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

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Global trends in counter-terrorism

Implications for human rights in Africa

Helen Duffy

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Contents

Executive summary iv

Abbreviations and acronyms vii

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 information 36
Inequality 39
Expanding actors: state, private and foreign 41
Evaluation, reparation and addressing impunity 44

Chapter 3
Conclusion 49
Legal and policy recommendations 51

Notes 57

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 interviews[2] 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 monograoh, 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 terrorism[5] 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 Sahel[9] 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 soil[14] 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 lead 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 end 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 resolutions[36] and African terrorism treaties[37] 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 Tanzania[86] 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 Covention),[100] adopted before 9/11, and the more recent Malabo Protocol[101] 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 2020[104] 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 indefinition 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 Algeria[113] to Ethiopia[114] and Egypt,[115] from Rwanda[116] to Zimbabwe[117] 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 Convention[125] 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 Mali[131] 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 Nigeria[136] 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 Taleban 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 detention[146] 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 Sahel[166] 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 nationality[202] 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]

NGOs[208] and academics[209] 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 pushback[239] 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 grounds[241] 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' phases[255] 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 Mozambique[272] 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 lead 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 Plan[303] 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)' programmes[308] 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] Asia[317] 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' obligations[333] 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 China[353] 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 Africa[365] 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 images[381] 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 violence[386] and hate speech[387] 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 addressed[391] 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 Sudan[429] 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.

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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 3 416 Boko Haram terror events between 2009 and 2018, with 36 000 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; Demuynck, 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.

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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.

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