Good talk, not enough action
The AU's counter-terrorism architecture, and why it matters

Simon Allison

Recommendations

To effectively combat terrorism, states should:

1 Ratify all international, continental and regional counter-terrorism instruments and associated regimes.

2 Review national legislation and implement practical measures, such as heightened border security and intelligence sharing with other states.

3 Use the African Model Anti-Terrorism Law as a blueprint for specific national legislation.

To lead the fight against terror on the continent, the African Union should:

4 Augment the capacity of the African Centre for the Study and Research on Terrorism, to become a one-stop shop for research, information and advice.

5 Strengthen the role of the PSC. It needs more financial and human resources to be more effective.

6 Encourage member states to ratify the relevant legal instruments and enact domestic legislation accordingly, and encourage RECs to do the same.

Summary

Africa has a long history of terrorism, but it has only recently begun to acknowledge the problem and treat it as a threat that transcends borders. Despite the slow start, the African Union (AU) has implemented a fairly progressive counter-terrorism framework, pushing states to coordinate their responses in order to close loopholes and shut down potential safe havens. This framework has limitations, however, especially in terms of implementation. Some states have been reluctant to adopt the continental policy, as shown by the poor ratification of key legal instruments and the slow adoption of the model law. A lack of resources prevents the purpose-built terrorism research centre from operating at full capacity, and there is still no functioning continental court. The AU should encourage states to meet their obligations, and take a more prominent role through its own institutions, such as the Peace and Security Council.

THE HISTORY OF terrorism in Africa goes back millennia – some ancient Egyptians committed atrocities that would today be construed as terrorist acts. It also occurred in the historical empires of Kanem-Bornu, Ghana, Mali and Songhai, as well as the Sokoto Caliphate.

Historically, however, the term 'terrorism' did not feature often in Africa's political lexicon. When it did, it meant very different things to different people. This is not unusual – globally, there is no unanimously accepted definition of terrorism.

For most of the 20th century, in Africa the term 'terrorism' was inextricably tied up with colonial politics. To the white colonial administrations, the fighters of the liberation movements were terrorists, while the liberation movements themselves generally applied the term to the colonialists. This dichotomy endured into the post-colonial era, where Africa's first continental body – the Organisation of African Unity (OAU) – was

regarded by the former colonial powers as 'an umbrella organization of terrorist groups'.[1]

This confusion could explain the OAU's reluctance to engage with the term at all. From its founding in 1963 until 1992, the term 'terrorism' is strikingly absent from the organisation's documentary history, applied only on rare occasions to Israeli-Palestinian issues and South Africa's apartheid state. Even seemingly obvious terrorist incidents, such as the Lockerbie bombing and the Entebbe hostage crisis, failed to merit its usage.[2]

> Terrorist groups profit from a lack of coordination among states. This is where the AU has a vital role to play

However, a change in political context in the early 1990s forced the OAU to take a more active role. In particular, it was concerned over the apparent rise in radical, religious-inspired terrorism in Algeria and Nigeria, and by public criticism of its silence on these types of issues.[3] In 1992, it began to move from a policy of non-action to one of non-interference, taking a more active role in continental security issues in general. This is when the foundations were laid for a continental counter-terrorism strategy.

When the OAU morphed into the African Union (AU) in 2002, the continental body became even more active against terrorism, finally recognising just how serious a threat it had become. The numbers speak for themselves: between 1970 and 2013 there were nearly 10 000 recorded incidents of terrorism in sub-Saharan Africa alone.[4]

The AU's tougher stance, although encouraging, has yet to pay off. Today, terrorism is perhaps the most significant threat to peace and stability in Africa. Key areas of concern are Nigeria, where Boko Haram has killed hundreds of people in 2014 alone and is thought to be expanding into neighbouring countries; East Africa, where al-Shabaab, although weakened, continues to launch attacks both at home in Somalia and in neighbouring countries, particularly Kenya; and North Africa, where a plethora of Islamist groups operate across the Sahel.

Need for a continental approach

There are several reasons why the AU considers a unified, continental approach necessary to combat terrorism.

The most important is the nature of modern terrorism itself, which does not respect international boundaries or the concept of sovereignty. Terrorist groups can and do operate in several countries simultaneously. Boko Haram, for example, has a presence in northern Cameroon as well as north-eastern Nigeria, and recruits from both countries.[5] Groups have also become adept at taking advantage of national borders to evade justice or regroup. Take the Lord's Resistance Army, which routinely shuttles between several Central and East African states, making it nearly impossible for authorities to track it down; or al-Qaeda in the Islamic Maghreb, which established operations in northern Mali when the Malian state effectively collapsed in 2012–2013, giving it a safe haven from which to target neighbouring countries.[6]

Terrorist groups thus profit from a lack of coordination among states. This is where the AU has a vital role to play: by providing a unified counter-terrorism strategy and coordinating the response of member states, it should be able to address the

10 000

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'A continental strategy is important because the threats are common. The African Union policy is to harmonise practices and objectives,' said Ambassador Francisco Madeira, Director of the African Centre for the Study and Research on Terrorism (ACSRT). 'These threats present similar characteristics, and we suffer from similar vulnerabilities. Each individual state alone will not be able to fight this scourge.'[7]

It's not just the AU that prioritises a unified strategy. At a global level, the United Nations – through various resolutions and its Security Council – also tries to define counter-terrorism policy, working on the same principle that a united front is more effective than myriads of different strategies. Part of the AU's motivation in adopting continental counter-terrorism measures is therefore to fulfil its obligations to implement international law on the African continent. Similarly, due to the structure of the international system, Africa's regional economic communities (RECs) should take the lead in coordinating AU policy at the level of an individual state.

Developing a continental framework

The first continental position on terrorism came in 1992 in response to a wave of violence from Islamist groups in Algeria. OAU Resolution 213 on the Strengthening of Cooperation and Coordination among African States[8] undertook not to allow 'any movement using religion, ethnic or other social and cultural differences to indulge in hostile activities against member states … and to strengthen cooperation and

States that have not ratified the key legal instruments (shaded)

THE SHADED AREAS IN THE MAP REPRESENT COUNTRIES THAT, A DECADE LATER, STILL HAVE NOT RATIFIED THE PROTOCOL ON THE ALGIERS CONVENTION (ONLY 15 HAVE)

coordination among African countries in order to circumvent the phenomenon of extremism and terrorism'. Although couched in general language, the OAU clearly 'saw religious extremism and state support for such activities as fundamental causes of terrorism'.[9]

This was followed in 1994 by the Tunis Declaration on a Code of Conduct for Inter-African Relations,[10] notable as the first time that African leaders explicitly described terrorism as a criminal act. It also committed Africa to following existing international law on the issue, and introduced the key counter-terrorism principle of *aut dedere aut judicare*, which forces states to either bring terrorist suspects to justice or extradite them.[11]

> ## The twin bombings of United States embassies in Nairobi and Dar es Salaam in 1998 again forced terrorism onto the continental agenda

The twin bombings of United States (US) embassies in Nairobi and Dar es Salaam in 1998 again forced terrorism onto the continental agenda. Over 250 people were killed and thousands injured in the al-Qaeda attacks, which made headlines across the world. The OAU realised it needed to toughen up and formalise its counter-terrorism strategy. This was achieved through the 1999 Algiers Convention on the Prevention and Combating of Terrorism.[12] 'The importance of the Convention for counter-terrorism in Africa cannot be overstated … the Convention put in place a solid and fundamental criminal justice framework for the fight against terrorism in Africa. It codified counter-terrorism norms and consolidated common standards,' according to Ewi and Du Plessis.[13]

The Algiers Convention for the first time defined exactly what constitutes a terrorist act (see sidebar). It also 'defines areas of cooperation among states, establishes state jurisdiction over terrorist acts, and provides a legal framework for extradition as well as extra-territorial investigations and mutual legal assistance'.[14]

After the 9/11 attacks in the US, the Algiers Convention was reinforced by the Dakar Declaration against Terrorism,[15] which unequivocally condemned terrorism and acknowledged it as an unacceptable infringement of human rights.

In 2002, the moribund OAU was replaced by the AU, but its legal properties – including all conventions, declarations and resolutions – remained intact. One of the new body's first priorities was to address the terrorism issue, which it did at a special meeting in September 2002, where emphasis was placed on finding more practical measures for combating and preventing terrorism. Its recommendations were made in the Algiers Plan of Action on the Prevention and Combating of Terrorism in Africa.[16] The concrete steps envisaged in this plan of action included: agreeing to insert advanced security features into identity documents, making them harder to forge; establishing a 'Passport Stop List' of suspected terrorists; and computerising immigration controls in order to better monitor the arrival and departure of all individuals in a country.[17]

The plan of action also provided for the establishment of the ACSRT, which was duly opened in 2004, headquartered in Algiers. The purpose of the centre is to centralise information about terrorist activity and assist states in developing counter-terrorism strategies in line with AU and international norms. It is designed to plug an obvious

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What exactly is a terrorist act?

In Article 1.3 of the Algiers Convention, the AU 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 govern-ment, 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, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

knowledge gap: prior to establishing the centre the AU had little to no institutional knowledge or independent research capacity to deal with terrorism issues.

The AU's most significant contribution, however, has been the adoption of the Protocol to the OAU Convention on the Prevention and Combating of Terrorism[18] in 2004 (although it only entered into force in February 2014). This additional protocol tries to address a major weakness of the Convention – its failure to include an implementation mechanism. The protocol mandates the AU's Peace and Security Council (PSC) to monitor and facilitate implementation, and encourages RECs to take a more active role.

Finally, the AU has developed the African Model Anti-Terrorism Law.[19] This is a legislative blueprint which African countries can copy or borrow from in order to draw up the necessary domestic legislation. The idea is that if all African countries model their laws on the blueprint, they will be consistent with each other and with the overarching continental policy.

Weaknesses in implementation

While the AU's legal instruments create a relatively comprehensive and progressive counter-terrorism framework, it has yet to have any noticeable impact in combating terrorism on the continent. If anything, terrorism in Africa is now a more serious threat than ever before.

This is mostly to do with the difficulties in implementing the framework, both at a state level and within the AU's own institutions – a shortcoming of which the AU itself is well aware. At a special meeting on terrorism in September 2014, the PSC noted in its final communiqué that, 'despite the progress made in developing a comprehensive normative and operational counter-terrorism framework, serious gaps continue to exist in terms of implementation and follow-up, thus undermining the effectiveness of Africa's response to the threat of terrorism and violent extremism'.[20]

> Ten years later, key state actors in the fight against terrorism in Africa – including Kenya, Nigeria, Somalia and Uganda – have yet to ratify the protocol

The most obvious indicator of this is the slow pace at which the Protocol was ratified. Adopted in 2004, the AU's anti-terrorism protocol required 15 states to ratify it before entering into force. It only achieved this milestone a decade later, in February 2014. And key state actors in the fight against terrorism in Africa – including Kenya, Nigeria, Somalia and Uganda – have yet to ratify it.[21]

Similarly, only about one-third of AU member states have introduced specific counter-terrorism legislation as recommended by the AU[22] – so much for closing those loopholes.

There are sound reasons for this, of course. Individual states have different relationships with terrorism. For some, it is an immediate and existential threat that must be addressed urgently, while for others it is a more abstract concept with little direct impact (for now, at least). In other words, terrorism is not a pressing priority for all leaders.

Even when it is a priority, many countries simply lack sufficient resources to implement the recommended counter-terrorism measures. Activities like securing national

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NUMBER OF AFRICAN STATES THAT HAVE PASSED SPECIFIC COUNTER-TERRORISM LAWS AS RECOMMENDED BY THE AU

borders and upgrading border crossings are enormously expensive, and states face many competing claims on their limited funding and capacity. So far, the AU has not convinced the majority of states that counter-terrorism is an urgent priority.

However, it is not just a capacity issue, but also one of political will. African states zealously safeguard their sovereignty and territorial integrity, and continental relations have long been defined by a reluctance to interfere in the internal affairs of other states. This is particularly true when it comes to sensitive issues of political resistance, violence and terrorism, where to accept criticism or request help can be seen as a sign of weakness. These sensitivities impede the kind of close cooperation required by the AU's counter-terrorism framework.

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> It could demonstrate its own commitment by
> better supporting its own institutions

The AU is guilty of perpetuating this dynamic. It has failed to publicly question or censure states that operate outside the continental framework. Both Nigeria and Kenya, for example, have been accused by rights groups of committing serious human rights violations in the conduct of their counter-terrorism operations, despite the protocol's specific commitment to 'implement all relevant continental and international humanitarian and human rights instruments'.[23]

Ultimately, the AU has not managed to bridge the gap between what states say about terrorism and their operational and practical commitment to combating it.[24]

But the AU itself could set a better example. It could demonstrate its own commitment by better supporting its own institutions and ensuring it meets its own obligations.

The ACSRT, for example, is supposed to be the brains and memory of Africa's counter-terrorism strategy and play a much-needed coordination role. But it is hamstrung. 'The ACSRT is poorly funded, inadequately staffed, and lacks the resources needed for it to fully deliver on the technical aspects of counter-terrorism,'[25] said Martin Ewi, a senior researcher at the ISS, who helped found the centre.

In an interview, Madeira confirmed this. He said that the centre struggled with a lack of both human and financial resources. For example, by the end of 2014 it would only have 16 staff on its books (excluding support staff), instead of the minimum 25 people that Madeira says it needs. The funding situation is even worse.

'We have very serious problems,' he said. 'More than 98% of our activities are funded by donors, and that is a serious handicap. Many times we adopt programmes whose implementation entirely depends on the timing of the delivery of the pledged funds. Sometimes the funds do not come.'[26]

ANOTHER INSTITUTION THAT COULD AND SHOULD PLAY A VITAL ROLE IS THE PROPOSED AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

Another institution that could and should play a vital role is the proposed African Court of Justice and Human Rights, which would have the power to prosecute individuals and potentially states contravening the Algiers Convention and Protocol. This court would give the AU real teeth in ensuring states implement the agreed policy. However, issues of funding and a lack of political will are again preventing the timely establishment of this court.

The PSC too could be more active. It was only in July 2014 that the PSC finally elected representatives to its sub-committee on counter-terrorism (one from each of Africa's five regions), and that committee has yet to begin work. 'The effective operationalisation of this committee is key if the PSC is to discharge its mandate, particularly in terms of following up [on] the implementation of AU instruments and decisions, mobilising an effective response against terrorist acts, preparing and regularly reviewing list of persons, groups and entities involved in terrorism, considering the annual report of member states and preparing an annual report to the AU Assembly,' said Solomon Dersso, head of the PSC Report at the ISS.[27]

The consequences of the lack of support for these institutions are evident in certain areas where the AU has failed to meet its own obligations. One concrete example of this is the failure to establish a Passport Stop List – a continental database of suspicious individuals – as envisaged in the Algiers Plan of Action.

Conclusion

In combating a transnational threat like terrorism, it is vital to present a united front. If the threat transcends national borders – and it does – the solution must do so too. This is where the AU comes in. It is the only body on the continent capable of creating a comprehensive continental counter-terrorism strategy. To the AU's credit, it has done so.

The Algiers Convention is a solid start, and the 2004 protocol makes it even stronger. In strongly condemning acts of terrorism and outlining how states should deal with the problem, both individually and together, these legal instruments provide a sound framework from which states can develop their own counter-terrorism policies. Coupled with leadership from the PSC and research and advice from the ACSRT, this framework should have already made headway in reducing terrorism in Africa.

But it has not. That is because it is yet to be tested, due to the difficulties in implementing its provisions. This is certainly not entirely the AU's fault – some states have struggled to find the resources and political will necessary to conform, while others are pursuing their own counter-terrorism policies, which may contradict the AU position.

The AU can do better, however, in holding up its side of the bargain in terms of ensuring that its own institutions – specifically the PSC and ACSRT – are running at full capacity, with sufficient resources to get the job done. This will help the continental body execute its vital coordinating role, and, eventually, help to make it far harder for terrorist organisations to operate in Africa.

Notes

1   M Ewi and A du Plessis, Counter-terrorism and pan-Africanism, in B Saul (ed.), *Research handbook on international law and terrorism,* Cheltenham, UK: Edward Elgar, 2014, 734.

2   Ibid., 735.

3   M Ewi, Counter-terrorism and pan-Africanism: from non-action to non-indifference, manuscript, 2014, 40.

4   See University of Maryland global terrorism database, November 2014, www.start.umd.edu/gtd/search/Results.aspx?region=11.

5   J Zenn, Northern Cameroon under threat from Boko Haram and Séléka militants, *Terrorism Monitor,* 12:1, 2014.

6   A Lebovich, AQIM and its allies in Mali, The Washington Institute, 5 February 2013, www.washingtoninstitute.org/policy-analysis/view/aqim-and-its-allies-in-mali.

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8   *OAU Resolution 213 on the Strengthening of Cooperation and Coordination among African States,* 1992 AHG/Res. 213, Dakar: Organisation of African Unity (XXVIII), 1992.

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14 African Union, The African Union Counter-Terrorism Framework, July 2014, www.peaceau.org/en/page/64-counter-terrorism-ct.

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18 *Protocol to the OAU Convention on the Prevention and Combating of Terrorism,* Addis Ababa: African Union, 2004.

19 African Model Anti-Terrorism Law, Malabo: African Union, 2011.

20 Communiqué of the Peace and Security Council, 455th meeting at the level of heads of state and government, Nairobi, 2 November 2014, www.peaceau.org/uploads/psc-455-comm-terrorism-nairobi-2-09-2014pdf.pdf.

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23 *Protocol to the OAU Convention on the Prevention and Combating of Terrorism,* Addis Ababa: African Union, 2004.

24 M Ewi, Counter-terrorism and pan-Africanism: from non-action to non-indifference, manuscript, 2014, 57.

25 Ibid., 58

26 F Madeira, telephonic interview with author, 19 November 2014.

27 S Dersso, Review of PSC summit on terrorism and violent extremism, manuscript, 11 September 2014.

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About the author

Simon Allison is a senior reporter for the *Daily Maverick*, a South Africa-based digital publication, and a consultant with the Institute for Security Studies. He specialises in African news and analysis with emphasis on conflict, security and counter-terrorism. He holds degrees from Rhodes University and the School of Oriental and African Studies, and has lived and worked across Africa and the Middle East.

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Acknowledgements

ISS Pretoria

Block C, Brooklyn Court
361 Veale Street
New Muckleneuk
Pretoria, South Africa
Tel: +27 12 346 9500
Fax: +27 12 460 0998

ISS Addis Ababa

5th Floor, Get House
Building, Africa Avenue
Addis Ababa, Ethiopia
Tel: +251 11 515 6320
Fax: +251 11 515 6449

ISS Dakar

4th Floor, Immeuble Atryum
Route de Ouakam
Dakar, Senegal
Tel: +221 33 860 3304/42
Fax: +221 33 860 3343

ISS Nairobi

Braeside Gardens
off Muthangari Road
Lavington, Nairobi, Kenya
Cell: +254 72 860 7642
Cell: +254 73 565 0300

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