremism and hate speech, and ensure judicial or independent and public oversight.’³⁶⁷

Among the casualties is press freedom, at a time when the role of the media is, arguably, more important than ever. It is essential to access to information and impartial reporting in an era of excessive secrecy, ‘fake news’, distrust and disinformation that increasingly fuels violence, and in exposing human rights violations.

However, in parts of Africa and beyond, the press is obstructed by CT-related restrictions on access and travel, threats to confidentiality and control of content.³⁶⁸

International news media, in particular, are increasingly subject to attacks and hostility when reporting in foreign countries, as reports on the safety of foreign correspondents in 2021 reflect.³⁶⁹ Journalists have been openly warned against criticising anti-terror laws in a way that might ‘appear to be supporting terrorists.’³⁷⁰

Well-publicised examples of the detention and prosecution of journalists and the closing of media outlets in African states on security grounds also has a chilling effect on reporting.³⁷¹ The result is a backsliding from the promise of ‘independent, pluralistic and free press’ affirmed in the Windhoek Declaration three decades ago as essential to human rights, democracy and development, all closely linked with human security.³⁷² In Cameroon the Committee to Protect Journalists reports exclusion, arrests and closures, creating a climate of fear and self-censorship in the media.³⁷³

Access to information and a free press are crucial
antidotes to terror groups’ propaganda, but they have
been stifled in the name of security

In parallel, the right to protest – a dynamic and defining rights issue of our time – is widely under attack.³⁷⁴ Research suggests that laws and policies that purport to be protecting national security are often, in practice, aimed at thwarting protest and dissent.³⁷⁵ There have been extreme examples in Egypt, where Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) demonstrators carrying gay pride flags were dubbed ‘security threats.’³⁷⁶

In the African digital space CSOs are increasingly using the internet and social media for political organisation, monitoring and accountability.³⁷⁷ This is exemplified by digital campaigns against police harassment in Nigeria,³⁷⁸ where CT violators have, on occasion, been identified and held accountable because their activities were captured on mobile telephones and shared on social media.³⁷⁹ Conversely, the clampdown on connectivity and expression has implications for the defence of human rights and accountability.³⁸⁰

The focus of international attention on the use of online messaging and virtual images³⁸¹ by ‘terror networks’ to ‘influence warfare networks’ has understandably prompted Security Council resolutions, regional measures and soft-law initiatives (such as the ‘Christchurch Call’)³⁸² to seek to limit the use of the internet for these purposes.

But care must be taken to ensure that such initiatives do not provide cover for repressive internet control, as has happened with internet blocking in recent years in Ethiopia.³⁸³ In other African states the internet has been slowed down, effectively

paralysing efforts to use it, and there has been internet interference targeted at particular zones, organisations and individuals.³⁸⁴

As controversy about EU regulations shows, private platforms are increasingly being called upon to exercise rapid internet ‘security’ control, with stiff penalties for failure to promptly remove content, creating both opportunities and risks. It is essential to safeguard against overcompliance by private actors with low-risk appetites, and subject to less human rights regulation and accountability than states.³⁸⁵

The African human rights framework reflects the importance of free expression. Some restrictions on expression, protest and online incitement to violence³⁸⁶ and hate speech³⁸⁷ are not only consistent with international and African human rights standards but required by them. However, the legitimacy of restrictions depends on clear laws being applied strictly and subject to timely and effective oversight and remedies. These are often lacking in CT practice.³⁸⁸

There has been important progress on the continent in recent years in recognising access to information rights. This is reflected in the Model Law on Access to Information in Africa, and the African Commission Guidelines on Access to Information and Elections in Africa, among others. As the latter notes, these rights are ‘cross-cutting ... necessary for the realisation of other human rights, including the right to participate in government directly or through freely chosen representatives, as guaranteed by Article 13 of the African Charter.’³⁸⁹

As reports of immigration exclusion practices suggest, nationality and terrorism have, together, been manipulated for nefarious ends

Moreover, restrictions on access to information and internet services are increasingly preclude access to other essential services – education, health, work, movement – linked to the full range of economic, social, civil and political rights. Access to information laws, properly implemented, should also counter the over-reaching state secrecy that has been a notorious feature of CT in the past 20 years.

However, in practice, access to information laws are rendered useless by vague national security overrides. As the ‘Tshwane Principles on National Security and the Right to Information’ note:

While there is at times a tension between a government’s desire to keep information secret on national security grounds and the public’s right to information held by public authorities, a clear-eyed review of recent history suggests that legitimate national security interests are, in practice, best

protected when the public is well informed about the state's activities, including those undertaken to protect national security. Access to information, by enabling public scrutiny of state action, not only safeguards against abuse by public officials but also permits the public to play a role in determining the policies of the state and thereby forms a crucial component of genuine national security, democratic participation, and sound policy formulation.³⁹⁰

A familiar paradox emerges. Free expression, protest, critical debate, credible 'alternative narratives' and enabling grievances to be expressed and addressed³⁹¹ have been identified as part of effective CT.³⁹² Access to information and a free press, are all crucial antidotes to the propaganda and violence of terror groups. Yet they are increasingly stifled under the pretext of ensuring security and countering terrorism.

Inequality

Although the link between inequality, terrorism/violent extremism and responses to them was neglected in the early days of the 'war on terror', growing attention is, correctly, being paid to it. There are multiple connections: socio-economic inequality and marginalisation are key conditions conducive to increasing terrorism in Africa,³⁹³ while responses of all types (military, criminal law and others) have been deeply discriminatory on multiple intersecting grounds.

Policies have been discriminatory in their targeting and their effect, leading to widespread ethnic and religious profiling,³⁹⁴ shaping immigration policies around ethnicity and religion,³⁹⁵ banning 'religious extremism',³⁹⁶ more subtly relying on religious practice as evidence of intent in criminal cases, or targeting Muslim communities and actors for 'deradicalisation' or PCVE. As reports of immigration exclusion practice from the US to Zimbabwe suggest, nationality and terrorism have, together, been manipulated for nefarious ends, including to limit political opposition.³⁹⁷

The fomenting of suspicion, tensions, discrimination and attacks within and between communities, with profound social impact, has been equally corrosive.³⁹⁸ Reports and interviews suggest that terrorism and CT are fueling ethnic, religious and inter-communal tensions and violence in various parts of Africa in multiple ways.

In South Africa, some suggest that the state and the media have adopted a 'Western security discourse', constructing 'Muslims as a security issue.'³⁹⁹ In situations where tribal or communal conflicts have had devastating effects historically, and have even contributed to genocide, one interviewee described it as deeply troubling that the 'terrorist' label was increasingly being used to further marginalise or stigmatise rival factions.⁴⁰⁰

Examples can be found in disputes among Fulani herdsman in Nigeria,⁴⁰¹ in Burkina Faso,⁴⁰² or in the Tuareg rebellion in the north of Mali.⁴⁰³ In some cases political

parties or governments have stigmatised ethnic groups as ‘terrorists’ to justify repressive policies, while in others communities themselves have adopted the rhetoric. There is a need to grapple with the way terrorism discourse and responses are fuelling discrimination and alienation, legitimising violence and increasing the risk of conflict escalation.⁴⁰⁴

A significant shift is underway globally to recognise and address the relationship between gender, terrorism and CT/PCVE. On one level this involves recognising that, as the UN Secretary-General's Plan of Action notes, it is ‘no coincidence that societies for which gender equality indicators are higher are less vulnerable to violent extremism.’⁴⁰⁵

Terrorism discourse and responses are fuelling discrimination and alienation, legitimising violence and increasing the risk of conflict escalation

Troubling trends include the increased targeting of women and girls by ISIS or Boko Haram,⁴⁰⁶ which have steadily increased the use of women and girls in suicide missions,⁴⁰⁷ deploying more females than males in recent years.⁴⁰⁸ Social media campaigns that successfully target women and girls have been well documented.⁴⁰⁹ More broadly, Afghanistan following the US' withdrawal is an example of the devastating inequality that results when certain organisations gain territorial control.⁴¹⁰

The responses of states also raise multiple gender issues. CT responses and national action plans (e.g. for the implementation of UNSC Res 1325 or CT strategies) have often revealed erroneous gendered assumptions, about women as passive actors and victims rather than as agents and potential perpetrators.⁴¹¹ However, over time a fuller picture has emerged of the range of roles women have played – as supporters, recruiters, facilitators and, in some cases, fighters, as well as as victims and survivors – and their diverse motives.⁴¹²

In turn, the increase in criminal prosecutions of women has led to gendered assumptions and discrimination.⁴¹³ In some cases women are punished for who they marry,⁴¹⁴ for neglecting parental duties or for living in houses captured by ISIS (a crime known as ‘pillaging’) raising questions as to whether the framing of charges is itself discriminatory.⁴¹⁵ As prosecutions increase there is also a need for more attention to be focused on ensuring that victims of trafficking, who may be innocent, are not prosecuted but provided with support.⁴¹⁶ This may require acknowledging complex inter-relationships between victimhood and perpetration, rehabilitation and accountability.

References to the need to address the ‘gendered dimensions’ of CT and PCVE have proliferated in recent years, in Africa as elsewhere. However, what this really means,

and how seriously it is taken, is a matter of dispute.⁴¹⁷ In practice, some policies and practices are still blind to the relevance of gender. Some coercively target women to act as 'go-betweens' on behalf of for states with individuals or communities, exacerbating womens' vulnerability. In numerous cases, women's groups have been directly targeted as 'terrorist'.⁴¹⁸

The increasing engagement of women in designing and implementing responses, in Africa and elsewhere, is positive.⁴¹⁹ Twenty years ago the UN Women, Peace and Security agenda recognised women's multifaceted roles in the prevention and resolution of conflicts and in post-conflict reconstruction.⁴²⁰ The Dakar Call for Action in West Africa and the Sahel reiterates the relevance of this today.⁴²¹ However, despite 'women's leadership and participation' commonly being commonly cited as crucial,⁴²² practice points to a deeply state-led and male-dominated field, suffering from a 'diversity crisis'.⁴²³

At the same time, research reveals the impressive role of women's CSOs.⁴²⁴ One example from Nigeria highlights the fact that while security forces reduced the number of active Boko Haram fighters, 'sustainable success' depended on the engagement of women's groups to 'facilitate youth disengagement ... foster interfaith harmony, and promote the reintegration of de-radicalized violent extremists and terrorists into the society'.⁴²⁵ Acknowledging and addressing inequality, and harnessing the full potential of diverse actors and leaders, will be human security priorities in the years to come.

Expanding actors: state, private and foreign

Private sector

The role of various non-state actors in CT/PCVE is burgeoning all over the world and Africa is no exception. This reflects the recognition of the importance of 'public-private partnerships' and a 'whole of society' approach involving state, civil society, religious or belief communities, schools, academia, the media, business and industry.

Harnessing Africa's developing private sector could introduce technological and financial capacity, power and presence that some states may lack. It could play a key role in targeted intelligence gathering, investigation of cybercrime, tracking funds, effective border management and support for reintegration, employment and engagement opportunities associated with the long-term prevention of terrorism.⁴²⁶ However, there are also concerns about private actors assuming state functions, with serious rights implications, in the absence of adequate controls and accountability.

The role played in CT by private military security contractors and the engagement of 'mercenaries' have increased amid widespread allegations of violations and impunity.⁴²⁷ Examples include 'private military involvement' in Nigeria's

response to Boko Haram,⁴²⁸ cases in the Central African Republic and Sudan⁴²⁹ and alleged torture and unlawful killings in Somalia and Eritrea.⁴³⁰ Increasing vigilantism and cases of states arming and financing ad hoc paramilitary committees are part of the landscape of spiralling violence perpetrated by unaccountable actors who cannot be held accountable.⁴³¹

Another trend to be grappled with is the increasing role played by the digital communication and banking sectors in identifying and reacting to security ‘threats’. There is a growing insistence that digital platforms monitor, remove and block content, which may be important in crime prevention, but which may also lead to ‘over compliance’ and repression of free speech.⁴³² Likewise, the role played by the financial sector in implementing sanctions or identifying potential violations of financing prohibitions has left humanitarians, NGOs, businesses and individuals unable to access basic financial services and funding.

The fact that the profit motives of the private sector may not incentivise the protection of rights increases the necessity for them to be regulated, monitored and held accountable.⁴³³ The UN Special Rapporteur on Terrorism has flagged the serious problems that may arise when private actors assume responsibility for CT regulation:

The processes that involve delegations of regulatory powers in the complex field of terrorism – where national legal requirements are in themselves overly broad and vague – should, in the view of the Special Rapporteur, not be left to private actors that may not have the ability and resources to develop human-rights based rules that fully comply with the rule of law and that provide sufficient accountability mechanisms should allegations of human rights violations emerge.⁴³⁴

On the positive side, the growing acknowledgement of corporate responsibility (including the UN framework on Corporate Responsibility)⁴³⁵ provides a basis to push for human rights commitments from corporate bodies. If the apparent trend of human rights bodies within the UN and AU frameworks, including the African Commission, to engage with non-state actors is developed it could make a contribution to safeguarding responsibilities of private actors as well as the responsibilities of governments to ensure the legal framework is carefully applied in each case. The engagement of private actors – whether digital platforms, banks, private military companies or vigilantes – cannot be used to shirk states’ obligations under IHRL and evade accountability.

State actors and democratic institutions

The impact of strong democratic state institutions on ensuring human security across the continent is crucial. The failure of some states, and the existence of swathes of territory that extend beyond effective governmental control, are major

sources of insecurity, as Cabo Delgado in Mozambique long exemplified before the recent violence that is engulfing the area.⁴³⁶

More broadly, where social, democratic and law enforcement institutions, including police and the courts, are weak, vulnerability to the influence of non-state armed groups increases. It is important, therefore, to question how trends in CT affect democratic institutions.

One East African human rights lawyer spoke of how the long-standing priority of police/justice sector reform and oversight in Africa is being undermined to the extent that ‘in the present “age of terror” the concept of rights-based policing is at grave risk.’⁴³⁷ The increased prominence and power of intelligence agencies has likewise had implications for transparency and impunity, prompting calls for greater oversight and reform.⁴³⁸

Independent evaluation of the effectiveness of laws and policies is vital to strategic policymaking in the future, but elusive in practice

While legislatures have been criticised for over-broad anti-terror laws, there is also concern about the diversion of power *from* legislatures to governments through the use of executive orders, administrative measures and emergency powers, with less political oversight, transparency and democratic engagement.

There are few independent reviewers of CT legislation globally and they are not yet a feature of the African landscape.⁴³⁹ Other institutional gaps include the lack of independent oversight of sanctions (and only selective independent oversight at UN level under the 1267 Sanctions regime).

In strained political and social contexts (such as those surrounding CT in the past 20 years, at least), the independent role of the judiciary, due process safeguards and transparency are more important than ever. But they are also under greater strain. Judicial independence is threatened directly both by terror groups and by state actors.

Criticising judges for ‘siding with terrorists’ undermines their independence.⁴⁴⁰ Closed judicial processes, removing some national security issues from judicial oversight altogether as ‘non-justiciable’, or limiting access to evidence on ‘state secrecy’ grounds, all pose challenges to the rule of law.⁴⁴¹ As the International Development Law Organization (IDLO) notes, (re)building the justice sector is essential for peacebuilding and human security in Africa.⁴⁴²

The judicial ‘record’ on rights protection in the CT context has been mixed. There has undoubtedly been ‘judicial harassment’, in the application of broad

anti-terrorism laws for example.⁴⁴³ But there are also examples of robust judicial pushback against overreaching and vague laws,⁴⁴⁴ reasserting the judicial role in a dynamic democracy.⁴⁴⁵ Enhancing judicial capacity and independence will be crucial safeguards against attacks on the rule of law by terrorism and abusive CT.⁴⁴⁶

An emerging global phenomenon is the role of ‘human rights cities’.⁴⁴⁷ Several African cities, among them Dakar in Senegal, Mombasa in Kenya and Bamako in Mali, have been recognised for the innovative collaboration of varied local authorities and practitioners in the fight against violent extremism.⁴⁴⁸ The central role of ‘communities’ and non-state CSOs, partnerships and support has been noted.⁴⁴⁹ Alternative actors and approaches may prove key, especially where national policies turn their back on democratic principles, as in the case of CT.

Foreign states, cooperation and influence

The influence of foreign states and international cooperation in relation to CT in Africa has been intensely controversial. One report refers to a ‘widespread view in Africa that the initial Western-inspired international campaign against terrorism was developed without the input of Africans, imposed from the outside.’⁴⁵⁰ Security agreements between states have proliferated. Aid and development initiatives have been linked to, or repackaged as, anti-terrorism.⁴⁵¹ Meanwhile, for some states, governance and human rights have taken a back seat to deals with ‘security partners’ in Africa.⁴⁵²

The increasingly transboundary dimensions of escalating terrorist violence and the problems with investigating and prosecuting serious crimes make clear the importance of enhancing international cooperation. At the same time, CT practice also reveals the ‘dark side’ of inter-state cooperation, epitomised by the extraordinary rendition and torture.⁴⁵³ African states played a role in the global CIA programme, alongside other examples of cross border rendition and torture involving multiple African states.⁴⁵⁴

The growing engagement of private actors in counter-terrorism cannot be used to shirk states’ obligations and evade accountability

Jurisprudence has clarified what the human rights framework requires of cooperating states: refusal to extradite or transfer (non-refoulement) where there is a risk of serious violations of the right to life, torture and ill-treatment, arbitrary detention and fundamental fair trial guarantees – all of which are seriously jeopardised in CT practices on the continent.⁴⁵⁵

Similar principles are increasingly recognised as applying to mutual legal assistance and other forms of cooperation and, under general international law, states are responsible when they ‘aid and assist’ others in violating human rights obligations.⁴⁵⁶ However, cooperation over CT (formal and informal, positive and negative) has burgeoned in the past 20 years, often bypassing legal frameworks altogether, or sidelining human rights.

Several trends suggest that it is a crucial time to refocus on human rights compliant cooperation. One is the growing emphasis by the UNSC and others on information sharing and cooperation, spurred by UNSCR 2396 (2017), which requires states to collect airline reservation data, block terrorist travel, develop watchlists and use biometrics to identify would-be terrorists trying to cross borders and to share the information with other states. While the UNSC insists that implementation of the resolution is consistent with IHRL, there should be benchmarks and processes that ensure the information is not shared in a way that violates rights.

Several initiatives are also underway to enhance cooperation among African states, including mutual legal assistance and extradition arrangements being developed under the auspices of the AU and ECOWAS.⁴⁵⁷ Those agreements provide the opportunity to clarify and enshrine (on paper and in practice) human rights safeguards. Secrecy and insufficient trust among African states are believed to hamper effective cooperation.⁴⁵⁸ Trust should be based on meeting standards that bolster, rather than undermine, the rule of law.

Evaluation, reparation and addressing impunity

This monograph has illustrated the egregious impact and strategic blunders of much CT. Among the essential prerequisites for the development of more effective responses are understanding, honest evaluation, implementing lessons learned and repairing harm. While the importance of all of these has been widely recognised, there are few clear trends to suggest meaningful implementation of these goals.

Evaluation and research

The need for independent evaluation of the effectiveness of laws and policies is vital to future policymaking, but elusive in practice.⁴⁵⁹ As one ISS report notes, ‘evaluation will ensure that practitioners worldwide can learn lessons from Africa on what works and what doesn’t to prevent violent extremism.’⁴⁶⁰

It is an essential premise for the application of IHRL, which depends on an evidence-based analysis of the rights impact of particular restrictions, and whether they are justified as ‘necessary and proportionate’ in a particular situation. The need for meaningful evaluation is rendered more urgent by the profound concerns about the counter productivity of the growing arsenal of CT/CVE measures.

Multiple reports and interviews for this work describe serious evaluation deficits. The UN Special Rapporteur is one of those who criticises the lack of robust scientific bases for CT and PCVE policies and the absence of human-rights-based monitoring and evaluation, including by UN entities.⁴⁶¹

Others note more broadly that ‘the evidence base underpinning [CT/CPVE] remains limited and evaluation practice and investments are underdeveloped’.⁴⁶² While interviewees pointed to a plethora of ‘assessments’ across the continent, often funder-driven, they warned of the danger of a ‘box-ticking’ approach to satisfy donors and international organisations, which wastes time and obscures the truth.

Almost all interviewees referred to gaps in knowledge and the importance of research to enhance a collective understanding of contributors to political violence and effective antidotes. The growing body of evidence that does exist highlights a complex reality calling for more empirical data. As one example, it has been noted that despite the policy push on ‘foreign terrorist fighters’ there is a dearth of information about even rough numbers of foreign nationals actually engaged in conflicts in Africa, still less their motives or circumstances.⁴⁶³ Identifying areas for future research and assessment and acknowledging current gaps is a logical prerequisite for the development of strategic policies.

Ironically, there is also a danger that research is being impeded by CT trends. The climate of secrecy and state control over information has justified excessive restrictions on independent research and reporting. In some African states foreign research on ‘terrorism’-related issues is strictly controlled by the state.⁴⁶⁴ Restrictions noted above, on access to and reporting on banned groups impede the roles of investigative journalists or CSOs. Academic freedom is also under threat from the requirement of loyalty to the state, which has little place in independent academic research and analysis.⁴⁶⁵

Reparation

Remedy and reparation are rights in themselves and rule-of-law principles.⁴⁶⁶ While states routinely make reference to the rights of victims of terrorism there is a poor record of implementation of such rights. ‘Victim-centred’ approaches to justice, rehabilitation and reparation remain elusive in this context.⁴⁶⁷ Greater emphasis has been placed on victims of terrorism over time, as reflected in the establishment of the 2022 UN congress, but the need to close the gap between statements and reality remains.⁴⁶⁸

An equally striking gap is seen between approaches to victims of terrorism and victims of counter-terrorism. There are calls for a more consistent approach, requiring that ‘any individual subject to human rights abuse in the context of terrorism – whether stemming from terrorist acts or counter-terrorism efforts –

should be granted the requisite access to effective remedy, redress and holistic, psychosocial and trauma-informed care.⁴⁶⁹

Reparation takes many forms under international law, embracing recognition and apology, compensation, measures of satisfaction including investigation and accountability and 'guarantees of non-repetition'.⁴⁷⁰

The African experience epitomises a deeply troubling global CT trend – impunity for crimes carried out in the name of countering terrorism

Global practice provides some positive examples of compensation following litigation, though this has been very selective and often framed as *ex gratia* payments, explicitly not recognising the victims or wrongdoing.⁴⁷² In an 'age of apologies'⁴⁷² victims and CSOs have placed growing emphasis on securing an 'apology', with some limited success,⁴⁷³ but the general reluctance to acknowledge or apologise to CT victims has been striking. Even the most vulnerable victims – children recruited by terrorist groups – are treated as 'non-children' undeserving of protection in responses to terrorism.⁴⁷⁴

The dearth of recognition or reparation for counter-terrorism violations is a powerful negative symbol. It reflects and compounds the discrimination and dehumanisation of the war on terror, which, in turn, validates the narratives that research shows drive the 'journey to extremism' in Africa. The process of securing recognition and reparation for abusive CT is complex and multifaceted and deserves priority attention. It is an essential dimension of a rule- of law and rights-compliant approach and plays a crucial role in learning lessons from the past and guaranteeing non-repetition in the future.⁴⁷⁵

Impunity and counter-terrorism

The African experience epitomises a deeply troubling global CT trend – impunity for the egregious crimes carried out in the name of countering terrorism. Globally, defining characteristics of the 'war on terror' have been torture, enforced disappearance, targeted killings accompanied by a dearth of accountability. Impunity for those committing crimes during CT has even been enshrined in law in some countries and is pervasive in practice in many more.⁴⁷⁶

The accountability deficit is profound on the African continent. Almost everyone interviewed referred to impunity as one of the key issues requiring urgent attention. Reports are replete with examples of egregious crimes committed by security forces in the name of CT and carrying no consequences.⁴⁷⁷

While the problem extends beyond the CT space, cultures of impunity are entrenched in situations in which a lack of transparency and heightened secrecy exacerbate the challenges. At times even the demand by CSOs for accountability appears muted, arguably reflecting the normalisation of impunity and a sense of futility. Together with the fear of reprisals, some reports suggest this has led to victims no longer filing complaints.⁴⁷⁸

Impunity deprives society of its 'right to truth' and victims of their rights to justice.⁴⁷⁹ It foments a lack of trust in the state, which, in turn, undermines legitimate security measures. It is widely reported to feed the recruitment narratives of terrorist organisations.⁴⁸⁰ Interviewees repeatedly suggested that the culture of impunity that pervades the CT space is inherently linked to the cycle of recurring human rights violations. By contrast, accountability is about breaking with the past and ensuring that abusive, counter-productive violations are not policy options for the future. But the deficits are glaring and current trends inauspicious.

Chapter 3

Conclusion

Effectively addressing the spread of organised armed violence in Africa is essential to the protection of human rights and rule of law. With threats proliferating and more serious today than they were 20 years ago, there is an urgent need to grapple with the question of whether Africa is 'worse for the fix' of counter-terrorism, and what this means for the future.

There are many areas of opportunity and promise in the trends and developments flagged in this monograph. They begin with growing recognition of the importance of addressing human rights as a dimension of effective human security in the long run, even if the implementation falls far short of the goals. They include remarkable civil society, community and women-led organisation across the continent, the promise of enhanced technological tools (for rights protection and law-enforcement capacity), the evolving landscape of private and public actors with resources to bring to bear, and fresh approaches to engagement and dialogue with organised armed groups.

The issues raised throughout this monograph also expose the profound negative impact of the vast and expanding security framework – on human rights, the rule of law, democratic governance and human security in Africa. The trends highlighted raise deep concerns that the situation continues to deteriorate, and a remarkable lack of political will to break the cycle.

The implications are multi-dimensional. The 'terrorism' banner and goal of collective security are being used as a cover for the most serious violations – extra-judicial executions, torture, disappearance, prolonged arbitrary detention and measures that are apparently less drastic, but amount to 'civil death' for those affected.

The human rights impacts reach far beyond those dubbed 'terrorist', their families and communities, or even the millions caught the crossfire between escalating terror violence and securitised CT responses. It radiates out to all segments of the population, directly or indirectly affecting the full range of economic, social, cultural, civil and political rights, with the most vulnerable disproportionately impacted. Hard won progress on crucial issues such as citizenship rights, access to justice or police reform has been set back, while intransigent problems such as impunity are exacerbated.

The indirect impacts on laws, cultures and institutions essential to the protection of human rights also needs to be better understood and addressed. The quality and authority of laws and legal systems are tarnished by unclear laws, by emergency legislation adopted without democratic oversight or basic fair process, by selective application of law, or by compromised prosecutorial or judicial independence.

Social and cultural norms are eroded by the control, surveillance and fear generated by the security state. Perennial problems of distrust in governments (and, to an extent, international actors), social tensions and discrimination are exacerbated. The social cohesion and resilience need to meet the human security challenges ahead risks being undermined. Political and institutional priorities have also shifted, towards security perspectives and priorities, while international cooperation, aid and development have been distorted for security purposes.

The cover provided to authoritarianism by the ‘war on terror’ has been warmly embraced in Africa, as elsewhere, as a means of repressing dissent and curtailing democracy. Reactions to the COVID-19 pandemic are but one example of how exceptional laws and policies adopted in the security contexts can be, and have been, redirected to novel situations, multiplying their detrimental effects.

The global negative impacts of the ‘war on terror’ are amplified on a continent struggling with overlapping social, economic and political challenges

The ultimate irony is how activities that promote peace and human rights, and are crucial to protecting human security in the long run, are being thwarted by CT. Through the wildfire expansion of who or what is deemed a threat, and pre-emptive measures to act against threats before they emerge, ever broader aspects of daily life and democratic participation are being stifled, stigmatised and punished. Voicing (and seeking to address) grievances, peace negotiations, humanitarian action, human rights defence, civil society organisation and funding are all deeply affected by CT laws and policies, despite being recognised on paper as critical to addressing ‘conditions conducive’ to the spread of terrorism.

The limited effectiveness and the negative impact of the ‘war on terror’ are a global phenomenon, hardly unique to Africa. But many of the global trends assume dramatic form on a continent struggling with a perfect storm of overlapping social, economic and political challenges. Some of the trends flagged are longstanding but are becoming worse, others are emerging. All require urgent legal and policy attention and innovation.

Legal and policy recommendations

Adopt a genuinely human-centred approach to human security

Human rights need to be moved into the centre of human security policy. This requires addressing the long neglected underlying ‘conditions conducive’ to the spread of terrorism, many of which are human rights related, such as denial of basic socio-economic and developmental rights, marginalisation and unaddressed grievances.

It entails ensuring security responses promote human rights as an antidote to the violence and propaganda of many armed groups in Africa. It requires open, participative processes that include those most affected by terrorism and counter-terrorism. The chasm between the theory of accepting human security approaches on paper, and the disregard for human rights in practice, must be addressed.

There is no shortage of human rights protections in international and national laws across Africa. But IHRL must be taken more seriously as binding law, rather than treated as a mere policy option. As UN Secretary-General António Guterres observed: ‘For terrorism to be defeated, it is essential that African counter-terrorism is holistic, well-funded, underpinned by respect for human rights and, most importantly, backed by strong political will.’⁴⁸¹ There is deep concern about the apparent lack of political will to change course from the current state-centric, security-obsessed approaches to CT.

Enable local led, contextual and holistic approaches

An understanding of local problems and support for local solutions are key to effective responses. It may eliminate the distortions from viewing diverse issues through a standardised CT lens, and the resistance to imposed ‘top-down’ approaches.

Similarly, rather than isolate and privilege CT, as happens in practice, it is necessary to engage holistically with the overlapping challenges to human security on the continent. It has been noted that responses ‘are only as strong as their weakest link; Africa’s responses must encompass all threats to the rule of law, and the linkages between them.’⁴⁸² Initiatives that build peace, resilience and economic and social development should be valued and provided with the long-term funding and support they require, not impeded by overreaching CT laws and practices. However, framing this work as CT or even PCVE may have unintended consequences, skew objectives and limit effectiveness

Bolster human rights oversight and enforcement

While security infrastructure has burgeoned, human rights investment has not nearly kept pace. Urgent attention is needed to strengthening both national and supranational human rights institutions. This may include introducing independent

reviewers of legislation, supervisory controls on executive measures including the growing use of sanctions, enhanced resources and powers for the African Commission or another AU entity to robustly review human rights compliance and ensure state and non-state actor responsibility.

Reduce and clarify law, policy and discourse of ‘counter-terrorism’ and ‘extremism’

The expansive discourse of countering terrorism, extremism and vague forms of support for or facilitation must be reduced and clarified. Whether Africa needs a universal definition of terrorism is a matter of legitimate controversy and the problem certainly goes far beyond that. But the current trajectory of layering one indeterminate term upon another must be acknowledged as a fundamental challenge to the rule of law, that lies behind many of the problematic trends. It must be reversed.

There is a woeful lack of robust engagement with the way states define and apply such terms, and their consistency with the IHRL framework, or the parameters of international guidance on the core elements of an acceptable definition of ‘terrorism’.

Pre-existing criminal law, and established international crimes, often provide more appropriate bases for accountability than crimes of terrorism

The exclusion from any definition of ‘terrorism’ of protected conduct such as humanitarian work (as in the Malabo protocol) is promising. This should be expanded to protect peacebuilding and human rights defence, and implemented in practice.

Even more contested terms such as radicalisation or extremism, which are amorphous, discriminatory and manipulated in practice, should be rejected. A focus on acts of or ‘disengagement’ from violence, rather than on changing ideologies or beliefs, might help overcome these pitfalls.

De-militarise CT/CPVE, tackle the implications and reassert the right to life

The military role, while essential in some places, must be limited and contained within a broader strategic approach. It must comply with the rule of law, be responsive to human needs and not be unduly skewed by state and foreign interests.

The situation in Afghanistan (and related concerns in Mali) make clear that it is imperative to avoid hasty and dangerous disengagements by foreign forces. But

there can be little doubt that the dominant role of the military in CT and CPVE needs to change, and the lack of accountability of foreign and national security forces must be addressed.

The long-term impact on society of increased militarisation should be assessed and tackled. The right to life and prohibition on extra-judicial executions must be reasserted, including ‘where the line between combat and non-combat operations is blurred’, lest standards are permanently eroded.⁴⁸³

Address mass arbitrary detention and limit ‘administrative measures’

There is a need to rethink incarceration policy, including specifically in the CT context, as has been widely recognised globally. Despite this, mass detention in response to perceived threats (whether security or COVID-19-related), without adequate legal basis or due process, continue to gather pace across Africa. Massive security detentions epitomise the arbitrariness and abuse of CT power, with widespread rights implications, and risk fomenting violent extremism rather than countering it.

As other administrative measures, such as sanctions or responses to ‘foreign terrorist fighters,’ are set to increase on the continent, there is an opportunity to avoid the pitfalls and arbitrariness experienced elsewhere. Clarifying legal standards and establishing independent systems of review and challenge are essential to legitimacy.

Reduce and reframe criminal law and address impunity

Criminal law has a crucial role to play in fostering rule of law and addressing violent organised crime, but this requires serious investment to investigate thoroughly and prosecute and punish fairly in line with IHRL. To be legitimate, criminal law should focus on genuinely culpable individual behaviour and sufficiently serious criminal conduct with intent, backed up by independent judicial systems. It must also be applied consistently.

The troubling trajectory of expanding criminal laws, lowering protections and heightened penalties must be stopped. While serious criminal acts of violence should be prosecuted, pre-existing criminal law, and established international crimes, often provide more appropriate, legitimate, and rights-compliant bases for accountability than dubious crimes of terrorism or extremism. They may also reflect the gravity and impact of those crimes.

The potential of alternative justice and reconciliation processes to respond to massive violations by non-state groups should also be seriously explored. More attention is due to ‘repairing the social fabric’ ruptured by terrorism and CT – an area in which ECOWAS has shown leadership in principle but not yet in practice. Victim-centred approaches to criminal law, and community engagement throughout

processes and in rehabilitation, are one discreet but important aspect, which are currently neglected in the counter-terrorism field.

The widespread impunity for egregious crimes committed by security forces in the CT context is a huge challenge with wide-reaching implications. The almost absolute impunity and neglect of criminal law for CT crimes, alongside the decisive trend to over-stretch terror-related crimes and subject them to exceptional process and penalties, brings the law into disrepute as a selective tool of repression – a ‘law of the enemy’ rather than one that reasserts state authority and restores public confidence.

Refocus on reparation (victims of terrorism and counter-terrorism)

Reparation, including the recognition of wrongs, rehabilitation, redress and measures to ensure non-repetition, is an important human right and essential to prevent violations in the future. All those subject to human rights abuse in the context of terrorism – whether stemming from terrorist acts or counter-terrorism efforts – should have access to reparation. This means moving beyond paying lip-service to the rights of victims of terrorism, and ensuring states assume responsibility for reparations for CT violations. The dearth of recognition or reparation of the many victims of security services in Africa reflects the insidious perception that when it comes to CT in Africa some are beneath the law and some are above it.

Harness technology, bolster access to information and internet freedom

As new technologies continue to develop, the African Commission and others will need to firmly benchmark and monitor relevant rights. Ensuring adequate legal frameworks for privacy and data protection, timely oversight of the exercise of powers by private and state actors, and the accountability of human beings, can eliminate the possibility of laws lagging behind reality.

While much attention is focused on abuse of the internet by violent groups, access to information and to neutral, open internet services should also be seen as an essential antidote to the ignorance and polarisation such groups thrive on. Internet access is an increasingly crucial precursor to essential rights – education, health, work, movement. Stronger access to information laws, properly implemented and without broad security exemptions, could help address over-reaching state secrecy.

Protect the right to protest

It is essential to open up not clamp down on discussions about the causes of and contributors to terrorism and the effectiveness of CT. The culture of free expression should be nurtured, as should spaces in which grievances can be aired and people empowered (such as education, a free press, civil society and political participation). These are antidotes to violence, not coterminous with it, as current

CT clampdowns suggest. The focus should be on actively seeking vehicles for grievances to be voiced and addressed, rather than stifled and punished as often happens in practice.

Prioritise peace and ensure CT laws stop impeding peacebuilding

Key priorities like peacekeeping, state building and reconciliation have been impeded by massive military CT operations. While each situation and group is distinct, and the nature and methods of engagement with proscribed groups vary, there is a need to engage creatively with such groups on the establishment of lasting peace. The trend towards growing recognition of non-state actor responsibility provides an opportunity for increased engagement. Humanitarian and peacebuilding actors, and access to, education of and negotiation with armed groups, must be excluded from CT laws.

Protect human rights defenders

The crisis facing CSOs must be addressed as a priority. In the words of one AU official, there needs to be an open conversation around the ‘culture shift’ needed to recognise and empower human rights actors and remedy increasingly fraught state-CSO relationships. It is essential to bolster rather than impede social organisations, including women’s and youth groups and, with them, community resilience. Doing so will enable communities to withstand and respond to the many threats to human security that lie ahead. Genuine community leadership, engagement and empowerment must be distinguished from box ticking or instrumentalisation for states’ own ends.

Access to information and internet services should be seen as an essential antidote to the ignorance and polarisation that violent groups thrive on

The private sector has a key role to play, provided both private and public actors are regulated, monitored and accountable. Vigilantism and the delegation of regulatory powers to private actors who may lack the motivation, capacity or resources to develop human-rights based approaches also pose real threats that need to be addressed.

Human security may call in certain contexts for reinforcing aspects of the state infrastructure which may have suffered backsliding, such as community policing initiatives, education, employment and development programmes that invest in human beings and respond to basic needs. The role of Africa’s ‘human rights cities’ or regions could be developed to foster a human-centred approach to security.

Integrate and operationalise human rights within inter-state cooperation

Inter-state cooperation should be developed, but made conditional on verifiable rights compliance. As agreements continue to emerge it is imperative to ensure that states are not complicit in the violation of rights or persecution opponents and rights defenders in the name of security, as has often been the case. If increased cooperation is to enhance rather than undermine the rule of law and effective CT, legal and policy standards governing cooperation must be clarified and respected and subject to safeguards, operational guidance and oversight.

Enhance research, evaluate and implement lessons learned

An overarching recommendation emerging from this work is the need to meaningfully evaluate, understand and, where necessary, repair damage done. States should invest in and enable research and the collection of empirical data to underpin a collective understanding of causes and contributors to armed violence and how best to address them. It is also crucial to ensure meaningful evaluation of responses, as opposed to pro forma evaluations that waste time and resources and undermine the credibility of review processes.

This monograph begins and ends with a focus on learning from and implementing the lessons of the past 20 years. Despite the recognition that much CT is more counter-productive and the threats more serious than a decade ago, it seems that problematic CT laws and practices have become entrenched and are spreading. The remarkable resistance to learning lessons, or to implementing those that seemed to have been learned, must be understood and addressed.

Notes

- 1 The WestPoint Combatting Terrorism Centre identified 'ineffective CT responses' as one of four reasons for the increase in terrorism in Africa, <https://ctc.usma.edu/twenty-years-after-9-11-the-threat-in-africa-the-new-epicenter-of-global-jihadi-terror/>.
- 2 Interviews/discussions were held with 13 people: five human rights defenders working in NGOs in diverse parts of Africa, two people working on CPVE in Africa, two prosecutors (one with a domestic Nigerian focus, one international), two academics (African and European), one high-level African Union official and three mid/high-level UN officials.
- 3 For example, the French authorities in Algeria, the British in Kenya, the Rhodesian government during the 1970s and the South African apartheid regime. Vines and Wallace, *Terrorism in Africa*, Chatham House, September 2021, <https://www.chathamhouse.org/2021/09/terrorism-africa>.
- 4 OAU Convention on the Prevention and Combating of Terrorism, 1999, Article 3(1); statements to the UN during negotiations over the UN Comprehensive Convention against Terrorism.
- 5 There is no accepted international definition, but, eg, UNSC Res 1566 and the UN Special Rapporteur have advanced 'Guidance on Good Practice', which centres definitions on acts of violence against civilians.
- 6 See Chapter 2 – Reach and vagueness of the terms 'terrorism' and 'extremism'.
- 7 Brookings, 20 years after 9/11, Jihadi terrorism rises in Africa, 30 August 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/08/30/20-years-after-9-11-jihadi-terrorism-rises-in-africa/>; R Beri, Rise of Terrorism in Africa, Manohar Parrikar Institute for Defence Studies and Analyses, 13 April 2017, https://idsa.in/idsacomments/rise-of-terrorism-in-africa_rberi_130417.
- 8 IEP, *Global Terrorism Index 2022*, <https://reliefweb.int/report/world/global-terrorism-index-2022>.
- 9 UN News, Unprecedented terrorist violence in West Africa, Sahel region, 8 January 2020, <https://news.un.org/en/story/2020/01/1054981>.
- 10 Global Terrorism Index 2022. The increase in fatalities from terrorism included a five-fold increase in deaths between 2014 and 2019 and a sharp spike following the COVID-19 pandemic in 2020, see Coleman, The Impact of Coronavirus on Terrorism in the Sahel, *ICCT*, 16 April 2020, <https://icct.nl/publication/the-impact-of-coronavirus-on-terrorism-in-the-sahel/>; Institute for Economics and Peace (IEP), *Global Terrorism Index 2020: Measuring the Impact of Terrorism*, November 2020, <https://www.visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-web-1.pdf>.
- 11 The Armed Conflict Location and Event Data project highlighted more than 3416 Boko Haram terror events between 2009 and 2018, with 36000 fatalities, <https://www.acleddata.com/dashboard/>.
- 12 UNHCR, Global Trends: Forced Displacement in 2019, 2020, 8, <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.
- 13 IEP, *Global Terrorism Index 2022*.
- 14 M Ewi, The 20-year war: 9/11's enduring legacy in Africa, 13 September 2021, <https://issafrica.org/iss-today/the-20-year-war-911s-enduring-legacy-in-africa>.
- 15 UN News, Islamic State threat moves online, expands across Africa: Senior counter-terrorism expert, 19 August 2021, <https://news.un.org/en/story/2021/08/1098112>.
- 16 Exploiting global crises, nations impacted by conflict at heart of Da'esh affiliates' strategy, counter- terrorism officials warn Security Council, 9 August 2022, <https://press.un.org/en/2022/sc14995.doc.htm>.

- 17 UNHRC, Report of the UN Special Rapporteur on Human Rights and Counter terrorism, UN Doc A/HRC/43/46, 21 February 2020. Global Terrorism Index 2022, Institute for Economics and Peace at <https://www.economicsandpeace.org/wp-content/uploads/2022/03/GTI-2022-web-09062022.pdf>
- 18 Vines and Wallace, *Terrorism in Africa*, 2021.
- 19 On the tendency to 'inflate' terrorism see UNHRC, Report on impact of policies and practices, 2020, para 2. On simplification of the threat in Africa, see Vines and Wallace.
- 20 Abang, Chuku and Isip, 'Growth and Fiscal Consequences of Terrorism in Nigeria', *Working Paper Series*, No. 284, 2017, African Development Bank; Demuyunck, Mehra and Bergema, ICCT Situation Report: The Use of Small Arms & Light Weapons by Terrorist Organisations as a Source of Finance in West Africa and the Horn of Africa', *ICCT*, June 2020, 9.
- 21 IEP, Terrorism was only responsible for .05% of deaths globally, *Global Terrorism Index 2019: Measuring the Impact of Terrorism*, November 2019.
- 22 UNHRC, Report on impact, 2020, para 16.
- 23 Speech by UN Secretary-General, SOAS, 16 November 2017, <https://www.un.org/sg/en/content/sg/statement/2017-11-16/secretary-general%E2%80%99s-speech-soas-university-london%E2%80%9Ccounter-terrorism>.
- 24 Interviews, senior UN, AU and NGO actors; see Chapter 2 – 'Forever war'.
- 25 Section III.7, esp, eg, UN CT Strategy 2008; AU and ECOWAS strategies.
- 26 See Chapter 2 – Expanding 'PCVE'.
- 27 See Chapter 2 – Stretching criminal law and justice gaps.
- 28 *Al Jazeera*, Ethiopia declares state of emergency to fight coronavirus, 8 April 2020, <https://www.aljazeera.com/news/2020/4/8/ethiopia-declares-state-of-emergency-to-fight-coronavirus>.
- 29 See Chapter 2 (administrative measures) as one example where executive decrees have also been used for diverse CT ends; see also Chapter 2 (Growing actors and institutions) noting this impacts on democratic oversight.
- 30 Duffy and vd Herik, *The Security Council and Terrorism*: in Geiss and Melzer Oxford Handbook of the International Law of Global Security, 2021; UNGA, Report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/73/361, 3 September 2018.
- 31 Ibid.
- 32 See, eg, UN Global Counter-Terrorism Strategy; Secretary-General's Plan of Action on Preventing Violent Extremism; AU and ECOWAS Plans of Action; IGAD Strategy on Countering Violent Extremism.
- 33 UN Special Rapporteur on Terrorism and Human Rights, Report to the General Assembly on the role of soft law on counter-terrorism measures and human rights, UN Doc A/74/335, 29 August 2019.
- 34 Examples are: Algiers Convention and Protocol to the Convention, 2004; Plan of Action, 2002 and model anti-terrorism laws. For East Africa, see Omenma and Onyango, *African Union Counterterrorism Frameworks Implementation Trends among Member States of the East African Community*, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/0974928419901197>. In West Africa ratification is mixed, but has improved, with all states in the region having ratified at least seven of the universal instruments. See Saliu, *The Center Can Hold: Towards a Regional Approach to Combatting West Africa's Terrorists*, July 2015, <https://www.kaipctc.org/wp-content/uploads/2017/03/New%20folder/Saliu-N.-2015-THE-CENTER-CAN-HOLD-TOWARDS-A-REGIONAL-APPROACH.pdf>.
- 35 See Chapter 2 – Reach and vagueness of the terms 'terrorism' and 'extremism'.
- 36 Though they have been silent on human rights since 9/11, as of 2004 all UNSC resolutions insist on implementation consistent with IHRL, IHL and refugee law.
- 37 Algiers Convention, 'Nothing in this Convention shall be interpreted as derogating from [IHL] as well as the African Charter on Human and Peoples' Rights', 1999, Article 22.
- 38 Right of all peoples to national and international peace and security, OAU African Charter on Human and Peoples' Rights (ACommHPR), 1981, Article 23. The charter also applies during emergency situations; *Media Rights Agenda and Others v. Nigeria*, Applications nos. 105/93, 128/94 and 152/96 (1998), para 67.
- 39 ACommHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, 29 January 2016.

- 40 They deal, for example, with private enterprises and private security contractors. See, Statement, former Special Rapporteur on Human Rights Defenders, 2016.
- 41 See, eg, definitional deficits, privacy and data protection, and non-state actor responsibility below.
- 42 Altioik and Street, A Fourth Pillar for the United Nations? The Rise of Counter-Terrorism, *Saferworld* 2020, <https://www.saferworld.org.uk/resources/publications/1256-a-fourth-pillar-for-the-united-nations-the-rise-of-counter-terrorism#:~:text=Over%20the%20past%2020%20years,UN%20Office%20of%20Counter%2Dterrorism>; see also, UNGA, Declaration on the commemoration of the seventy-fifth anniversary of the United Nations, UN Doc A/75/L.1, 16 September 2020.
- 43 At AU level, the 1999 Algiers Convention; the Plan of Action on the Prevention and Combating of Terrorism (2002) was initiated to further its implementation; the 2011 African Model Anti-Terrorism Law; ECOWAS Strategy; J Omenma, African Union Counterterrorism Frameworks: Implementation Trends among Member States of the East African Community, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/0974928419901197>.
- 44 The African Centre for the Study and Research on Terrorism, <https://caert.org.dz/>.
- 45 Omenma, African Union Counterterrorism.
- 46 H Duffy, *War on Terror* (2nd ed), CUP, 2015, 187, citing Ugandan prosecutions.
- 47 UN SRTHR, Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defender', UN Doc A/HRC/40/52, 1 March 2019.
- 48 See Chapter 2 – Growing actors and institutions – which notes the implications for police reform and other areas of governance and development, despite them being central to combatting 'conditions conducive'.
- 49 See, eg, Litigating the War on Terror, in Duffy, *Strategic Human Rights Litigation*, Hart, 2018.
- 50 See Chapter 2 – civil society.
- 51 Interviewee (civil society, E Africa) suggested this was seen in muted responses to COVID-19-related abuses.
- 52 ILO, In Africa in 2020, 82.2% of people had no social protection and only 5.6% of the unemployed receive unemployment benefits, *World Employment and Social Outlook: Trends 2020*.
- 53 Campbell, How Jihadi Groups in Africa Will Exploit COVID-19, Council on Foreign Relations, 3 April 2020, <https://www.cfr.org/blog/how-jihadi-groups-africa-will-exploit-covid-19>.
- 54 Ramadhan and Ouma, COVID-19 and Countering Violent Extremism Measures in Kenya, Centre for Human Rights and Policy Studies (CHRIPS), Briefing Note No.1, May 2020; UNITAR, Impact of Covid-19 on Violent Extremism and Terrorism, <https://unitar.org/learning-solutions/publications/impact-covid-19-violent-extremism-and-terrorism>; Euromesco, Thriving on uncertainty: Covid-19-related opportunities for terrorist groups, June 2021, 26-30, <https://www.euromesco.net/wp-content/uploads/2021/06/Thriving-on-Uncertainty-COVID-19-Related-Opportunities.pdf>; Haer and Demarest, COVID-19 in Africa: Turning a Health Crisis into a Human Security Threat?, *Peace Econ Peace Sci Pub Pol*, 2020, https://www.researchgate.net/publication/343715755_COVID-19_in_Africa_Turning_a_Health_Crisis_into_a_Human_Security_Threat#fullTextFileContent.
- 55 Comments by the government of Ghana to the UNSC, Debate on Global Crises and Counter-terrorism, August 2022, <https://reliefweb.int/report/world/exploiting-global-crises-nations-impacted-conflict-heart-daesh-affiliates-strategy-counter-terrorism-officials-warn-security-council>.
- 56 Saharan Africa was one of the two regions most affected by increased life-threatening hunger in 2020. See, eg, WFP, The State of Food Security and Nutrition in the World, 2020, https://docs.wfp.org/api/documents/WFP-0000117811/download/?_ga=2.56502635.1366633845.1602503729-1546222716.1602503729.
- 57 Namayanja, Lack of Vaccines Fuels Terrorism in Africa, 10 June 2021, <https://foreignpolicy.com/2021/06/10/vaccines-africa-terrorism-covid-19/>; Columbo and Harris, Extremist Groups Stepping Up Operations During Covid-19 Outbreak in Sub-Saharan Africa, 1 May 2020, <https://www.csis.org/analysis/extremist-groups-stepping-operations-during-covid-19-outbreak-sub-saharan-africa>; Bellinger and Kattelman, Domestic terrorism in the developing world: Role of food security, *Journal of International Relations and Development* 24(2), 2020, 306–332, <https://link.springer.com/article/10.1057/s41268-020-00191-y>; Tahir, Ibne Afzal, Asim Afridi, Naseem, and Bin Saeed, Terrorism and its Determinants in the Sub-Saharan Africa Region: Some New Insights, *African Development Review* 31, 2019, 393–406, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-8268.12397>; Adelaja and George, Grievances, Latent Anger

and Unrest in Africa, *African security* 12(1), 2019, 111–140, <https://www.tandfonline.com/doi/abs/10.1080/19392206.2019.1599641?journalCode=uafs20>.

- 58 Ramadhan and Ouma, COVID-19 and Countering Violent Extremism.
- 59 Shepard, Global warming: Severe consequences for Africa, *Africa Renewal*, March 2019, <https://www.un.org/africarenewal/magazine/december-2018-march-2019/global-warming-severe-consequences-africa>.
- 60 ICCT, The Warning Signs are Flashing Red: The Interplay between Climate Change and Violent Extremism in the Western Sahel, 2019, https://icct.nl/app/uploads/2019/10/PB-The-Warning-Signs-are-flashing-red_2e-proef.pdf.
- 61 IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Part A: Global and Sectoral Aspects, 2014, Chap 12.5, (LINK).
- 62 Scheffran, Schilling and Link, Climate and Conflict in Africa, *Oxford Research Encyclopedia of Climate Science*, OUP, 2019, 19.
- 63 Ibid.
- 64 The tension between Africa and the International Criminal Court is one example.
- 65 Oehme, Terrorist, Insurgents and Criminals – Growing Nexus?, *Studies in Conflict & Terrorism* 31(1), 2018, 80–93; Ford, Counter-terrorism, human rights and the rule of law in Africa, *ISS Paper* 248, September 2013, https://archive.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap12_FINAL.pdf.
- 66 See Chapter 2 – Reach and vagueness of the terms ‘terrorism’ and ‘extremism’ and Clampdown on expression.
- 67 UNSC Res 1373 (2001), UN Doc S/RES/1373, 28 September 2001.
- 68 UNGA Res 72/284 (2018), UN Doc A/RES/72/284, 27 December 2018.
- 69 The AU Peace and Security Council, Communiqué of the 650th meeting of the PSC: Briefing by CISSA on the recent international developments in the fight against terrorism and its impact in Africa, 2017, para 4.
- 70 UNGA, The United Nations Global Counter-Terrorism Strategy, UN Doc A/Res/60/288, 20 September 2006, which has been commonly invoked since then.
- 71 UNGA, Plan of Action to Prevent Violent Extremism, UN Doc A/70/674, 24 December 2015, 5 primary drivers conducive to VE: (1) Lack of socio-economic opportunities; (2) marginalization and discrimination; (3) poor governance, violations of human rights and the rule of law; (4) conflicts, and (5) radicalisation in prisons; see also UNGA, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/HRC/31/65, 22 Feb 2016; UNODC, *Foreign Terrorist Fighters, Manual for Judicial Training Institutes. Middle East and North Africa*, 2021, https://www.unodc.org/pdf/terrorism/FTFs_manual_final_version_09.04.2021_ENG.pdf.
- 72 UNDP, Human Security: A Thematic Guidance Note for Regional and National Human Development Report Teams, 2013.
- 73 UNGA, Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome, UN Doc A/RES/66/290, 10 September 2012.
- 74 UNDP, *Journey to Extremism in Africa: Drivers, Incentives, and the Tipping Point for Recruitment*, 2017, <https://journey-to-extremism.undp.org/content/downloads/UNDP-JourneyToExtremism-report-2017-english.pdf>.
- 75 *Journey to Extremism*, *ibid*. It adds that 71% of terrorist recruitment occurred because of violent government action against a family member or friend.
- 76 Van Zyl, Time to rethink the prevention of violent extremism in Africa, ISS, 2020, https://issafrica.org/iss-today/time-to-rethink-the-prevention-of-violent-extremism-in-africa?utm_source=BenchmarkEmail&utm_campaign=ISS_Today&utm_medium=email.
- 77 Interviews; see also Pérouse de Montclos, Nigeria’s Interminable Insurgency?: Addressing the Boko Haram Crisis, 2014, https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers15-04/010064368.pdf.
- 78 During an interview an experienced human rights advocate in West Africa spoke of ‘extensive examples’ of witnesses explaining how state practices have been used in face-to-face recruitment by such groups; see also, Dufka, Les atrocités commises par des militaires favorisent le recrutement par les groupes

- armés, *Le Monde*, 29 June 2020. Corruption, banditry and rivalries over access to land and water all contributed, but revenge and 'atrocities' committed by the military were paramount.
- 79 De Guttry, Capone and Paulussen, *Foreign Fighters under International Law and Beyond, Africa Development*, T.M.C. Asser Press, 2016, 376. Commentators also cite 'the Palestinian problem' as 'a driver of radicalisation;' M. Ewi in *Exploiting Global Crises and CT*, <https://reliefweb.int/report/world/exploiting-global-crises-nations-impacted-conflict-heart-daesh-affiliates-strategy-counter-terrorism-officials-warn-security-council>.
 - 80 Becker and Shane, Secret 'Kill List' Proves a Test of Obama's Principles and Will, *The New York Times*, 29 May 2012.
 - 81 Qureshi, Feeding grievances: The killing of Makaburi, *Al Jazeera*, 12 April 2014.
 - 82 UNHRC, Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on Targeted Killings, Human Rights Council, UN Doc A/HRC/14/24/Add.6, 28 May 2010; Crook, President Obama Orders Closure of Guantánamo Detention Facilities; Obstacles Remain, *AJIL* 103(2), 2019, 325–331.
 - 83 UNGA, The Secretary-General's High-level Panel Report on Threats, Challenges and Change, A more secure world: our shared responsibility], UN Doc A/59/565, 2 December 2004.
 - 84 UNGA, UN Counter-Terrorism Strategy, 2006.
 - 85 UNDP, *Journey to Extremism*.
 - 86 Interview, Kenya; US Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2019: Tanzania*, 2020.
 - 87 In interviews a Nigerian prosecutor and a CPVE actor cited as an impediment poor cooperation as a result of distrust, compounded by rights violations.
 - 88 Chapter 2 on CT impeding movement, access by humanitarian workers and civil society operations.
 - 89 Solomon, The African state and the failure of US counter-terrorism initiatives in Africa: The cases of Nigeria and Mali, *South African Journal of International Affairs* 20(3), pp. 417–445; Vines and Wallace, 'Terrorism in Africa', Chatham House, Sept 2021, <https://www.chathamhouse.org/2021/09/terrorism-africa>.
 - 90 Taylor, Lip Service Paid to Human Rights During UN Counterterrorism Week, *HRW*, 2018, <https://www.hrw.org/news/2018/07/09/lip-service-paid-human-rights-during-un-counterterrorism-week>; UNSG, Secretary-General's remarks to the African Regional High-Level Conference on Counter Terrorism and Prevention of Violent Extremism Conducive to Terrorism, Nairobi, 10 July 2019.
 - 91 Interview, E African human rights scholar.
 - 92 UNGA, Negative effects of terrorism on the enjoyment of human rights, UN Doc A/HRC/AC/24/CRP.1, 22 January 2020.
 - 93 Ibid; Interview, ISS.
 - 94 UNSC, Res 1373 (2001); broadened by Res 2178 (2014), and others, regional initiatives and national legislation.
 - 95 Ibid; Res 2354 (2017) and Res 1963 (2010) refer to, but lack a definition of, extremism; Report of the SRTHR, UN Doc A/HRC/40/52, 1 March 2019.
 - 96 Examples are increasingly found in regional/national laws, eg, EU Terrorism Directive, 2017/UNSC Res 1624 (2005); Directive (EU) 2017/541; Duffy and Pitcher, Indirectly Inciting Terrorism? Crimes of Expression and the Limits of the Law, in Goolod and Lazarus, *Security and Human Rights*, Hart Publishing, 2019, 343–386; See also Chapter 2.6.
 - 97 UNSC Res 2178 (2014); Duffy, 'Foreign Terrorist Fighters': A Human Rights Approach, *Security and Human Rights* 29, 2019, 120–172.
 - 98 UNSC Res 2482 (2019), UN Doc S/RES/2482, 19 July 2019.
 - 99 See, eg, EU Terrorism Directive and Shanghai Convention on Combating Terrorism, Separatism and Extremism, 2017, which includes political state-centred 'separatism' as well as religious extremism.
 - 100 Ibrahima Kane, Reconciling the Protection of Human Rights and the Fight against Terrorism in Africa, in A M Salinas, K Samuel, and N White (eds), *Counter-Terrorism: International Law and Practice*, Oxford: OUP, 2012, 842, criticising, for instance, the equation of terrorism with insurrection or political offences.
 - 101 The Malabo Protocol defined the crime of terrorism for the purpose of the criminal jurisdiction of the African Charter on Human and People's Rights, see, AU, 'Protocol on Amendments to the

Protocol on the Statute of the African Court of Justice and Human Rights, 27 June 2014; Amnesty International, 'Malabo Protocol: Legal and institutional implications of the merged and expanded African court, *Snapshots*, 2017, <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR0161372017ENGLISH.pdf>.

- 102 Although originally neglected after 9/11, this has long been explicit in UNSC resolutions and in the EU Terrorism Directive 2017.
- 103 See Chapter 2 – Stretching criminal law.
- 104 Walsh, Sisi Promised Egypt Better Health Care: Virus Exposed His True Priority, *The New York Times*, 11 November 2020.
- 105 UNSC, Res 1373 (2001), Preamble, para 3.
- 106 Scheinin, A Proposal for a Kantian Definition of Terrorism, *EUI Working Paper LAW* 3, 15 2020: States (like the UNSC) don't care about definitions, because they don't care about the law when it comes to 'terrorists'.
- 107 Ibid.
- 108 UNHRC, Report on impact, para 71.
- 109 Ni Aoláin, Counter-Terrorism and Crackdowns on Civil Society, 2020.
- 110 CIVICUS reports that civic space is closed, repressed or obstructed in 111 countries in the world, and only 4 per cent of the global population lives in areas where the civic space is open. Within Africa, it identifies two countries as 'open'; six as 'narrowed', 18 'obstructed', 15 'repressed' and eight closed, <https://monitor.civikus.org/quickfacts/>.
- 111 HRW, *World Report 2020*; UNHRC, Report on impact.
- 112 Ibid, paras 5, 8.
- 113 Letter 5 from 5 UN Special Rapporteurs to the Algerian government on abuse of antiterrorism legislation against Kabyle or Members of the Hirak democratisation movement, 27 December 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26905>.
- 114 Committee to Protect Journalists, *Journalists Not Terrorists*, the government's branding of the Oromo Liberation Front and the Ogaden National Liberation Front as terrorist organisations led to the arrest of hundreds of government opponents, 2017, Section 3.7.
- 115 Walsh, Sisi Promised Egypt Better Health Care.
- 116 Reyntjens, Rwanda: Progress or Powder Keg?, *Journal of Democracy* 19, 2015, 21; York and Rever, Assassination in Africa: Inside the Plots to Kill Rwanda's Dissidents, 2014.
- 117 Solomon, *Terrorism and Counter-Terrorism in Africa: Fighting Insurgency from Al-Shabaab, Ansar Dine and Boko Haram*, Palgrave Macmillan, 2015, 109.
- 118 UNHRC, Report on impact, para 42. A very recent example is Thailand's Draft Act on the Operations of Not-for-Profit Organizations, see open letter from NGOs, <https://www.article19.org/resources/thailand-draft-act-on-not-for-profit-organizations-causes-alarm/>.
- 119 See Musila, *Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa*, Freedom House, May 2019, among other examples of Sudan's closure of NGOs.
- 120 Norwegian Refugee Council, Principles under pressure: The impact of counterterrorism measures and preventing/countering violent extremism on principled humanitarian action, 12 June 2018, 21.
- 121 UNGA Res 68/181, UN Doc A/RES/68/181, 30 January 2013.
- 122 African Guidelines, 2016.
- 123 Interview, AU official.
- 124 UNGA, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions: Saving lives is not a crime, UN Doc A/73/314, 7 August 2018, recommending exempting humanitarian action from all CT measures; Section III.3 Militarisation.
- 125 OAU, Convention on the Prevention and Combating of Terrorism 1999, Art 22; EU Terrorism Directive 2017, para 37.
- 126 Australia, Canada and Switzerland, for instance, have such exemptions in law; EU Terrorism Directive 2017.
- 127 UNGA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc A/

- RES/53/144, 8 March 1999 declares that states should provide 'enabling environments' for HRD; UNHRC, Report on impact.
- 128 Duffy, *War on Terror*.
 - 129 Bøås, Between Prison and Freedom in Museveni's Uganda, *Nordic Journal of Human Rights* 25, 2007, 44–57.
 - 130 E.g. the UNDP Journey to Extremism in Africa report recognises the 'essential' role of military campaigns as components of combatting Boko Haram and Al-Shabaab, while calling for a dramatic reappraisal of militarised approaches to CT overall.
 - 131 Dufka, Military Might Alone Won't Pull Mali from Quagmire, HRW, 2017. See also, *The New Humanitarian*, New Sahel anti-terror force: Risks and opportunities, 30 October 2017; FIDH, The crisis in Mali must be a wake-up call for a new response in the Sahel, September 2020.
 - 132 Crouch, Somalia's war can't be won militarily: Time to give peace a chance, *Saferworld*, 2018; HRW, *World Report 2020: Somalia*.
 - 133 UNGA, UN High-level Panel, 2004; UNGA, UN Counter-Terrorism Strategy, 2006; AU Strategy, Silencing the Guns.
 - 134 See Chapter 2 – Growing actors and institutions. On international actors and foreign states see, Kambela, Terrorism in Africa: A Manifestation of New Wars, *ACCORD*, 24 June 2019, <https://www.accord.org.za/conflict-trends/terrorism-in-africa/>.
 - 135 Ibid, Formed by the governments of Burkina Faso, Chad, Mali, Mauritania and Niger.
 - 136 The MNJTF, established in 1998 by Nigeria, Chad and Niger, has increased its troop numbers and become more active as attacks by Boko Haram have increased. States belonging to the Lake Chad Basin Commission (Cameroon, Chad, Niger and Nigeria) and Benin have pledged troops to the MNJTF, with support from the US, the UK and the EU.
 - 137 The AU Mission was originally created to help the transitional government for six months. See, African Union Mission in Somalia Mandate, 2007, <https://amisom-au.org/amisom-mandate>.
 - 138 Implemented through UNSC Res 2071 (2012), S/RES/2071, 12 October 2012.
 - 139 Munshi and Peel, West Africa's Sahel moves to forefront of global war on terror, *Financial Times*, 2019.
 - 140 *The Economist*, The real lessons from 9/11, 11 Sept 2021.
 - 141 Duffy, Trials and Tribulations, in Bohrer, Dill and Duffy, *Law Applicable to Armed Conflict*, Max Planck Trialogues: Book 2, CUP, 2020.
 - 142 Duffy, *Law Applicable*, 2020.
 - 143 Under IHL non-international conflict must reach a certain level of intensity and be perpetrated by organised armed groups, which is not the case in all situations of terrorism and organised crime, however challenging they might be.
 - 144 Arbitrary detention, Section III.5.
 - 145 The Costs of United States' Post-9/11 'Security Assistance': How Counterterrorism Intensified Conflict in Burkina Faso and Around the World, https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20Counterterrorism%20in%20Burkina%20Faso_Costs%20of%20War_Savell.pdf.
 - 146 Amnesty International, Nigeria: Stars on Their Shoulders, Blood on Their Hands: War Crimes Committed by the Nigerian Military, 2 June 2015.
 - 147 *BBC News*, Nigeria air strike error kills dozens in refugee camp, 17 January 2017.
 - 148 HRW, *World Report 2020 and World Report 2020: Somalia*.
 - 149 Arieff, U.S. Counterterrorism Priorities and Challenges in Africa, Committee on Oversight and Reform Subcommittee on National Security U.S. House of Representatives, 16 December 2019, <https://icct.nl/app/uploads/2016/05/Alex-P.-Schmid-Links-between-Terrorism-and-Migration-1.pdf>.
 - 150 See Chapter 2 – Reach and vagueness of the terms 'terrorism' and 'extremism'.
 - 151 See Chapter 2 – Growing actors and institutions.
 - 152 Chapter 2 – Growing actors and institutions.
 - 153 See, eg, HRW, Security Forces Dealt with Them: Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces, 7 September 2021; Trump vows to help Nigeria in fight against Boko Haram, *France24*, 1 May 2018.

- 154 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/76/261, 3 August 2021; Interviews, AU CT official, Nigerian prosecutor.
- 155 See Chapter 2 – Dearth of evaluation, reparation and accountability.
- 156 Interview, Advocate, West Africa.
- 157 See Buchanan-Clarke and Lekalake, Violent extremism in Africa: Public opinion from the Sahel, Lake Chad, and the Horn, *Afrobarometer*, 2016; Sn III. XX (PCVE.)
- 158 UNDP, *Journey to Extremism*, 87.
- 159 Interview, E African advocate; B Azmy, The Legacy of 9/11: Reckoning with a 20-year Ideology of War, Nativism, and Authoritarianism, Center for Constitutional Rights, 2 September 2021.
- 160 UNHRC, Use of armed drones for targeted killings, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/HRC/44/38, 15 August 2020, para 8; UNHRC, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, UN Doc A/HRC/38/44/Add.I, 20 June 2018, paras 21, 31–32 and recommendations; UNGA, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, UN Doc A/HRC/14/24/Add.6, 28 May 2010.
- 161 Eg, African Commission Guidelines, paras 13 and 14: ‘During the conduct of hostilities, [IHL applies] ... In all other situations the intentional deprivation of life is prohibited unless strictly unavoidable to protect another life or other lives.’
- 162 Statement by Fatima Kyari Mohammed, Permanent Observer of the AU, on ‘the reality of drone terrorism’, in Security Council Issues Presidential Statement Calling for Greater Efforts to Help Africa Fight Terrorism, as Delegates Denounce ‘Insufficient’ Current Approaches, UNSC 8743rd Meeting, SC/14140, 11 March 2020, <https://www.un.org/press/en/2020/sc14140.doc.htm>.
- 163 Ibid, para 3.
- 164 Qureshi, Feeding grievances: The killing of Makaburi, 2014.
- 165 HRW, *World Report 2020: Kenya*; Ali and Mirodan, Killing Kenya: People & Power investigates allegations that Kenya’s police are involved in extra judicial killings, *Al Jazeera*, 23 September 2015; Ali, Islamist Extremism in East Africa, *Africa Center for Strategic Studies*, 2016.
- 166 Anyadike, ‘In the news: Sahelian security forces accused of hundreds of extrajudicial killings’, *The New Humanitarian*, 5 May 2020.
- 167 On arbitrary deprivation of life and impunity U.S. Department of State, Human Rights Reports, ‘Nigeria: Executive summary’, <https://www.state.gov/report/custom/ce2520aeba>.
- 168 HRW, Burkina Faso: Killings, Abuse in Sahel Conflict: ‘By Day We Fear the Army, By Night the Jihadists’, 21 May 2018.
- 169 See Reyntjens, Rwanda: Progress or Powder Keg?, 21; Rafti, Crumbling in Exile: The Changing Nature of the Rwandan Opposition, in Marysse and Reyntjens, *L’Afrique des Grands Lacs*, Editions L’Harmattan, 2005; York and Rever, Assassination in Africa: Inside the Plots to Kill Rwanda’s Dissidents, *The Globe and Mail*, 2 May 2014.
- 170 See Chapter 2 – Arbitrariness and administrative measures. On 7 000 deaths in military custody in NE Nigeria from 2011–2015, see Amnesty International, Nigeria: Stars on their shoulders, 2015, 58; 44 deaths in a Chad prison.
- 171 Eg, one Kenyan official stated that one cannot ‘bail terror suspects, then moan about extrajudicial executions’; see also Ng’eno, *Nation*, 11 April 2014; RFI, Tchad: raid français contre des rebelles de l’UFR, 4 February 2019.
- 172 ACommHPR, General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), 18 November 2015, para 34.
- 173 Ibid.
- 174 Bohrer, Dill and Duffy, *Law Applicable to Armed Conflict*, Chapter 1.
- 175 UNHRC, UN Doc A/HRC/44/38, 15 August 2020, para 29.
- 176 ICRC, Customary Rule 159: Amnesty, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159; OSCE ODIHR, Guidelines for Addressing the Threats and Challenges of ‘Foreign Terrorist Fighters’ within a Human Rights Framework, 12 September 2018, https://www.osce.org/files/f/documents/4/7/393503_2.pdf.

- 177 *Saferworld*, 'A war that hurts us twice': Inside Kenya's war on terror: community perspectives on security in Mandera county, August 2020, 30–31.
- 178 See section III.3
- 179 AU, Malabo Protocol, 27 June 2014, Art 28G(D): 'Acts covered by IHL ... shall not be considered as terrorist acts'; see also, EU Directive 2017, OSCE, Guidelines.
- 180 Neethling, The entanglement between peacekeeping and counterterrorism with special reference to peacekeeping operations in Africa, *AJCR* 2019/2, ACCORD, 2019.
- 181 *Saferworld*, A fourth pillar for the United Nations? The rise of counter-terrorism, June 2020, 36; *Saferworld*, Thinking beyond 'countering violent extremism' in Somalia: Local views on an international 'project', February 2020.
- 182 HRW, Turkey: Rights Lawyer Faces Terrorism Probe, 26 October 2015; Academics for Peace cases pending, ECtHR.
- 183 See Chapter 2 – Stretching criminal law and justice gaps. Eg, *Holder v Humanitarian Law Project*, Supreme Court of the US, 561 U.S. (2010) Nos. 08-1498 and 9-89, 21 June 2010, which held that educating groups about IHL constituted 'material support'.
- 184 Ewi, The 20-year war.
- 185 Berghof Foundation, Dialogue with Salafi jihadi armed groups: Challenges and opportunities for conflict de-escalation, 10 December 2019, <https://berghof-foundation.org/news/to-de-escalate-violent-conflicts-around-the-world-it-is-time-to-engage-in-dialogue-with-salafi-jihadi-armed-groups>; Göldner-Ebenthal and Dudouet, Expert Roundtable on Salafi jihadi armed groups: De-escalation trajectories and dialogue engagement, Berghof Foundation Library, 2020, 2, https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Other_Resources/2020_SJAG_WorkshopReport.pdf.
- 186 Interview, ISS; Schwartz, Afghanistan-Taliban Talks Begin In Attempt To End 19 Years Of Bloodshed, *NPR*, 12 September 2020; U.S. Congressional Research Service, Afghanistan: Background and U.S. Policy: In Brief, *CRS Report*, 11 June 2021, 4–5; Jackson and Weigand, The Taliban's War for Legitimacy in Afghanistan, *Current History* 118(807), 2019, 143–148.
- 187 Bouhlel, (Ne pas) dialoguer avec les groupes 'jihadistes' au Mali? Entre contradictions normatives, 'manqués' de la médiation ... et nécessité heuristique', Berghof Foundation Library, 2020, 2-3.
- 188 A call to rethink Europe's 'counter-terrorism' strategy and prioritise dialogue; Joint statement by peace and conflict resolution organisations, 10 September 2021, <https://berghof-foundation.org/news/call-to-rethink-europes-counter-terrorism-strategy>.
- 189 Ibid.
- 190 Bohrer, Dill and Duffy, *Law Applicable to Armed Conflict*, CUP 2020.
- 191 Ibid; see also, OHCHR, Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors, Geneva, 25 February 2021.
- 192 De Haas, Castles and Millar, *The Age of Migration: International Population Movements in the Modern World*, 6th edn, Red Globe Press, 2020; Schmid, Links between Terrorism and Migration: An Exploration, ICCT, 2016.
- 193 AU, Evaluation Report of the African Union Migration Policy Framework for Africa, 2016, 9, https://au.int/sites/default/files/newsevents/workingdocuments/32718-wd-english_report_evaluation_of_the_migration_policy_framework_for_africa.pdf.
- 194 Schmid, Links between Terrorism and Migration, 2016, 36.
- 195 Migratory flows have increased both away from and towards the conflict zones, involving those seeking safety and those lured into the conflict as foreign terrorist fighters, further destabilising regions like North Africa, Kenya, and Somalia; see, UNGA, Plan of Action, para 2.
- 196 N Avdan, Do Asylum Recognition Rates in Europe Respond to Transnational Terrorism? The Migration-Security Nexus Revisited, *European Union Politics* 15 (4), 2014, 445–471.
- 197 Tschudin, Moffat, Buchanan-Clarke, Russell and Coutts (eds), *Extremisms in Africa* (Volume 2), Tracey McDonald Publishers, 2019.
- 198 Schmid, Links between Terrorism and Migration.
- 199 MEMO, Tunisia Tightens Security Along Libya Border, 2019, <https://www.middleeastmonitor.com/20190406-tunisia-tightens-security-along-libya-border/>.

- 200 Eg, Israel, US under the Trump administration or Hungary; for the connection with CT see European Parliament, US counter-terrorism since 9/11: Trends under the Trump administration, 2018, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621898/EPRS_BRI\(2018\)621898_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621898/EPRS_BRI(2018)621898_EN.pdf).
- 201 OHCHR, administrative Detention of Migrants, <https://www2.ohchr.org/english/issues/migration/taskforce/docs/administrativedetentionrev5.pdf>.
- 202 Eg, reports of extremist violence in Kenya linked to profiling of Somali Muslims by security agencies: UNDP, Preventing Violent Extremism Through Promoting Inclusive Development, Tolerance and Respect for Diversity: A Development Response to Addressing Radicalization and Violent Extremism, 2016.
- 203 MEMO, Tunisia Tightens Security; See Chapter 2 – Expanding ‘PCVE’.
- 204 Eg, prosecution of unlawful border crossing as ‘terrorist-related crimes’ in Kenya; Chapter 2.6 (Crime).
- 205 ISS, Africa’s international borders as potential sources of conflict and future threats to peace and security, Paper No 233, May 2012.
- 206 OHCHR, Refugees and Terrorism: ‘No Evidence of Risk’ – New Report by UN Expert on Counter-Terrorism, 2016.
- 207 Ibid.
- 208 *Saferworld*, ‘Alternative Approaches to Counter-Terrorism’.
- 209 Schmid, ‘Links between Terrorism and Migration’, 2016.
- 210 AU, The Revised Migration Policy Framework for Africa and Plan of Action (2018–2027), 2017.
- 211 United Nations Trust Fund for Human Security, Migration, <https://www.un.org/humansecurity/migration/>.
- 212 Horn Institute, Counter Terrorism and Security Strategies along the Kenya-Somalia border, 1 September 2017; Connolly, Al-Shabaab in Kenya: Cross-border attack and recruitment, *Foreign Brief*, 28 May 2019.
- 213 De Guttery, Capone and Paulussen, *Foreign Fighters*, 373–390; OSCE, Guidelines for Addressing Foreign Terrorist Fighters, 2018.
- 214 UNSC Res 2178 (2014); UNSC Res 2396 (2017) and UNSC 2253 (2015), Un Doc S/RES/2253, 17 December 2015.
- 215 OSCE, Guidelines.
- 216 See, eg, UNCRC, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communications No. 79/2019 and No. 109/2019 [*L.H. et al v. France*], UN Doc. CRC/C/85/D/79/2019-CRC/C/85/D/109/2019, 2 November 2020.
- 217 ICCT, 10 Years of ICCT: What’s Next?, <https://icct.nl/10years/>.
- 218 UNOCT Report, July 2017, 5, this may radicalise those who are a low threat through unwarranted persecution.
- 219 Boutin, Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards, *ICCT*, 2016, 5.
- 220 See, eg, OMCT, To be: Arbitrary Administrative Control Measures in Tunisia, <https://omct-tunisie.org/wp-content/uploads/2020/06/Rapport-SANAD-%C3%Aatre-S-VEN.pdf>.
- 221 Interviews, PCVE civil society actor, Nigeria; Advocates, E and W Africa; prosecutor, Nigeria.
- 222 See, eg, ACommHPR, Guidelines Arrest, Police Custody and Pre-Trial Detention in Africa, <https://www.achpr.org/presspublic/publication?id=7>.
- 223 Landry Faye, Faces of Religious Radicalization in African Carceral Spaces, *FES Peace and Security Series*, 2017; ODIHR and Penal Reform International (PRI), Guide for detention monitors on the protection of human rights in preventing and countering violent extremism and radicalisation that leads to terrorism in prison, 2019; see also, UNODC, UNODC strengthens the efforts of the penitentiary to prevent radicalization in prison, <https://www.unodc.org/westandcentralafrica/en/2018-07-24-prison-radicalisation.html>; PRI, Preventing radicalisation in prisons, December 2015.
- 224 ARC Foundation, Prison Conditions in Nigeria, November 2019.
- 225 Ibid.

- 226 Felbab-Brown, In Nigeria, we don't want them back, *Brookings*, May 2018.
- 227 HRW, 'They didn't know if I was alive or dead', 10 September 2019.
- 228 See Chapter 2 – Arbitrariness and administrative measures.
- 229 See eg. Covid-19: Prisons and Detention in Africa, International Drug Policy Consortium, June 2020.
- 230 Odunsi, Nigeria has identified, detained Boko Haram sponsors – AGF Malami, *Daily Post*, 23 September 2021.
- 231 The effectiveness, and risks were also evident from the widespread use of detention against COVID curfew breakers despite its counter productivity in terms of health goals.
- 232 Courts have often found them to lack basic due process, eg, the Kadi case at the ECJ and Sayadi and Vinkc at the UNHRC. See Duffy, *The 'War on Terror'*, CUP 2015, Ch 7, for more discussion on listing and human rights implications.
- 233 *The Economist*, Sanctions are now a central tool of governments' foreign policy. The more they are used, however, the less effective they become, 24 April 2021.
- 234 US Senate Foreign Intel committee, Statement of Hon Sue E Eckhert: The unintended consequences of UN Sanctions were cited as 'corruption, criminality, strengthening of authoritative rule, and decline of legitimacy of the Security Council'.
- 235 Ibid.
- 236 Ní Aoláin, Counter-Terrorism and Crackdowns on Civil Society, *Just Security*, 5 January 2020.
- 237 These measures have been used in the UK, Australia, Canada and several Middle East countries. See, D Burchardt and R Gulati, International Counter-terrorism Regulation and Citizenship-stripping Laws – Reinforcing Legal Exceptionalism, *Journal Security* 23(2), 2018, 203–228; OSCE, Guidelines.
- 238 Ibid.
- 239 New Zealand's prime minister accused Australia of reneging on its responsibility by using this measure in the case of Suhayra Aden, <https://www.justsecurity.org/50599/counter-terrorism-crackdowns-civil-society/>.
- 240 Ibid. The practice was dropped, although some citizens had already been deprived of their citizenship.
- 241 ACommHPR, Resolution 234 on the Right to Nationality, CHPR/Res.234(LIII)2013, 23 April 2013; UNA, Convention on the Reduction of Statelessness, 30 August 1961, Preamble; UNGA, Convention Relating to the Status of Stateless Persons, 28 September 1954, Preamble; UNGA, Universal Declaration of Human Rights, 10 December 1948, Art 15; African Guidelines 2016, Principle 1(G): Prohibition of Discrimination, Explanatory Note.
- 242 Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism, https://brill.com/view/journals/emil/22/3/article-p338_2.xml?language=en.
- 243 Mbiyozo, Statelessness: An Old Problem with New Threats, ISS, 13 November 2019, <https://issafrica.org/iss-today/statelessness-an-old-problem-with-new-threats>. In Southern Africa factors compounding the challenges include 'colonial history, border changes, migration, poor civil registry systems, and discrimination on the basis of gender, ethnicity and religion'.
- 244 Manby, *Citizenship Law in Africa: A Comparative Study*, Open Society Foundations, 2016, 106.
- 245 Ibid.
- 246 Mbiyozo, Statelessness.
- 247 OSCE, Guidelines.
- 248 African Guidelines 2016, part 9; UNSC Res 2178 (2014); SADC, Resolution on the Prevention of Statelessness and the Protection of Stateless Persons in the SADC Region, 15 November 2016 and the Migration Dialogue for Southern Africa, contain strong conclusions and recommendations on statelessness; Mbiyozo, Statelessness.
- 249 Van Waas, Citizenship stripping, expulsion and statelessness: Counter terrorism measures have gone too far, *OpenDemocracy*, 9 July 2020.
- 250 Mbiyozo, Statelessness; HRW, 'twin threats', *Annual Report 2019*.
- 251 African Guidelines.
- 252 See, eg, OSCE, Guidelines.

- 253 The UN Manual on Cooperation in Criminal Matters, https://www.unodc.org/documents/terrorism/Publications/Manual_Int_Coop_Criminal_Matters/English.pdf, states that 'any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support [thereof must be] brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms'.
- 254 See Chapter 2 – Reach and vagueness of the terms 'terrorism' and 'extremism'.
- 255 Duffy, *War on Terror*, Ch 4; McCulloch and Pickering, Pre-Crime and Counter-Terrorism: Imagining Future Crime in the 'War on Terror', *British Journal of Criminology* 49(5), 2009, 627–645.
- 256 Duffy and Pitcher, Indirectly Inciting Terrorism, 2019; UNHRC, Report on impact of measures, 2019, paras 36–7; OSCE, Guidelines.
- 257 Ní Aoláin, The UN Security Council, Global Watch Lists, Biometrics and the threat to the rule of law, *Just Security*, 17 January 2018.
- 258 Counter-Terrorism and Human Rights in the Courts: Guidance for Judges, Prosecutors and Lawyers on Application of EU Directive 2017/541 on Combatting Terrorism, *ICJ*, November 2020.
- 259 OSCE ODIHR, Note on the Shanghai Convention, <https://www.osce.org/files/f/documents/e/8/467697.pdf>.
- 260 OAU, Algiers Convention 1999, Article 1(b) includes 'any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement ... with the intent to commit any act referred to in paragraph (a) (i) to (iii). This extends to 'inducing ... the general public or any segment of it ... to adopt or abandon a particular standpoint'.
- 261 Article 28(g) of the Statute of the African Court of Justice and Human and People's Rights, as amended by the Malabo Protocol, confers jurisdiction for the crime of terrorism. The definition refers to acts that violate national, AU or other international law, embracing 'danger to life, physical integrity or freedom'.
- 262 AU, Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, September 2002, para 12.
- 263 Chapter 2.3
- 264 UNSC CTED, Implementation of Security Council resolution 2178 (2014) by States affected by foreign terrorist fighters, para 67.
- 265 Sampson, Between Boko Haram and the joint task force: Assessing the dilemma of counter-terrorism and human rights in Northern Nigeria, *Journal of African Law* 59(1), 2015, 25–63, noting that 'Nigeria found the opportunity to characterise violent religious extremism as terrorism to be quite attractive.', 29.
- 266 Eg, Section 4.4. on closing civil society space.
- 267 Article 30 of Chad's Anti-Terrorism Law No. 034/PR/2015 of 30 July 2015 enshrines heavy punishment for 'publicly advocating' or 'publicly acclaim[ing]' 'terrorist acts'.
- 268 Francis, *Policing in Africa*, Palgrave Macmillan, 2012, 111.
- 269 Kenya, Prevention of Terrorism Act No 30, 2012, Art 5.
- 270 Ibid, Art 10.
- 271 Ibid, Art 30.
- 272 US Department of State, Bureau of Counterterrorism, Country Reports on Terrorism 2017: 'We placed special emphasis on helping partner countries enact appropriate legal frameworks to bring criminal charges against terrorist offenders. At the end of 2017, 70 countries had laws in place to prosecute and penalize foreign terrorist fighters, and 69 had prosecuted or arrested [FTFs] or their facilitators.'
- 273 The Institute for Integrated Transitions (IFIT) and United Nations University, The Limits of Punishment: Transitional Justice and Violent Extremism, May 2018.
- 274 Nigeria Terrorism Prevention (Amendment) Act No 3, 22 April 2013.
- 275 Ewi, The 20-year war.
- 276 Eg, HRW, 'Foreign Terrorist Fighter' Laws, Human Rights Rollbacks Under UN Security Council Resolution 2178, December 2016, 16. The right to be tried by an independent and impartial tribunal is part of the non-derogable core of fair trial rights.
- 277 Eg. UN CTITF, Guidance to States on Human Rights-Complaint Responses to the Threat Posted by Foreign Fighters, 2018, 42.

- 278 ACommHPR, *Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt*, Application No. 334/06, 1 March 2011; ACommHPR, Final Communiqué of the 31st Ordinary Session of the African Commission on Human and Peoples' Rights, May 2002.
- 279 President Mubarak stated that US military commissions showed he was right to use special security courts.
- 280 Cameroon Law No. 2014/028 on the Repression of Acts of Terrorism, 23 December 2014, Art 1(3); ACommHPR, *Egyptian Initiative for Personal Rights*.
- 281 See OSCE ODIHR, *Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers*, November 2013, 48; UNHRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, 23 August 2007, para 33.
- 282 Francis, *Policing in Africa*, 107.
- 283 Internationally, various laws criminalise travel to a 'declared area where terrorist organisations engage in hostile activity' unless the individual proves 'legitimate purpose' (eg, Australia Counter-Terrorism Legislation Amendment [Foreign Fighters] Bill (2014), The human rights concerns are expressed in the OSCE FTF Guidelines (2018).
- 284 Ali, *Islamist Extremism*.
- 285 *Richard Baraza Wakachala v Republic* [2016] eKLR. In *Ibrahim Katana Mzungu v Republic* [2015] eKLR: 'Section 30C [of Kenya's Prevention of Terrorism Act 2012] ... creates a presumption that a person who travels to a country designated by the Cabinet Secretary without passing through a designated immigration entry or exit point should be deemed to have travelled to that country to receive training in terrorism.' Kenyan law was held to be unconstitutional for breaching the presumption of innocence.
- 286 See, eg, Cameroon Law No. 2014/028 on the Repression of Acts of Terrorism, 23 December 2014.
- 287 Ali, *Islamist Extremism*.
- 288 In accordance with the principle of individual guilt (*nulla poena sine culpa*).
- 289 IHRL requires a balanced assessment of fact not automatic penalties, eg, Eurojust, *Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response*, 4th *Eurojust Report*, 2017, 13.
- 290 Kimari and Mungai, Case Digest: Decisions of Kenyan Courts on Terrorism, *CHRIIPS*, May 2020.
- 291 *Isaac Lekushon Taruru v Republic* [2017] eKLR; 10 years reduced on appeal to five.
- 292 Chad Anti-Terrorism Law No. 034/PR/2015, 30 July 2015. It was abolished again in 2020, <https://www.ohchr.org/en/stories/2020/10/civil-society-organizations-pave-road-end-capital-punishment-chad>.
- 293 Amnesty International, *Death Sentences and Executions – 2015, 2016*.
- 294 ICCPR, Arts 7, 10 and 17; UNGA, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/RES/65/229, 21 December 2010; Eurojust, *FTFs Report*, 5.
- 295 On rehabilitation, see, UNOTC, *Enhancing the Understanding of the Foreign Terrorist Fighters Phenomenon in Syria*, July 2017; GCTF, *Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders*. Eurojust, *FTFs Report* gives examples of judicial alternatives to imprisonment, including 'specific conditions' for the 'rehabilitation, disengagement and/or de-radicalisation of FTFs'.
- 296 Eurojust, *Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences*, May 2020.
- 297 Duffy, *The War on Terror*, Ch 4, cites African examples of good practice.
- 298 See, eg, victim participation before the Special Criminal Court of the Central African Republic in *Redress*; ISS, *Expert Conference Report on Participation of Victims of International Crimes in National Criminal Justice Systems*, November 2015, 29.
- 299 UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, 2015.
- 300 ICCT, *10 Years of ICCT: What's Next?*
- 301 Interviews, ISS and prosecutor; see also IFIT and UN University, *The Limits of Punishment*.

- 302 I Idris, Gender and countering violent extremism (CVE) in the Kenya-Mozambique region, *K4D*, 19 October 2020; UNGA Res 68/181, UN Doc A/RES/68/181, 30 January 2013.
- 303 ECOWAS, Political Declaration and Common Position Against Terrorism, 28 February 2013.
- 304 Ewi, The Adoption of the Historic Strategy Marks a New Phase in Counter-terrorism Efforts in West Africa, but Doubts Remain as to Whether ECOWAS Member States Can Ensure its Implementation, ISS, 13 March 2013; interview, ISS.
- 305 IFIT and UN University, The Limits of Punishment, <https://cpr.unu.edu/research/projects/the-limits-of-punishment-transitional-justice-and-violent-extremism.html#outline>.
- 306 Chapter 2.3 (Militarisation); African Guidelines. IHL already anticipates amnesty for participation, whereas IHRL would not allow it for serious violations or war crimes.
- 307 The Limits of Punishment, *ibid* 126–161.
- 308 See UNSC Resolution 2178 (2014), which calls on states to ‘counter this kind of violent extremism’. Similarly, OSCE commitments to prevent and counter violent extremism and radicalisation that lead to terrorism.
- 309 One report indicates that by 2017, 88% of all countries considered in the US State Department’s Country Reports had established CVE/PVE programmes. By 2019 at least 14 African countries had done so: Ambrozik, Countering Violent Extremism Globally: A New Global CVE Dataset, *Perspectives on Terrorism* 13(5), October 2019, 102–111; U.S. Bureau of Counterterrorism, *Country Reports on Terrorism* 2019, 2020.
- 310 Eg, UNSC Res 1624 (2005), UNSC Res 2178 (2014), and UNGA Res 70/291, UN Doc A/RES/70/291, 1 July 2016.
- 311 Ambrozik, Countering Violent Extremism’.
- 312 Van Zyl, Preventing violent extremism: Lessons from Africa, *Africa Report* 17, ISS, September 2019.
- 313 Eg. peace educators and community leaders in Nigeria received an award for reintegrating 90 women who had not been accepted back into their communities for fear that they were affiliated with Boko Haram; community engagement training; discussions of post-traumatic stress and early warning and response programmes; UNDP, *Invisible Women*, ICAN, 7 January 2019.
- 314 UNHRC, Report on impact, 2019.
- 315 Van Zyl, Preventing violent extremism.
- 316 Eg, the UK ‘Prevent’ initiative, which elicited damning reviews from a broad range of sources. See Open Society Justice Initiative (OSJI), *Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education*, Open Society Foundations, October 2016. On Danish programmes see Christensen, *Lessons Learned from P/CVE Youth Mentorship*, *RUSI*, 10 October 2019.
- 317 Multiple reports from NGOs and OSCE reflect striking violations in ‘PVE’ initiatives in Central Asia. See, eg, Rosand, CVE’s Relevance and Challenges: Central Asia as Surprising Snapshot, *Just Security*, 7 January 2020.
- 318 UNHRC, Report on impact.
- 319 Van Zyl, Preventing violent extremism.
- 320 UNHRC, Report on impact, paras 12–15, 17–18.
- 321 Chapter 2.3 (Militarisation).
- 322 UNDP, *Journey to Extremism*.
- 323 Van Zyl, Preventing violent extremism.
- 324 De Kerchove, Foreword, in De Guttry, Capone and Paulussen, *Foreign Fighters*, Springer.
- 325 Berger, Making CVE Work: A Focused Approach Based on Process Disruption, *ICCT*, May 2016.
- 326 Eg in parts of Nigeria 2022 reports suggest education has been closed down due to rising influence of organisations; Nigeria Civil Society Condemns School Closure, 29 July 2022.
- 327 See, eg, GCPEA, Education under Attack 2020; HRW, Attacks on Students, Teachers and Schools Surge in Africa’s Sahel, 8 September 2020.
- 328 Gibson, Violent Religious Extremism in Africa: A Stench to Our Common Humanity, *Religious Education & Security: McGill Blogs*, 2016; UNDP, *Journey to Extremism*.
- 329 *Ibid*.

- 330 OSJI, *Eroding Trust*; UN CTITF, *Guidance on FTF*, 56: ‘When a statutory obligation exists for civil servants engaged in education, social and health services to share information about those with whom they interact with law enforcement officers, this should be made clear to beneficiaries from the outset.’
- 331 In UNHR, *Report on Impact*, the Special Rapporteur referred to the need to address the UNDP’s conceptual framework’s eight drivers that can result in violent extremist action. The drivers are: the 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 ‘banalisation’ of violence in the media and entertainment.
- 332 UNDP, *Journey to Extremism*.
- 333 UNSC Res 2178 (2014); UNSC Res 2396 (2017); UNGA, *Plan of Action*; the OSCE ODIHR Declaration on Strengthening OSCE Efforts to Prevent and Counter Terrorism, 9 December 2016, para 8, addresses ‘prosecution, rehabilitation and re-integration strategies’; OSCE ODIHR, *Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism*, 4 December 2015, preamble and para 19.
- 334 Ambrozik, *Countering Violent Extremism*, 106; OSCE, *FTF Report 2018*; Aoláin, *The UN Security Council*, *Global Watch Lists*, 2018, notes they have been limited to criminal justice processes.
- 335 Chapter 2.6 (Alternative Justice).
- 336 UNDP, *Journey to Extremism*.
- 337 Ní Aoláin and Huckerby, *Gendering Counter-terrorism: How to, and How not to – Part II, Just Security*, 3 May 2018; Holmer and Shtuni, *Returning Foreign Fighters and the Reintegration Imperative, Special Report 402*, USIP, March 2017, 12; OSCE, *Chairmanship’s Perception Paper OSCE-wide Counter-Terrorism Conference 2020*, 25 March 2021.
- 338 De Guttry, Capone and Paulussen, *Foreign Fighters*, 385.
- 339 Tschudin, Moffat, Buchanan-Clarke, Russell and Coutts, *Extremisms in Africa*, note that it was driven by ‘pressure from US President Donald Trump’s administration and various European governments to advance this as part and parcel of counterterrorism strategies’.
- 340 GCTF, *The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon*, Good practice #1, note 194.
- 341 The Hague-Marrakech Memorandum, Good Practice #5, note 194.
- 342 See Chapter 2 – Reach and vagueness of the terms ‘terrorism’ and ‘extremism’; Beerli, *Terrorism, counter-terrorism and international humanitarian law*. Statement of Christine Beerli, ICRC Vice-President at the 17th edition Bruges Colloquium, *ICRC*, October 2016, 20–21.
- 343 OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, February 2014, 73; OSCE, *Women and Terrorist Radicalization: Final Report*, 1 March 2013. On reprisals, see, Van Zyl, *Preventing violent extremism*.
- 344 UNDP, *Invisible Women*, *ICAN*, 7 January 2019. See Chapter 2 – civil society.
- 345 On lack of meaningful evaluation in CT and PCVE, See Chapter 2 – dearth of evaluation; CREST, *Countering Violent Extremism II: A Guide To Good Practice*, 2019; Van Zyl, *Preventing violent extremism*.
- 346 For example, technological evolution has an impact on lives through drone killings; on expression, through monitoring and internet blocking; on discrimination, through predictive policing and on economic and social rights, by impeding access to essential services.
- 347 Feldstein, *The Global Expansion of AI Surveillance*, Carnegie Endowment for Int. Peace, 2019.
- 348 Wright, *How Artificial Intelligence Will Reshape the Global Order*, *Foreign Affairs*, 2018.
- 349 For the use of big data in counterterrorism after the 11 September 2001 attacks, see, Ganor, *Artificial or Human: A New Era of Counterterrorism Intelligence?*, *Studies in Conflict & Terrorism*, 2019, 1–18.
- 350 Feldstein, *The Global Expansion of AI Surveillance*.
- 351 *Ibid*, 8: Fewer than one in four countries in sub-Saharan Africa have AI surveillance. East Asia, the Pacific and the Middle East/North Africa have adopted it more vigorously, as, to a lesser extent, have the Americas.

- 352 DataReportal, Digital 2019: Internet Trends in Q3 2019, 2019; Feldstein, The Global Expansion of AI Surveillance; Research ICT Africa, Policy Brief: Africa's Expansion of AI Surveillance – Regional Gaps and Key Trends, January 2021.
- 353 Chinese companies, leading suppliers of AI surveillance globally, are penetrating African markets through China's Belt and Road Initiative. See, DataReportal, Digital 2019.
- 354 The growing role of Israel was mentioned in interview with a UN official. B Ganor, Artificial or Human: A New Era of Counterterrorism Intelligence? (February 2019) *Studies in Conflict and Terrorism*, 44(7):1–20.
- 355 Privacy International, Have a Biometric ID System Coming Your Way? Key Questions to Ask and the Arguments to Make, 11 July 2019.
- 356 Parkinson, Bariyo and Chin, Huawei Technicians Helped African Governments Spy on Political Opponents, *Wall Street Journal*, 2019; *Reuters*, Uganda's Cash-Strapped Cops Spend \$126 Million on CCTV from Huawei, 2019.
- 357 *Reuters*, Uganda's Cash-Strapped Cops.
- 358 The Kenyan government announced in the face of the COVID-19 health crisis that the Ministry of Health would use technology to track people who congregated after curfew hours.
- 359 UNSC, Res 2396 (2017).
- 360 *Le Petit Juriste*, The African Charter on Human and Peoples Rights: How Effective is this Legal Instrument in Shaping a Continental Human Rights Culture in Africa?, 21 December 2014.
- 361 Guidelines 11 to 14 specifically address 'privacy'.
- 362 See, eg, UNGA, The Right to Privacy in the Digital Age, UNGA Res A/RES/68/167, 18 December 2013.
- 363 April 2018 session on biometrics and privacy at the African Commission for Human and Peoples' Rights 62nd Ordinary session where Privacy International called for enhanced privacy commitments, <https://privacyinternational.org/news-analysis/2227/privacy-international-62nd-session-african-commission-human-and-peoples-rights>.
- 364 EU, Council Regulation 2016/679 of the European Parliament and Council on the protection of natural persons with regard to the processing of personal data and free movement of such data.
- 365 African Guidelines, 2016; SADC, Model Law on Data Protection: Establishment of Harmonized Policies for the ICT Market in the ACP Countries, 2013; ECOWAS, Supplementary Act A/SA.1/01/10 on Personal Data Protection, 16 February 2010; East African Community, Draft EAC Legal Framework for Cyberlaws, November 2008.
- 366 See, eg, Privacy International, Have a Biometric ID System Coming Your Way?. The Personal Data Protection Guidelines for Africa refer to African states with data protection laws: AU, Personal Data Protection Guidelines for Africa. A Joint Initiative of the Internet Society and the Commission of the African Union, 9 May 2018, https://www.internetsociety.org/wp-content/uploads/2018/05/AUCPrivacyGuidelines_2018508_EN.pdf.
- 367 UNGA, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc A/RES/71/373, 6 September 2016.
- 368 UNESCO, World Trends in Freedom of Expression and Media Development.
- 369 UNESCO, Expression and the Safety of Foreign Correspondents, 2021.
- 370 In Eswatini press reports about the arrest of opposition figures on terrorism charges prompted the country's attorney-general to warn: 'If you appear to be supporting terrorists in your reporting, woe unto you', <https://www.un.org/africarenewal/magazine/october-2009/africa-looks-beyond-%E2%80%98war-terror%E2%80%99>.
- 371 There have been notorious examples in Ethiopia of press-related prosecutions for offering moral support or for vague incitement.
- 372 UNESCO, The Windhoek Declaration of the Development of a Free, Independent and Pluralistic Press, 1991.
- 373 Committee to Protect Journalists, Journalists Not Terrorists: In Cameroon, anti-terror legislation is used to silence critics and suppress dissent, 20 September 2017.
- 374 See Chapter 2 – Securitising migration; see also HRW, World Report 2020.
- 375 UNESCO, Legal Standards on Freedom of Expression: Toolkit for the Judiciary in Africa, 2018, 149.

- 376 Michaelson, LGBT people in Egypt targeted in wave of arrests and violence, *The Guardian*, 8 October 2017.
- 377 Section Chapter 2 – Clampdown on expression.
- 378 Salaudeen, Nigeria’s tech community launches a campaign against alleged police harassment, *CNN*, 2 October 2019 and <https://twitter.com/bbcafrica/status/937704404274372608?lang=en>.
- 379 Ibid.
- 380 See Chapter 2 – Reach and vagueness of the terms ‘terrorism’ and ‘extremism’.
- 381 Weimann, The Emerging Role of Social Media in the Recruitment of Foreign Fighters, in De Guttry, Capone, and Paulussen, *Foreign Fighters*, 77–96.
- 382 Christchurch Call, to eliminate terrorist & violent extremist content online, <https://www.christchurchcall.com/>.
- 383 Dahir, Orwellian Moves: The miscalculations African governments keep making with social media and internet blocks, *QuartzAfrica*, 3 October 2019.
- 384 Ibid; Giles and Mwai, Africa internet: Where and how are governments blocking it?, *BBC News*.
- 385 See Chapter 2 – Reach and vagueness of the terms ‘terrorism’ and ‘extremism’.
- 386 UNHRC, Rabat Plan of Action on what constitutes incitement, UN Doc. A/HRC/22/17/Add.4, 11 January 2013.
- 387 See ICCPR, Art 20 and UNGA, International Convention on the Elimination of All Forms of Racial Discrimination, Art 421, December 1965.
- 388 UNHRC, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, paras 22 and 34; UN Special Rapporteur report, UN Doc A/RES/71/373, 6 September 2016.
- 389 ACommHPR, Guidelines on Access to Information and Elections in Africa.
- 390 The Tshwane Principles on National Security and the Right to Information, Open Society Foundations, 12 June 2013.
- 391 UNDP, *Journey to Extremism*.
- 392 UNGA, Plan of Action, paras 49(e), 51(g), Rec 3(7).
- 393 UNDP, *Journey to Extremism*, 55; African Centre for the Study and Research on Terrorism, Poverty, Marginalisation and Exclusion Fuel Violent Extremism, 2018, 10; Ambassador D Shinn, Poverty and Terrorism in Africa: The Debate Continues, *Georgetown Journal of International Affairs* Vol. 17 p.16, 2016.
- 394 On ineffectiveness in Europe, see, eg, Amnesty International, A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-Terrorism in Europe, 3 February 2021.
- 395 The most notorious was the ‘Muslim ban’ in the US, but the problem is widespread.
- 396 OSCE ODIHR, Note on the Shanghai Convention; *The World*, France unveils draft law to fight religious extremism, 10 December 2020; Kiyagan, Austria drops ‘political Islam’ from controversial bill, 17 September 2020.
- 397 Manby, *Citizenship Law in Africa: A Comparative Study*, 2016, 106.
- 398 Amnesty International, A Human Rights Guide, 10.
- 399 Hendricks, *Manufacturing Terrorism in Africa: The Securitisation of South African Muslims*, MacMillan, 2020.
- 400 Interview, West African advocate.
- 401 UNSC, Special Representative Stresses Urgent Need to Address Causes of Conflict between Farmers, Herders, as Security Council Considers West Africa, UNSC 8685th Meeting SC/14050, 16 December 2019.
- 402 Ibid: More than 500 000 people have been displaced In the northern and central northern regions.
- 403 Dal Santo, Mali: Is It All About Terrorism?, ICCT 17 April 2018.
- 404 Ibid.
- 405 UNGA, Plan of Action, para 53; Hudson and Emmett, Women’s Well-Being Is the Best Predictor of State Stability, *New Security Beat*, 22 May 2012.
- 406 Akanonu, Mythbusting Gender Roles within Violent Extremist Groups in Africa, *Southern Voice*, 6 April 2020.

- 407 Banks, Women, Gender, and Terrorism: Gendering Terrorism, *Women & Criminal Justice* 29, 2019, 181–186.
- 408 Ibid.
- 409 Tarras-Wahlberg, Promises of Paradise? – A Study on Official ISIS-Propaganda Targeting Women, Swedish Defence University, May 2016.
- 410 The unfolding Afghan situation in 2021–2022 has attracted attention to the issue, but there are many other examples.
- 411 Ndung'u and Shadung, Can a Gendered Approach Improve Responses to Violent Extremism?, ISS, 2017; OSCE ODIHR, Women and Terrorist Radicalization, 2013, paras 13–15.
- 412 OSCE ODIHR, Women and Terrorist Radicalization; on motivations see Saltman and Smith, 'Till Martyrdom Do Us Part': Gender and the ISIS Phenomenon, Institute for Strategic Dialogue, 2015.
- 413 *The Guardian*, Iraq court sentences 16 Turkish women to death for joining Isis, 23 February 2018. In some countries marriage has been criminalised as 'material support', raising questions about individual culpability, crime by association and the right to marry.
- 414 Ibid.
- 415 Kather and Schroeter, Co-Opting Universal Jurisdiction? A Gendered Critique of the Prosecutorial Strategy of the German Federal Prosecutor in Response to the Return of Female ISIL Members: Part I, *Opinio Juris*, 7 March 2019.
- 416 UNODC, *Handbook on Gender Dimensions of criminal justice responses to terrorism*, 2019.
- 417 UNHRC, Report on the Human Rights Challenge of States of Emergency in the Context of Countering Terrorism, UN doc A/HRC/37/52, 1 March 2018: The UN SRTHR warns that 'gender-blind' policies perpetuate emergency responses.
- 418 See Chapter 2 – Reach and vagueness of the terms 'terrorism' and 'extremism'; UNODC, *Handbook on Gender Justice*.
- 419 European Parliament, Radicalisation and violent extremism – focus on women: How women become radicalised, and how to empower them to prevent radicalisation, Study for the Committee on Women's Rights & Gender Equality, December 2017.
- 420 De Nooijer, Mastwijk and Smits, *Gender, Peace and Security – Evaluation of the Netherlands and UN Security Council Resolution 1325*, The Netherlands Ministry of Foreign Affairs, 2015, 9.
- 421 UNOWAS, Dakar Call for Action, 11 April 2018, https://unowas.unmissions.org/sites/default/files/dakar_call_en_final_version_0.pdf.
- 422 UNSC, Working Group on Women, Peace and Security, Sexual Violence in Conflict, UNSC Open Debate 2015, Statement, 16 April 2015.
- 423 UNGA, Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family, UN Doc A/HRC/46/36, 22 January 2022.
- 424 Birch-Jeffrey, Women Can Help Defeat Terrorism in Africa, *Africa Renewal*, 8 July 2018); Nwangwu and Ezeibe, Femininity Is Not Inferiority: Women-Led Civil Society Organizations and 'Countering Violent Extremism' in Nigeria, *International Feminist Journal of Politics* 21(168), 2019, 185; De Jonge Oudraat, Preventing and Countering Violent Extremism (CVE): The Role of Women and Women's Organizations, in Chowdhury Fink, Zeiger and Bhulai, *A Man's World? Exploring the roles of women in counter terrorism and violent extremism*, Abu Dhabi: Hedayah and The Global Center on Cooperative Security 2016, 18. Birch-Jeffrey, Women Can Help Defeat Terrorism, 186.
- 425 Ibid.
- 426 Olojo, Counter-terrorism in Africa needs private sector involvement, ISS, 2019.
- 427 Private Security Events Database, <http://psed.siecenter.du.edu/>, records 276 PMSC interventions in Africa between 1990 and 2012 in response to violent events.
- 428 Varin, Turning the tides of war: The impact of private military and security companies on Nigeria's counterinsurgency against Boko Haram, *African Security Review* 27(2), 2018, 144–157.
- 429 Reynolds, Putin's Not-So-Secret Mercenaries: Patronage, Geopolitics, and the Wagner Group, Carnegie Endowment for International Peace, 8 July 2019. For older examples see, Cilliers and Mason, *Peace, Profit or Plunder? The Privatisation of Security in War-Torn African Societies*, ISS, 1999, 141–174.
- 430 PMSC Sterling, Global Operations: Shock Monitor Map.

- 431 Interviews.
- 432 Eg, EU regulations give internet providers 24 hours to remove content (Reg (EU) 2021/784, On addressing the dissemination of terrorist content online, 29 April 2021; Joint Letter to the European Parliament.
- 433 Duffy and v d Herik, Terrorism and the Security Council, in Geiss and Melzer, Oxford Handbook of The International Law of Global Security, OUP 2021, Ch.11.
- 434 UNHRC, Report on impact of measures, para 52.
- 435 Guiding Principles on Business and Human Rights ['Ruggie Principles'], UN Doc. A/HRC/17/31, 21 March 2011. A draft Binding Agreement is now being circulated under UN auspices for discussion.
- 436 Tschudin, Moffat, Buchanan-Clarke, Russell and Coutts, *Extremisms in Africa*.
- 437 Alemika, Ruteere and Howell (eds), *Policing Reform in Africa: Moving towards a rights-based approach in a climate of terrorism, insurgency and serious violent crime*, APCOF, April 2018, 207; U.S. Country Reports on Terrorism 2019: Tanzania, 2020.
- 438 Alemika, Ruteere and Howell, *Policing Reform*, 140.
- 439 UNHRC, Report on impact, recommendations.
- 440 African Charter, Art 26; Duffy, *Strategic Litigation*, 2018, Ch 2.
- 441 The UNECA African Governance Report, the WB Worldwide Governance Indicators and the Ibrahim Index of African Governance show improvements in African states, but an overall slowdown since 2011 due to insecurity, war and civil unrest; World Development Report, Post-conflict recovery and Peacebuilding, 2011.
- 442 IDLO, Rule of Law in Africa and Justice Institutions, Background Paper.
- 443 UNHRC, Report on impact of measures, 2019.
- 444 Duffy, *The War on Terror*, 2015, Ch 11.
- 445 Eg. J Klaaren, The Judicial Role in Defining National Security and Access to Information, *South Africa, Democracy and Security* 11(3), 2015, 275–297.
- 446 UNSG, Remarks, 10 July 2019.
- 447 Oomen, Davis and Grigolo, *Global Urban Justice: The rise of human rights cities*, CUP, 2016.
- 448 Strong Cities Network, The role of cities in preventing and countering violent extremism in East and West Africa, 2015.
- 449 Ibid.
- 450 E Harsch, Africa Looks Beyond the War on Terror, also referring to 'external pressure' after 9/11 to adopt stringent anti-terrorism legislation and sign military agreements with the US and European states 'breeding resentment'; on African 'ambivalence', Ewi, The 20-year war.
- 451 Ewi, The 20-year war.
- 452 Eg, US cooperation with the Egyptian 'security partner' deprioritising rights; HRW, 'Security Forces Dealt with Them': Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces, 7 September 2021.
- 453 This was epitomised by the 'global spider's web' of complicity in CIA-led extraordinary rendition and torture. Duffy, *The War on Terror*, Ch 10; European Court of Human Rights (ECtHR), *Abu Zubaydah v. Lithuania*, 2018, Judgment.
- 454 See eg pending case *Kamilya Mohammedi Tuweni v. Kenya*, African Commission on Human Rights, involving allegations of torture and rendition involving 4 East African states, <https://redress.org/casework/kamilya-mohammedi-tuweni/>. *Al asad v Djibouti* is also currently pending at the Commission.
- 455 African Guidelines, 2016, Parts 5 and 7.
- 456 ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Art 16.
- 457 See, eg, ECOWAS, Political Declaration and Common Position Against Terrorism, 2013; Interview.
- 458 Interview, Southern African expert; On secrecy and security concerns impeding cooperation against terrorism and states refused to share information on CT investigations to protect their officials or allies. See, eg, Akanji, Sub-regional Security Challenge: ECOWAS and the War on Terrorism in West Africa, *Insight of Africa* 11(1), 2019, 104.

- 459 UNHRC, Report on impact, 2020, para 52(c).
- 460 Van Zyl, Preventing violent extremism.
- 461 UNHRC, Report on impact, 2020.
- 462 Bellasio *et. al*, Counterterrorism evaluation: Taking stock and looking ahead, RAND, 2018.
- 463 De Guttry, Capone and Paulussen, *Foreign Fighters*.
- 464 Interviewees noted that the Kenyan states exercises strict controls over research on terrorism and access to Kenya for this purpose.
- 465 *The Conversation*, Academic freedom is under threat around the world – here's how to defend it, 7 October 2019. One example is that of Turkey, where CT legislation is used against 'disloyal' academics, see *Telek, Sar and Kivilcim v. Turkey*, a case brought by Academics for Peace, which is pending at the ECtHR; Apps 66763/17, 66767/17 and 15891/18; also, in Egypt, see Article 19, IFEX member organizations call on the Egyptian authorities to stop violating academic freedom, <https://www.article19.org/resources/egypt-release-researcher-ahmed-samir-santawy-and-stop-violating-academic-freedom>.
- 466 UN Basic Principles on Remedy and Reparation; African Guidelines, 2016.
- 467 UNODC, Good Practices in Supporting Victims in Criminal Justice, 2015; Chapter 2.6.
- 468 Civil Society Outcome Document May 2022, endorsed by the UN Special Rapporteur on Terrorism and Human Rights in her statement to the UN Congress on Victims of Terrorism September 2022, <https://www.ohchr.org/en/statements/2022/08/un-expert-affirms-rights-child-victims-terrorism-urges-human-rights-based>.
- 469 Ibid.
- 470 UNGA, 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, UN Doc A/RES/60/147, 16 December 2005; see also alternatives to criminal justice, Chapter 2.6
- 471 See, eg, Duffy, Dignity Denied: A Case Study, in Paulussen and Scheinin, *Human Dignity and Human Security in Times of Terrorism*, 2020, 67–96, 85 et seq.
- 472 Wakeham, Reconciling 'Terror': Managing Indigenous Resistance in the Age of Apology, *American Indian Quarterly* 36(1), 2012, 1–33.
- 473 Duffy, Dignity Denied.
- 474 Statement Special Rapporteur on Terrorism and Human Rights.
- 475 UNGA, UN Basic Principles, 2005; see also reconciliation and alternatives to criminal justice 2.6 above.
- 476 See, eg, Russian Federal Law No. 35-FZ on Counteraction Against Terrorism, 6 March 2006; Eke, Russia Law on Killing 'Extremists' Abroad, *BBC*, 27 November 2006.
- 477 On death in custody not being investigated see, eg, HRW, Burkina Faso: Killings, Abuse in Sahel Conflict, <https://www.hrw.org/news/2018/05/21/burkina-faso-killings-abuse-sahel-conflict>.
- 478 Ibid: None of the victims of alleged abuse had filed judicial complaints 'both because they felt it was futile and because they feared reprisal'.
- 479 Well established 'positive obligations' are reflected, eg, in African Guidelines, 2016, Principle 1(D): Obligation to Ensure Accountability.
- 480 UNDP, *Journey to Extremism*, 87.
- 481 UNSG Remarks, 10 July 2019.
- 482 UNODC, Speech by Director-General Ghada Wally, 28 September 2021.
- 483 UNHRC, UN Doc A/HRC/44/38, 15 August 2020, para 29.

About this monograph

This monograph identifies global trends in counter-terrorism and the prevention of violent extremism and their implications for human rights and the rule of law in Africa. It flags global trends and their manifestations in and implications for the continent, identifying evolving threats, the proliferating number of actors, factual, legal and policy developments and their multi-dimensional impact. It is intended as an invitation to reflect on threats and opportunities and to think proactively about the challenges ahead.

About the author

Helen Duffy is a Professor of International Humanitarian Law and Human Rights at the Grotius Centre, Leiden University, and Honorary/Visiting Professor at Glasgow, Melbourne and American Universities. She runs Human Rights in Practice, an international human rights practice. Her litigation experience spans regional and international human rights courts and bodies, including the African, European and Inter-American systems, the Economic Community of West African States court, United Nations human rights bodies and national courts. She is the author of 'The War on Terror and the Framework of International Law' (CUP 2nd ed., 2015) and other publications on counter-terrorism and international law and practice.

About the ISS

The Institute for Security Studies (ISS) partners to build knowledge and skills that secure Africa's future. The ISS is an African non-profit with offices in South Africa, Kenya, Ethiopia and Senegal. Using its networks and influence, the ISS provides timely and credible policy research, practical training and technical assistance to governments and civil society.

Development partners

The ISS is grateful for support from the members of the ISS Partnership Forum: the Hanns Seidel Foundation, the European Union, the Open Society Foundations and the governments of Denmark, Ireland, the Netherlands, Norway and Sweden.