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African Commitments to Combating Crime and Terrorism: A review of eight NEPAD countries

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Introduction

This report is a summary of the findings of a study of positions taken and measures adopted to combat organised crime and terrorism in eight countries, namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda. The measures are based on commitments that have been made by African countries in respect of human security, at various stages. Its point of departure is that if certain laws and practices derived from these commitments are put in place and implemented, this would greatly enhance human security on the African continent. Both this paper and the longer monograph upon which it is based are available at www.africanreview.org.

The selection of commitments with a bearing on organised crime has been determined by the lowest common denominator, in the sense that the selected commitments are those to which all the countries have signed up. In addition, the review took into account that commitments relevant to organised crime fall within a broad spectrum. They include commitments whose implementation cannot be measured in the short to medium term and others that can be implemented within such time frames. Long-term commitments are largely proactive aspirations, while the shorter-term commitments take the form of reactive measures. In assessing implementation, only the reactive measures were taken into account. Time and resource constraints dictated the chosen approach.

In essence, three forms of organised crime are covered, namely (1) drug trafficking, (2) corruption, and (3) money laundering. The latter two spheres of activity are broad enough to embrace other forms of organised crime. Thus motor vehicle theft, armed robbery and narcotics trafficking are perceived to be predicate activities for the laundering of illicit funds. The same goes for trafficking in endangered resources and arms. Smuggling is often a cause or beneficiary of corruption and usually yields assets that have to be laundered. The huge profits that are generated by organised crime provide an incentive

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THE AFRICAN HUMAN SECURITY INITIATIVE (AHSI)

AHSI is a network of seven African Non-Governmental research organisations that have come together to measure the performance of key African governments in promoting human security. The project is inspired by a wish to contribute to the ambitions of the New Economic Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). Whereas the APRM process has defined a comprehensive set of objectives, standards, criteria and indicators that cover four broad areas, AHSI only engages with one of the four, namely issues of political governance in so far as these relate to human security. Within this area, each AHSI partner has identified a set of key commitments that African leaders have entered into at the level of OAU/AU heads of states meetings and summits. A "shadow review" of how these commitments have been implemented in practice has then been conducted. Eight countries have been chosen for review, namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda. All eight are members of NEPAD and have acceded to the APRM. While not constituting an exhaustive list of human security challenges in Africa, the AHSI Network selected the following seven clusters of commitments: human rights, democracy and governance; civil society engagement; small arms and light weapons; peacekeeping and conflict resolution; anti-corruption; and terrorism and organised crime. The AHSI partners are the South African Institute for International Affairs (SAIIA), the Institute for Human Rights and Development in Africa (IHRDA), the Southern Africa Human Rights Trust (SAHRIT), the West African Network for Peace (WANEP), the African Security Dialogue and Research (ASDR), the African Peace Forum (APFO) and the Institute for Security Studies (ISS).

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for corrupting politicians and public officials, as well as the means with which to achieve this.

Africa recorded 6,177 casualties from 296 acts of terrorism between 1990 and 2002, making it the continent with the second most casualties in the world, after Asia. It is important to note that these figures only reflect the number of international terrorist attacks on African soil. In addition to these incidents, many African countries have been plagued by periods of domestic terrorism, with devastating effects on human life, stability and development.

The concept of human security adopted by the African Human Security Initiative (AHSI) project includes overlapping systems of security from individual to international levels. At its core, the "referent object" of human security is the security of the individual in his or her personal surroundings and within the community. It follows that a human security approach dictates that measures against terrorism be aimed at protecting individuals and communities from terrorist acts, irrespective of the source or motivations of those attacks. Domestic terrorism is, therefore, included within the scope of this study as a threat to human security, to be taken as seriously as international terrorism. Although African states have reacted to international pressure and the mandatory requirements of the United Nations Security Council Resolution 1373 in the wake of the 9/11 attacks, it is to their citizens that their primary obligation lies.

The research

Apart from the direct threat posed to the lives and property of individuals, organised crime threatens human security by impacting on both the inclination and the capacity of state structures to provide security for their citizens. One of the fundamental characteristics of organised crime is its capacity to precipitate economic and social consequences that far outweigh the profits that accrue to those who commit it.[2] The clearest illustrations of this kind of cause-effect link tend to be drawn from drug and arms trafficking, but they are by no means the only instances. It is for this reason that organised crime is regarded as a threat to human security.[3] Organised crime is defined as serious crime that is motivated by financial or other material benefit, committed by a structured group of three or more persons, acting in concert and existing for a determinate period of time.

The definition of a "terrorist act" contained in the OAU Convention on the Prevention and Combating of Terrorism (1999) will be used as a frame of reference for the review. The Algiers Convention defines a "terrorist act" as:

a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

    i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
    ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
    iii) create general insurrection in a State.

b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

Article 3 of the Convention contains the controversial and seemingly contradictory proviso that:

    i) Notwithstanding the provisions of Article 1 (above-mentioned definition), the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.

2 G Stessens, *Money laundering: A new international law enforcement model,* Cambridge: Cambridge University Press, 2002, p 8–9.
3 Interpol money laundering threat assessment report for 2003.

ii) Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

This provision clearly acknowledges the African historical context in which liberation movements were labelled "terrorist organisations" by the colonial powers or white minority regimes (for example, the African National Congress, current ruling party of South Africa). While this definition may conceivably present a "loophole" to justify inaction against human rights violations committed in the name of "liberation" or "self-determination", it is unlikely to find application in Africa today. The focus of African leaders has instead been on developing the capacity to implement practical counter-terrorism measures, such as enhanced border control and surveillance, information-sharing and financial controls.

The review summarised in this report does not measure the implementation of anti-corruption commitments in general, as this was dealt with by another report in the same series.[4] However, commitments to detect, seize and confiscate the proceeds of corruption – in so far as this relates to money laundering – have been included. The commitments that have a bearing on organised crime can be found in the OAU Treaty Establishing the African Economic Community (1991), to a limited extent the AU Plan of Action for Drug Control in Africa 2002–2006 (2002), and the AU Convention on the Prevention and Combating of Corruption and Related Offences (2003).

African commitment to prevent and combat terrorism dates back to July 1992, when OAU heads of state and government adopted a Declaration against Extremism in Dakar. Despite visionary work done on the continent to prevent and combat terrorism, the OAU Convention on the Prevention and Combating of Terrorism, read with the "Plan of Action" of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, is the latest and most comprehensive instrument in Africa addressing terrorism and, therefore, forms the basis for this review. The following commitments relating to organised crime and terrorism were identified:

i) Commitment 1: To ratify and implement international anti-drug conventions;
ii) Commitment 2: To adopt legislative measures to detect, seize, confiscate and, in appropriate cases, repatriate the proceeds of corruption;
iii) Commitment 3: To waive bank secrecy in order to facilitate the use of financial records in tracking proceeds of corruption;
iv) Commitment 4: To make corruption and the laundering of the proceeds of corruption, extraditable offences, without requiring additional treaties;
v) Commitment 5: To improve international co-operation against organised crime and corruption;
vi) Commitment 6: To ratify international counter-terrorism instruments and domesticate their provisions;
vii) Commitment 7: To establish and enhance inter-agency co-operation at national level;
viii) Commitment 8: To strengthen surveillance and border control; and
ix) Commitment 9: To suppress the financing of terrorism.

Compliance with organised crime commitments is measured mainly through a survey of legislation and institutions in existence, as well as those proposed, at the time of the study. A detailed insight into capacity was obtained in most cases through interviews with officials from the public sector.

In assessing national implementation of the OAU Convention on the Prevention and Combating of Terrorism, a basic questionnaire was compiled covering all the primary areas of concern in a national, regional and international counter-terrorism strategy. This questionnaire also standardised the questions presented to authorities to make evaluation possible. This study, the first of its kind, was predominantly met with excitement, although some distrust in sharing information was encountered. This was a learning process for public officials and civil society alike, and the authors would like to thank all those who gave generously of their time and expertise.

Although all countries were evaluated on the same commitments and indicators, not all responded in the same manner. Six of the eight countries under review experienced, in one way or another, the impact

4 H Mupita and N Kututwa, *African commitments to eradicate corruption: A review of eight NEPAD countries*, AHSI, Pretoria, 2004.

of terrorism on state security, human suffering and economic consequences through the destruction of property or the prevention of and/or limitations on international investments.

Compliance levels: the findings

It is necessary to place the study of compliance with commitments in proper context. The study presents an overview of the challenges presented to the surveyed countries by drug trafficking, corruption and money laundering. Drug trafficking is the common thread running through all countries. There is a discernible connection between the advent of organised crime syndicates and the increase in the availability of narcotics generally, but particularly drugs other than cannabis. The experiences of Ghana, Nigeria and South Africa underscore this point. The funds that drug trafficking yields have to be disposed of in various ways. Some are used in the country in which they were generated, but others require to be transmitted across borders. Law enforcement and border control authorities may have to be evaded or corrupted to achieve this. The emergent pattern portrays a link between narcotics, corruption and the laundering of proceeds of crime.

Drug trafficking is the common thread running through all countries.

The study examined specific commitments in respect of drug trafficking and related money laundering, as well as commitments relating to the proceeds of corruption. It found that Algeria, Ethiopia, Ghana, Kenya, Senegal and Uganda regarded money laundering as a derivative offence connected to drug trafficking. In only two countries, Nigeria and South Africa, was money laundering considered to be an offence distinct from its predicate activities. The consequence is that, in these two countries, it is easier to cast the net of criminal responsibility beyond actual participants in drug trafficking to beneficiaries upstream or downstream who may be outside immediate criminal business circles.

The chronology of the adoption of the relevant international and regional instruments to combat money laundering indicates incremental legal evolution. The measures prescribed by international instruments such as the Vienna Convention to enhance access to financial information have gradually been extended beyond the sphere of narcotics offences to economic offences generally: corruption, money laundering and, more recently, the funding of terrorist activities. The scarcity of resources in the reviewed countries makes it imperative to develop carefully targeted responses. In the absence of information it is difficult to achieve this. To date, it is not known in what proportions proceeds of crime circulate internally within countries, as opposed to transmission abroad.

Transnational legal assistance mechanisms conventionally involve public sector agencies. Requests for co-operation involve public law enforcement bodies and diplomatic authorities. Key elements are financial intelligence units and asset forfeiture agencies. It appears that, to achieve the combination of measures required by the Convention for the detection, seizure and confiscation of the proceeds of corruption, countries are required to impose a new set of obligations on institutions in the private sector. Among the reviewed countries, South Africa and Nigeria come closest to the ideal situation in this respect. Ethiopia, Ghana and Kenya appear to have the furthest distance to travel to attain this position.

The study examined commitments the reviewed countries made to co-operate in combating drug trafficking, corruption, money laundering and organised crime in general, in terms of extradition and mutual legal assistance. In virtually every case, with the exception of Senegal and South Africa, extradition remains treaty, rather than offence, based. On the issue of mutual legal assistance, only Ghana and South Africa appear to take account of the offence involved rather than the existence of a treaty. Two of the eight states, Algeria and Ethiopia, will not extradite their nationals and, similarly, only Ghana and Ethiopia consider political grounds to constitute a mandatory basis for refusing to extradite fugitives.

In conclusion, it appears relatively easy to establish consensus of action in the key areas of drug trafficking. The response to corruption at a continental level, and specifically in the reviewed countries, is not as uniform. Mechanisms to control the laundering of the proceeds of organised crime in general are in their infancy in most of the reviewed countries. Progress in this area seems to be hindered by continued pre-occupation with autonomy and sovereignty. There is very little evidence that conventional barriers separating government departments from each other (e.g. the prosecution, the police, the central bank, the department of foreign affairs) are being removed. Banking secrecy is still an area of concern, but it is by no means the only one. In a sense, banking

secrecy brings into sharp relief the potential barrier that sovereignty still constitutes to inter-state co-operation.

The fact that much still needs to be done in fostering prudential regulation and management of the variety of avenues through which illicit assets may circulate in legitimate economies is easier to appreciate, in view of the short history of measures to track down and confiscate proceeds of crime.

Organised crime commitments

At the core of the commitment to adopt a common position in respect of drug trafficking is the resolve to ratify the relevant international instruments against such trafficking, in particular the UN Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, commonly called the Vienna Convention of 1988. All the countries reviewed were found to have complied with the commitment to ratify the Convention. They had all implemented the Convention, to the extent that it required that drug trafficking be criminalised. In addition, all countries have criminalised the laundering of proceeds of drug trafficking. As observed above, six countries consider money laundering to be a contingent offence to drug trafficking, and only two countries, Nigeria and South Africa, treat money laundering as a wider offence, distinct from the predicate activities from which the money is derived. The latter approach seems to be more consistent with the spirit of the Vienna Convention. Countries that have yet to criminalise money laundering generally therefore fall short of the prescription of the Convention. It is encouraging to note that, at the time of writing, bills to extend the money laundering offence were under consideration in Algeria and Ethiopia. In Kenya the bill had been under discussion for more than a year,[5] while Uganda was also considering similar legislation.

In addition to criminalisation, and perhaps in support of it, full compliance with the Convention requires the introduction of measures to allow access to financial information on the proceeds of drug trafficking. In this regard, there is an overlap between the commitments on drug trafficking and on corruption. In recent years, counter-terrorism international law has also paid particular attention to this aspect.

Banking secrecy refers to a bank's protection of information about the personal property of its clients, usually assets and investments held by the bank, from anyone not authorised by the beneficiary to gain access to it, including the state.

Compliance with the commitment to waive bank secrecy was found to be uneven, in that while the law authorised access to financial records in Algeria, Ethiopia, Nigeria and South Africa, no access was available in Ghana, Kenya, Senegal and Uganda. The toughest position is adopted in Nigeria, where the police or the Economic and Financial Crimes Commission have concurrent powers of access. The penal code in Ethiopia was updated to facilitate access. The Financial Intelligence Centre (FIC) in South Africa is not dedicated to narcotics trafficking as such, but it is the central institution to which financial information that could indicate evidence of trafficking is referred by a broad range of accountable institutions. The FIC is required to refer reports, and the information on which they are based, to law enforcement agencies. The FIC is a member of the Egmont Group of financial intelligence units.[6] It may also co-operate with equivalent or counterpart institutions in other countries, to share experience on trends.

Compliance with the fourth and fifth commitments listed above depends on the content and scope of the laws on mutual assistance in criminal matters, on extradition, and on the existing capacity of relevant institutions. Both the Vienna Convention (on drugs) and the AU Corruption Convention require member states' commitment to the observance of drug trafficking and corruption as special offences for the purposes of extradition. The commitments relating to drug trafficking and corruption are treated simultaneously in this paper.

Extradition and mutual legal assistance tend to be regulated either by treaties or through the "soft-law" of transnational economic blocs and communities. Sub-regional organisations also play an important role through conventions and protocols applicable among member states. It is important to point out that the states under review do not form a single

5 The latest occasion when the Bill came up for discussion was during the final weekend in March 2004.
6 At the time of writing the Egmont Group had a membership of 31.

sub-regional legal or geographical entity. Each, however, belongs to a recognised grouping. In some cases, several states constitute part of a larger sub-regional community that is relevant to this review. In the case of Ethiopia, Kenya and Uganda, it is the Inter-Governmental Authority on Development (IGAD); and Ghana, Nigeria and Senegal belong to the Economic Community of West African States (ECOWAS). A comprehensive survey of progress attained by states that form part of these larger constituencies of the African continent should go beyond local laws to take account of sub-regional arrangements, in the form of treaties, conventions and protocols.

The study noted that half of the reviewed states, namely Ghana, Kenya, Nigeria and South Africa (as members of the Commonwealth) are bound by Commonwealth "soft-law". In respect of extradition, the London Scheme binds Commonwealth states to Extradition within the Commonwealth. After the amendments agreed on at Kingston, Jamaica, in November 2002, the London Scheme defines an extraditable offence as "an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty." The London Scheme incorporates a streamlined process for the apprehension of fugitives from justice at the instance of the requesting state (on the issue of a warrant of arrest), appearance before a competent judicial authority in the requested state, and extradition. It also renders Interpol notices, in respect of fugitives, valid for the issue of warrants of arrest (albeit provisional) by authorities of the state of abode of the fugitive.

The Harare Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth is fairly well established, and has influenced the pace and thrust of legislative developments in the four specified states. The opening words of the Scheme proclaim its purpose to be "to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters." It is in addition to any existing or future arrangements on the subject. The forms of assistance envisaged by the Harare Scheme are set out in paragraph 1(3) to include:

a) identifying and locating persons;
b) serving documents;
c) examining witnesses;
d) search and seizure;
e) obtaining evidence;
f) facilitating the personal appearance of witnesses;
g) effecting a temporary transfer of persons in custody to appear as witnesses;
h) obtaining production of judicial or official records; and
i) tracing, seizing and confiscating the proceeds or instrumentalities of crime.

The scope of the Scheme compares favourably with what the Vienna Convention advocates. As implied in paragraph 1(1), the procedures enunciated in the Harare Scheme should supplement other mechanisms for mutual legal assistance, and not stifle them.

Police agencies in all the states under review have acquired some experience of joint operations and collaborative work. Formal arrangements for combating organised crime exist in Southern Africa, through the Southern Africa Regional Police Chiefs Co-operation Organisation (SARPCCO) and in East Africa through the East Africa Police Chiefs Co-operation Organisation (EAPCCO). Among the reviewed states, the following would be involved:

- South Africa (SARPCCO); and
- Ethiopia, Kenya, Uganda (EAPCCO).

Member police agencies of EAPCCO entered into an agreement for co-operation and mutual assistance in combating crime, which goes further than both the Convention and the Harare Scheme. It mentions the specific areas in which police agencies pledge to co-operate, as:

a) the exchange of crime-related information on a regular basis;
b) the planning, co-ordination and execution of joint operations, including under-cover operations;
c) co-operation in respect of border control and crime prevention in border areas as well as in respect of follow-up operations;
d) the controlled delivery of illegal substances or any other objects; and
e) technical assistance and expertise where the same are required.

Apart from Ethiopia, Kenya and Uganda, EAPCCO includes the police agencies of Burundi, Djibouti, Eritrea, Rwanda, the Seychelles, the Sudan and Tanzania.

It was found that compliance with the commitment to make corruption and the laundering of the proceeds of corruption extraditable offences, without requiring additional treaties, was marginal. In virtually every case, with the exception of Senegal and South Africa,

extradition remains treaty, rather than offence based. No specific recognition has been accorded to the fact that the organised crimes discussed in this review, namely drug trafficking, corruption and money laundering, warrant special treatment. On the issue of mutual legal assistance, only Ghana and South Africa appear to take account of the offence involved rather than the existence of a treaty. Two of the eight states, Algeria and Ethiopia, will not extradite their nationals and, similarly, only Ghana and Ethiopia consider political grounds to constitute a mandatory basis for refusing to extradite fugitives. These weaknesses tended to negate the prospects for improving international co-operation against organised crime and corruption in the short term.

The commitment to ratify international instruments and incorporate into domestic legislation

All of the eight countries have demonstrated the political will and commitment to prevent and combat terrorism by becoming parties to international and regional counter-terrorism conventions and instruments. In general, the changed international context after 9/11 had a remarkable impact on the commitment of countries to become parties to international and regional counter-terrorism conventions. Four of the six countries that are parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which came into effect in 1973, did so after 9/11. Similarly, all seven countries that have ratified the International Convention for the Suppression of Terrorist Bombings (1997) did so after 9/11. All six countries that are currently parties to the International Convention for the Suppression of the Financing of Terrorism, 1999, ratified the Convention after 9/11. With respect to regional counter-terrorism initiatives, seven of the eight countries under review ratified the Algiers Convention after 9/11.

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However, the adoption of national legislation to address terrorism specifically is evidently a more difficult, lengthy and controversial process, as each country struggles to define terrorism and to reconcile counter-terrorist measures with their commitment to uphold human rights, freedom of association, the presumption of innocence and the right to a fair trial. In addition, the necessary legislative framework is only the first step in enabling security forces to prevent and prosecute individuals suspected to be involved in terror-related activities. Whether the countries have the training, technical capacity and resources to enforce their political commitments remains to be seen.

The commitment to establish and enhance inter-agency co-operation at national level

Counter-terrorism strategies are a specialised field that requires dedicated resources and structures. In establishing such structures, co-ordination and the exchange of information and experience are important. All countries, including those under review, face resource constraints. Effective counter-terrorism initiatives are built on the timely and regular exchange of information between national intelligence and security agencies, as well as between countries, either bilaterally or through regional or international structures. The aftermath of 9/11 again reminded the international community to focus their attention on their respective intelligence structures and to place renewed emphasis on inter- and intra-state co-operation. In doing so, most countries that had not already experienced national security challenges established counter-terrorism centres or units. The primary aim was to inform all role-players of counter-terrorism activities, including intelligence gathering operations, collation and analysis of terrorism-related information received and new trends and threats that require attention. Realising that terrorism could not be addressed in isolation, security/intelligence agencies are also required to focus their attention on other forms of transnational criminal activities that might be related to terrorism, especially money laundering, drug trafficking, trafficking in illegal firearms and syndicates that focus on the forgery of documents or identity fraud.

Algeria stands out as the country most concerned about the threat of terrorism.

However, research concluded that countries that have directly experienced the impact of terrorism, whether domestic or international, proved to be better equipped to deal with terrorism through specialised intelligence gathering and co-ordination structures. All of the countries, especially after 9/11, have implemented additional intelligence gathering and crime prevention measures to ensure that suspected terrorists do not have easy access to their territories. As could be expected, countries that have previously experienced terrorism, namely Algeria, Uganda, Kenya, Ethiopia and South Africa, already had established structures to co-ordinate the activities of their security agencies. Algeria stands out as the country most concerned about the threat of terrorism.

The commitment to strengthen surveillance and border control

Protecting identity documents against forgery

A national register is not only necessary for a country to keep a record of its population, it is also essential for the implementation of counter-terrorism measures. The question is not only whether the countries under review all have identity documentation systems, but also whether these systems are safe against forgery. Six of the eight countries under review have existing national identity documents, namely Algeria, Ethiopia, Kenya, Nigeria, Senegal and South Africa. In addition to the standard application form, photographs and fingerprints, the six countries adopted additional security measures and format in which their documents are presented.

Preventing falsification of travel documents

In terms of the AU Plan of Action, member states are required to issue machine-readable travel documents that contain security features to protect them against forgery. All the countries under review issue passports. As with the application for an identity document, the applicant submits a formal application form, fingerprints, photographs and identity documents or birth certificates as proof of citizenship.

Preventing misuse of asylum

All the countries under review have specific legislation to protect their respective territories against unauthorised entry. In addition, most of the countries under review, with the exceptions of Algeria and South Africa, identified the central role of the UNHCR in the registration and monitoring of refugee-related activities. According to the UNHCR Handbook for Registration, the registration of refugees and asylum-seekers remains the responsibility of individual states. The UNHCR assumes an operational role for registration only if needed. In these cases the role is assumed jointly with the authorities of the host country, and the capacity of the host country is developed to enable it to take on the responsibility at a later stage. In the interim, the UNHCR provides governments with necessary material, financial, technical and human resource support.

It is clear that the countries under review have already implemented or are in the process of implementing the required instruments to prevent their territories from being used to allow entry, harbouring or providing travel documents to suspected terrorists. Despite these formal, structural and legislative measures, most countries in Africa are faced with the problem of long borders that are almost impossible to monitor. Identified as a matter of concern are the limited structures in place for computerising all points of entry in order to monitor the arrival and departure of all individuals as a pre-requirement to keeping a passport stop-list containing information about individuals whose applications would require special attention or who may not be issued with travel documents. Sophisticated measures to prevent the illegal manufacturing of passports also proved to be insufficient if the country is plagued by corruption.

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The commitment to suppress the financing of terrorism

The countries under review are at different stages of development and implementation of legislation intended to prevent and criminalise the financing of terrorism. Cutting off the financial source of terrorist operations makes strategic sense in an international strategy to counter and prevent terrorism. This tactic might prove to be less effective against “domestic” groups that do not require extensive financial resources

to carry out their activities. National initiatives to counter the financing of terrorism are still relatively new, making them difficult to assess, considering the lack of resources, training and experience. Although ground-breaking work has commenced in the countries under review, additional work is still required in implementation – especially to:

1) verify customer identity –
   with the exception of Uganda (as a result of technical difficulties), all countries require individuals and other entities to present the required identification before an account can be opened. The verification of customer identity in day-to-day transactions is, however, a different matter (especially in a cyber world), placing emphasis on reliable report mechanisms to identify suspicious transactions; and
2) report suspicious transactions and provide records to authorities.

Both require an established link of communication between financial institutions and authorities that possess the knowledge and technical support to analyse and interpret an overwhelming amount of data aimed at identifying possible financial links between individuals and groups associated with terrorism.

Conclusion

It could be said that while it has been relatively easier to establish consensus in respect of drug trafficking, the same has not been the case for corruption and money laundering. The response to corruption at a continental level, and specifically in the reviewed countries, is not uniform. On a positive note, there is an evolving convergence of revulsion to corruption. Progress has been achieved through the adoption of protocols at sub-regional levels. The United Nations Convention Against Corruption, adopted in Mexico in 2003, has received acclaim and been signed by the reviewed countries. Deficiencies persist in the practical implementation of commitments through legislative and institutional innovation. In this regard, the enactment of the Prevention and Combating of Corrupt Activities Act (2003) in South Africa is a positive development.

Mechanisms to control the laundering of the proceeds of organised crime in general are in their infancy in most of the reviewed countries. Progress in this area seems to be hindered by continued preoccupation with autonomy and sovereignty. The international conventions on drugs and corruption underline the importance of restructuring the manner of co-operation within law enforcement systems, between them and financial sectors, and between different countries. There is very little evidence that conventional barriers separating government departments from each other (e.g. the prosecution, the police, the central bank, the department of foreign affairs) are being removed.

Although all the countries under review have committed themselves to the Algiers Convention on the Prevention and Combating of Terrorism, the degree to which terrorism poses a threat to human security in the different countries varies considerably. The terrorist threat to Africa is aggravated by the continent's dire hardships as a result of war, hunger and poverty. Africa's weak states offer sanctuary and succour to terrorist movements. The absence of effective local authority not only allows the use of African territories by external agents, but also permits the activities of paramilitaries in terrorising the local populations. Widespread conditions of conflict and poverty create a breeding ground for feelings of alienation, offering recruits to the cause of terrorist groups. Africa is the kind of environment where frustration and radicalism could thrive: a large number of weak and failing states, porous borders, widespread poverty, political repression and a recent history of liberation movements, where the distinction between legitimate and illegitimate forms of political dissent has been blurred.

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The dilemma for Africa is the need to act against terrorism as a national security risk without destroying the often tenuous rule of law that exists in many of our constituent states. There is a need to ensure that those legal tools do not undermine values that are fundamental to a democratic society – liberty, the rule of law, and the principles of fundamental justice – values that lie at the heart of the international and African constitutional orders. In cases where terrorist acts are characteristic of essentially local conflicts, experience suggests that

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security measures alone will not end the violence and that some form of political accommodation and settlement will be equally required.

In addition to the reality that terrorism presents a direct and indirect threat to international, regional, national and human security, international and regional bodies, with the assistance of civil society, also have an additional responsibility. This includes preventing draconian counter-terrorism policies and legislation from provoking and legitimising terrorism. In all political systems, whether liberal democracies or totalitarian regimes, force, coercion and repression are double-edged swords. The prevailing challenge to all governments will, therefore, be to balance the protection of state security with the equally vital safeguarding of basic human rights. In addition to this, the protection of the right to free association and speech reflected in the legitimate dissent that preceded the formation of organisations, whether influenced by ideology, religion or culture, is of prime importance. Governments need to be able to distinguish between political opposition and terrorism as a criminal act to be dealt with in a criminal court.

Excessive counter-terrorism legislation and initiatives in themselves directly threaten democracy, particularly as they often criminalise and punish legitimate dissent that might have the following two consequences: one, forcing individuals and organisations still within the framework of legitimate dissent to resort to illegitimate violence (including terrorism) and two, limiting the development of a healthy political system that allows political opposition. In other words, the challenge to governments and security forces is not to gather information in the name of counter-intelligence operations only to protect the political order of the day; they should rather focus on the primary role of intelligence and security agencies, which is to gather information on all activities that undermine human security.

What is self-evident is that without a functioning, nationally recognised central government, failed and weak African states provide a safe haven for domestic and international terrorism alike. No military operation can make these countries safe if it is not linked with a process ultimately aimed at reconciliation and the reconstruction of a functioning state with a government in control of its territory, including its land, sea and aerial borders. Above all, strong engagement to bring internal peace and to reconstruct failed, weak and undemocratic states is the strategic challenge facing Africa and the international community. Civil society has a responsibility to assist our governments and their security forces to implement these initiatives. Information-sharing can be a proactive strategy in building trust between governments, their security forces and their citizens.

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