Counter-terrorism, human rights and the rule of law in Africa

INTRODUCTION

We are now well into the second decade since the 9/11 attacks in 2001 so vividly placed transnational terrorism on the international agenda. The far-sighted response at the time by the UN Security Council was based on the understanding that adherence to rule of law and human rights principles was indispensable to effective long-term counter-terrorist strategies. The main tenet was that in order to preserve our own values in the face of a complex open-ended conflict, and to avoid a self-defeating and hypocritical posture, counter-terrorist justice should be fair, and not just firm.

Then, just before the tenth anniversary of the attacks, popular uprisings in Tunisia, Egypt and Libya dramatically altered political and social landscapes across North Africa. The tendency in these countries for authorities to treat critical political voices within an overly broad definition of 'terrorism' can be understood as one factor that prevented freer political expression and fuelled serious popular grievance.[1] The uprisings prompted reappraisals further south – from Angola to Zimbabwe – of prevailing assumptions about relationships between regime stability and the human rights climate.

While transnational terrorism of the 9/11 variety has not been at the heart of these more recent debates, rule of law and human rights issues certainly have. The Institute for Security Studies (ISS) commissioned this paper as a forward-looking analysis of counter-terrorism in Africa in the second post-9/11 decade.

Most of Africa has been free from any direct impacts of terrorist violence, certainly of the sort that has a transnational or global agenda. Yet global counter-terrorist narratives remain very significant for Africa. This is the case, firstly, because of the degree to which some external actors will inevitably continue to see much of the continent through the (limited) lens of their own national security interests. Secondly, the wider climate for human rights and adherence to the rule of law is inevitably affected by the position that the state takes when defining and responding to what it considers terrorist activity. And, thirdly, African authorities' actions in the name of preventing and countering terrorist methods take place within a global normative framework – and ought to comply with that framework.

CONTEXT

The statement that African countries have in recent years largely escaped forms of violence characterised as terrorism is, however, not true of all settings:[2]

- **Somalia and the Horn.** Especially since 2011, concerted regional military action has significantly altered the security picture in south-central Somalia. However, as shown when Ethiopian troops partly withdrew in March 2013 and again around Kismayo in June, Somalia's security gains are still reversible. Moreover, external intervention has generated some kickback by way of indiscriminate attacks in Ugandan and Kenyan urban centres (most vividly in Nairobi in September 2013), and claims of the extra-judicial killings in 2013 and 2013 in Kenya of Kenyan Muslim religious figures with alleged al-Shabaab links.[3]

- **East Africa.** Along the so-called Swahili coast, there is now the risk that authorities in Kenya and Tanzania might make miscalculations in their responses to the increasing political assertiveness of Islamic

communities. Such errors could result in an unfortunate and unnecessary self-fulfilling prophecy whereby greater youth radicalisation results from what is otherwise essentially a political and ethnic dispute by some coastal groups rather than an ideological, universalist struggle. The situation in this strategic subregion is at an early stage, and more nuanced law enforcement lessons might help prevent hardening of positions and the potential for greater discord.

■ **Sahel-Sahara**. The western Sahel countries, especially Mali, have continued to experience the fallout of instability following Libya's civil war. It took an extraordinary last-minute French intervention in Mali to make significant military gains against various groups espousing inflexible ideologies and terrorist methods. European authorities over-reacted in depicting Mali's situation as an existential threat to their security. However, there are legitimate grounds for concern about the future reconsolidation in inaccessible parts of this region of groups with no interest in accessing channels of political dialogue, some of whom have links with (or express solidarity with) transnational terrorist groups.

In Mali, Niger and the subregion, global counter-terrorism and local counter-insurgency objectives are easily blurred. This is made more complex by factors such as perceived state illegitimacy, aspirations of autonomy, racial and ethnic divisions and reconciliation problems, organised crime and foreign intervention. A major UN peace operation will be active in Mali alongside a parallel French force directed at countering jihadist terrorism, taking UN peacekeeping into largely unexplored doctrinal territory.

Questions remain in Mali about the state's interest in and capacity for inclusivity, representation and equitable distribution, and about the Malian forces' reputation for rights abuses. Meanwhile, security issues and the use or threat of violence in political agendas remain a strong feature of politics in countries from Chad and the Central African Republic to Algeria and Libya – even if acts of terrorism (properly defined) have been few and far between. South-western Libya is of particular concern in relation to certain groups with a wider agenda than control of local areas and economies.

■ **Nigeria**. In 2012 Nigeria was rocked by an upsurge in violence perpetrated by an explicitly Islamist jihadist group (there are now several groups), which authorities have struggled to understand or contain. More lives were lost to the violence in 2012 than in 2010 and 2011 combined – and this pattern continued in 2013.[4] The destruction of the UN headquarters in Abuja has not yet been followed by similar attacks on symbols of the international order, and although Nigeria's problems remain overwhelmingly of a domestic terrorism variety, they are on some levels inseparable from wider issues of terrorist threats in Africa. Nigeria's problems also raise questions about long-range and latent radicalisation risks in the hinterlands of coastal countries across the West African region, which in some respects mimic Nigeria's dynamics.

After 2001 (and contrary to the UN framework), a more 'permissive' global counter-terrorism environment prevailed. Some African governments took advantage of the cover of global counter-terrorism approaches to pursue domestic opponents. At the same time, some donors focused narrowly on counter-terrorism at the expense of broader rule of law issues.

Catalysed by the change in the US administration in 2009, this period has largely passed, bringing a discernibly different tone to counter-terrorist efforts on the continent. Looking forward into the second decade after 9/11, two broad factors are discernible.[5]

One is Washington's declaration in 2013 that it sees itself at a crossroads marking the end of the post-2001 'War on Terror' approach. Given the impact that US policy has had on African counter-terrorism debates, this new policy will have important ramifications for Africa.[6]

After 2001, some donors in Africa focused narrowly on counter-terrorism programming at the expense of broader rule of law issues

The other factor arguably dilutes the significance of US policy for Africa. It is evident that some African authorities, mainly by necessity, are taking interest in the form of their counter-terrorist strategies for reasons that are not connected to an externally driven agenda. In these places, the sense of urgency in getting counter-terrorist strategies 'right' increasingly comes from local perceptions of threat, rather than actions taken to cooperate (or be seen to cooperate) with the international community. This trend will become more marked.

However, two policy risks from the first decade after 9/11 still remain in Africa. The first is that the authorities will continue to invoke and use or abuse counter-terrorist rhetoric and measures to restrict what is often largely peaceful political expression.

The second is that in responding, as authorities must, to threats, the temptation by the state to cut corners by ignoring procedural and rights safeguards might have counter-productive consequences. Such moves would eventually increase rather than reduce levels of violence, and alienate or radicalise groups while reducing the state's moral authority and its ability to rely on the legitimacy of public institutions.

In this context, this paper reflects on future pathways for lawful counter-terrorist strategies, seen as necessarily part of those strategies relating to the wider rule of law. It gives lessons learnt from the distractions and distortions that resulted during the implementation (and non-implementation or mis-implementation) of globally mandated counter-terrorist measures in Africa since 2001. It does not attempt to chronicle terrorist incidents or evaluate threat levels or responses.

FOUR THEMES

The paper is intended to engender debate among policymakers in donor and recipient countries on the future role of legal frameworks and rule of law programming in African counter-terrorist strategies. The other side of this coin is to reconsider the role of counter-terrorist measures within the wider framework of the rule of law and institutional development.

In essence, those primarily concerned with preventing and countering terrorism (as opposed to African governance more generally) ought to reconsider the significance of paying attention to generic rule of law issues, such as criminal justice system safeguards and procedures, although special support will often be needed on counter-terrorist issues. In the long term, building the state's reputation for fair and efficient justice across the spectrum of social issues is as important as having particular provisions dealing with terrorism-related offences.

This paper centres on four thematic propositions:

■ **Legitimacy.** If before 2011 authorities chose to ignore the argument that rights-compliant rule of law frameworks were the best long-term guarantee of security, then the 2011 North African uprisings may have served to change their approach. There is now a greater understanding among authorities that more principled, rule-based approaches to dissent (including violent dissent) are more likely to reinforce the state's perceived legitimacy (i.e. its social licence to apply laws and use force), corroborate the justness of state authority and prevent more widespread discord. However, this realisation and the associated political will for reform may not necessarily translate into national measures that meet global minimum standards.

■ **Legality.** There is increased, if belated, recognition that rule of law issues pertaining to counter-terrorism and security are typically inseparable from the state's overall culture of constitutionalism. That is, although terrorist offences are 'special', and treated as such, how a state responds to terrorist threats tells a good deal about the quality of its wider commitment to constitutionalism. In turn, how a state treats ordinary criminals and political challengers tells a great deal about its likely response, under pressurised circumstances, to terrorist activities.

The issue of legality in terms of how readily and with what authority the state calls upon military support to quell internal law-and-order problems (normally, in constitutional terms, the preserve of the police and courts) is, therefore, an important factor when it comes to human rights activists, partners or donors seeking to persuade governments of the merits of demilitarising their domestic counter-terrorist approaches. Distinguishing military from law enforcement measures (or counter-insurgency from counter-terrorism) is difficult, but highly significant if governments are to be persuaded (and assisted) to shift their counter-terrorist responses to an approach that is based in the ordinary police and criminal justice system.

What has emerged in the last decade is that those involved in promoting rule of law and human rights-related measures now appreciate better just how political are the ostensibly technocratic processes of policy reform and programming. This recognition bodes well for more realistic interventions that account for domestic political agendas and interests.

■ **Lessons.** The overall tone of recent African counter-terrorist debates is largely shaped by reference to terrorist acts linked to overtly military style insurgencies deploying relatively conventional methods, rather than the more amorphous threat experienced, for instance, in the West. Whatever the distinct legal bases for Western interventions in Iraq and Afghanistan in the decade after 9/11, it is undeniable that the painful experiences in those theatres reinforce the historical lesson that even if one's only aim is to 'win' (rather than to observe the rule of law for its own sake), a strategy based on restraint and compliance with human rights and/or humanitarian guarantees is more likely to succeed over time.

Whatever the applicability of this historical lesson to strictly militarised campaigns, it no doubt applies to those aspects of the last decade's major conflicts that involved foreign efforts to contain organised violence against civilians. Hence, the lesson that adhering to the rule of law is the greatest asset in countering terrorism is an important one for donors promoting counter-terrorism measures in the different situations (not involving overt foreign intervention) in Africa.

Law enforcement in the context of counter-terrorism in Africa can therefore draw on the experiences of the more frenzied counter-terrorist activity of the last decade. Especially where the threat is latent or dormant, these lessons can inform a policing and prosecution approach that ensures undesired radicalisation and alienation do not ensue. The lesson has been that rule of law-based approaches are important, and they make countering terrorism easier in the long run: they are right in principle and, partly for this reason, they work in practice.

While legal classifications of types of conflict matter in terms of which body of norms will apply, the broad 'hearts and minds' lesson from the last decade will remain highly relevant – either in the context of countering terrorist acts in a place such as Tanzania (with isolated pockets of radicals whose campaigns can be easily contained by a basic policing–prosecution framework) or in places where there is sustained armed insurgency or civil war.

Adhering to a rights-based approach will be especially important in the latter type of situation, given the risks inherent in a (sometimes necessary) military-based response, as opposed to a policing/criminal justice-based approach. For example, there are salutary lessons to be learnt from how the Nigerian authorities first dealt with Boko Haram in 2002–2009. Arguably, the human rights short cuts taken in the July 2009 police and military campaign against that group (especially the execution of its leadership without trial) have in many respects sown the seeds for what has ensued since the group's followers and sympathisers reformed after the crushing action by the authorities in 2009.

■ **Leadership**. Finally, since around 2009, African states have perceived a different approach and tone adopted by the US, which is still the predominant counter-terrorist actor on the African continent. This paper is timed to coincide with the early part of President Obama's second term, as a juncture to assess African leaders' views on principled counter-terrorism and how external actors affect these views.

Without discounting the human rights imperative of preventing harm to civilians, many foresaw the damaging effect that a global counter-terrorist narrative might have on African authorities' respect for human rights and due process, and the potential to abuse it for domestic political purposes.[7] As mentioned, a side effect of the tone of US-led counter-terrorist efforts – what they promoted and what they chose to overlook – was to create a permissive environment for using counter-terrorist discourses and devices to pursue local political opponents. The War on Terror inadvertently gave African and other governments an opening for such practices.[8]

At this point in the second post-9/11 decade, most objective observers agree that the 'permissive climate' theory, frequently observed by human rights advocates,[9] is largely sound. The need to curb the practice of using counter-terrorist measures and language as a licence to lock up one's adversaries was almost explicit in the US State Department's revised approach under former Secretary of State Hillary Clinton.[10] The extensive reliance on drone warfare in its counter-terrorism reveals that the US still views a large part of its global counter-terrorist strategy as a form of open-ended armed conflict.[11] However, it is fair to say that the Obama administration is not generally characterised by this permissive environment, whereby anything African leaders perform in the name of global counter-terrorism is given the prima facie benefit of the doubt. Nor is this decade characterised by the same levels of resistance by African governments and civic groups to what they previously perceived as the imposition of external agendas on counter-terrorism. This is partly because the nature of threats in some places has shifted and is seen as fundamental to local politics and security, whereas in the previous decade many approaches viewed Africa as one chapter in a global campaign.

Leadership matters, and leading by example speaks volumes. Therefore, efforts to promote rule of law-based counter-terrorist measures at the national level in Africa will remain closely linked to whether the rule of law obtains at the international level. The example shown by the United States and others in terms of the methods they adopt to deal with their national security threats will be critical to their credibility when pushing for principled actions by African countries where they cooperate operationally and legally, and where they provide military, policing, justice and human rights support.

One important clarification is necessary in relation to linking counter-terrorist strategies with routine rule of law programming. One needs to be cautious about explicitly linking development issues and counter-terrorist ones – even severe social and economic exclusion is no justification for indiscriminate violence. Yet the incidence of terrorism is relatively low in Africa, and the threat is typically more a latent one in most parts of North, West and East Africa.

Therefore, strategies and talk concerning countering terrorism are often really more about preventing radicalisation and the emergence of conditions in which people more readily accept extreme ideologies and even resort to terrorist violence. This is not to say that counter-terrorist programming should be subsumed into general development and poverty alleviation strategies, any more than the latter should take second place to security issues.

Instead, it is important to frame counter-terrorist measures in ways that continue to present security and development as interlinked in positive ways. And adherence to rule of law principles as the means to realise human rights provides that link.

The potential exists this decade for less blunt responses deriving from the force of example and self-interests as much as principles

The following sections discuss four macro factors that either affect or may come to characterise legal and law enforcement measures for counter-terrorism, particularly as promoted by donors and other partners in Africa in this decade.

BEYOND POLITICS OR PERSUASION?

Now easier to advocate strategies respecting human rights

It is arguable that one factor in particular will distinguish this decade from the previous one: the probable shift from mere rhetoric about appropriate counter-terrorist responses to greater manifestation of these responses. In an ideal world, a greater degree of adherence to best practice in terms of policing and prosecution would come about by internalising the principles of the UN global counter-terrorist framework. If this shift occurs in Africa, it will probably reflect as much as anything else the realisation by authorities of the risks of getting their responses wrong – in particular, the risk of over-reaction or taking human rights short cuts, which would end up fuelling rather than preventing radicalisation and the adoption of terrorist methods by individuals and groups.

This shift does not necessarily mean that one can expect a noticeable increase in states' adherence to global counter-terrorist frameworks. For instance, the rate of ratification and implementation of global conventions and other legal instruments is unlikely to increase markedly for several reasons (set out comprehensively elsewhere).[12] Nor will the issue necessarily be driven at the level of continental or regional organisations. Instead, it is arguable that one consequence of events such as the Arab Spring is that governments will more readily accept the arguments in favour of principled counter-terrorist

approaches, even if they do so for practical political or self-preservation reasons.

This is what is meant by potentially moving 'beyond persuasion': there is potential for less blunt responses to terrorism in this decade that derive from the force of example and self-interests as much as, if not more than, from the UN and other agencies imploring states to respond in certain ways for principled reasons. Consider an example from West Africa based on responses to the discovery of new mineral wealth as an analogy to the discovery of a new terrorist threat. In this example, those countries do not need external persuasion for them to adopt more principled approaches; instead, they see these approaches as directly in their own interests:

- When exploration revealed the extent of Ghana's offshore Jubilee Oilfield, much commentary focused on the opportunity for the country, as a new oil producer, to learn from and avoid the sociopolitical problems that have long blighted Nigeria's oil phenomenon.
- In the same way, should this decade see the emergence in another major West African country of an approximate equivalent to the Boko Haram group that emerged around 2002 in north-east Nigeria, it is not unforeseeable that governments will act in ways that more closely reflect ideal rule of law-based approaches to terrorism prevention precisely because they have witnessed the adverse consequences that Nigeria's 2009 response to Boko Haram have had on that country's security.

Many littoral West African countries share Nigeria's basic demographic and socio-economic features (e.g. north–south divide, Muslim–Christian, rich coastal region–poor hinterland). For various reasons, it is not inevitable that these countries will see the emergence of a Boko Haram equivalent. Nor is the post-2010 deterioration in northern Nigerian security only a function of how the authorities have acted – the militants' record of murder speaks for itself. However, the example of Nigeria's unfortunate experience is likely to be powerful in terms of mitigating the risk of similar mistakes to those in Nigeria in July 2009 being repeated in other West African countries.

At the time, the policing and military operations against Boko Haram members partly led to the state abandoning its primary 'weapon' (i.e. its reputation for principled, lawful measures). The extrajudicial killing of Boko Haram's arrested leader deprived the state of stronger grounds for resisting the insurgency, which soon revived, citing unlawful state actions as a primary basis for rejecting state authority and for the use of fresh violence. This is not to say that the Nigerian state created the problem it now faces. But in similar circumstances, it is possible that the

country's recent turmoil will prove persuasive to governments deciding how to deal with emerging threats from radicalised local populations.

The upshot of this shift that has come about in recent years is that awareness of the consequences of blunt responses by the state – along with lessons learnt from the Arab Spring about the benefits of maintaining a reputation for fair justice – creates opportunities for more principled security and justice policies and practices in Africa. After 9/11, the UN Security Council responded in powerful terms to the effect that anything less than compliance is counter-productive, over time, in combatting extremism. In this decade, advocates now have, regrettably, a host of examples that clearly show that this argument has very practical implications.[13] This ought to be viewed as a positive thing in terms of advocacy and capacity building strategies.

A caveat, however, is necessary: it is one thing for African policymakers and leaders to be determined to mitigate the risk that the state's own conduct may stimulate radicalisation and potentially terrorist behaviour. It is quite another thing to actually transform the mandates, mindsets and skill sets of police officers, prosecutors and others whose conduct can, like those officers involved in north eastern Nigeria in 2009, have such profound strategic consequences for national security. But this transformation of behaviours at the tactical level is probably not possible without the strategic significance of the rule of law being adopted at the highest level. So it is perhaps easier now than in the mid-2000s for advocates within and outside of the police, security and justice systems in Africa to make the case for rule of law-based and criminal justice system-based responses to the threat of terrorism.

BETWEEN PRINCIPLES AND PRAGMATISM

There may be greater focus on 'good enough' practice

The second factor that could characterise counter-terrorist strategies in this decade and distinguish them from the last is probably not limited to issues of international crime in Africa (including terrorism), but more generally models and frameworks with a normative and transformative element. That is, whether from fatigue with previous approaches or a more sophisticated strategic realisation, donors are now tending to work on the basis of finding and fostering 'good enough' governance and processes, rather than seeking to impose 'best practice' models. This is true whether one is talking about reforming investment codes or promoting normative frameworks for revenue transparency in the extractive industries.

This realisation has a long genesis in the literature on the rule of law in developing countries,[14] and is a familiar point of debate in African governance. The point is that it also applies to counter-terrorist strategies in this decade. It is interesting to note that the Global Counter-terrorism Forum's 2012 Rabat Memorandum refers to 'Good Practices for Effective Counter-terrorism Practice in the Criminal Justice Sector' (emphasis added).[15] This may be more than a matter of semantics, and reflect an acknowledgment that external promotion of best practice can lead to frustration, the detrimental effect of routine non-fulfilment and even resistance.

Here an analogy from the contemporary issue of revenue transparency is apposite. Donors feel an obligation to uphold principled frameworks, such as the Extractive Industries Transparency Initiative, but also recognise that some countries are likely to be unable or unwilling to adhere to them for years to come. For such funders, the question is whether to refrain from engaging with non-party states, or to engage because the beneficiaries need their interventions. This dilemma – shorter-term pragmatism over longer-term principle – is probably also inherent in the strategies behind externally supported security and justice reform, from negotiating with rebel groups on humanitarian access to vulnerable populations, to engaging diplomatically with pariah states isolated for their 'antisocial' behaviour.

Nigeria's recent turmoil will prove persuasive to governments deciding how to deal with emerging threats from radicalised locals

Caution is required with this point, since it may be deemed condescending to suggest that African law enforcement and justice officials are only capable of implementing good enough counter-terrorist practices.

The point, however, is that the record of the last decade suggests that reforms and campaigns aimed at securing good enough compliance with international safeguards for preventing and prosecuting terrorist behaviour may be more likely to succeed (in terms of what can be defined as 'success').

If a longer-term view is taken, where officials remain unconvinced about human rights issues (seeing these as 'soft' on terrorism), then implementing good enough practices may act as a basis for improving compliance and attaining best practices, which, when it comes to security

threats, many of Africa's donors fall short of. In an era of Western austerity and where the urgency that followed 9/11 has now dissipated to a degree, it may be inevitable that counter-terrorist programming adjusts its benchmarks, even if the principled frameworks remain universal and immutable. This pragmatic approach marks the next trend, discussed in the following section.

BEHIND POLICIES AND PROGRAMMING

Donor awareness of the local politics

A third feature of emerging next-decade responses by African governments (and their partners) to the threat of terrorism is the greater recognition of the highly political nature of what otherwise appear relatively straightforward technical issues, such as the ratification of global legal instruments dealing with terrorist issues.[16]

Programming that promotes rule of law issues ought not to ignore the long-standing development literature critical of approaches that deny the political dimensions of such interventions. The abundant literature questioning the validity, in African contexts, of global human rights and rule of law frameworks is often tiresome.[17] Many of its authors purport to speak for African human rights victims, as if they would prefer not to have any protective and remedial human rights support from whatever source.

Yet there is a valid practical point to be derived from this critical literature: that resistance to governance and human rights agendas, especially on a topic as politically complex as counter-terrorism, is perhaps inevitable. This is to be expected from government to civil society to community level, and requires strategies that anticipate and account for such inevitable resistance.[18] For example:

- Much of the domestic resistance to counter-terrorist legislation in Kenya in the 2000s from moderate Muslim organisations came not from their desire to defend terrorist acts (which they rejected), but from a sense that the legislation risked stigmatising Muslims.
- There was perhaps little resistance to the technical aspects of the draft law, which many of those resisting may not even have studied.
- External efforts to assist Kenya to ratify instruments and enact domestic legislation arguably took insufficient account of these sentiments, conceiving of the process as largely technical.[19]

There has been one notable shift in this area. Whereas, previously, programming was openly termed as related to human rights, recognition of the political sensitivity of such support means that often such support is now called rule of law programming when what is really meant is human rights and the rule of law, as an indivisible composite.

Part of the resistance to external frameworks does not reflect any normative phenomenon of reacting to external values or systems. It has a far more obvious source. Corruption and political interference affect the police and the prosecutorial and judicial institutions, and undermine public confidence in them and the idea of the rule of law. Counter-terrorist programming that offers merely to 'strengthen' such systems will hardly inspire greater public confidence. In some (undesirable) ways, the system is already too 'strong', and that is what is problematic about it in human rights and due process terms.

It is clear that more effective counter-terrorist strategies require greater civic participation in the detection and prevention of radicalisation. Such strategies necessitate greater trust in justice institutions. It follows that although rule of law programming cannot attempt to address everything, it is also true that measures aimed at improving general aspects of the police, justice and penal systems are likely to have a net benefit in terms of counter-terrorism.

In relation to learning lessons about the local political context, there are signs of greater nuance in terms of how groups are designated as foreign terrorist organisations. In 2012 the decision by the US authorities not to list the Boko Haram group (but only some individuals) as terrorists showed an awareness of the undesirable propaganda effect that designation can have (an effect reduced by adopting an approach based on the ordinary criminal justice system, which deprives terrorists of a label and a stage).

As discussed in the final section of this paper, most African counter-terrorist situations are intensely local in nature. One risk of taking actions that are not compliant with rule of law and human rights standards is to prompt groups to internationalise their agendas in an attempt to legitimise their actions.

Linking counter-terrorism to development and growth

In 2012, the UN Secretary-General made the following observation in the context of strategies to promote respect for the rule of law:

> The rule of law is also fundamental to development … [we must] forge a new, structured approach to strengthening the rule of law and delivering justice so we can achieve peace, development and human rights.[20]

An important aspect of rethinking policies and programming by donors for counter-terrorist issues is that there remains considerable scope for more imaginative and productive linkages between counter-terrorist objectives

(both preventative and prosecutorial) and broader goals to promote not only the rule of law, but also social and economic development.[21]

Indeed, given that many African governments perceive international terrorist activity as a low risk, they may be more amenable to counter-terrorist capacity building and other interventions less for their own sake, and more for other, indirect, reasons. First, compliant policy and practice reap benefits in terms of more favourable relations with donors and development agencies. Secondly, greater rule of law competence enhances a state's investment attractiveness, which underpins a good business environment and fosters stronger economic growth.

Hence, strategies aimed at obtaining cooperation on implementing counter-terrorist legal frameworks could indirectly lead to investment attractiveness, thereby appealing to the self-interest of governments in promoting their national status. Improving the legal framework, legal profession, legal rights and legal culture is likely to have the concurrent benefits of making a country more capable of responding in a principled manner to terrorist issues, and simultaneously more attractive to investors and donors, both of whom seek places where they can achieve measurable results.

But for practitioners and policymakers engaged in counter-terrorist issues, the risk of making explicit strategic programming linkages with wider growth or development issues is that the counter-terrorist issues might become obscured by the array of development ones. (Although in low-threat African settings, it may be desirable that counter-terrorist issues are given a lower priority than other more pressing local issues.) Nevertheless, the benefits of such linkages probably outweigh the risks, particularly since we have moved beyond the War on Terror era, and the danger of the wider development narrative being hijacked for the service of an external security agenda is much reduced.

This is not to say that Western actors are now putting African interests before their own, but there is a greater recognition that pursuing Western security interests within an African-focused developmental framework is right and more likely to work.

Martin Ewi's persuasive argument that the timing of 9/11 (and what ensued for almost a decade afterwards) had a particularly unfortunate effect for Africa's development is worth citing in full:

> During the past decade, Africa's major concern in the 'war against terrorism' has been to ensure that the continent's development agenda is not overshadowed by the demands of combating terrorism. Africa had embraced the new millennium with hopes for economic development – a position

that was crystallised with the adoption of the Millennium Development Goals in 2000, which aimed to alleviate abject poverty on the continent. This goal was in danger of being marginalised by 9/11 as the 'war against terrorism' took centre stage and Africa's development partners and the international community diverted resources [accordingly].[22]

Were it not for the War on Terror, it is arguable that during the relatively prosperous early years of the new millennium, when many sub-Saharan African economies began growing at very high rates, there would have been greater opportunity for donors and governments to focus on harnessing human-development issues for economic ones. Ewi was giving expression to a negative effect, and one that has been far less evident since at least 2009. The tripartite linkage that is possible between counter-terrorist objectives, rule of law/human rights issues and the wider development agenda now has far greater potential.

However, as mentioned above, in some low-threat settings realising this potential may require a degree of institutional humility. The relatively low priority of the counter-terrorist agenda needs to be recognised, and building capacity in the areas of rule of law, criminal justice, legal cooperation and human rights needs to be seen as not just the best that can be hoped for, but also preferable.

Considerable scope exists for more imaginative linkages between counter-terrorist objectives and broader goals promoting the rule of law and development issues

In settings where there is a greater terrorist threat, the counter-terrorist agenda acquires greater significance, but its promoters will arguably see the longer-term gains to be had from integrating it into a holistic development narrative that makes clear the link between security and development in a rights-based sense. The idea is that fostering local security is integral to the development agenda, but given the nature of relations between governments and development agencies, there will no doubt be some resistance to articulating this linkage, given concerns that local development issues may (once again) become subordinate to external security preferences.

Across the continent, there is renewed interest in harmonising trade and investment regulations, and reducing barriers to greater intra-African trade. While strong local resistance to such reforms is inevitable (and often understandable amid uneven markets), there is some scope for tying rule of law promotion – in the sense of human rights aspects of security – to such market-driven initiatives. At the very least, reducing distrust between neighbouring states on issues concerning legal harmonisation and barrier reduction – on trade issues, as opposed to security-related ones – may have the effect of building the political capital for greater coordination on counter-terrorist issues as well.

Therefore, it is arguable that governments may be more receptive to offers to assist with improving capacity to counter terrorist financing if the offer is framed in terms of the benefits to that country's reputation as an investment climate, motivated by an anti-money laundering ethos and integrity in its financial transactions. There is, however, the risk of being perceived to be using the argument of improving the country's business environment to persuade an otherwise resistant recipient government to adopt measures that are plainly intended to improve counter-terrorist capacity.

Yet the donor approach does not need to be one of subterfuge: the reality is that improving a state's capacity to regulate illicit transactions has benefits both for improving its reputation as a market economy and the capacity to curb the financing of terrorism. The banking sector can be called upon to assist government in a virtuous triangle of donor, government and private sector. The practical problem in some jurisdictions is more likely to be a lack of political will to address transparency in financial transactions.

In the East African context, Cockayne has argued that donors are missing opportunities for strategic engagement by potentially linking counter-terrorist competence with regional growth and development.[23] This argument holds that it is easier for capacity building institutions to promote and sustain security-related initiatives by linking rule of law issues (which have incidental counter-terrorist benefits) with those of economic growth and market attractiveness. Critics of such an approach may argue that it conceives of Africa's prosperity as relevant only as a vehicle by which to promote a counter-terrorist agenda of interest to the West. This is not so. The argument is as follows: one way to promote greater official attention to the rule of law and human rights in Africa is to make explicit linkages between fair, yet firm, justice institutions and the sorts of jurisdictions that are likely to attract attention from global capital in search of investment returns.

This linkage may be one way to address the identified problem of short-termism in African counter-terrorist responses.[24] That is, the overall efficiency and coordination of counter-terrorism capacity building projects in Africa might benefit from being professionalised. Linking these projects more closely to development assistance and business-environment reform will make them more directly subject, as other development projects are, to monitoring and evaluation. By focusing on generic issues surrounding criminal justice systems – such as improving investigation and interrogation, anti-money laundering and bringing to justice organised crime – programmes will benefit from improvements that extend far beyond cases involving terrorist dimensions.

A related challenge is to ensure that terrorist cases are dealt with as far as possible through the ordinary criminal justice system, although there is a good argument for having specialised training for officials dealing with these cases. A preferable approach is to improve the quality of policing and justice generally, and then steps made towards preventing terrorism and radicalisation are likely to follow. An approach seeking to link counter-terrorist objectives with the promotion of development and growth may, in this decade, bear fruit.

BUNDLING NATIONAL, REGIONAL AND INTERNATIONAL

A focus on local security issues

Not long after the September 11 attacks, Cilliers argued that since sub-state terrorism was already endemic to many parts of Africa, the threat for the continent was likely to be found in a complex mixture of subnational and international terrorism.[25] A decade on, one could argue that the primary security threat in most of the continent lies with groups that overwhelmingly have a local or subnational agenda. This is so even in areas like the Sahel and Sahara, routinely described as potential host sites for global terror networks.

Although some of these groups may have transnational links (from expressions of solidarity or affiliation to 'staff' exchanges, funding or cooperation), they are notable for their localised aspirations, grievances or operations. It does not follow that because Somalia's al-Shabaab expresses affiliation with al-Qaeda that it has any strategy (like the latter) to target the US. There is a risk that when counter-terrorist strategies project a transnational agenda and capacity onto organisations that primarily have only a limited and local one, it results in a form of self-fulfilling prophecy.

If this broad characterisation of the current African terrorist threat remains correct, then perhaps outside of areas of direct armed conflict (where military action is an imperative) the primary international intervention should be to build the capacity of local justice systems to deal fairly

and effectively with terrorist behaviour as criminal offences against the local polity, rather than as manifestations of a global phenomenon. Therefore, counter-terrorist legal and justice measures should take their tone and content from the global framework and emphasise transnational cooperation, but the premise ought to be that donors are helping states to improve their own domestic criminal justice systems, not simply helping African states to be in a better position to reduce threats to Western security.

This point of emphasis is subtle, but significant. Despite events like the 1998 embassy bombings in East Africa, much of the reaction against donor-led counter-terrorist efforts in the last decade was the result of perceptions that Africa was being carried along with an essentially external agenda. Interventions framed in terms of building up rule of law and human rights resilience as aspects of local development for its own sake are more likely to be sustainable, while also recognising that few terrorist groups have more than marginal connections with transnational terrorism.

Measures that are integrated into a narrative that ties the rule of law and human rights compliance to wider aspirations of economic and social development (and hence regime stability) are more likely to gain political and technocratic traction. As discussed in the previous section on linkages to development, this is not to say that general rule of law development assistance should become a Trojan horse for counter-terrorist issues of interest to donors in relation to their own security.[26] It is to recognise that the security and stability of both donors and recipients are improved by better-quality legal and justice systems capable of fair and effective delivery, including the prevention and prosecution of terrorist crimes

Ten years after the 9/11 attacks saw the promulgation in Cairo of a declaration on effective counter-terrorist practice in the criminal justice sector.[27] The Cairo declaration was developed into the 2012 Rabat Guidelines, which is illustrative of the move towards providing more concretised, actionable and reasonable measures (with related capacity building, including using existing national and regional training platforms, and working through the Global Counter-terrorism Forum's three regional capacity building working groups).[28] State officials can use these measures to give effect to the global strategic imperative to treat terrorism according to criminal justice principles, including their human rights dimensions. The premise is that good practices for addressing terrorism must be built on a functional criminal justice system capable of handling ordinary criminal offences while protecting the accused's rights.[29]

In the context of economic growth in contemporary Africa, much of the focus is on regional integration of regulations and infrastructure to create economies of scale. By analogy, much of the challenge facing counter-terrorism

(and promoting security more generally, in the context of armed groups not typically characterised as terrorists) is how to engage regional cooperation. States' interests may align in cooperative clusters – for example, as seen in the joint military operations around the western shores of Lake Chad in April 2013 involving Nigerian, Nigerien and Chadian forces. Ideally, this sort of military cooperation would be replicated in civilian intelligence, policing, and legal institutions cooperating to prevent and prosecute terrorism through the criminal justice system, where appropriate.

In the light of this, what follows are some brief reflections on the regional context for donor and government interventions related to justice system-based approaches to counter-terrorism.

North Africa

The region of the continent with the greatest exposure to the most prevalent 'brand' of terrorist activity (aligned with al-Qaeda's radical Islamist ideologies) is also where the greatest potential exists – in the short to medium term – for reform to legal frameworks and institutions.

An earlier ISS study examined the shortcomings in authorities' efforts to implement human rights-compliant legal frameworks premised on an approach privileging the ordinary criminal justice system.[30] Authorities from Morocco to Sudan are arguably more amenable, since 2011, to the notion that greater long-term security and stability lie in having strong but fair and accountable measures for preventing and prosecuting terrorists – and in differentiating those whose political conduct should not be the subject of counter-terrorist measures or discourse.

The two- to three-year period from 2013 arguably presents a narrow but significant window of opportunity to translate the essence and energy of the Arab Spring into a more enduring rule of law culture. This includes building a more law-based, rights-compliant and discerning counter-terrorist framework. This is the case both in the post-revolution countries undergoing significant constitutional transformations (Egypt and Tunisia) and those that have hitherto avoided revolution by embracing reforms (Morocco and Algeria) or by other political means (Mauritania, Sudan). Libya's experience is to some extent a special case, whereby reforms to the criminal justice system will have to coincide with extensive post-conflict security sector reforms in a climate of considerable insecurity and uncertainty.

In relation to the post-Arab Spring context, the Global Counter-terrorism Task Force has recently noted that:

> There are few more urgent [tasks] than providing support for countries seeking to turn their backs on repressive approaches to

counterterrorism … This is particularly important for countries transitioning to democracy as they seek to strengthen a rule of law-based approach …[31]

The Task Force noted that these countries may desire technical assistance, including training and capacity building support, to develop the necessary legal framework and institutions to implement a more balanced, rule of law-based approach to preventing and responding to terrorism.

East Africa and the Horn

Perhaps the single greatest constraint to counter-terrorist interventions, such as specific legislative frameworks in Kenya and Tanzania, is how readily such interventions can, and have, become politicised.[32] As noted, these countries' ability to develop a sound, robust law-based counter-terrorist framework is hampered by the residual fallout from the early 2000s, when many Muslim groups there perceived government efforts to promote these measures as unduly stigmatising members of that faith.

Whatever the actual grounds for this grievance, it presents a barrier to reformed justice system-based counter-terrorist measures – even though, ironically, the purpose of these measures would be to guard against the sort of blunt state actions that peaceful religious groupings fear. Both Kenya and Tanzania face considerable tests in navigating peaceful inter-communal politics without giving rise to greater radicalisation, especially of youths in coastal areas. The nature of the Kenyan government's response to any further future provocative large-scale attacks inside Kenya by al-Shabaab agents or sympathisers could determine whether these attacks trigger, as terrorists intend, wider sectarian violence against ethnic citizen and non-citizen Somalis in Kenya. Yet undue focus on al-Shabaab through the Western lens of counter-terrorism can obscure the existence of divisions within that group and so the potential for accepting that large parts of its membership consider themselves to be engaged in aspects of the residual Somali civil war: adopting only a counter-terrorism lens when examining the group could occlude opportunities to engage some elements in the current efforts at federal state-building in Somalia.

Meanwhile, in the context of greater assertiveness against the central government by some groups (who happen to be largely Muslim) in Coast Province, Kenya's post-2010 constitutional devolution process could lead to trying circumstances for the country, when (as in Nigeria's crucial moment in mid-2009) adherence to principled responses will determine whether tensions escalate or not. The same is true of relations between mainland Tanzania and Zanzibar, which will also debate constitutional devolution in 2014.

Ethiopia's prospects of holding together its ethnic federation peacefully in a post-Meles Zenawi age will partly hinge on the authorities' ability to demonstrate due process and impartiality in its legal measures relating to political activity and security, while refraining from an overly broad definition of 'terrorist' conduct or association.

Sudan's military-security system will face important choices, come an inevitable leadership transition, about the quality of policing and justice employed in circumstances where, so far, despite various insurgencies, there is no particular terrorist threat as such.

Mali and the western Sahel/Sahara

The security situation in Mali has eased off as a source of international concern about rampant and exportable jihadism, following France's January 2013 intervention. In many respects, the appropriate angle from which to view the situation there is one of international humanitarian law applicable to internal armed conflict, and not counter-terrorism in a domestic capacity.

Regional UN peacekeeping forces will encounter a complex situation where there may be some residual need for military/counter-insurgency approaches. However, in the longer-term the need is for policing and justice-based approaches to support the reconciliation Mali needs if it is to quell the racial, religious, ethnic and regional divisions that its civil war and coup have further illustrated.

These efforts are likely to take place in the context of heightened interest from the US, EU, France, Algeria and Mauritania (and others) in pursuing counter-terrorist strategies, potentially involving the use of unmanned aerial vehicles (drones), with the consequent legal-ethical and strategic concerns that these have raised elsewhere.

Therefore, Mali will struggle to address democratic deficits (its 2012 coup), political aspirations for greater inclusiveness and greater autonomy (especially from Tuareg nationalists), insurgency (in the context of a civil war) and organised criminal activity (groups keen to control trans-Sahelian and trans-Saharan routes) – against a background of foreign interest in counter-terrorist operations targeted at groups with any transnational agenda or aspirations. In these challenging circumstances, the temptation to opt for short-term solutions rather than more principled long-term approaches could prevent the resolution of Mali's problems, and even lead to the resurgence of radicalised elements.

Mali's experience and instability raise questions about threat levels and corresponding state practices across the subregion. It is easy to exaggerate the degree of networked terrorist capacity in the Sahel belt, so the question is more about pre-emptive cooperation between states, and the prevention of radicalisation (if it carries violent tendencies) within states such as Mauritania, Senegal, Burkina Faso,

Niger, Chad, the Central African Republic and Cameroon.[33] As with the global phenomenon of terrorism, it is too simplistic to draw automatic links between poverty or marginalisation and potential emergent terrorist threats.[34]

In the medium term (2013–2016), adherence to principled methods of policing and intelligence activity hold the greatest prospect of preventing an unnecessary situation whereby the state's own conduct acts as a stimulant to groups to resort to terrorist methods where their incidence is low. The emphasis on the part of Western security agencies on rule of law-based approaches has a significant practical (operational-strategic) dimension as well as a principled one. This is because most groups espousing radical Islamic ideologies in this region tend to be home-grown factions. They are focused on local concerns and have the support of only very small minorities within Muslim communities. Misconceived interventions, especially where these involve Western forces, may reinforce the cause of existing or potential militants, thereby strengthening their credibility and ease of recruitment.[35]

Nigeria and littoral West Africa

North-eastern Nigeria continues to suffer indiscriminate terrorist violence by individuals loosely referred to as Boko Haram. The campaign against this group and its fragmented entities continues following a state of emergency in three north-eastern states in May 2013, an upsurge of vigilantism and local rejection of Boko Haram, and with the 2015 elections on the horizon.

This is not the place for an extended discussion of the complexities of the Nigerian situation. For the purposes of this paper, what is significant is the shift discernible since the most recently appointed presidential national security advisor came to office. One has seen an intelligence-led approach replace a blunter military/counter-insurgency style of response. One of the internal challenges was to consolidate buy-in to this strategy among the law enforcement and security authorities within the country.

Whether or not the wider situation calls for a comprehensive political and developmental solution, it is possible to argue that one factor that will determine sustained success by the state and federal authorities in Nigeria will be their ability to retain moral authority and, therefore, achieve strategic advantage through demonstrated commitment to combatting terrorism within the constraints prescribed by law.

While a return to a military-style confrontation became necessary in Borno State in early to mid-2013, consolidating such tactical gains will require a strategic re-examination of the state's response. The state will struggle to impose normality if it does not carry out legal prosecutions of Boko Haram elements and instead continues to treat the problem as a tactical military one.

The 'uprising' in 2013 of community members against Boko Haram in the form of vigilante self-protection groups is certainly understandable in response to the scale and brutality of attacks.

On the face of it, it provides a tactical victory for state forces, and in principle illustrates a preponderance of popular sentiment capable of underpinning 'hearts and minds' community policing that works. Yet it should not be equated with restoration of the rule of law: the state's tolerance, instrumental use or encouragement of vigilantism is ultimately antithetical for promoting a law-based system of state justice in north eastern Nigeria. It arguably does not bode well for longer-term respect of state authority that Boko Haram suspects captured by vigilante community groups have reportedly been executed summarily.

Most groups espousing radical ideologies tend in fact to be focused on local concerns. State overreactions can boost their image

West Africa exhibits increasingly complex links between local and transnational organised crime, narco crime and weakness in the state security system, which leads to greater vulnerability to the emergence of terrorist groups.[36] Capacity building interventions and reform efforts that are framed as being specific to counter-terrorism may well improve capabilities of the local justice system in terms of handling issues related solely to counter-terrorism, but may have little impact on the resilience of law enforcement agencies more generally. Conversely, however, interventions and reforms intended to build state and regional capacity in terms of dealing with the wider problems of transnational and organised crime are likely to benefit counter-terrorist efforts as well.

The Sahelian states and Nigeria are familiar with the significance of counter-terrorist responses, and considerable challenges remain to building a culture of respect for due process and human rights in the face of terrorist violence. However, in littoral West Africa (other than Nigeria), the main constraint to greater implementation of counter-terrorist measures may be political will. Arguably, in East Africa the challenge is to motivate state action on counter-terrorist frameworks where these encounter local political resistance, whereas in sub-Sahelian West Africa the challenge is more one of complacency.

There is an opportunity for countries that currently have no group like the Boko Haram to establish a rights-based culture of law enforcement and justice that will mitigate the risk of such an entity ever emerging.[37] A related challenge will be how to deal with the potential security threat that could come from tolerating networks that are ostensibly criminal and apolitical. Reforms premised on strengthening the rule of law, and the legitimacy and effectiveness of state agencies offer a greater long-term guarantee of regime stability than indulging regional criminal networks.[38]

Given the patterns one can discern of greater infiltration by criminal networks in West Africa, it is reasonable to state that these polities face an increasingly stark choice between action or submission. Outside of the Sahel, there is not necessarily a direct link between organised criminal activity and terrorist threats. However, the vulnerability of littoral West African states to potential variants of groups such as those in Nigeria is directly linked to the perceived fairness, effectiveness and accountability of the security and justice systems when dealing with all manner of issues. If the state is subverted or silent on day-to-day justice and governance issues in this region, the resulting vacuum could prove dangerous.

Southern and central Africa

The perceived level of threat from terrorism in this region is fairly low, so counter-terrorism is likely to remain a low priority for both donors and governments. It is a region where generic strengthening of the rule of law will receive (and require) attention. Framing this by reference to global counter-terrorism will not advance its implementation, and may even retard it. While there is still meaningful work to be done in building the capacity of local criminal justice systems to deal with terrorism (especially in terms of mutual legal assistance), the issue has less salience than in East, West and North Africa.

CONCLUSION

The UN Global Counter-terrorism Strategy, and in particular Pillar IV of its Plan of Action, underscores the critical role that an effective, rule of law-based national criminal justice system plays in ensuring that terrorists and their supporters are brought to justice in a manner that respects human rights. Alongside the use of diplomacy and advocacy to increase internalisation of principles (or at least the practical merits of their implementation), the role of capacity building in counter-terrorism is to give officials legally acceptable processes and skill sets that reduce their temptation to engage in torture and other gross human rights violations in the erroneous belief that this is the way to protect their citizens.

The thrust of this paper has been that this decade presents new opportunities for more nuanced, palatable,

realistic and interlinked strategies, on the part of African governments and organisations, as well as their external partners, to promote principled counter-terrorist practice and policy in ways the reduce rather than exacerbate the longer-term threat.

The scale of the challenge to promote even 'good enough' practices remains considerable in the face of Western strategies employed to target the threat of terrorism, which have left a sinister legacy – potentially eroding the boundary between ethical and unlawful conduct in armed conflict. Moreover, even where authorities are committed to rights-based approaches to combatting terrorism, they will continue to struggle with difficult categorisation and framing questions where local armed insurgencies have elements of transnational terrorism, and where conventional security responses (i.e. armed action) and criminal justice ones (i.e. prosecution-focused strategies) seem incompatible.

Nearly 12 years since the landmark UN Security Council resolution on countering terrorism within the rule of law, Africa faces one of its many 'multiple truths':

- **Moving on?** On the one hand, in much of the continent counter-terrorist debates and issues do not have the prominence and urgency that they had from 2001 to 2008. Instead, the focus now is on economic growth patterns and their related developmental dimensions, including many reasons to celebrate the continent's performance. Security and international crime issues are still an urgent issue. However, as in the last decade, most civilians and security forces in African settings tend to face organised security threats from armed groups that, although they terrorise the population, are not easily classified as 'terrorists' – at least not in the popular or media sense of belonging to a wider transnational group.

- **Moving in?** On the other hand, one effect of the role of jihadist groups and rhetoric in the Malian conflict in 2012–2013 (in the context of al-Qaeda's apparent setbacks in South Asia and elsewhere) has been to generate often-feverish debate about Africa as the 'next big thing' in global ideological struggles against extremism and terrorism.[39]

This paper has argued that the former narrative ('moving on') in some ways makes it easier to promote the rule of law and human rights as they relate to counter-terrorism, without the resistance to external support that was evident in the early part of the millennium. There is, moreover, scope to tie the generic concerns of good counter-terrorist strategies (i.e. fair and effective policing and criminal justice administration) to

wider development and agendas that promote investment. This offers the prospect of entrenching principled approaches in ways that have a preventative effect on radicalisation and its occasional terrible cousin, terrorism.

The latter phenomenon ('moving in') is easily exaggerated, if only because it tends to attribute to al-Qaeda some strategic plan to focus on the expansion of its African 'franchises'. Yet there is no doubt that large parts of the continent currently not affected by the scourge of terrorism (or the curse of unlawful state responses to things deemed terrorist conduct) are vulnerable to less positive outlooks. It cannot be denied that despite, or perhaps because of, stronger economic growth in much of the continent, the social, demographic and political ingredients exist for radical violent ideologies to breed. Governments cannot control all groups that may emerge – but they can control their responses to those groups. So to some extent, a government gets the insurgency that it deserves.

States cannot be expected rapidly to address all issues of socio-economic exclusion and marginalisation, youth job creation, or any of the other conditions in which the risk of terrorism might (but never automatically) become more likely to emerge. Yet what states can control to a greater extent is whether their law enforcement and criminal justice systems adhere to principles that reduce the prospect of disenchanted groups going outside normal political forms of expression and resorting to indiscriminate violence aimed at blackmailing the state and instilling general fear in the wider population. In other words, terrorism.

Despite the security and political challenges states face in North Africa and parts of West and central Africa, considerable scope remains for using situations of temporary social upheaval to reconfigure approaches to security and law enforcement. Despite the potential for more principled approaches to state security, the main risk is that a pragmatic and less principled response to localised, but partly internationalised, insurgencies could generate far wider social conflict that plugs into serious, latent religious and ethnic cleavages, especially between north–south (in West Africa) and coast–hinterland (Kenya and Tanzania).

Such worst-case developments are not inevitable, but they cannot be dismissed as fanciful either. In avoiding worst-case outcomes, the continent's main hope is that it remains possible to advance strategies that deal with near-term stability imperatives without losing sight of the principles-based approaches without which the state will soon find itself unable to manage the complex issues of security and social cohesion.

NOTES

1   For an assessment of the extent to which Maghreb countries deviated from implementing a justice system-based approach to counter-terrorism in the 2000s, see Jolyon Ford, Beyond the 'War on Terror': *A study of criminal justice responses to terrorism in the Maghreb*, Pretoria: ISS Monograph 165, 2009.

2   Clearly, there are many settings (such as the eastern Congo, Central African Republic and western Sudan) where organised violence against state, other armed groups, or civilian targets occurs. Yet these situations, like maritime piracy, are typically not referred to as examples of terrorism. This reflects accepted doctrines and definitions, but there is nevertheless scope for reflection on whether use of the term 'terrorism' in Africa has become official and institutional shorthand for violent Islamism, which is only one potential source of violence produced mainly through terrorist methods. As noted below, a major source of terrorist acts in Nigeria has been southern (almost all Christian) Delta militants, who are almost all Christian. However, terrorism in Nigeria is too often considered to refer only to jihadist terrorism in Nigeria.

3   Generally, Western analyses of Somali security are greatly enhanced when viewed through the lens that sees the situation primarily as a civil (and especially inter-clan) war with subregional interventions, onto which al-Shabaab and its regional/international opponents have projected aspects of a more global threat or struggle.

4   More recently, in addition to violence by northern Islamist Boko Haram militants and their offshoots, security has deteriorated in the southern Niger Delta. A South African court this year sentenced a delta militant leader on terrorism charges in relation to bombings at Nigeria's independence celebrations.

5   Consideration of the shift and evolution in the nature of threats faced is beyond the scope of this paper. However, operational experts will acknowledge that threat levels can often reflect the nature of the state's response. The state cannot control its opponents' actions, but it can do so indirectly, since it controls its own responses.

6   See President Barack Obama, Address at the National Defence University, Washington DC, 23 May 2013, http://www.whitehouse.gov/photos-and-video/video/2013/05/23/president-obama-speaks-us-counter-terrorism-strategy#transcript (accessed 10 July 2013).

7   For a compelling and prophetic account not long after September 11, see, for instance, Saras Jagwanth and Fred Soltau, Terrorism and human rights in Africa, in Jakkie Cilliers and Kathryn Sturman (eds), *Africa and terrorism, joining the global campaign* (Monograph 74, ISS, Pretoria, 2002). More recently, see Malinda Smith (ed), *Securing Africa: Post-9/11 discourses on terrorism*, Farnham: Ashgate, 2010.

8   See, for example, Mary Robinson, *The rule of law: Striking a balance in an era of terrorism*, International Bar Association/American Bar Association Symposium, Chicago, September 16, 2006, http://www.abanow.org/wordpress/wp-content/files_flutter/1269887049_20_1_1_7_Upload_File.pdf (accessed December 2012); See also The Eminent Jurists' Panel on Terrorism, Counter-terrorism and Human Rights (International Commission of Jurists), http://ejp.icj.org/home.php (accessed December 2012); also Mark Vorkink and Erin M Scheick, The 'war on terror' and the erosion of the rule of law: The US hearings of the ICJ

Eminent Jurist Panel, http://www.wcl.american.edu/hrbrief/14/1vorkink.pdf (accessed December 2012).

9   See, for example, http://www.fidh.org/Africa-Antiterrorism-and-human. Country-specific examples of this sort of criticism abound, for example: Ethiopia – Human Rights Watch 2011, http://www.hrw.org/news/2011/11/21/ethiopia-stop-using-anti-terror-law-stifle-peaceful-dissent (accessed December 2012); Kenya – Redress 2009, http://www.redress.org/downloads/publications/Kenya%20and%20Counter-terrorism%205%20Feb%2009.pdf (accessed December 2012); Swaziland's Suppression of Terrorism Act (or more accurately, its abuse by the authorities) is another example that is often cited.

10 Arguably, since the end of the Bush era there is much greater awareness among Washington policymakers of the use and abuse of counter-terrorist laws in Africa. See, for example, http://csis.org/event/use-and-abuse-anti-terrorism-laws-africa (accessed December 2012).

11 This is subject to President Obama's May 2013 statements of an intention to rebalance the drone programme and its oversight.

12 See Jolyon Ford, *African counter-terrorism legal frameworks a decade after 2001*, Pretoria: ISS Monograph 177, 2011.

13 The UN Security Council's 2001 response was based on bitter experience from previous settings around the world, where attempts to counter certain ideologies led over time to compromising the very values that were at stake.

14 See, for instance, the seminal and influential work of Yves Dezalay and Bryant Garth (eds)*, Global prescriptions: The production, exportation and importation of a new legal orthodoxy,* Michigan University Press, 2002.

15 Global Counter-terrorism Forum, Rabat memorandum on good practices for effective counter-terrorism practice in the criminal justice sector, drafted in Rabat, 7–8 February 2012, adopted in Istanbul, 7 June 2012.

16 This reality is central to the point made in Ford, *African counter-terrorism legal frameworks a decade after 2001.*

17 For an example of such work, see Paul Zeleza and Philip McConnaughay (eds), *Human rights, the rule of law, and development in Africa,* University of Pennsylvania Press, 2004 (2011).

18 This much is clear in the explanation for limited ratification and implementation of counter-terrorist instruments in Africa. See Ford, *African counter-terrorism legal frameworks a decade after 2001.*

19 The author encountered this phenomenon while conducting interviews for the ISS in Kenya in 2007

20 UN Secretary General, High-Level Meeting of the UN General Assembly on the Rule of Law, New York, 24 September 2012 (UN Doc. SG/SM/14526).

21 Drawing on experience in the African context, Anton du Plessis has argued for the importance of integrating counter-terrorist capacity building into broader (and often more palatable) rule of law reform efforts: Global Counter-terrorism Forum, Co-chairs' summary, inaugural meeting of the criminal justice/rule of law working group, Washington DC, 3–4 November 2011.

22 Martin Ewi, The elusive quest for al-Qaeda in Africa 10 years on, *ISS Today*, 12 September 2011.

23 See James Cockayne, Strengthening counter-terrorism cooperation in East Africa, briefing, Center on Global Counter-terrorism Cooperation, 26 January 2012. More

generally, see Eric Rosand, Alistair Millar, and Jason Ipe, *Implementing the UN global counter-terrorism strategy in East Africa,* Center on Global Counter-terrorism Cooperation, 2008.

24 See Cockayne, Strengthening counter-terrorism cooperation in East Africa.

25 Jakkie Cilliers, Terrorism and Africa, African Security Review 12(4) (2003).

26 Compare critiques in the 2000s, such as Alice Hills, Trojan horses? USAid, counter-terrorism and Africa's police, *Third World Quarterly 27(4)* (2006).

27 Global Counter-terrorism Forum, Cairo declaration on counter-terrorism and the rule of law: Effective counter-terrorism practice in the criminal justice sector, Cairo: Global Counter-terrorism Forum, 22 September 2011.

28 Rabat memorandum on good practices for effective counter-terrorism practice in the criminal justice sector.

29 See http://thegctf.org/documents/10291/21760/Rabat+Memorandum-English (accessed 22 September 2013).

30 Ford, *Beyond the War on Terror.*

31 Global Counter-terrorism Forum, Co-chairs' fact sheet, criminal justice/rule of law, http://www.state.gov/documents/organization/173156.pdf (accessed 10 July 2013). See, more generally, Global Counter-terrorism Forum, Criminal justice and the rule of law working group, http://www.thegctf.org/web/guest/criminal justice-and-the-rule of law (accessed 10 July 2013).

32 See the earlier discussion of the author's interview experience in Kenya. For a good, recent, yet succinct, discussion, see Cockayne, Strengthening counter-terrorism cooperation in East Africa.

33 One reason for concern about the dynamics of the conflict in the Central African Republic leading to the rebel victory was the dangerous tendency of some hardliners in the previous regime to attempt to make north–south ethnic and religious divisions in the country explicit in a way that has not characterised the country to date.

34 In the light of Mali's experience, it is salutary to reread the International Crisis Group's March 2005 report on Islamist terrorism in the Sahel. This argued persuasively against the presumption that there are direct links between poverty and religious-oriented violence. See Islamist terrorism in the Sahel: fact or fiction?, *Africa Report* 92(3), Brussels: International Crisis Group, 2005.

35 SSee, for example, Terje Østebø, Islamic militancy in Africa, *Africa Security Brief* 23, November 2012, Africa Centre for Strategic Studies, Department of Defence, Washington DC.

36 See, for example, James Cockayne, Transnational threats: The criminalisation of West Africa and the Sahel, Center on Global Counter-terrorism Cooperation, policy brief, December 2011.

37 The International Crisis Group's 2005 report (see endnote 35) cautioned against presumptively linking poverty and terrorism risk in West Africa, stating that if economic problems were the primary cause of a move towards fundamentalism or violence, 'West Africa would have long been the world centre of Islamist politics and terror, given its unequalled levels of poverty'. Hence the emergence of multiple Boko Haram-type groups across West Africa is hardly inevitable.

38 This much is implicit in Cockayne, Transnational threats.

39 See, for example, Valentina Soria, Global jihad sustained through Africa, *UK Terrorism Analysis* 2, Royal United Services Institute, April 2012.

ABOUT THIS PAPER

This paper considers institutional aspects of counter-terrorist strategies in Africa in the second decade after the 9/11 attacks in 2001: countering threats while building respect for the rule of law and human rights. It considers how recent events – especially North Africa's so-called Arab Spring, the Mali crisis, militant Islamism in Nigeria, the gains against al-Shabaab in Somalia and the potentially restless East African coast – may shape counter-terrorism approaches. More than a decade after 2001, African authorities generally accept the argument that blunt state responses can worsen the longer-term security outlook. However, this recognition will not necessarily translate into principled criminal justice approaches.

The paper argues that terrorism has largely been treated as an exceptional issue distinct from broader rule of law and development programming. There is scope to focus on generic rule of law issues even if the overall aim is countering radicalisation and terrorism. Better quality laws and their enforcement are key to ensuring such efforts protect civilians without becoming counter-productive in the process.

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