

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

Romi Sigsworth



International law and global policy place counter-terrorism firmly within a rule of law and human rights framework. By focussing on securitised responses to terrorism, countries in West Africa risk undermining the rule of law, compromising human rights protections and slowing progress towards their peace and development agendas. Shifting to a criminal justice approach to countering terrorism has various challenges, but will most effectively protect and promote peace and security, human rights and development in the long term.

Key findings

- ▶ The global counter-terrorism framework is explicit in that respect for the rule of law and the protection of human rights should underpin any approach to combatting terrorism.
- ▶ Within the broader global context of post-9/11 geopolitical dynamics and national security concerns, data shows that those countries in West Africa facing the highest threat of terrorism – Burkina Faso, Côte d’Ivoire, Mali, Niger and Nigeria – have focussed on a securitised approach to countering terrorism.
- ▶ This securitised approach has resulted in challenges for the rule of law and human rights protections in these countries. These include legislation that codifies exceptional or emergency measures; human rights violations

committed with impunity by security agents in the context of counter-terrorism operations; disregard for due process in the investigation, arrest, prosecution and adjudication of terror suspects; and lengthy pre-trial detention periods.

- ▶ In the context of the urgent and complex national security threat posed by terrorism, compounded by weak adherence to the rule of law and fragile criminal justice systems, shifting to a criminal justice approach to countering terrorism demands long-term and sustainable solutions that recognise the tripartite linkages between counter-terrorism objectives, the rule of law and human rights, and the wider development agenda.

Recommendations

- ▶ Counter-terrorism responses need to be aligned and independently coordinated across sectors and among stakeholders.
- ▶ Regular and robust reviews of counter-terrorism response systems and networks need to be instituted, with strong monitoring and evaluation frameworks, preferably implemented by a central oversight body.
- ▶ Institutional barriers to a criminal justice response to terrorism need to be overcome through advocacy and pressure from both the international community and domestic stakeholders.
- ▶ A context-sensitive approach is needed to capacitate the criminal justice system to respond effectively to terrorism, informed by local knowledge of existing capacities,

opportunities, drivers of change, motivations, pitfalls and constraints, and taking into consideration the broader regional and global counter-terrorism environment.

- ▶ The input, participation and leadership of those within the criminal justice system and those in other sectors with a stake in responding to terrorism should be maximised through inclusive coalitions of support.
- ▶ Any long-term criminal justice reform requires local ownership at the community level, i.e. the people who are the end users and recipients of justice on the ground.
- ▶ Overall institutional capacity rooted in rule of law principles should form the basis for developing and deploying any specialised counter-terrorism skills in practice.

Reconnecting policy and practice

Over the last two decades the constant evolution of terrorism has worsened global threats to security, demanding robust responses from international bodies, regional organisations and individual countries. The global, regional and national policy frameworks developed to combat terrorism emphasise the need to locate responses within the broader human rights and rule of law obligations of all states.

Notwithstanding the emergence of ‘preventing violent extremism’ (PVE) as a key area of investment over the last decade, securitised counter-terrorism (CT) – coupled with limited criminal justice efforts – remains the dominant strategic approach to addressing this threat.

The constant evolution of terrorism has worsened global threats to security

In West Africa local terrorist groups emerged as a security threat in the early to mid-2000s. Since 2009 these groups – in various configurations and sometimes in partnership with international terrorist groups – have become an increasingly complex and urgent security challenge within individual countries and across the region as a whole.

In the broader context of global trends, nationally driven CT responses from those countries in West Africa facing the most serious terrorism threat – Burkina Faso, Côte d’Ivoire, Mali, Niger and Nigeria – have tended towards a securitised approach. This creates challenges for the rule of law and the protection of human rights.

This report begins with a discussion of how rule of law and human rights came to be centred within global and regional CT policy frameworks. This is followed by five country case studies that outline, through a human rights and rule of law lens, the achievements in and challenges of implementing CT measures on the ground.

The report then highlights the importance of positioning CT practices within a human rights and rule of law framework in order to build a more sustainable peace

within which development can thrive. It concludes with broad recommendations for re-orientating CT practices towards a criminal justice approach rooted in the rule of law.

Methodology and terminology

Data for this study was collected through desktop research and drawn from unpublished ISS research on the criminal justice systems of countries within the Economic Community of West African States (ECOWAS).¹

The countries chosen as case studies for this report were selected on the basis of data from the Global Terrorism Database (GTD).² Within ECOWAS (hereafter referred to as West Africa), the GTD determined that Burkina Faso, Côte d’Ivoire, Mali, Niger and Nigeria had the highest number of terrorist incidents and related fatalities between 2005 and 2016, as depicted in Figures 1 and 2.

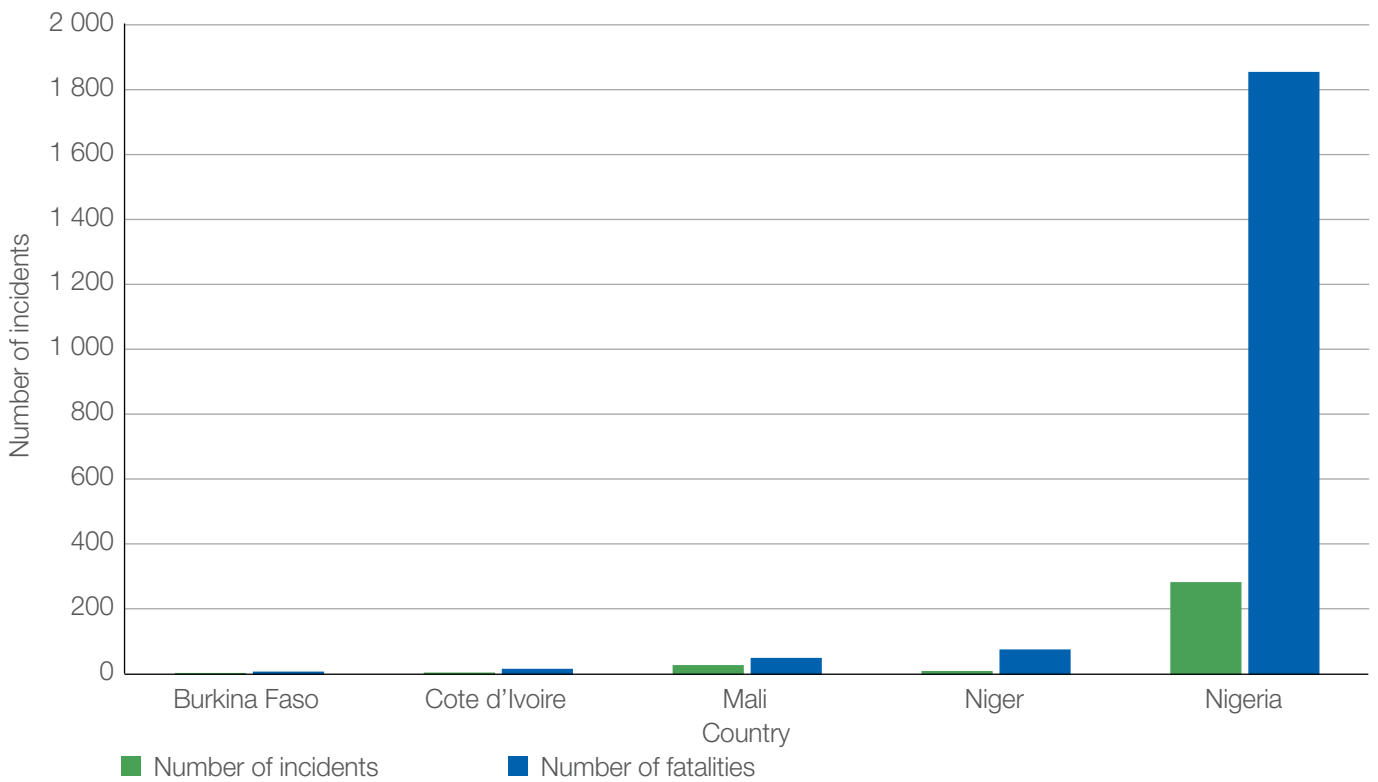
This study is limited by the dearth of publicly available, accessible and verifiable data on CT measures in the selected states; this is because, in many cases, CT measures relate to national security operations and are protected by legislation. Even less data is available on the results and human rights consequences of CT operations in these countries. Much of what occurs is simply not documented or is considered protected information. In addition, because many sources of publicly available information on issues of terrorism and/or CT are presented by interested parties with specific agendas, there are challenges in establishing the veracity of many assertions.

Key terms used in this report are complex, contested, constantly shifting and lack clear, globally agreed definitions. Specific choices have therefore been made in selecting definitions for the purposes of this study.

Violent extremism is advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic or political objectives.³

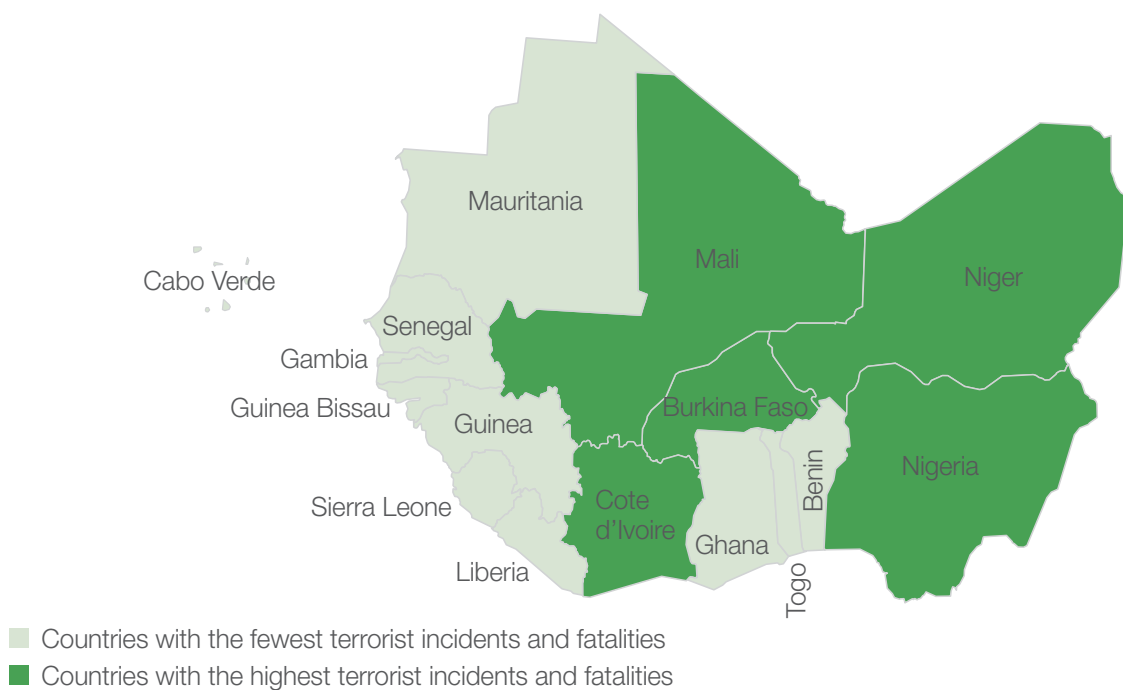
Terrorism is ‘the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological’.⁴ International terrorism involves the citizens or the territory of more than one country.⁵

Figure 1: Terrorist incidents and related fatalities in Burkina Faso, Côte d'Ivoire, Mali, Niger and Nigeria, 2005–2016



Source: Global Terrorism Database⁶

Figure 2: Map of West African countries



Counter-terrorism refers to military and/or criminal justice system activities and operations that are undertaken ‘to neutralize terrorists [and extremists], their organizations, and networks in order to render them incapable of using violence to instil fear and coerce governments or societies to achieve their goals’.⁷

Rule of law is ‘a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards’.⁸

Criminal justice system refers to the system and processes that are ‘directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses’,⁹ usually comprised of law enforcement agencies, courts and the judiciary, and correctional services.

Policy and practice in the real world: diverging paths

The path of CT policy development

The dynamic and international nature of terrorism has placed immense pressure on international bodies and governments around the world to implement responses that will protect citizens and safeguard national security.

In developing a global CT framework intended to guide member states’ responses to terrorism, the United Nations (UN) has been explicit that respect for the rule of law and the protection of human rights should underpin any approach to combatting terrorism.¹⁰

Respect for the rule of law and fundamental human rights are central tenets of the UN. The rule of law is not only a principle of governance committed to by member states of the UN,¹¹ it is also the vehicle through which the UN seeks to protect and promote its three interconnected pillars: peace and security, human rights and development. By providing ‘a structure through which the exercise of power is subjected to agreed rules’,¹² the rule of law guarantees the protection of all human rights, which have been codified into international law through the Universal Declaration of Human Rights (1948).

This rule of law and human rights framework, however, was not developed with peace and security in mind but

rather to provide states with a legal and policy structure within which they could respond effectively to evolving and dynamic threats to national and international security. One such threat is the current global terrorism threat.¹³

International human rights law has a system of limitation clauses that provide for the temporary suspension of certain rights, allowing states the freedom to either limit some rights when certain conditions are met or derogate from specific rights in circumstances involving exceptional threats or emergencies.¹⁴

However, states still have an obligation to operate judiciously within this freedom to limit or derogate from certain rights. It is as important that they protect the human rights of citizens who – through measures used to counter the threat of terrorism – are suspected of being actively involved in or supporting terrorist organisations as it is that they protect the human rights of citizens who are vulnerable to the impact of terrorism.

Respect for the rule of law and fundamental human rights are central tenets of the UN

In adhering to global commitments on protecting the rule of law and human rights, UN Security Council Resolution 1373 (2001) prescribes that states should combat terrorism by drafting comprehensive national and regional strategies; developing legislation to criminalise acts of terrorism and the financing of terrorism; implementing legislation through law enforcement and criminal justice processes; and cooperating internationally.¹⁵

Resolution 1456 (2003) declares that ‘[s]tates must ensure that any measure taken to combat terrorism comply with all their obligations under international law ... in particular international human rights, refugee, and humanitarian law’.¹⁶

In 2006, the policy framework governing CT was formalised in the UN Global Counter-Terrorism Strategy, which crucially recognises that ‘development, peace and security, and human rights are interlinked and mutually reinforcing’.¹⁷ The fourth pillar of the strategy urges states to

make every effort to develop and maintain an effective and rule of law-based national criminal

justice system that can ensure, in accordance with our obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms, and that such terrorist acts are established as serious criminal offences in domestic laws and regulations.¹⁸

The path of CT practice

States' responses to terrorism over the last two decades have generally taken three inter-related and overlapping approaches, all of which have the potential to conflict with human rights norms and standards:

- Preventing or countering violent extremism (P/CVE): These are interventions in communities that seek to address the causal dynamics associated with violent extremism. PVE programmes may present risks to human rights by focussing on specific racial, ethnic or religious groups in ways that might stigmatise them,¹⁹ and by allowing the 'extremism' net to widen to such an extent that it affects the rights of legitimate actors (such as political opponents and journalists) and actions (such as public protests).²⁰
- Criminal justice: The criminal justice system, through its law enforcement agencies, is central to monitoring potential threats and preventing or interrupting possible attacks. Criminal justice personnel investigate, prosecute and adjudicate the crimes associated with terrorism, and correctional agencies oversee the incarceration, rehabilitation and reintegration of convicted terrorists. If not implemented with strict regard for the rule of law, the criminal justice approach can also pose risks to human rights, including by enacting terrorism legislation that conflicts with international standards; using profiling during investigations; using evidence obtained through coercion or torture; and allowing abusive detention conditions.
- The use of force: Armed responses use the military and security agencies to directly combat threats through security operations. This can take the form of individual country actions, including special

operations or day-to-day activities in risky regions, or joint multi-country operations, and may involve both civilian and military security agencies.²¹ An important aspect of these operations is the gathering of intelligence on the actions of suspected individuals or groups, which also informs the criminal justice response. The risks inherent in this approach range from human rights infringements (such as illicit surveillance, arbitrary arrests and detentions, etc.) and injury to loss of life.

In the context of post-9/11 geopolitical dynamics and national security concerns, both democratic and non-democratic governments across the globe tend to favour the third approach.

In 2001 the United States (US) articulated its response to the threat of terrorism as a global 'war' against an exceptional enemy. This allowed the US and other countries to justify the use of force and other securitised measures. As a result, CT operations began to shift away from a rule of law framework into a space where 'the customary distinctions between war and peace have melted away'.²²

Inherent risks in the use of force approach include human rights infringements

Two grey areas in the global CT framework contributed to the justification of this shift. Firstly, while an international body of law defines a range of crimes that constitute acts of terrorism (contained in a series of conventions and protocols), there is still no global consensus on a definition of terrorism that can be applied in international law. This lack of consensus means that the international community's calls to eliminate terrorism are open to different interpretations by individual states. This results in the very real potential for 'unintended human rights abuses and even the deliberate misuse of the term [counter terrorism]'.²³

Secondly, the rapid expansion of the institutional, legal and policy frameworks for CT in the post-9/11 period inadvertently became a 'legal super highway'²⁴ to respond to terrorism, and the resulting lack of clarity has allowed states to be selective about the regulations they want to apply.²⁵

While the use of force may be a necessary and required response to terrorism in some contexts, it can and should be carried out within the rule of law and subject to international human rights law.²⁶ In practice, unfortunately, a securitised response to terrorism poses several challenges to upholding the rule of law and human rights protections.

In order to implement a securitised response, governments need to legitimise the use of exceptional national security regulations. This is often done by enacting a state of emergency or legislating expanded powers for security agencies.

The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (hereafter the Special Rapporteur) noted in February 2018 that, in practice, ‘the absorption of emergency statutes into the ordinary legal framework, including counter-terrorism legislation, essentially normalizing the exception’²⁷ is a real challenge to human rights protection in the context of combatting terrorism. It is also difficult to reverse.²⁸

A securitised response to terrorism poses challenges to upholding the rule of law and human rights protections

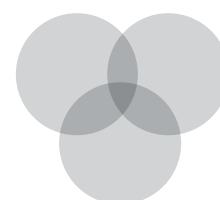
Long-lasting emergencies can undermine the separation of powers or further entrench unrestricted governments, ratchet up levels of violence and negatively influence the long-term culture of criminal justice institutions.²⁹

Across the globe, there are examples of how CT legislation has been – or continues to be – used to empower law enforcement and intelligence agencies with special investigative, arrest and detention powers and freedoms, while lowering procedural safeguards in the justice system. In just a couple of examples:

- Legislation in Australia, Egypt, Jordan and Morocco gives special powers to intelligence agencies to issue interrogation and detention warrants,³⁰ while many other countries – including the United Kingdom, France, Chad, Tunisia and Saudi Arabia – have extended pre-charge detention periods for terror suspects.³¹
- Pakistan and Sri Lanka have amended legislation to allow courts to rely on confessions given to police officers in terrorism-related cases; such confessions are not ordinarily admissible as evidence.³²

The prioritisation of a securitised or militarised response to terrorism undermines the ordinary operation of the criminal justice system in other ways, including:

- Limited civilian or judicial scrutiny and oversight, meaning increased impunity for state actors who have violated human rights in the context of CT operations.



STATES' TERRORISM RESPONSES
OVER THE LAST 20 YEARS HAVE
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OVERLAPPING APPROACHES

- Military courts or tribunals that try terrorism cases – these courts often lack independence and have lower procedural safeguards with limited appeal options.
- Inadequate, if any, rehabilitation and reintegration strategies for convicted terrorists – prisons provide a space in which terrorists ‘network, compare and exchange tactics, recruit and radicalise new members, and even direct deadly operations outside the prison’.³³

All of the above result in the most fundamental risk of a securitised response to terrorism: the heightened probability of deaths, injuries, displacements and the broader humanitarian crises that are the inevitable consequence of conflict. In addition, local populations where securitised CT operations are conducted can feel invaded, alienated and under threat, especially if security agency personnel are seen violating the rights of, injuring or killing civilians.

The actions of security forces toward civilians can become part of a complex overlap of mutually reinforcing factors that contribute towards the radicalisation of individuals or local communities.³⁴

Ultimately, a purely securitised approach neglects the range of long-term political, social and economic responses that could provide sustainable solutions to violent extremism and terrorism.

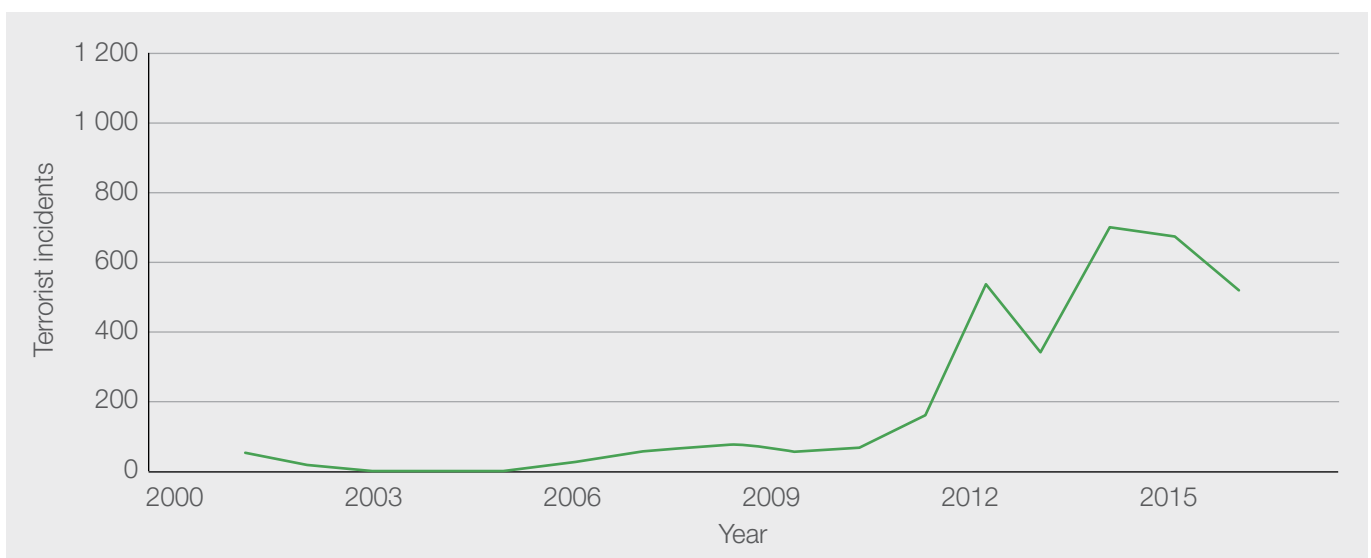
Threat and response: terrorism in West Africa

West Africa has experienced over 3 500 terror-related incidents since 2000, resulting in tens of thousands of deaths and injuries and millions of displacements.³⁵ Figure 3 depicts the number of terror incidents in West Africa since 2000, while Figure 4 shows the geographic spread of attacks by different groups across the region.

Terrorist and other armed groups in this region have generally grown out of complex webs of localised political, social and economic grievances combined with radical religious and ideological views. The grievances of local groups have, over time, converged with the broader agenda of global terrorist groups, resulting in various and often complex mergers and splits between and within these terrorist groups, as depicted in Figure 5.

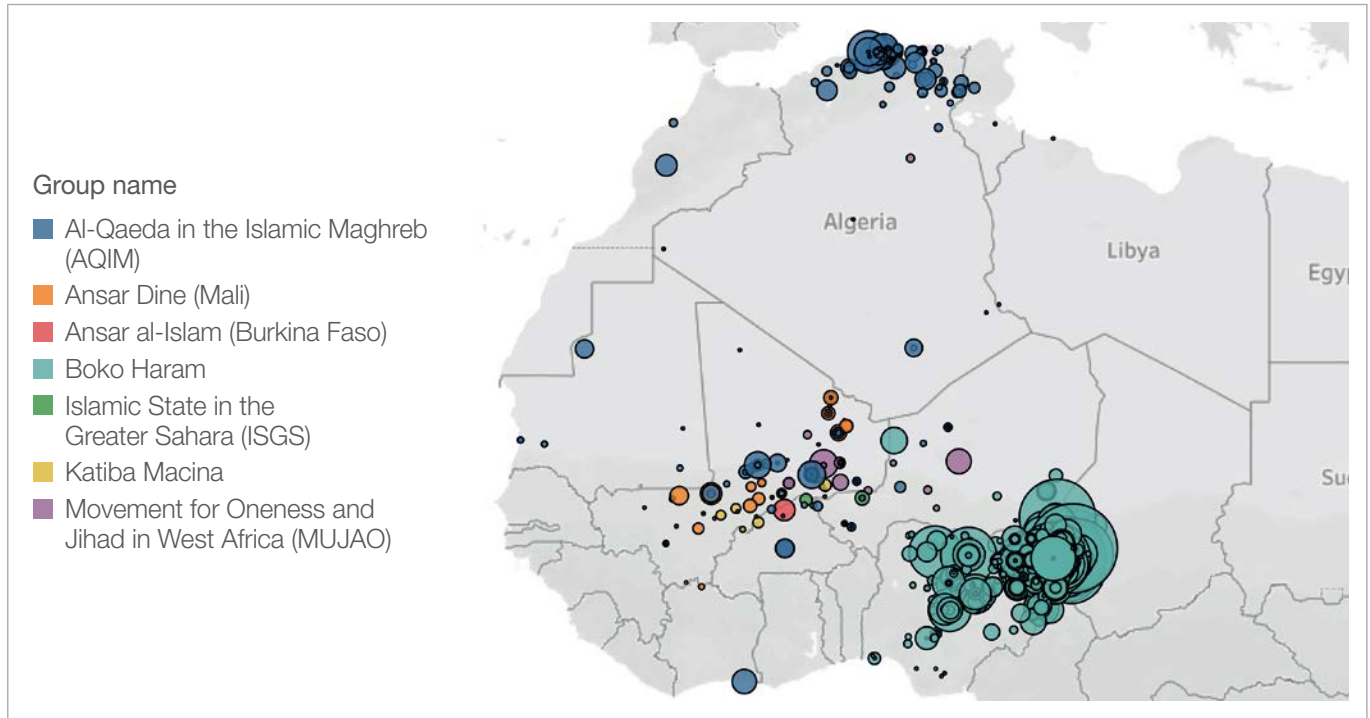
Jamaat Nusrat al-Islam wal-Muslimin (JNIM) was formed in March 2017 through the merger of some of the most prolific jihadist groups in the region: al-Qaeda in the Islamic Maghreb (AQIM), al-Mourabitoun, Ansar Dine and Katiba Macina.³⁶ JNIM is affiliated with al-Qaeda and has alliances with armed political groups in Mali.³⁷ The Islamic State in the Greater Sahara (ISGS), a breakaway faction of al-Mourabitoun, includes members of Niger’s Fulani community and is affiliated with the Islamic State of Iraq and Syria (ISIS). Jamā’at Ahl as-Sunnah lid-Da’wah

Figure 3: Terrorist incidents in West Africa 2000–2016



Source: Global Terrorism Database

Figure 4: Terrorist attacks by different groups across West and North Africa



Source: Z Donnerfeld, Tableau

wa'l-Jamā'at (better known as Boko Haram) is based in Nigeria but has extended its operations into northern Cameroon, Niger and Chad. The group is currently split between supporters of long-time leader Abubakar Shekau and those of ISIS-aligned Abu Musab al-Barnawi. Ansaru, also based in Nigeria, is a splinter group of Boko Haram aligned with AQIM.

Security agents involved in CT operations are regularly exposed to the aftermath of brutal attacks

Not only have these groups created national and regional security threats in their own right, but their strategies have also interacted with and exacerbated other human security challenges in the region, such as internal displacement, forced migration, porous borders, food insecurity and various forms of transnational organised crime. These challenges have compounded existing development, justice and governance deficits.

To achieve their evolving objectives, terrorist groups in West Africa perpetrate attacks on state infrastructure,

private property, security agency personnel and civilians. Countless numbers of civilians have been killed, injured, displaced, subjected to sexual violence, threatened, intimidated, beaten, tortured and kidnapped, while whole communities live in perpetual fear.³⁸

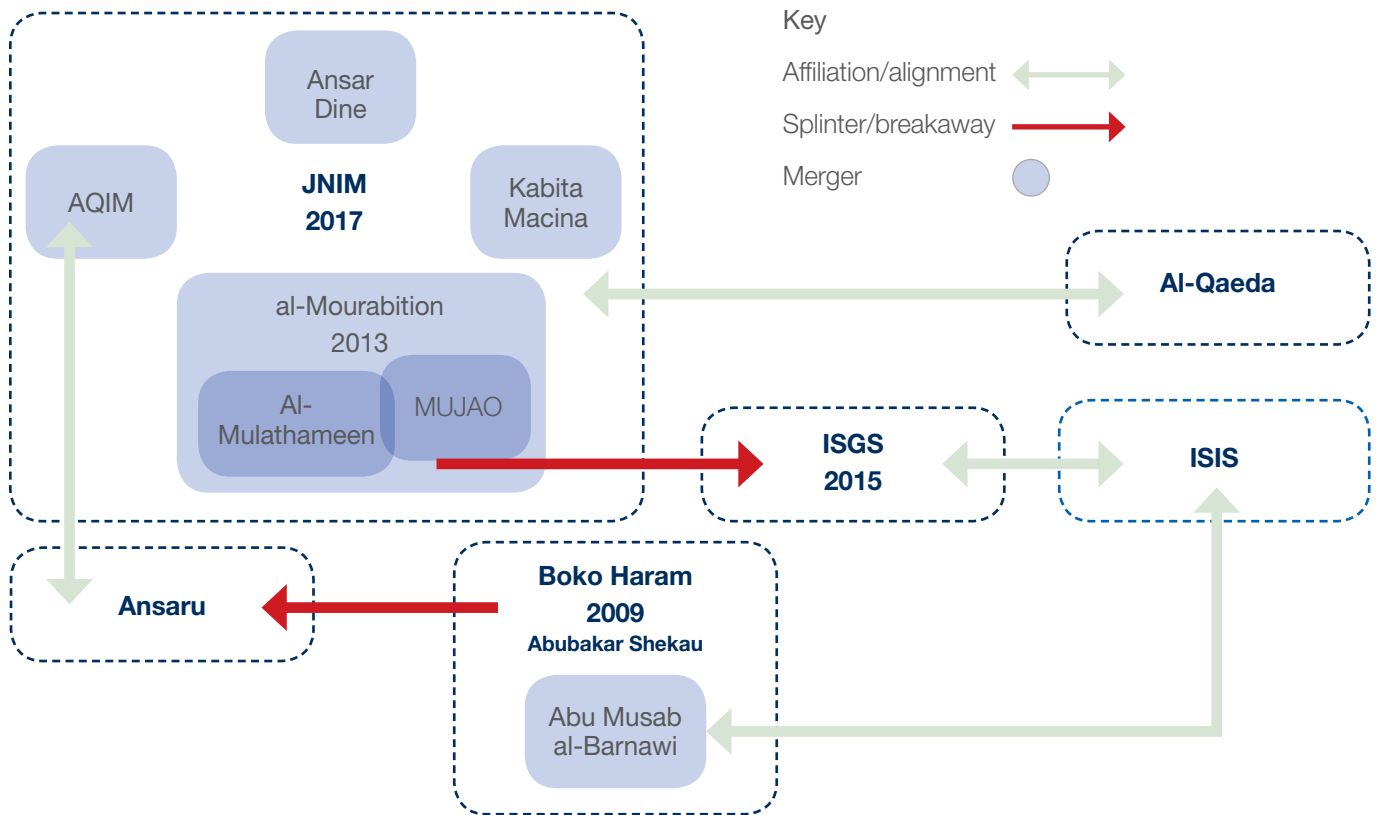
Security agents involved in CT operations are regularly exposed to the harrowing aftermath of brutal attacks, while dealing with threats to their own safety. The scale of the violence has meant that most citizens are unsympathetic towards terrorists or those suspected of terrorism, and indifferent as to whether their human rights are being respected or protected.³⁹ It is within this context that states are responding to terrorism and implementing CT operations.

Regional responses to terrorism

Countries in West Africa are subject to continental as well as regional CT frameworks.

Key measures adopted by the African Union (AU) – previously the Organization of African Unity (OAU) – in response to the threat of terrorism have included the OAU Convention on the Prevention and Combatting of Terrorism (Algiers' Convention) (1999) and subsequent

Figure 5: Terrorist groups and their affiliations, 2017



Source: Author compilation

Protocol (2004), the AU Plan of Action on the Prevention and Combatting of Terrorism (2002) and the African Centre for the Study and Research on Terrorism (2004). All these measures adhere to the general principles of international human rights law and commit states to protect the human rights of all their citizens, including terrorist suspects.⁴⁰

In West Africa, ECOWAS adopted the Political Declaration and Common Position Against Terrorism in 2013 as a regional framework for preventing and combatting terrorism.⁴¹ The declaration calls for the elimination of terrorism in the region but reaffirms states' commitments to upholding international law:

[A]ll Member States collectively abhor torture and other degrading and inhumane treatment of terrorist suspects, and undertake to strengthen democratic practices and rule of law to ensure due process, fair trial and equality before the law for all citizens.⁴²

The Political Declaration includes a Counter Terrorism Strategy and Implementation Plan grounded in the rule of law and respect for human rights. It explicitly states

that '[u]nder no circumstances should counter-terrorism be used as a justification for the violation of human and people's rights'.⁴³ All three of the strategy's pillars foreground the importance of the rule of law and human rights approaches to combatting terrorism.⁴⁴

West Africa has not been immune to the global trend of securitised CT measures

Other CT initiatives have been established to improve coordination and information sharing in the region. Table 1 highlights a selection of these initiatives but is by no means exhaustive.

Despite international and regional CT frameworks emphasising the importance of human rights and the rule of law, West Africa has not been immune to the global trend of securitised CT measures.

There are currently multiple international or regional military CT operations in West Africa, including:

Table 1: Regional CT initiatives and networks

| Date | Initiative or network | Comments |
|------|--|---|
| 1992 | ECOWAS Convention on Mutual Assistance in Criminal Matters | Member states commit to cooperate with each other on matters of criminal justice. |
| 1994 | ECOWAS Extradition Convention | Member states commit to cooperate with each other in denying offenders shelter from legal proceedings or penalties. Article 5 allows for extradition to be refused if the person whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting state. ⁴⁵ |
| 1998 | West African Police Chiefs Committee (WAPCCO) | Identifies trends and patterns of crime, organises regional conferences and meetings, establishes and maintains contacts with different law enforcement authorities, and assists in sharing best practices. |
| 2000 | Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) | Specialised ECOWAS institution builds and strengthens the capacity of member states to prevent and combat money laundering and terrorist financing. |
| 2005 | ECOWAS Court of Justice | In 2005 the Court of Justice gained jurisdiction to determine cases involving human rights violations in ECOWAS member states. |
| 2010 | Sahel Judicial Cooperation Platform | Established by Burkina Faso, Mali, Mauritania and Niger to strengthen judicial cooperation on criminal matters, in compliance with bilateral, regional and international agreements. |
| 2013 | West African Network of Central Authorities and Prosecutors (WAGAP) | Promotes mutual legal assistance networks among prosecutors in ECOWAS states and has developed a regional strategy to facilitate the prosecution of people involved in transnational organised crime and terrorism. |
| 2017 | INTERPOL Regional Counter Terrorism Nodes (RCTN) | Enable information exchange and rapid response capabilities to terrorist threats. |
| 2018 | Partnership between the AU, the UN Counter Terrorism Committee Executive Directorate, and the Lake Chad Basin Commission | Currently developing common elements for a regional approach to screen, prosecute, rehabilitate and reintegrate persons associated with Boko Haram, as well as engage directly with Lake Chad Basin states on the challenges posed by Boko Haram. |

- The Multinational Joint Task Force (MNJTF): Established by the Lake Chad Basin Commission (LCBC), the MNJTF is comprised mostly of military units from four of the LCBC member states (Cameroon, Chad, Niger and Nigeria), as well as Benin, a non-member of the LCBC. Focussed primarily on CT since 2012,⁴⁶ the MNJTF has made some progress in combatting Boko Haram,⁴⁷ but has also been accused of committing human rights violations in the context of its CT operations.⁴⁸
- The UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA): Established in 2013 to support the peace process and conduct security-related stabilisation tasks in Mali. MINUSMA has been given increasingly forceful mandates, which some have argued could classify the mission as a CT operation.⁴⁹ More than 155 peacekeepers with MINUSMA had been killed by March 2018, the highest death rate for an ongoing UN peace mission.⁵⁰ Some peacekeepers under the MINUSMA umbrella have been accused of human rights violations.⁵¹
- Operation Barkhane: Successor to Operation Serval (2013–2014), the French-led military response to Mali’s insurgency crisis in 2012. Established in 2014 as France’s more permanent CT response in Mali, Operation Barkhane is

comprised of French troops and the military forces of Mali, Chad, Niger, Côte d'Ivoire and Burkina Faso, as well as MINUSMA.⁵²

- G5 Sahel Force: in February 2017 the G5 Sahel countries (Burkina Faso, Mali, Mauritania, Niger and Chad) established a military force, supported by France, to combat terrorism and transnational crime along affected border areas.⁵³ The UN Assistant Secretary-General for Human Rights, Andrew Gilmour, called for the establishment of a human rights compliance framework for the force during a visit to Mali in November 2017.⁵⁴

CT practices and challenges on the ground: case studies

This section begins with Burkina Faso, Côte d'Ivoire and Niger, countries that have experienced terrorist attacks in their more liminal spaces. Here the lines between terrorism and criminality are the most blurred, making it challenging for states to distinguish between the two and respond accordingly. Niger occupies the most precarious position geographically, sandwiched between Mali and Nigeria, where it 'sits at the crossroads of terrorism, trafficking, and conflict'.⁵⁵

Niger 'sits at the crossroads of terrorism, trafficking, and conflict'

The section concludes with the epicentres of terrorism in the region, Mali and Nigeria – countries where terrorist attacks are frequent and widespread, resulting in extensive damage and gross human rights violations. A heavily securitised CT response from state, regional and international forces has been compounded by fragile state institutions.

Each case study outlines the situational context, presents the current CT responses and summarises the challenges to human rights and the rule of law posed by the practical implementation of CT measures.

Burkina Faso

Despite its geographic position in a volatile region, Burkina Faso remained relatively free of terrorist incidents until 2015, when a spate of attacks claimed

over 20 lives.⁵⁶ Attacks have been on the increase since 2016. Three major attacks in Ouagadougou in 2016, 2017 and 2018 have claimed over 60 lives.

There have been numerous raids, kidnappings and attacks on police and military personnel as well as civilians in the border regions. Attacks have been perpetrated by the Burkinabe branches of Ansar Dine, MUJAO and Boko Haram, as well the home-grown Ansarul Islam and unaffiliated Muslim extremists.⁵⁷ AQIM purportedly announced its presence in Burkina Faso through an online video posted on 18 September 2018.⁵⁸

Current CT approaches

Burkina Faso prioritises a military approach to CT. President Roch Marc Kaboré, who vowed to combat terrorism when he came to power in December 2015, 'has repeatedly emphasized the need to strengthen the country's military capabilities and border security in an effort to combat the threat from terrorism'.⁵⁹ More recently, there has been some focus on strengthening criminal justice approaches to terrorism through specialised law enforcement and judicial units.⁶⁰

Table 2 outlines key CT initiatives in Burkina Faso.

Challenges for human rights protection and the rule of law

Article 2 of the Law on the Suppression of Terrorist Acts in Burkina Faso allows for the broad offence of 'criminal conspiracy'. Although this article has not yet been applied, Ben Emmerson (a former UN special rapporteur) expressed concern that such a broad offence 'has been used in some countries to prosecute individuals with only the most tenuous connection to alleged terrorists'.⁶¹

The Code of Criminal Procedure (as amended in 2017) allows for 'permit searches and home visits, under certain circumstances, without the consent of the persons concerned and at any time' in the context of CT.⁶²

A 2017 law on military tribunals allows for civilians to be tried before military courts, which operate independently of the High Council of Magistrates.⁶³ Although the law 'allows for a two-step appeals process and enables non-Burkinabe lawyers to be a part of proceedings',⁶⁴ there is concern that those tried by military tribunals may not be afforded their rights to due process and an impartial trial.⁶⁵

Table 2: CT initiatives in Burkina Faso

| Legislation & policy | Military | Law enforcement | Criminal justice |
|---|---|--|---|
| Law no. 060-2009/AN (2009) on the suppression of terrorist acts. | <i>Groupement des Forces Anti-Terroristes</i> (Grouping of Anti-Terrorist Forces) (GFAT): a joint army-gendarmerie CT task force operated and deployed as part of the military. | <i>Unité d'Intervention polyvalente</i> (Multipurpose Intervention Unit) (MIU) of the National Police Force. | <i>Pôle judiciaire spécialisé</i> (Specialised Judicial Division): specialised judicial centres for terrorism, terrorism financing and transnational organised crime. |
| Law no. 061-2009/AN (2009) on combatting terrorist financing. | <i>Mission de Securitisisation du Nord</i> : military mission aimed at countering terrorist activity by developing a more effective army unit in the north. | | National justice policy (2010–2019): aims to strengthen the justice system. |
| Law no. 005-2017/AN (2017) on establishing and operating specialised judicial units to combat terrorism, terrorism financing and transnational organised crime. | Contribution to external military operations with CT focus: <ul style="list-style-type: none"> G5 Sahel Joint Force: 550 soldiers and 100 police/gendarmes. | | Member of the Sahel Judicial Cooperation Platform. |

Human Rights Watch (HRW) has documented human rights violations by Burkinabe soldiers in CT operations on the border with Mali, including unlawful detention and interrogation, beatings and the destruction of property.⁶⁶ One Malian elder reported that, '[i]n May and June [2017], soldiers from Mali and Burkina Faso captured dozens of people ... 17 members of my community have disappeared but people are terrified to talk about it.'⁶⁷ Burkinabe soldiers have reportedly also taken Malian residents across the border into Burkina Faso for interrogation.⁶⁸

Owing to the dominance of a military response, there is limited information about the Burkinabe criminal justice response to terror suspects. However, the documentation of human rights violations committed against 'ordinary' criminal suspects in the country is cause for concern for terror suspects as well.

Allegations of excessive force, wrongful arrest, torture, ill treatment and corruption, as well as impunity for those accused of such violations, have been levelled against the police.⁶⁹ The 72-hour limitation on detention without charge for investigative purposes is reportedly routinely disregarded.⁷⁰

Reports of slow progress in investigations related to law enforcement agents involved in human rights

abuses have exacerbated the existing mistrust between citizens and the police.⁷¹

There is reportedly widespread public mistrust of judicial authorities in Burkina Faso.⁷² This stems from extended periods of pre-trial detention; denial of defendants' rights; the disregard of legal provisions establishing the inadmissibility of confessions obtained during torture as evidence in court; and persistent allegations of corruption.⁷³

Côte d'Ivoire

After years of civil war and political turmoil, Côte d'Ivoire has been relatively stable since 2011. However, progress towards national reconciliation has been slow and remains fragile.⁷⁴ Despite its long borders with Burkina Faso and Mali, the country only experienced its first terrorist attack in March 2016, when AQIM militants attacked a beach resort in Grand Bassam, killing 19 and injuring 33.

The major terrorist threat to Côte d'Ivoire comes from AQIM incursions from neighbouring Mali and Burkina Faso, as well as potentially home-grown terrorists.

Current CT approaches

Much of the financing and foreign support for Côte d'Ivoire's CT initiatives appears to be channelled into the military. In November 2017 French President Emmanuel

Macron announced the establishment of a school in Côte d'Ivoire that would train special forces from across the region in 'intelligence, intervention, combat and the fight against terrorism'.⁷⁵ Key features of Côte d'Ivoire's CT framework are outlined in Table 3.

Challenges for human rights protection and the rule of law

CT legislation enacted in 2015 empowers law enforcement agencies to intercept correspondence, tap phone lines and conduct terrorism-related search and seizure at night. The detention of suspected terrorists without formal charges has been extended from the usual 48 hours to up to 96 hours.⁷⁷

Responsibility for CT is shared by the Armed Forces of Côte d'Ivoire (FACI), the gendarmerie, the police and the Directorate for Territorial Surveillance (DST). The joint Centre for the Coordination of Operational Decisions (CCDO) unit, primarily tasked with providing security in urban areas, was one of the first responders at the Grand Bassam attack in 2016. Although there are no publicly available reports of these security agencies' committing human rights violations

within the context of CT operations specifically, their human rights track record in the context of enforcing the law in relation to 'ordinary' crime is cause for concern.

FACI, whose members are more highly trained and better equipped than the police or gendarmerie, reportedly regularly perform functions that are usually associated with civilian law enforcement agencies.⁷⁸

Security forces and law enforcement agencies have been accused of a range of human rights violations, including extrajudicial killings, mistreatment of detainees and prisoners, arbitrary arrest (including by FACI, which does not have the authority to make arrests), detention without charge, corruption and extortion.⁷⁹

Although the investigation and prosecution of security agents accused of human rights violations increased slightly in 2016, widespread impunity has been reported.⁸⁰ However, the National Commission for Human Rights in Côte d'Ivoire and FACI have recently established a mechanism for monitoring and reducing human rights violations within the armed forces.⁸¹

Table 3: CT initiatives in Côte d'Ivoire

| Legislation & policy | Military | Law enforcement | Criminal justice |
|--|---|--|---|
| Law no. 2015-493 (2015) on the repression of terrorist activities. | US\$137.2 million set aside in April 2016 to build capacity and train units, strengthen the country's intelligence apparatus and border security measures, bolster the operational capacities of the country's defence and security forces, and better equip its armed forces. | <i>Unité d'intervention de la Gendarmerie Nationale (UIGN)</i> : a special forces unit of the gendarmerie that includes CT operations in its mandate. The UIGN has 52 officers and 300 non-commissioned officers especially trained and equipped to perform CT missions. | The National Financial Intelligence Processing Unit (CENTIF-CI), housed within the Ministry of Finance, was operationalised in 2008 to investigate the financing of terrorism. It has broad powers to investigate suspicious financial transactions, including those of public officials. |
| | Centre for the Coordination of Operational Decisions (CCDO): an elite anti-crime task force composed of the military, police and gendarmerie tasked with securing main urban centres. The CCDO helped to repel the terrorist attack in Grand Bassam in 2016. ⁷⁶ | <i>Direction de la Surveillance du Territoire (DST)</i> : domestic intelligence agency under the Ministry of Interior and Security with responsibility for countering external threats. | |
| | | <i>Force de Recherche et d'Assistance de Police (FRAP)</i> : specialised CT police unit. | |

Although efforts to strengthen the judicial system in Côte d'Ivoire are ongoing, it is reportedly inefficient and lacks independence.⁸² In cases involving national security, which is applicable to terrorism offences, some reports indicate that detainees are not always informed promptly and in detail of the charges brought against them, as provided for by law. Authorities also do not allow detainees access to lawyers and family members.⁸³

Conditions at detention centres are reportedly harsh, and pre-trial detainees are imprisoned with convicted inmates owing to the lengthy pre-trial detention periods.⁸⁴ In addition, FACL and the DST operate informal detention centres where prisoners are not allowed to meet lawyers and family members; local and international non-governmental organisations (NGOs) (including the UN) have been denied access to these centres.⁸⁵

Niger

Niger is geographically positioned at the core of West Africa's war on terror, 'with overlapping local and regional violent groups based within Niger and coming into the country from nearly every side'.⁸⁶

Since 2015 multiple attacks in the Diffa region to the east (bordering Chad and Nigeria) and the Tillabéri, Tahoua and Niamey regions to the west (bordering Mali, Burkina Faso and Nigeria) have killed and injured hundreds of civilians and security forces, as well as destroying property and displacing hundreds of thousands of civilians.

The recent increase in terrorist attacks in Niger is the result of a complex set of overlapping factors, including increasing activity by terrorist groups across the region; the contribution of Niger's government to regional and international efforts to combat terrorism in the region; the flow of weapons through Niger as a key transit route; and the deteriorating security situation owing to local conflicts along the Niger–Mali border.⁸⁷

Current CT approaches

Niger has received significant international support and funding for deploying its military in response to terrorism. However, the country has also made a concerted effort to establish a criminal justice framework for countering terrorism, including establishing a specialised law enforcement unit and court system. Table 4 outlines key elements of Niger's current CT framework.

Challenges for human rights protection and the rule of law

The state of emergency declared in Diffa region in 2015 has been repeatedly re-issued, with provisions under the state of emergency allowing authorities to conduct search and seizure in private houses at any time and for any reason. States of emergency have also been declared in Tillabéri and Tahoua regions.⁸⁹

In terror-related cases, individuals may be detained without charge for 10 days, extendable once for an additional 10 days, in contrast with the 48-hour deadline for 'ordinary' crime. This 10-day time period only begins once suspects reach the Niamey Central Service for the Fight against Terrorism (SCLCT), which may take days or even weeks depending from where they are transported.⁹⁰

The recent increase in terrorist attacks in Niger is the result of a complex set of overlapping factors

There are reports of the Nigerien military unlawfully killing people suspected to be supporters or members of Boko Haram, and security officials have reportedly tortured detainees in Diffa region to extract information.⁹¹ However, the Nigerien army allegedly behaves better than its counterparts in the MNJTF,⁹² and civilian authorities maintain effective control over the armed forces.⁹³ The appointment of a civilian governor for Diffa in June 2016 was seen as a positive sign that the government is committed to civilian oversight in that region.⁹⁴

Despite investigations being launched into unlawful killings by security forces, there are widespread reports of impunity in Niger.⁹⁵

By the end of 2016 the SCLCT had arrested and detained 1 400 individuals on charges relating to planning acts of terrorism, association with a terrorist organisation, recruitment, and terrorist financing.⁹⁶ However, the prosecutor responsible for terrorism cases said that most arrests followed accusations from disgruntled community members and that 'insecurity and the state of emergency in Diffa region had prevented effective investigations'.⁹⁷

In October 2017 the UN Office on Drugs and Crime (UNODC) reported that Niger had processed 230 terrorism-related cases within two months as a result of concerted

Table 4: CT initiatives in Niger

| Legislation & policy | Military | Law enforcement | Criminal justice |
|---|---|---|---|
| Law no. 2010-05 (2010) on combatting terrorism funding. | Niger's armed forces are partners with France and the US in CT operations in the Lake Chad Basin. Niger serves as a central hub for intelligence collection and dissemination and US CT operations in the region. ⁸⁸ | Central Service for the Fight against Terrorism (SCLCT): a centralised service for CT investigation comprised of the National Police, the National Guard and the Gendarmerie. The SCLCT facilitates greater information sharing between the three branches of law enforcement on CT issues. In 2014 the SCLCT was expanded to include a separate operational cell in the regional capital of Diffa. | The Judicial Centre for the Fight against Terrorism: jurisdiction over terrorism acts. |
| Order no. 2011-11 (2011) modifying Law no. 2004-50 (2004) establishes specialised courts for terrorism. | Contribution to external military operations with CT focus: <ul style="list-style-type: none"> • Member of the G5 Sahel Joint Force: 1 100 soldiers and 200 gendarmes. • Member of the MNJTF. | | SCLCT: in charge of the preliminary investigation of terrorism cases, under the direction and control of the Public Prosecutor of the High Court of Niamey. |
| Law no. 61627 (1961) on the Criminal Code amended by Order no. 2011-12 (2011) criminalises terrorist acts, and by Order no. 2011-13 (2011) establishes the Central Service for the Fight against Terrorism and protection measures for officials, witnesses and victims of terrorism. | | | The Supervision Court for the Fight against Terrorism: jurisdiction over appeals against orders by investigating judges of the Judicial Centre for the Fight against Terrorism and transfer of terrorist defendants to the Trial Court for the Fight against Terrorism. |
| Sahel-Sahara Development and Security Strategy (SDSS): aims to reduce the risk of instability and increase resilience to violent extremism. | | | The Trial Court for the Fight against Terrorism: jurisdiction over deciding upon judgements at first and last instance on terrorist offences. |
| A state of emergency has been in place in the Diffa region since 2015 and was extended to Tillabéri and Tahoua in March 2017. | | | |

action by the Nigerien judicial authorities supported by UN volunteers and the UNODC.⁹⁸

The increase in arrests on terror-related charges in Niger has put pressure on both the judicial and prison systems. There is concern that lengthy pre-trial periods – which are reportedly the norm, with some suspects detained since 2012⁹⁹ – may become a source of recruitment for terrorist groups.¹⁰⁰

In September 2016 the Nigerien government announced the extradition of all Nigerian detainees to Nigeria ‘to reduce prison overcrowding and because Nigeria was better placed to investigate their nationals’, despite reports of the torture and ill treatment of terror suspects in Nigerian correctional facilities.¹⁰¹

Mali

Terrorist organisations AQIM, MUJAO and Ansar Dine took advantage of the power vacuum that opened up in northern Mali after the 2012 military coup and subsequent government collapse. In 2015 the *Accord pour la paix et la réconciliation au Mali issu du processus d’Alger* (Accord for Peace and Reconciliation in Mali Emanating from the Algiers Process) was signed between the government and political armed groups in an attempt to bring peace and participatory governance to the country.

However, terrorist activities continued in the north throughout and after the peace process, with attacks on all parties to the peace agreement, including former rebel groups with which the terrorists had briefly allied.¹⁰² Terrorist activities have since expanded into central and southern Mali, with attacks in Segou and Mopti, and Bamako and Sikasso respectively.

To date, attacks continue unabated by terrorist groups such as AQIM, Islamic State, JNIM and Katiba Macina against symbols of the state and its representatives, Mali security personnel and property, international armed forces, UN peacekeepers, infrastructure, civilians and their property.¹⁰³ Major attacks have included the January 2017 attack on a military camp in Gao in which 77 people were killed; the November 2017 attack on the Radisson Blu hotel in Bamako in which 20 people were killed and over 170 taken hostage; the January 2018 bombing of a civilian passenger vehicle in which 25 people were killed; and the April 2018 armed attack in the Ménaka region in which 47 people were killed.

However, it is the almost daily gun attacks, landmines, bombings and suicide bombings that are having the most profound impact on the security of state and international actors, civilians, infrastructure and property.

Current CT approaches

A deteriorating security situation with ongoing clashes between armed groups, a tense political environment and a plethora of non-state, state and international armed forces make CT in Mali extremely complex. Since 2012 the government and international community have focussed primarily on a securitised response to the crisis. Table 5 outlines key CT initiatives in Mali.

Challenges for human rights protection and the rule of law

The complexity of the conflict in Mali makes it difficult for CT legislation and policy to be implemented effectively, simply because it is difficult to distinguish

between ‘compliant’, ‘terrorist’, and ‘criminal’ armed groups. All continue to carry weapons and to move around, and the lines between them remain blurred due to the fluidity in their leadership and the opportunistic calculations of fighters who join their ranks.¹⁰⁴

Several officers in the Malian army and gendarmerie ‘held the conviction that the [compliant armed groups] and terrorist groups are more or less one and the same’.¹⁰⁵

The increase in arrests on terror related charges has put pressure on the judicial and prison systems

The UN Secretary General’s report on Mali in December 2017 is explicit that CT operations by the Malian defence and security forces have led to human rights violations.¹⁰⁶ The MINUSMA Human Rights Division (HRD) reported that of the documented human rights violations committed between January 2016 and June 2017, 47% (288 out of 608 cases) were attributable to state actors.¹⁰⁷ The Malian armed forces have been accused of extrajudicial executions, arbitrary arrest, torture and enforced disappearances in the context of CT operations.¹⁰⁸ There are reports of Malian soldiers threatening, beating and burning men accused of

Table 5: CT initiatives in Mali

| Legislation & policy | Military | Law enforcement | Criminal justice |
|---|---|--|---|
| Law no. 08-025 (2008) on the Suppression of Terrorism in Mali. | The Malian armed forces (including the gendarmerie) are the primary agencies responsible for securing Mali against terrorist threats. | <i>Direction générale de la sécurité d'état</i> (General Directorate of State Security) (DGSE): intelligence agency that has the authority to detain and investigate individuals for terrorism-related offences. | <i>Unité judiciaire spécialisée contre le terrorisme et le crime organisé transnational</i> (Specialised Judicial Unit against Terrorism and Transnational Organised Crime): consists of a special prosecutor, a special investigating unit and special investigating brigades (composed of gendarmes and police officers) dedicated to combatting terrorism. |
| Law no. 2016-008 (2016) on the fight against the financing of terrorism and money laundering. | Operation Barkhane: French-led military operation conducting anti-insurgency operations in the north. | <i>Forces Spéciales Anti-terroristes</i> (FORSAT): newly established anti-terrorism unit comprising police, National Guard and gendarmerie. | |
| Code of Criminal Procedure amended by Law 2013-010 (2013): Chapter 9 establishes derogatory procedures to criminal procedure within common law for the pursuit, investigation and judgement of corruption, economic and financial offences, terrorism and other forms of transnational organised crime. | Member of the G5 Sahel Joint Force: 1 100 soldiers and 200 gendarmes. | | |
| National strategy for the prevention of radicalisation, terrorism and violent extremism (November 2016): coordination and monitoring falls under the Ministry of Foreign Affairs. | | | |
| <i>Plan de Sécurisation Intégrée des Régions du Centre</i> (Integrated Security Plan for the Central Regions) (PSIRC) (April 2017): controlled by the Ministry of Security, the aim of the plan is to secure the centre of the country while taking development and governance issues into account. | | | |

supporting or having links with terrorist groups. This ill treatment allegedly usually occurs during interrogations at army bases and bush camps in the first few days of a suspect's detention, even though it is prohibited for soldiers to interrogate detainees.¹⁰⁹

The human rights violations reportedly perpetrated by security forces have largely gone unpunished, and

mechanisms to investigate and hold security forces to account are said to be ineffective. A commission of inquiry established by the Malian Ministry of Defence in 2014 to investigate killings by security forces had not completed any investigations by the end of 2016.¹¹⁰

In November 2017 HRW reported that the Malian Ministry of Defence had once again committed to investigating

alleged military abuses and bringing the perpetrators to justice, as well as

ordering troop commanders to turn over anyone arrested during military operations to the gendarme military police; instructing provost marshals to submit monthly reports on human rights violations to the armed forces' chief of staff; and increasing training on human rights for deployed military personnel.¹¹¹

Law enforcement units reportedly have a poor record of accountability and respect for human rights.¹¹² Terror suspects arrested by gendarmes (on the orders of the DGSE) are allegedly secretly transferred to DGSE buildings in a process that can take more than a week, and detained for lengthy periods of questioning in the high-security division of Bamako Central Prison and in Koulikoro.¹¹³

HRW reports that some detainees held in a GGSE-run detention centre for up to five months were refused access to family members or lawyers and could not make phone calls during their detention.¹¹⁴ There are reports of arrests being made based on denunciations by the local population and/or the targeting of individuals belonging to specific communities or ethnic groups suspected of supporting terrorist groups.¹¹⁵

The human rights violations reportedly perpetrated by security forces have largely gone unpunished

The MINUSMA HRD notes that between January 2016 and June 2017, 56% of the individuals 'arrested in connection with "terrorism"-related charges were ultimately released by judicial authorities, generally due to a lack of evidence against them'.¹¹⁶

As post-conflict reconstruction takes place in Mali, the judicial system reportedly struggles with a lack of independence, corruption, bribery and a shortage of staff and resources.¹¹⁷

The prosecutor of the specialised judicial unit for terrorism-related offences has the power to prosecute offences related to the acts of terrorism over which s/he has jurisdiction. A local human rights' organisation is

concerned that this makes the prosecution of international crimes and serious human rights violations contingent on the perpetrators also being prosecuted for terrorism-related offences. This would eliminate

the possibility of any prosecution [for human rights violations] if a person has not also committed terrorist acts or other transnational crimes (such as crimes that may have been committed by elements of the Malian army or foreign troops including Barkhane and MINUSMA), or if these acts or crimes cannot be proven.¹¹⁸

Aliou Mahamane Touré, the former chief of Islamic police of MUJWA in Gao, was arrested in 2013 for human rights abuses carried out during the Malian conflict. Touré was prosecuted, convicted and sentenced to 10 years in prison in August 2017, in the first domestic trial of crimes committed by Islamists during their occupation of northern Mali in 2012–2013.¹¹⁹ However, there is concern that legislation announced in December 2017 to provide amnesty for some other actors in the conflict will undermine access to justice for victims of human rights violations.¹²⁰

Terrorism-related detentions accounted for 81% of conflict-related detentions by 30 June 2017.¹²¹ International human rights and humanitarian organisations are denied access to prisoners in facilities operated by the DGSE, where many terrorism-related detainees are held.¹²²

Nigeria

Boko Haram and, more recently, ISIS-West Africa have waged war against the government and civilian population in north-eastern Nigeria since 2008, carrying out attacks on military, law enforcement, government and civilian targets, killing and injuring tens of thousands of people, causing widespread destruction of property and displacing over 2 million civilians.¹²³

Kidnapping is rife, the most notorious of which was the kidnapping of 276 schoolgirls by Boko Haram in Chibok in 2014. Despite President Muhammadu Buhari's declaring Boko Haram defeated in December 2015 after the sustained and forceful military Operation Lafiya Dole in the north-east, the group continues its campaign of violence.¹²⁴

Nigeria is also dealing with other national security threats, including escalating violence between herders and farmers

(which killed more people in 2018 than the Boko Haram insurgency),¹²⁵ and a renewal of violence by various groups in the Niger Delta between 2016 and the present.

Current CT approaches

Nigeria has adopted a militaristic approach to countering terrorism, preferring to engage Boko Haram ‘in direct, unilateral military action and through the MNJTF, which is headed by a Nigerian military officer’.¹²⁶

However, the 2016 National Counter Terrorism Strategy and 2017 National Action Plan for Preventing Violent Extremism include commitments to overhaul the criminal justice system, recognise that respect for international law and human rights is an integral part of CT, and promote good governance as a key element of broader efforts to combat terrorism and extremism.¹²⁷ Table 6 gives an overview of Nigeria’s key CT initiatives.

Table 6: CT initiatives in Nigeria

| Legislation & policy | Military | Law enforcement | Criminal justice |
|--|--|--|--|
| Terrorism (Prevention) (Amendment) Act 2013 | The Nigerian military has primary responsibility for combatting terrorism. | The Office of the National Security Advisor (ONSA) coordinates CT activities between security and enforcement agencies. | Prison Service De-Radicalisation Programme (2015): programme implemented by Nigerian Prisons Service (NPS) and the ONSA to change the beliefs, views, values and attitudes of the violent extremist prisoners. |
| Money Laundering (Prohibition) Act 2011 (as amended) on the prohibiting of financing of terrorism and the laundering of the proceeds of crime. | Member of the Multi-National Joint Task Force (MNJTF). | The National Security and Civil Defence Corps (NSCDC) has the authority to arrest, investigate and prosecute (in the name of the Attorney General of the Federation) any criminal activity, including ‘any planned act of terrorism’. | |
| Nigerian National Counter Terrorism Strategy (2016): de-radicalisation; counter radicalisation; strategic communication. | | The Counter Terrorism Centre (CTC) (2012) is located within the ONSA and houses the Joint Terrorism Analysis Branch, National Counter Terrorism Strategy, Explosive Devices Analysis Office and the Preventing and Countering Violent Extremism Unit (responsible for implementing the Policy Framework and National Action Plan for Preventing and Countering Violent Extremism). | |
| National Action Plan for Preventing Violent Extremism (2017): strengthens Nigerian institutions to prevent violent extremism; strengthens the rule of law, access to justice and human rights approach; builds community engagement and resilience; and integrates strategic communication to prevent violent extremism. | | The Nigerian Police Force has CT functions. | |

Challenges for human rights protection and the rule of law

Activists have criticised the Terrorism (Prevention) (Amendment) Act of 2013 for containing clauses that are in conflict with the Nigerian constitution. For example, the act suspends the rights of suspects to access their own lawyers or family members while in pre-charge detention.¹²⁸

The Nigerian military has been accused of widespread human rights violations in the course of CT operations. Several international and national human rights organisations have documented incidents where the military was allegedly involved in the unlawful killing of thousands of civilians (including children) and suspected members of Boko Haram, as well as allowing those

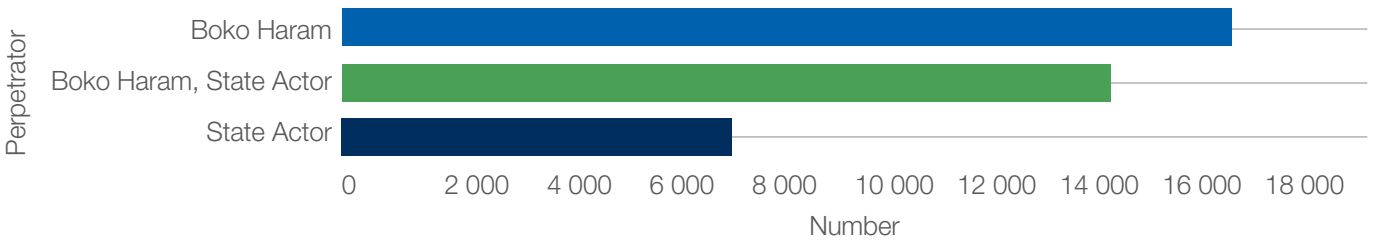
arrested by the security agents to die in military detention facilities.¹²⁹ These organisations have also reported enforced disappearances, arbitrary and mass arrests, and torture (including beatings, shootings, nail and tooth extractions, starvation, rape and other forms of sexual violence).¹³⁰

Amnesty International (AI) estimates that since 2009 the Nigerian military has arrested over 20 000 people in areas of Boko Haram activity (including the relatives of Boko Haram suspects in lieu of the suspect), often on the basis of unreliable information.¹³¹ Figure 6 shows the number of deaths attributed to both state security forces and Boko Haram between 2011 and 2018.

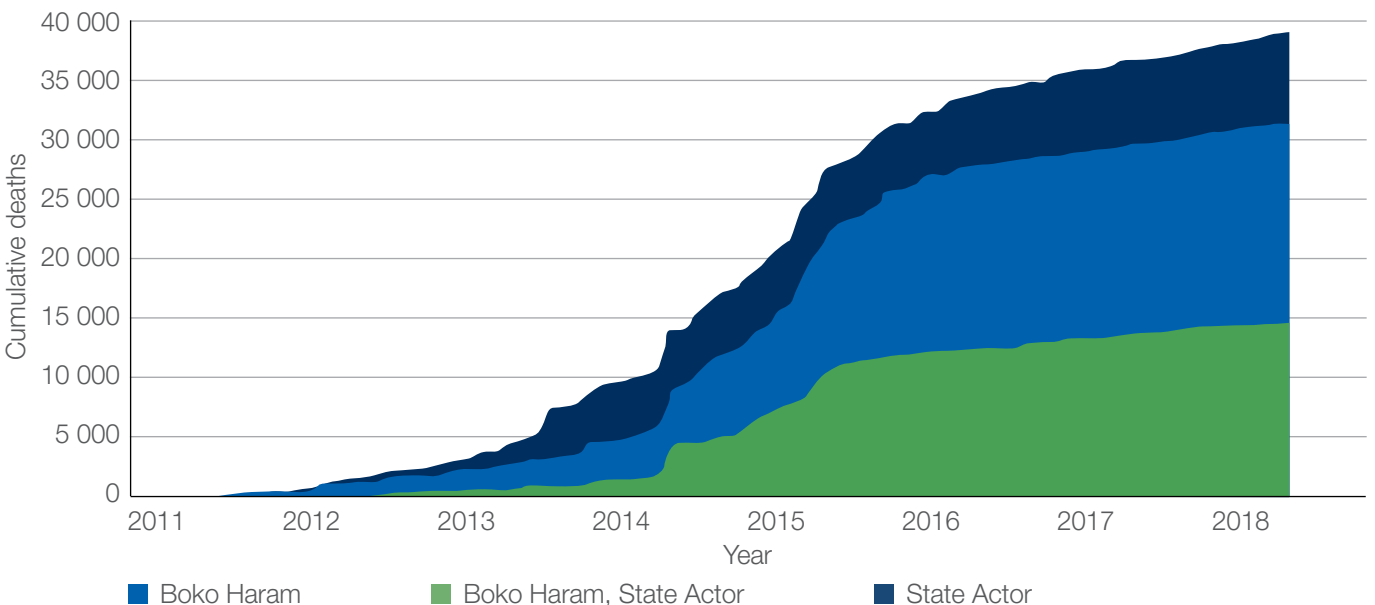
Figure 6: Number of deaths by perpetrator in Nigeria, 2011–2018

Date: May 2011 to March 2018

These graphs depict countrywide deaths broken down by perpetrator. To avoid double counting deaths, the Nigeria Security Tracker (NST) distinguishes between incidents in which one perpetrator is involved and in which more than one perpetrator is involved. As a result, deaths of Boko Haram and State Actors are combined for the category “Boko Haram, State Actor”, which corresponds to incidents where there was a clash.



This graph reflects the cumulative deaths over time attributed to a particular perpetrator.



Source: Council on Foreign Relations, Nigeria Security Tracker, 2018¹³²

Some members of the Nigerian military have also been accused of reneging on their responsibility to protect civilians during Boko Haram attacks.¹³³ Civilians interviewed by the Office of the UN High Commissioner for Human Rights (OHCHR) in 2015 described the Nigerian security forces as ‘dysfunctional, overstretched and ill-equipped, and therefore unable to mount an adequate defence, resulting in greater insecurity’.¹³⁴

While impunity for security officials who have committed human rights violations is reportedly widespread, there have also been various initiatives to hold violators to account:¹³⁵

- In 2016 a Nigerian Army human rights desk was established in response to ‘increasing interest of the local and international human rights bodies’.¹³⁶
- The Directorate of Civil-Military Affairs runs human rights workshops and sensitisation seminars on human rights abuses to raise awareness about the importance of protecting human rights during military operations.¹³⁷
- In March 2017 a Nigerian Army Special Board of Inquiry, established to investigate allegations of gross human rights violations, found that the Giwa Barracks military detention facility was ‘extremely overcrowded, with poor sanitation and insufficient ventilation, factors which resulted in detainees’ deaths’.¹³⁸ However, the inquiry exonerated senior military officers of any wrongdoing under international law.¹³⁹
- In August 2017 then acting president Yemi Osinbajo established a seven-person judicial panel to investigate the military’s compliance with Nigeria’s international human rights obligations in response to allegations of war crimes committed by the military in the context of CT operations.¹⁴⁰ Progress in these investigations is unknown.¹⁴¹

The Nigerian Police Force and the Department of State Services, both of which have some CT responsibilities, have been accused of corruption, human rights abuses and the apprehension, illegal detention, torture and extrajudicial execution of suspects.¹⁴²

The Nigerian criminal justice system is reportedly beset by corruption, long delays in the finalisation of cases, a shortage of judges and a lack of independence.¹⁴³ Human

rights organisations allege that terror suspects detained by the military are routinely denied their rights to lawyers, due process and appearance before a judicial authority.¹⁴⁴

Although thousands have been arrested on terrorism-related charges over the last decade, investigation into and prosecution of these suspects is slow.¹⁴⁵ The ONSA reports that of those suspects who have been prosecuted, few convictions have been secured.¹⁴⁶ In September 2017 a mass trial of Boko Haram suspects resulted in the conviction of 50 defendants, who were sentenced to various terms of imprisonment, while 468 suspects were discharged.¹⁴⁷ In February 2018, 205 additional suspects were convicted on terrorism-related charges and sentenced, while 526 people were released for rehabilitation.¹⁴⁸

The conditions in which terror suspects are imprisoned are reportedly dire.¹⁴⁹ In 2017 thousands of men, women and children were reportedly detained in horrendous conditions in military detention facilities across the country, which are subject to little or no civilian oversight.¹⁵⁰

Nigeria has adopted a militaristic approach to countering terrorism

The OHCHR reported in 2015 that five Boko Haram suspects were dying every day of ill treatment and poor conditions in cells.¹⁵¹ In April 2017 Giwa Barracks in Maiduguri was holding ‘more than 4 900 people in overcrowded cells [where] disease, dehydration and starvation were rife’.¹⁵² At least 200 children, some as young as four, were detained in a children’s cell that was overcrowded, dirty and infested with germs.¹⁵³

Challenges in shifting the CT focus in West Africa

Despite policy commitments and some attempts to implement a criminal justice response to terrorism, there are a number of challenges in shifting away from a securitised approach in West Africa.

Weak adherence to the rule of law

The Rule of Law Index, which measures rule of law in practice, ranks sub-Saharan Africa as the second worst performing region in the world.¹⁵⁴ The 2017 Ibrahim Index of African Governance finds that while a decade of decline in safety and rule of law in Africa has slowed in recent years, a

decline in national security keeps safety and the rule of law on a downward trajectory.¹⁵⁵ The Mo Ibrahim Foundation reports that ‘worsening trends in government involvement in armed conflicts and cross-border tensions’ are exacerbated by the growing security threat of terrorism.¹⁵⁶

The reality for many countries in West Africa is that adherence to the rule of law is still a major challenge. This can be attributed to constitutional fault lines, weak state institutions, corruption, outdated legislation and lack of capacity to enforce the law, challenges in exercising authority over territory within their borders, the role of the military in the governance process, and the impact of ethnic relationships and religious affiliations on political actors.¹⁵⁷ All these challenges are interconnected with the threat of terrorism and the responses to terrorism that states choose to adopt.

Although much work has already gone into building the rule of law in many countries in West Africa, renewed efforts are needed in the face of the growing threat and destructive impact of terrorism.

While judicial and legal reforms often play second fiddle to security sector reform, with donors in a rush for quick, visible and measurable results, it is long-term criminal justice system reform that will safeguard the rule of law.¹⁵⁸ The International Development Law Organisation states emphatically that

[b]uilding the rule of law takes vision, time and money. But it is the soundest investment there is. The more governments and the international community are willing to invest in it, the less they will have to scramble to address humanitarian emergencies.¹⁵⁹

CT legislation and states of emergency

The Special Rapporteur warns that while terrorism may trigger the conditions necessary to declare a state of emergency, states should not automatically turn to a state of emergency to regulate terrorism. Not only could this result in more harm than good, but as the duration of the emergency lengthens it may become harder ‘to seal off that part of security, intelligence, and policing systems that operate in one way under counter-terrorism legislation from the ordinary criminal justice system’.¹⁶⁰

For example, troops deployed to enforce a state of emergency in Nigeria in 2013 reportedly ‘engaged in the indiscriminate arrest, detention, torture, and extra-judicial

killings of those suspected to be supporters or members of the Islamist group’.¹⁶¹ Yet they failed to curb the atrocities perpetrated by Boko Haram or to sufficiently protect civilians.

The state of emergency in Niger’s Diffa region, accompanied by restrictive measures, has been extended multiple times and research shows that this may risk pushing young Nigeriens into the arms of Boko Haram.¹⁶²

Countries in West Africa that declare states of emergency in response to specific terrorism threats must therefore ensure that robust and independent judicial oversight is maintained while the state of emergency is in force, and that stated deadlines to end emergencies are met.

In line with their commitments to global CT legal and policy frameworks, all the countries discussed in this report either have enacted specific anti-terrorism legislation or have amended their criminal codes to include crimes of terrorism. Although essential to a criminal justice response to terrorism, CT legislation can also have a negative impact on human rights and, ironically, the rule of law if not drafted with these principles front and centre.

Adherence to the rule of law is still a major challenge for many countries in West Africa

For example, Côte d’Ivoire and Burkina Faso have expanded the powers of law enforcement and intelligence agencies in terrorism cases. This can result in the infringement of citizens’ human rights if not conducted with strict judicial oversight, and these powers risk being absorbed into the ordinary legal framework if not reviewed regularly for relevance.

The extension of pre-charge detention periods for terrorism suspects in Burkina Faso and Niger, and the suspension of some rights of pre-charge detainees in Nigeria, is cause for concern. Lengthening periods of pre-charge detention increases the risk that detainees’ rights will be violated, including subjecting detainees to torture or other forms of ill-treatment in order to extract information or ‘confessions’.

The Special Rapporteur urges states to periodically review their CT legislation in a robust and meaningful way in order to assess whether such legislation’s effect on

human rights is necessary and proportionate.¹⁶³ Laws, or clauses within laws, that threaten human rights protections or are no longer relevant to the local context should be amended or repealed. That CT takes place within the rule of law should be a fundamental feature of long-term criminal justice reform in West Africa.

Fragile criminal justice systems

If the criminal justice system is to give practical effect to the rule of law, the institutions, actors and agencies of the criminal justice system need to be strong and effective. Currently, however, the criminal justice systems of West Africa are struggling with multiple challenges and in many instances are unable to cope with their mandates for 'ordinary' crime, let alone the complexity of terrorist crimes. The AU Peace and Security Council acknowledged this in January 2018, stating that the criminal justice response to terrorism in Africa remained weak, hampered by

persistent capacity constraints facing law enforcement agencies and the courts to successfully investigate and prosecute terrorism cases, as well as rehabilitate and reform convicted perpetrators, [with] courts in many states ... overwhelmed and unable to deal with the load of persons disengaged from terrorist groups in a timely and effective manner.¹⁶⁴

All the countries discussed in this report have systemic problems in their ordinary law enforcement and judicial systems, including endemic corruption; a range of human rights violations committed by law enforcement agencies; weak oversight and accountability mechanisms; impunity for officials who have committed violations; lack of resources (human and monetary); political interference; uneven or limited access to justice; and a lack of adherence to existing laws and procedures.

These challenges are worsened by terrorism in two ways: ongoing violence focuses the state's resources on a security and military response to terrorism; and terrorist attacks destroy infrastructure (including courts) and/or disrupt basic judicial services in certain areas, contributing to the difficulties in delivering a criminal justice response.¹⁶⁵

The dilemma of specialised responses

Global good practice recommends that states develop specialised CT units and actors to deal with crimes of terrorism within the criminal justice system.¹⁶⁶ Each country

discussed in this report has specialised law enforcement units to deal with terrorism. Burkina Faso, Mali and Niger also have specialised court systems to process terror suspects and have made an effort to equip law enforcement agencies and the judiciary with the skills and experience necessary to handle terrorism cases.

Burkina Faso, Mali and Niger also have specialised court systems to process terror suspects

However, in countries where the ordinary criminal justice system is struggling with multiple challenges, caution needs to be exercised when pursuing specialisation. The Eminent Jurists warn that consistent disrespect for the ordinary criminal justice system creates a vicious circle and point to three potentially problematic areas:

- A weakening of the expertise of, and respect due, ordinary civilian judges, as important cases are taken from them and tried outside the normal judicial system.
- An erosion of the professional and independent role of lawyers, as they are increasingly treated as allies (or enemies) of the state in its fight against terrorism.
- A loss of normal investigative skills as law enforcement officials become reliant on coercive methods or exceptional powers to secure arrests.¹⁶⁷

Specialisation is a resource-intensive exercise requiring the development of a wide range of expertise, functions and infrastructure.¹⁶⁸ In the long term, this diverts vital resources away from reforming the criminal justice system as a whole. Evidence from Mali suggests that despite its having access to resources that are 'vastly greater than those of ordinary courts' and being staffed with 'administrators of justice [who] have received specialised training in investigative techniques and the laws applicable to the unit's mandate',¹⁶⁹ the Specialised Judicial Unit is still struggling to process its backlog of terrorism cases.

Thus, while capacitating local CT security agents and judicial officers with the technical knowledge and tools necessary to handle complex terrorism-related investigations and prosecutions is valuable and necessary, these should not be developed and implemented at the expense of the ordinary criminal justice system.

Rather than creating a ‘parallel’ criminal justice system that has its own set of challenges – not least because it is premised on and resourced from an existing system beset by structural deficiencies – the more sustainable approach would be to improve the quality of core policing and justice institutions, actors and practices.¹⁷⁰ Such an approach would also address the conditions conducive to violent extremism.

Towards a criminal justice approach

The dilemma for countries in West Africa is that comprehensive criminal justice system reform is a lengthy, technical and expensive process that requires sustained political will. At the same time the need to stem terrorism-related violence and investigate, arrest and process terror suspects is immediate and urgent.

If a rule of law and human rights-based approach to CT, implemented through the criminal justice system, seems impractical and impossibly idealistic for governments in these contexts, they will persist with a military approach underpinned by extraordinary regulations and already supported by international funding. It is necessary, therefore, to balance the ideal with the pragmatic in crafting long-term and sustainable solutions to the challenge of terrorism in the region.

Comprehensive criminal justice system reform is a lengthy, technical and expensive process

The most practical way of doing this is by establishing an approach that recognises the tripartite linkages between CT objectives, the rule of law and human rights, and the wider development agenda. This is particularly important considering that the problems caused by ill-conceived CT approaches – human rights violations, an undermining of the rule of law and good governance, the marginalisation of minority groups, and ethnic or religious discrimination – are the same conditions conducive to the rise and spread of violent extremism and terrorism.

This vicious cycle cannot be resolved or prevented solely through military power and technical assistance to security forces. It requires a comprehensive approach that includes justice, governance and development in addition to security.¹⁷¹

Three processes need to be implemented in parallel to enable states to make the shift from securitised to criminal justice approaches to CT:

- Prioritising long-term criminal justice system reform that emphasises the protection of human rights within the rule of law: Many countries in West Africa already have criminal justice reform programmes in place – these must be strengthened to absorb the added pressures and complexities of terrorism crimes, including equipping ‘ordinary’ policing and justice institutions, actors and practices to handle terrorism suspects and crimes within rule of law and human rights frameworks.
- Capacitating certain actors and agencies within law enforcement and the judiciary with the skills and expertise needed to investigate, prosecute, adjudicate and punish complex terrorism crimes in the medium term: This requires dedicated funding and technical support from international partners and local organisations. The large number of terror suspects and returnees may, however, require additional capacity. Governments need to think creatively about options such as authorising and capacitating traditional and/or restorative justice mechanisms to process certain terrorism-related crimes, within carefully monitored rule of law parameters.
- In the short term, working to centralise and normalise the protection of human rights in current CT responses: Efforts must focus on investigating and bringing to justice terrorist and state perpetrators of human rights violations to tackle impunity, as well as on addressing the needs of victims. Existing civilian oversight bodies must be strengthened and empowered to hold agencies conducting CT operations to account. In addition, any extraordinary or exceptional powers that already exist should be limited in scope and term so that they are not unintentionally absorbed into the ordinary legislative landscape and practised indefinitely.

An emphasis on capacitating the country’s criminal justice system to deliver ‘credible, fair, independent, transparent, decentralized, competent ... accessible’¹⁷² justice to all is crucial to ensure social justice, stability, sustainable peace and development in countries actively combatting or resisting the encroachment of terrorism.

Conclusion

International law and global policy position CT firmly within a rule of law and human rights framework. By focussing on securitised responses to terrorism, countries in West Africa risk undermining the rule of law, human rights protections and progress towards their long-term development agendas. They could also exacerbate the very threat they are trying to mitigate and jeopardise prospects of sustainable peace.

Lessons learned over the last two decades have consistently pointed to the dangers of a primarily securitised response to terrorism, while emphasising the need to prioritise the rule of law and protection for human rights within any approach to countering terrorism.

The most practical way of doing this is through a strong criminal justice system that can handle ordinary crimes as well as complex terrorism cases, working both to prevent terrorist attacks (through tackling terrorist networks and conducting proactive intelligence investigations) and to deter terrorist groups (through effective investigation and prosecution, as well as conviction and detention where appropriate). Such an approach is ‘the best possible protection for society against terrorism’¹⁷³ and integrates the twin agendas of providing national security and enhancing the development agenda in fragile states.

Recommendations

Each unique country context requires specific, detailed recommendations developed after collaboration with multiple local and international actors and institutions at multiple levels, which is beyond the scope of this report.

There are, however, broad recommendations for what needs to be taken into consideration if such a shift is to be successful and sustainable.

- No single approach, actor or institution can respond effectively and comprehensively to the complexity of terrorism:
 - CT responses (including P/CVE programming) need to be aligned and independently coordinated across sectors and stakeholders.
 - Regular and robust reviews of CT response systems and networks need to be instituted, with strong monitoring and evaluation frameworks, preferably implemented from a central oversight body.

- Institutional barriers to a criminal justice response to terrorism – most notably the political imperative towards securitised responses (encouraged by selective international funding) – need to be overcome through advocacy and pressure from both the international community and domestic stakeholders, organisations and institutions.
- A context-sensitive approach is required to capacitate the criminal justice system to respond effectively to terrorism – one informed by local knowledge of existing capacities, that identifies ‘opportunities, drivers of change, incentives, spoilers, and constraints in the capacity-development process’,¹⁷⁴ and takes into consideration the broader CT environment (including international and national organisations, agencies and actors).
- The recommendation above entails maximising the input, participation and leadership of both those within the criminal justice system and those in other sectors with a stake in responding to terrorism. This requires inclusive coalitions of support between ‘strategically selected actors from civil society, cultural and religious institutions, academia, and government to lend legitimacy, insight, and local leadership’ to the reform and capacity-building process.¹⁷⁵ It also requires local ownership at the community level, with the people who are the end users and recipients of justice on the ground.
- Any criminal justice system intervention needs to recognise the limits of specialised technical assistance and ad-hoc training within dysfunctional or weak criminal justice systems. Overall institutional capacity rooted in rule of law principles should form the basis for developing and deploying specialised skills in practice: ‘[C]ore criminal justice capacity forms the primary pillar of good governance and the rule of law ... and is a fundamental requirement for the more specialized purpose of counterterrorism.’¹⁷⁶ It is crucial that adequate incentives for law enforcement and judicial officers need to accompany resulting changes in behaviours and attitudes. Similarly, criminal justice system officials who commit human rights violations in any way, shape or form must be held accountable and punished accordingly.

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About the author

Romi Sigsworth is a research consultant with the Transnational Threats and International Crimes division of the ISS. Prior to this she was the gender specialist at the ISS and a senior researcher at the Centre for the Study of Violence and Reconciliation. She has an MSt in Women's Studies from Oxford University.

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