

Legal Strategies and Transnational Cooperation in Countering Terrorism: A Case Study of Uganda's Framework

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ABSTRACT

Terrorism remains a global threat, with terrorists operating across borders and targeting innocent civilians. While criminal law traditionally operates within national boundaries, the challenge of terrorism necessitates a reevaluation of legal frameworks to effectively combat this phenomenon. This article explores the legal framework for countering terrorism in Uganda, emphasizing the need for enhanced national and regional cooperation to strengthen criminal justice structures. It examines international and regional human rights instruments, victim rights, criminal justice responses to terrorism, and the role of international cooperation in combating this transnational threat. Additionally, it discusses the adoption of administrative measures within a rule of law framework to prevent individuals from engaging in terrorist activities. The study underscores the importance of addressing terrorism through both legal and operational means to ensure the safety and security of citizens.

Keywords: Counter-terrorism, Legal framework, Terrorism, Terrorist-attacks, Victims of terrorism.

INTRODUCTION

In 1994, the United Nations General Assembly established that terrorism was "criminal and unjustifiable, wherever and by whomever committed, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them [1]. By defining terrorism as a crime rather than as an international security issue, the General Assembly has chosen a criminal law approach rather than a war model of fighting terrorism[2]. While the General Assembly categorized international terrorism in 1994 in terms of a criminal justice model as a serious crime, the United Nations Security Council categorized it, on 12 September 2001, in resolution 1368, "like any act of international terrorism, as a threat to international peace and security", thereby applying a security rather than a crime model to such acts[3]. It is widely accepted that a number of countries are strongly supporting the Security Council approach while other members of the international community feel more comfortable with the General Assembly method.

The United Nations has adopted several counter-terrorism measures to punish individuals and groups engaging in terrorism. UN Security Council Resolution 1267 and subsequent related resolutions

require UN member states to freeze funds and other financial resources of the Taliban, al-Qaeda and affiliated individuals and groups, and designate specific individuals and groups as sanctioned[4]. Additionally, Resolution 1373 and subsequent related resolutions require states to implement laws and measures to improve their ability to prevent terrorist acts. These measures include criminalising the financing of terrorism; freezing the funds of individuals involved in acts of terrorism; denying financial support to terrorist groups; cooperating with other governments to share information; and investigating, detecting, arresting, and prosecuting individuals and entities involved in terrorist acts[5]. Since terrorism is one of the gravest crimes, it would be logical to conclude that a great deal of attention should be paid to preventing possible terrorist attacks. A successful proactive criminal justice approach to terrorism prevention would need 'a strategy to permit intervention against terrorist planning and preparations before they mature into action. The goal is to proactively integrate substantive and procedural mechanisms to reduce the incidence and severity of terrorist violence and to do so within the strict constraints and protections of the civilian criminal justice system and the rule of law[6]. Thus, countering

terrorism through penal prevention would mean criminalizing acts that are committed before any terrorist act takes place. Among certain leading humanitarian donor states, counterterrorism laws not only strongly condemn and penalise terrorist acts but also criminalise acts preparatory to or in support of terrorism. In the United States, for example, an act deemed in 'material support' of terrorism is punishable by 15 years' imprisonment. The law applies to everyone irrespective of the nationality of the accused. The definition of 'material support or resources' encompasses a broad range of activities, including the provision of lodging, training, expert advice or assistance, communications equipment, facilities, personnel, and transportation[7].

Terrorist attacks are intensifying in Uganda. An explosion in a Kampala cafe on 23rd October killed a 20-year-old waitress and injured three others, two of them critically[8]. Two days later, a suicide bomb was detonated on a bus 30km west of the capital, killing the perpetrator and wounding passengers. Islamic State claimed both attacks, and the police reported that the suicide bomber was on its list of wanted ADF members. Police also said the ADF was a possible suspect in the cafe bombing[9]. The ADF is an Islamic State affiliate that calls itself ISCAP. The attacks raise questions about the links and tactics of jihadist groups in the region, whether they are increasing their focus on Uganda and presenting a wider threat. This necessitated the present study that explores the legal framework for countering-terrorism in Uganda.

International and regional human rights instruments

For victims of terrorism who wish to pursue an action, human rights mechanisms offer several advantages. In contrast to seeking justice before an international or national criminal court or, to a lesser degree, a truth commission, the victim can bring a specific action, related directly and indirectly to their own case, on their own terms, and at a time that suits them. The achievement of justice for the victim is not, therefore, peripheral to the determination of any broader criminal charges, but instead forms the substance of the action.

Human rights mechanisms also have several disadvantages for the victims, including their lack of enforcement measures in relation to any proven failings on the part of a State. In addition, human rights mechanisms lack any in-State investigative body which might be able to furnish the answers needed by many victims, and while Courts are typically able to demand that a respondent State provides documents, the lack of any in-State presence means that it is also unable to verify

whether or not a State has fully disclosed all relevant materials as illustrated in *Janowiec v. Russia*[10]. In addition, parties are required to "furnish all necessary facilities" to enable a full investigation of the petition by the Court [11]. Finally, human rights actions tend to concern individual victims, and so they may fail to provide the kind of broader or societal benefit required in the aftermath of a significant terrorist attack.

Minimum standards for the fair treatment of victims according to basic principles of justice [12]

- Victims should be treated with compassion and respect for their dignity.
- Victims should be informed of their rights in seeking redress.
- Victims should have their views and concerns presented in legal proceedings.
- Victims should receive proper assistance throughout the legal process.
- Victims should be protected against intimidation and retaliation.
- Victims should have their privacy protected.
- Victims should be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation.
- Victims should enjoy restitution and compensation, as appropriate.
- Victims should receive the necessary material, medical, psychological and social assistance.

There are some common underpinning principles across international and regional human rights instruments which are mentioned briefly here. These concern positive obligations which require that States adopt reasonable measures to prevent violations and to investigate, prosecute, punish, and provide reparation when serious human rights abuses arise. This is well recognized by international courts and bodies as arising under all general human rights treaties for example in *Osman v. UK*[13] The obligation extends to not only foreign State actors, but also non-State actors including terrorist groups. This is reflected in United Nations Human Rights Committee[14] regarding the nature of the general legal obligation imposed on States parties to the Covenant:

The positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.

There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, because of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities[15].

In parallel, States have other duties, such as to exercise due diligence obligations existing in customary international as well as treaty law and to prevent the (re)occurrence of such violations in the first place, especially if there is a significant risk of such unlawful practices occurring or putting an end to them as soon as they become known. The approach of the European Court of Human Rights (ECHR) with respect to the principle of prevention has been to determine whether "the authorities knew or ought to have known at the time of the existence of a real and immediate risk ... from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk" as it is in *Kaya v. Turkey*[16].

Furthermore, as part of a State's human rights law obligations to protect human rights, where serious violations arise, a thorough investigation should be undertaken which, if appropriate, leads to the prosecution of the perpetrators *Barrios Altos v. Peru*[17]. The scope of the investigation, and potentially the prosecution's policy, should include the immediate perpetrators of the crimes and, in some instances, any architects of such violations such as terrorist group leaders. Where any failings on the part of a State exist, then any cases involving higher level officials may assist victims in understanding the broader story and generally contribute to clarifying the historical narrative.

The duty of "thorough, independent and effective investigation" is an inherent aspect of the positive obligations in general human rights treaties obligations to protect and ensure the rights in the conventions *Yusupova and Bazayeva v. Russia*[18]⁹ This duty has been held to apply in security sensitive circumstances, including in situations of armed conflict. Military and civilian superiors are also obliged to punish subordinates for crimes they know or have reason to know the subordinates have committed in the past. A superior can sufficiently discharge this obligation by reporting breaches of international humanitarian law to a competent authority for investigation and prosecution[19].

More specifically, in relation to the legal rights of victims, these should reflect three primary components: the right to know (the truth of: e.g., what happened and why), the right to justice (and

prevention of impunity of those culpable), and the right to reparations[20]. The fulfillment of such rights can also assist with keeping alive the memory of victims of terrorist attacks which can often be a struggle to achieve in practice.

International Human Rights Law

With respect to human rights norms, article 2(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR)[21] provides that victims of violations of human rights provided for under the Covenant have the right to an effective remedy, including the right to have such a remedy determined by competent judicial, administrative or legislative authorities and to have that remedy enforced when granted. Not only must such remedies exist legally, but they must also be enforced in practice by the competent authorities. In terms of what form such remedies should take, the Human Rights Committee has stated that in addition to compensation, "where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations[21].

An inherent aspect of ICCPR article 2(3) is that where violations of Covenant rights have occurred, any failure to bring the perpetrators to justice could in and of itself constitute a separate breach of the Covenant. This is especially the case where the violations may also be criminal in nature, whether under domestic and/or international law. Where any violations are committed on a mass scale as part of a widespread or systematic attack on a civilian population, such violations of the Covenant may cross the threshold into constituting crimes against humanity[22]

International and regional instruments governing victims of terrorism

Numerous international declarations reaffirm the duty of States to provide a remedy for victims of human rights abuses and violations of international humanitarian law. (See e.g. General Assembly resolution 217/A, article 8; General Assembly resolution 30/3452, Annex, article 11). A comprehensive articulation of this duty is found in the declaration of Basic Principles (General Assembly resolution 30/3452, Annex)[1]. The declaration is the most comprehensive instrument on justice for victims. It provides guidance on measures that should be taken at the national, regional and international levels to improve access to justice and fair treatment, restitution, compensation, protection and assistance for victims of crime and abuse of power. In adopting the

declaration, the General Assembly called upon Member States to take the necessary steps to give effect to the provisions of the declaration. In its resolution 2005/20 of 2005 (ECOSOC Resolution 2005/20), the Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

Furthermore, in April 2005, the Commission on Human Rights took note of the revised Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add. I). That set of principles includes the right to know, the right to justice, the right to reparation and guarantees of non-recurrence, which form integral aspects of securing justice for victims.

These instruments, together with other developments, such as the inclusion of victims' rights to reparations and participation in the Rome Statute, highlight the increasing centrality of victims in the criminal justice system and, by extension, the response of that system to terrorism. It is important to emphasize that while victims of terrorist activities were perhaps not foreseen - or at least not expressly mentioned - in human rights instruments, to the extent that terrorism, as an attack on civilians, is an affront to the human rights of the victims, those victims have the rights enumerated in the relevant treaties.

Indeed, some instruments have been adopted which specifically seek to address the specific need of victims of terrorism, such as the Council of Europe's Guidelines on the Protection of Victims of Terrorist Acts, 2005^[23], which demand, at Section VI (2), that "States should ensure that the position of victims of terrorist acts is adequately recognized in criminal proceedings". The Guidelines emphasize the importance of access to the law and to justice being effective, such as through enabling victims to access competent courts to bring a civil action in support of their rights, as well as the provision of financial assistance to do so where needed in the form of legal aid (Section V). Where appropriate, states must ensure the protection and security of victims of terrorist acts and should take measures, where appropriate, to protect their identity, in particular where they intervene as witnesses".

Yet, for these positive developments, some would argue that an important weakness in the existing international framework remains, namely the absence of any coherent or comprehensive international treaty that specifically governs issues relating to victims of terrorist crimes. One explanation for this may be linked to the absence of universal agreement regarding the definition of terrorism, leaving States unwilling to develop a

binding instrument on 'victims of terrorism'. Whether or not a designated treaty is needed, as well as whether or not the needs of victims are adequately covered by existing international treaties, remain topics of debate.

That said, there is no instrument of existing agreed norms on the criminal elements of terrorism related crimes and definitions of 'victim' to not develop such a binding instrument along similar terms as the universal anti-terrorism conventions which generally do not include definitions of terrorism. For example, within the European region, in addition to the 2005 Guidelines on the Protection of Victims of Terrorist Acts, the Council of Europe has a binding treaty instrument for victims of crime - the European Convention on the Compensation of Victims of Violent Crimes, which could be drawn upon in terms of key norms and approaches.

Under this Convention, State parties have the obligation to compensate the victims of intentional and violent offences resulting in bodily injury or death committed on their territory regardless of victims' nationality. This binding treaty is supplemented by non-binding, but nonetheless influential instruments, such as the Council of Europe Recommendation which articulates key principles such as regarding the protection of victims' human rights and dignity, assistance, support, information and access to remedies. Similarly, the EU Directive 2012/29/EU: establishing minimum standards on the rights, support and protection of victims of crime.

Furthermore, several international principles already exist for the reparation of victims of both ordinary and serious crimes, which could similarly inform an international framework (Economic and Social Council, Commission on Human Rights report 2000/62; Economic and Social Council, Commission on Human Rights reports 1997/20 and 1997/20/Rev.1), including those developed in the Rome Statute regarding the redress of and participation by victims within the International Criminal Court.

Notably, much of the existing framework approaches the compensation, reparation and so forth of victims of terrorism as a criminal remedy within the criminal justice system which is primarily concerned with apprehending, prosecuting and punishing terrorists i.e. 'making terrorists pay'. In contrast, civil remedies do not have any accompanying counter-terrorism objectives such as prevention, deterrence or punitive function, encompassing instead all non-forcible, non-criminal means of sanctioning terrorists and States who support terrorists. The legal framework governing civil

recovery against terrorists is even less developed than the parallel criminal justice one. In particular, this is reflective of ongoing debates regarding the function of civil remedies for victims of terrorism, including what civil remedies are and should be available, as well as what wider objectives the recognition and enforcement of civil remedies against terrorism serve together with what national government institutions are most appropriate for creating and enforcing such remedies^[24]. There is also an underlying policy debate regarding how best to promote traditional law and public international law objectives without raising undue judicial competence and separation of powers concerns^[24]. In some jurisdictions, such as Spain, the State prosecutor has discretion as to whether to pursue civil liability for victims of terrorism through criminal trial or civil litigation routes^[25].

Criminal Justice Responses to Terrorism

Promoting Ratification

Since 2003, UNODC has contributed to over 700 additional ratifications of the 19 international conventions and protocols related to terrorism by assisted Member States. These instruments do not define terrorism but create obligations on State parties to: criminalize the offences in question under domestic law; exercise jurisdiction over offenders under prescribed conditions; establish the obligation to extradite or prosecute; and set up mechanisms for enhancing international cooperation in criminal matters. Universal ratification of the international legal framework against terrorism is far from been achieved, particularly for those instruments that were more recently adopted in 2010 and 2014. This is why a key priority for UNODC is promoting the ratification and implementation of those international conventions and protocols and relevant Security Council resolutions related to terrorism. For example, the multi year efforts of UNODC resulted in the milestone entry-into-force of the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material on 8 May 2016. Even after ratification, long-term sustained efforts are required to achieve the full implementation of the universal legal regime against terrorism. To this end, UNODC is encouraging Member States to benefit from its legal and capacity-building assistance on a full range of counter-terrorism criminal justice aspects.

Legislative Assistance

Since 2003, UNODC has provided legislative services that have led to the review and drafting of 172 pieces of national counter-terrorism legislation. UNODC supports Member States in aligning their national legislation with the provisions of international counter-terrorism conventions and

protocols, and develop appropriate legal frameworks in line with major Security Council resolutions. To that end, UNODC, upon request by a Member State, conducts legislative assessments and gap analysis of the existing national counter-terrorism legislation, provides assistance with legislative drafting and revision, and recommends administrative and regulatory changes necessary for the implementation of national legislation.

Capacity Building

Since 2003, UNODC has trained over 28,000 criminal justice and law enforcement practitioners through technical assistance initiatives on a broad range of legal and criminal justice aspects pertaining to terrorism prevention. The evolving nature of terrorism and the increased number of terrorism cases pose multiple challenges to prosecutors, judges, investigators and police. UNODC works to build capacity of national criminal justice systems to prevent and counter terrorism; more efficiently implement anti-terrorism legislation and other measures in compliance with the rule of law, and international human rights standards and norms. Training activities offer criminal justice officials the opportunity to exchange views, discuss best practices and share lessons learned, ultimately aiming to equip them with the very specialized skills and knowledge required to effectively prosecute terrorism cases.

UNODC delivers its technical assistance activities through the following methods: Capacity building activities at the national, sub-regional and regional levels, through which criminal justice officials receive specialized knowledge and training on preventing and countering terrorism; Online courses and live discussions delivered through the UNODC Online Counter Terrorism Learning Platform; Simulations of trials and investigations of terrorism cases based on real-life scenarios; Study tours for criminal justice officials to get acquainted with good practices in counter-terrorism; Support in the development of national and regional counter-terrorism strategies and plans of actions.

Strengthening the legal regime against the threat posed by foreign terrorist fighters

Foreign terrorist fighters (FTFs) are a continuously evolving threat. It has been further exacerbated by the increased number of terrorist fighters returning and relocating. The number of cases involving such fighters has significantly risen, posing numerous challenges to the judiciary and law enforcement. Since 2015, UNODC has been implementing a major five-year Initiative on Strengthening the Legal Regime against the Threat posed by FTFs for the Middle East, North Africa and Southeastern Europe. The project supports Member States in

preventing and suppressing the flow of FTFs and in their implementation of relevant Security Council resolutions, including 2178 (2014), 2322 (2016) and 2396 (2017). Its specific objective is to enhance the implementation of a criminal justice response to FTFs that fully incorporates the rule of law and respect for a human rights approach.

The Initiative's thematic pillars cover the following areas: Criminalization of FTF-related offences; Investigative and prosecutorial aspects; The use of intelligence as admissible evidence; Preventing and countering FTF financing; Special investigation techniques; Administrative measures; Border control measures for FTF identification and interdiction; Reintegration and alternatives to imprisonment; Strengthening inter-agency and international cooperation in FTF related cases, including the exchange of operational and judicial information.

International Cooperation

The increasing number of cross-border investigations poses a major challenge to practitioners and requires more efficient, faster cooperation between Member States. National criminal justice officials encounter diverse types of challenges, especially while investigating cases involving individuals, evidence, witnesses, victims or the proceeds of the crime located across borders. UNODC provides technical assistance to Member States to promote international and regional cooperation in criminal matters related to

CONCLUSION

The UN is often criticized for its action (or more accurately lack of action) on terrorism. "Lack of the definition" of terrorism, not addressing its "root causes", "victims" and other issues are often cited by the critics to highlight UN impotence in dealing with this gravest manifestation of crime. But the critics often fail to acknowledge that these accusations do not reflect the reality adequately and present only a one-sided picture of the problem.

The UN effectively addresses various issues related to the fight against terrorism through its different departments and agencies. For example, on the "root causes of terrorism front" the UNDP deals with poverty and UNI-ICHR deals with the issues of human rights. UNODC supports countries in their efforts to promote the rule of law. And finally, the International Criminal Court, although it does not deal with terrorism directly does have a victims' fund that could be applicable to the victims of taking hostages which is under its jurisdiction according to the Statute. And most importantly, although a comprehensive definition of terrorism would be extremely useful, the international legal regime against terrorism exists and if allowed to work properly (especially with regard to the provisions of

terrorism, especially with regard to extradition and mutual legal assistance. Aspects of international cooperation are incorporated into all capacity-building activities, including emerging threats such as the phenomenon of FTFs.

Since 2010, UNODC has been supporting the effective functioning of the Sahel Judicial Cooperation Platform. The members of the Platform are Burkina Faso, Chad, Mali, Mauritania, the Niger and Senegal. UNODC support for the G5 Sahel has been most beneficial. Since 2014, UNODC has drafted legal texts creating the Sahel Security Cooperation Platform, equipped regional and national units, and carried out capacity-building for actors in charge of counter-terrorism and transnational organized crime. Through regional judicial platforms supported by UNODC, Chadian, Malian and Nigerian authorities successfully cooperated to facilitate the interrogation, extradition and prosecution of terrorism suspects located in the Sahel region. This collaboration led to the signing of an agreement on judicial cooperation between the three countries in May 2017. A Multi-Agency Task Force was established in 2017 to support strengthening cooperation in terrorism-related matters, including on FTFs. UNODC with CTED and IAP are collaborating to develop guidelines for obtaining digital evidence from Internet service providers in terrorism cases and will soon be providing technical assistance in this regard.

international cooperation in criminal matters) could contribute greatly to the work of the nations of the world on the counter-terrorism front.

Additional administrative measures can constitute a valuable tool to deal with an individual considered to be a risk for national security when there is not enough evidence to open criminal proceedings. When administrative measures are used within a rule of law framework, they could contribute to prevent individuals from committing a terrorist crime. Terrorists and terrorist networks are increasingly transnational in nature. Jihadi terrorist groups and, increasingly, right-wing extremist groups alike have cells and connections abroad and use social media platforms to mobilise, recruit, coordinate and move financial resources across borders to support their activities.

To combat this, during the last decade governments have increasingly adopted legislation that criminalizes the preparation, facilitation and incitement of terrorism. Furthermore, states have implemented a range of administrative measures – including listing procedures, the use of watch lists, control orders and deprivation of nationality – aimed at the prevention of terrorism. Some of these efforts

pose serious challenges to human rights and the rule of law.

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