

African Human Security Initiative
Organised Crime and Terrorism Report

COMMITMENTS IN RESPECT OF ORGANISED CRIME AND TERRORISM

CHAPTER 1: INTRODUCTION

The basic issue arising from the evaluation of states in honouring their obligations in the spheres of organised crime and terrorism is one of definition. Among the questions that arise is whether it is necessary, in the initial instance, to identify definitions accepted by these states. If no such definition exists, should they be formulated before the requisite commitments are highlighted, and implementation records assessed?

ORGANISED CRIME AS A HUMAN SECURITY ISSUE

Although the existence of organised crime as a universal challenge has been known for at least the last eight decades, no common legal definition of the concept has been adopted at a global level. This is not to say that there has been an absence of efforts in that direction. Notable initiatives in this regard have been attributed to the United Nations since the early nineties. The intractability of the problem of defining the concept is underlined by the fact that, by the close of the year 2000, all that had emerged was a definition of an organised crime syndicate. The Convention Against Trans-national Organised Crime (2000), which is often conveniently called the Palermo Convention, presents a normative description of the characteristics of organised criminal groups, without defining organised crime. There is no African international legal instrument equivalent to the Palermo Convention. There is also no such instrument adopted at the sub-regional level, which defines an organised criminal group or organised crime. It follows that there is no definition of organised crime that has been adopted on the African continent. The Palermo Convention is, admittedly of limited utility in defining organised crime, but it provides a possible launching pad for a definition which might secure wide international acceptance. More significantly, the Convention indicates the types of activity generally recognised as involving criminal syndicates. In a sense, even if no definition of organised crime is found, one can use the activity areas stipulated in the Palermo Convention as a guide in identifying spheres in which responses of African states should be judged. It is arguable that this is a better approach than to hold states accountable on the basis of a putative definition formulated for them. At the same time, it must be stressed that the reliance on the Palermo Convention does not mean that this report/study assesses the compliance of African states with the Convention.

The Palermo Convention describes an organised criminal group as ‘... a structured group of three or more persons, existing for a period and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;’

The Convention establishes as serious crimes or offences, the following activities:

- (i) participation in an organised criminal group
- (ii) the laundering of proceeds of crime
- (iii) corruption, and
- (iv) obstruction of justice

This part of the report/study presents an assessment of the record of implementation of commitments relating to some aspects of organised crime by selected African

states. It does not attempt to assess implementation in all areas of organised criminal activity, or indeed in the full range of organised crime stipulated in the Palermo Convention.¹ Its scope is limited to organised crimes in respect of which there is convergence of attention by the respective African states. In essence two of the forms of organised crime envisaged by the Convention are covered, namely the laundering of proceeds of crime and corruption. Both activities are broad enough to embrace, inspire or at least support other modes of organised crime. Thus motor vehicle theft, armed robbery and narcotics trafficking can be 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 have been regularly deployed to corrupt politicians and public officials, or to outflank or eliminate the incorruptible.

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 that commit it.² The clearest illustrations of this kind of cause-effect link have tended to be drawn from drug and arms trafficking, but they are by no means the only instances. In the final analysis, it is for this reason that organised crime is regarded as relevant to human security.³

THREAT OF TERRORISM TO HUMAN SECURITY

The threat of terrorism to human security is indisputable. However, despite renewed interest in the subject in the aftermath of the atrocities committed on the 11th September 2001 (commonly referred to as 9/11) in New York, insufficient focus has been given to the factors that motivate individuals to resort to acts of terrorism, therefore prevent secondary terrorism. Yet terrorism is not a new phenomenon in national, regional and international politics. It has developed through various eras in history, motivated and justified by different reasons, and committed by different modus operandi and in different geographical areas.

Although the attention of the international community is predominantly fixed on 9/11 in the United States and its aftermath, the people of Africa are still confronted by violence committed, in many instances by groups ostensibly seeking self-determination. In other instances, violence is state-inspired. Some African countries have fallen victim to terrorism, paying a high price in civilian lives and damage to their infrastructure. Terrorism can only impede the efforts for the promotion of peace, security and stability in Africa and consequently, compromises Africa's chances for socio-economic development. Terrorism constitutes a negation of the ideals of peace, respect for human life and justice, which have inspired many initiatives taken by the African leaders over the past years.

It is easier to define the act of terror, than to label an organization as a terrorist movement. Although public perceptions of the level of terrorism appear to be determined not by the level of violence but rather by the quality of the incidents, the location and the degree of media coverage, it is important to be objective. For example, hostage situations appear to have a greater impact than murder, barricade situations and kidnappings, which lack suspense. The location of the incident is the second determining factor - incidents that occur in cities have more impact than those that occur in the countryside. Incidents in Western Europe, the Middle East and North

Africa have a more significant impact than more serious incidents in Latin America, sub-Saharan Africa and Asia.

Notwithstanding these abnormalities, the reality is that large parts of the world have long suffered the ravages of terrorism, often in the face of indifference in certain sectors of the international community. A new era in international cooperation on counter-terrorism is needed, but its achievement will depend on the requisite political will and determination. Focused and persistent counter-terrorism efforts concern first and foremost the countries whose territories are known to harbour terrorist support networks or to be used by terrorist groups as staging areas. It is incumbent on these countries to comply with requests for exchange of information or legal and technical assistance. It is important to guard against any approach to terrorism that might appear selective. The fight against terrorism will not be effective if conceived as a confrontation with a given civilization or religion. Unified and indivisible, the fight against terrorism must be universal, global and concerted; the commitment it entails should leave no room for ambiguity.

The 9/11 attacks, in its aftermath triggered a global campaign against terrorism and promoted a collective awareness of the danger that terrorism presents for peace and security.

Accordingly, a comprehensive convention constituting the political and legal foundation for the fight against terrorism, capable of responding to contemporary challenges, is all the more essential given the importance of ensuring that the international response is commensurate with the multifarious and evolving nature of acts associated with transnational terrorism, the diversity of tools at the disposal of terrorists and the power of the transnational mechanisms that terrorists have employed with formidable cunning. It is also essential to have a monitoring mechanism in place to assess the threat and to evaluate the ongoing national, regional and international initiatives to counter and prevent terrorism.

Within Africa, analysts have to face with the question: what degree of violence, beyond the basic definition of violent crime, should constitute terrorism? In the aftermath of 9/11 it has become common to stigmatise groups opposed to governments as terrorist groups. On the other hand, should government agents, that target specific sections of society, whether on the basis of ethnicity, religious orientation or linguistic grounds, be classified as terrorists? There exists a lack of analysis or a desire to extend or create all-encompassing terminology, which clouds the boundaries between terrorism, violence, civil war, insurgency and dissent. It will become increasingly important to use the nature of the act, including the method or modus operandi, the primary target and its context as the basis to differentiate between acts of terrorism and other forms of violence. Terrorism is not limited to bombings or airplane hijackings. Within the African context the mass killing of civilians, whether committed by groups or government forces should be considered as terrorism.

In understanding and explaining the need for more comprehensive and structured counter-terrorism initiatives, whether initiated by countries, regional and the international community, the following discussion will shed light on the threat of terrorism within the eight countries reviewed. This should assist in appreciating the

actual responses by these states to global counter-terrorism initiatives. Although all the countries under review committed themselves to the OAU/AU Convention on the Prevention and Combating of Terrorism or Algiers Convention the physical manifestation of the threat in the different countries varies.

If the impact of terrorism should be limited to international/transnational terrorism, Kenya was the only country (amongst the eight countries under review) that was targeted by international terrorism. It is also the only African country that was targeted on two different occasions: First in 1998 with the US Embassy bombing followed by the November 2002 bombing of a hotel, and a surface-to-air missile attack in Mombassa. In addition to the bombings in 1998 (that included Tanzania), Uganda security officials claim that they foiled a similar attack in Uganda.

ALGERIA

Violence and acts associated with terrorism in Algeria are predominately blamed on armed Islamic groups that formally commenced their campaign in 1992 has sharply declined during 2003 as a result of the increasing efficiency of security forces and divisions among extremist groups. Fewer than 900 people were killed in 2003 in violence led or directed against extremists, including 420 radical Islamic extremists. That compares with a total number of 1,400 deaths in 2002 and 1,900 in 2001. In comparison to previous official figures that recorded 9 418 bomb attacks from 1995 to 2001. Bombings peaked in 1998 with the detonation of 2 864 explosive devices. Initiating the trend 245 explosive devices detonated during 2001 that claimed 72 lives⁴.

The *Group Islamique Armee* (GIA) or Armed Islamic Group makes no distinction between government, local civilian or foreign targets; all are considered legitimate. It operates mainly in the rural areas to the south and west of Algiers, where it has waged a bloody campaign against ill-protected towns and villages (aided, or at least abetted by the army and security forces, say many). It has also targeted travellers on roads heading south and west from the capital. Its preferred method is to set up fake military roadblocks, forcing unsuspecting drivers to stop before opening fire with automatic weapons. The attacks conducted by the GIA are mostly confined to western provinces, such as Ain Delfa, Chlef and Tipasa and to the south of Algiers. Despite a number of surrenders the number of GIA operatives was reduced to a number of small groups, despite this tactical situation their capacity to inflict harm still remains.

The other main Islamist group, the *Groupe Salafi pour la predication et le combat* (GSPC) operates largely in the regions to the east of Algiers. The GSPC was created in a 1998 split with the more radical Armed Islamic Group, or GIA. The dissidents were reportedly discontent with numerous civilian massacres carried out by the GIA. Headed by Hassan Hattab, replaced in 2003 by Nabil Sahraoui⁵ (alia Abou Ibrahim Mustapha)⁶, the GSPC is considered better organized than the GIA, and targets primarily symbols of the state such as soldiers and police officers. The GSPC operate predominantly in the east of the country, in Kabylia and Tebessa regions. In addition the GSPC also direct their attacks against former members that applied for amnesty in August 1995.

Not exclusively limited to Algeria the group established a network of operatives in Europe, including Britain and Spain. First regarded as a threat to civilians inside Europe in 1998, when Europe-wide police sweeps were carried out ahead of the World Cup⁷. GSPC agents are known to have travelled to Britain and other European countries where they run criminal operations specialising in credit card fraud, passport forgery and identity theft. They have also plotted terrorist attacks in Paris, London and Rome.

Instability in Algeria also had an effect on neighbouring countries. During 2003 Mali was in the highlights twice: Directly counter-terrorism units foiled an attack by the GSPC directed against the US embassy in Mali⁸. Indirectly, Mali territory was used to hold 30 kidnapped hostages (Western). The length of the border between Algeria and Mali is almost the equivalent of the entire Algerian coastline made Mali the rear base of the GSPC. Saharan borders between Algeria, Mali, Niger, Libya and Mauritania are too large for effective surveillance, and have long been ignored by Tuareg nomads and smugglers using ancient camel routes to circumvent customs posts. However, the borders gained a new importance with the events surrounding the kidnapping of European tourists by an Algerian Islamist group. The ethnic structure of northern Mali provides valuable opportunities to the GSPC in order to achieve its objectives. This is because of the current conflict between the Arab tribes of Ifagha and Al-Barabish on one hand, and Timsilli tribes on the other hand, bearing in mind that all these tribes are not subjected to the authority of the central power in Bamako. This void provides an appropriate atmosphere to the kidnapers and facilitates their contacts with the local population. It is to be noticed that Kidal, Timbuktu, and Gao are considered as "neglected" regions in Mali. Abderrezak Le Para a well-known member of the GSPC even settled in northern Mali. Security officials announced that militants associated with Le Para have close links with arms and drug smuggling networks and with gangs specialized in car theft. These networks have indeed become the main source of income for these militants. According to customs reports, in the south of the country, these networks that are linked to each other, have in fact taken advantage of the absence of any state authority because of the difficulty in implementing the law on the local populations and the vast uncontrolled superficies in the region. This is in addition to poverty and the deterioration of the living conditions in the neighbouring countries, as it is easy to bribe policemen and border guards⁹. The immensity of the desert region, which spans more than two million square kilometres, makes it nearly impossible to prevent illicit traffic between Algeria and its neighbours Mali, Mauritania, Niger and Libya. Besides the official border, there are at least 39 points of entry that are not controlled¹⁰. In the case of Northern Africa there is a direct link between terrorist groups and organized crime, particularly through the GIA (Armed Islamic Group), the GSPC and Al-Qai'da.

The border between Algeria and Niger has been the subject of all-out vigilance since Islamic extremists began to be interested in it. And following the kidnapping of the three customs agents in July 2003¹¹, the surveillance team as well as the fighting methods can only further reinforce and refine each other. Because if such acts are evidence of the determination by the terrorist groups that walk hand in hand with the local smuggling networks on both sides of the border, they are also a way to know their methods, itineraries, numbers, supporters, etc., better.

ETHIOPIA

Ethiopia is a zone of ethnic, tribal and religious tensions. Housing over 80 ethnic and linguistic groups in the country, many of these intended to reassert their identity after more than a decade of suppression under Mengistu. The two main threats to internal stability come from the Oromo peoples and the ethnic Somalis of the Ogaden. The latter declared a *jihad* against the Zenawi regime in January 1996. Mainly the Oromo Liberation Front (OLF), an entity that sits on the borderline between a separatist organisation and a political party, represents the Oromos¹². Primary factions that oppose the Ethiopian government include:

The Oromo Liberation Army (OLA) – the military wing of *the Oromo Liberation Front (OLF)* fought for the independence of the southern Oromo region from the Addis Ababa government since 1993, who was accused of discriminating against the Oromo, Ethiopia's largest ethnic group. Members of the OLF are divided in to two parts following the recent attempt made by the US foreign minister to reconcile the OLF with the Ethiopian government. As with other opposition groups that oppose the current Ethiopian government, the resort to violence are not excluded as a strategy. Some OLF members rather prefer dialogue with the EPRDF government.

Although other opposition groups have agreed not to wage an armed struggle against the government, the OLF has not presented formal statements on the issue of armed struggle. Since its inception, the OLF has employed a multifaceted method of struggle - coordinating armed, political and diplomatic means. In June 2000 the OLF in a statement reconfirmed their target selection to include selected transport routes, military targets and economic centres¹³. Changes in the modus operandi and target selection of the OLF led to the assessment that the OLF transformed from a revolutionary movement into a terrorist movement. Urging countries that host the OLF, including the United States and Germany to classify and treat the organization as a terrorist organization. OLF offices outside Ethiopia include: The United Kingdom, United States and Canada. The OLF killed three citizens of the Netherlands, Germany and France in 1995 and 1996/97 and planted bombs during the same period at two hotels. In 1999 and 2000/1 the OLF has made repeated attempts in bombing public and freight transports railway lines.

Since the outbreak of the 1998-2000 Ethiopian-Eritrea border war in May 1998, the Addis Ababa-Djibouti line, the country's only railway line, has carried much of Ethiopia's traded goods to and from the Red Sea port of Djibouti. Security is considered inadequate, as it continues to be targeted by various tribal and separatist groups, especially the OLF, which see the line as a symbolic target to attack the Addis Ababa government. In addition allegations were made during April 1999 that 450 Ethiopian Oromo Liberation Front (OLF) fighters were trained to carry out hit-and-run raids inside Ethiopia. According to these reports Eritrean trainers and Somali military officers trained in the former Soviet Union and Arab countries training the Oromo guerrillas in camps in Qoryoley district in Somalia's southern Lower Shabelle region¹⁴.

The Oromo Liberation Army (OLA), armed wing of Oromo Liberation Front (OLF) focus their attacks on Ethiopian government forces.

Afar Revolutionary Democratic Unity Front (ARDUF), limited presence in Afar region)
- The ARDUF was formed in March 1993 as a coalition of three organizations: the

ARDU (*Afar Revolutionary Democratic Unity Union*), the AUDF (*Afar Ummatah Demokrasiyyoh Focca*) and the ARF (*Afar Revolutionary Forces*). The ARDUF was opposed to the division of the Afar region between Eritrea and Ethiopia and called for the reunification and autonomy of Afar territory. The ARDUF had warned foreign workers in November 2003 of the threat of insecurity if they enter the Afar territory under the cover of border demarcation. The rebel group has never recognized Eritrea as a sovereign state, and considers the larger part of Eritrea as an annexed Afar territory. The conflict persists for 14 years, and has drawn more fire from Addis Ababa than from Asmara¹⁵.

Ogaden National Liberation Front (ONLF) - The Ogaden, a Somali clan is concentrated in northern Kenya and eastern Ethiopia. History also proved that this is one of the clans that are more susceptible to Islamic extremism. Although the clan system proved to be a more effective organizing force within Somalia, Islam tends to be used against external role-players to mobilize support and justify actions. The ONLF's mission is to seek independence that resulted in an ongoing conflict between the ONLF and the Ethiopia security forces. The Ogaden National Liberation Army (ONLA), the military wing of the Ogaden National Liberation Front (ONLF) predominately direct their attacks against Ethiopian troops.

Islamic Front for the Liberation of Oromia (IFLO), a faction with links to Islamic groups in Somalia, including Al-Ittihad al-Islamiyya (listed by the United States as a terrorist group, with suspected links to al-Qa'ida). The IFLO was formed after a split within the OLF and was initially called Jihad Oromo led by Ibrahim Bilissa. Between 1978 and 1988 it waged guerrilla war against Mengistu. After taking part in the Peace and Democracy Conference of July 1991, several IFLO leaders were killed in January 1992 in the eastern town of Dire Dawa by government soldiers. The IFLO went underground and boycotted the June 1992 regional elections. The IFLO is still active in rural areas inhabited by Muslim *Oromos*, notably in Harar, Dire Dawa and the south-eastern part of Oromia Regional State.

Reports were also received that Al-Ittihad members participate in attacks along both the OLF and ONLF¹⁶. Addressing the situation in Oromo, the following groups formed the United Oromo Liberation Forces in September 2000¹⁷:

- The Oromo Liberation Front (OLF);
- The Oromo People's Liberation Front (OPLF);
- The Islamic Front for the Liberation of Oromia (IFLO);
- The Oromo Liberation Council (OLC); The United Oromo People's Liberation Front (UOPLF); and
- The Oromo People's Liberation Organization (OPLO)

Resulted in the release of joint military communiqué of the Oromo Liberation Front (OLF) that concentrates most of its activities in south eastern Ethiopia and Ogaden National Liberation Front (ONLF) on military successes against Ethiopian security forces.

Before 9/11, especially since Ethiopia do not have specific legislation to deal with the activities of OLF, although publicly announced as terrorism charged members of OLF that were suspected to be involved in a series of grenade and bomb attacks in Addis Ababa with 'arms stockpiling, destroying of property and murder'. Government also

charged members of a privately owned weekly newspaper with membership of the OLF.

NIGERIA

Nigeria saw a surge of religious and ethnic conflicts at the cost of thousands of lives, made worse by the fact that approximately 120 million people is split among 250 different ethnic and linguistic groups and two primary religions: Christianity and Islam. Riots, the ravaging of churches and mosques, violent demonstrations, military and police abuses, and a general lawlessness were recorded in various parts of the country, such as the religious crisis in Jos and Kano, the crisis between the Tivs and Jukuns over land, and only recently bomb explosions in Lagos, and between the Yorubas and Hausas. Violence, as could be expected have a serious negative effect on the economical profile and development of the country, especially in the oil rich Delta region where Shell (Anglo-Dutch), Total (France) and Chevron Texaco (United States) were forced to evacuate most of their facilities in reaction to conflict between the Ijaw and Itsekiri ethnic groups and between the Ijaw and government forces. Instability allows gangs to exploit the situation leading to an escalation in attacks on pipelines and oil facilities and the kidnapping of oil workers for ransom.

According to official figures 892 people died between May 1999, the end of military rule and December 2001, primarily as a result of ethnic militia groups. Academics however put the figure conservatively at more than 10 000. Violence primarily erupted over the past three years along ethnic, religious and communal lines, particularly in deep underlying fear of domination by another group¹⁸. For example, ethnic militias, such as the southwest-based Odua People's Congress (OPC) often exploit already volatile situations. These state of affairs led to an increase call by academics as well as the local community on government urging them to take action against ethnic militias. Government is also called upon to set up peace-building organisations in their respective areas, involving all the local communities.

Without over simplifying the reasons behind terrorism in Nigeria, it is clear that the search for political power is one of the primary motivational factors for terrorism and political violence. Affirmed by the fact that in more than 40 years of independence Nigeria has never successfully transferred power from one elected regime to the other¹⁹, also manifested in an increase in the number of assassinations before and after elections.

SOUTH AFRICA

Although not on the same level as crime and violence South Africa's internal security (as part of a transnational phenomenon) is threatened by both Islamic and right wing motivated extremism. In contrast to earlier manifestations of terrorism, South Africa as with the rest of the world, is confronted by a new trend of terrorism. Although ideology as motivation could be clearly identified in larger movements, small independent cells, if not individuals are conducting the planning and execution of acts of terrorism. Police and intelligence structures accepted that, although these manifestations of terror may not be considered as rational, in reality it exists.

UGANDA

The Allied Democratic Forces (ADF) consists predominately of former members of the National Army of the Liberation of Uganda (NALU) formed in 1995 in opposition of

the government of President Yoweri Museveni. Acts of terror were predominately directed against local citizens to create fear with the intention to undermine confidence in the government. In the campaign between 1997-2000, 48 explosive devices detonated in and around Kampala. A successful military offensive against several ADF camps resulted in the arrest of several operatives that led to a termination of attacks. During November 2003 reports were received that the ADF is regrouping in the Democratic Republic of the Congo. In light of this trend requests were received from Bundibugyo, western Uganda to beef up security²⁰.

The aim of the *Lord's Resistance Army (LRA)* is to rule Uganda according to the biblical Ten Commandments. Throughout the 1990s, the conflict was fuelled by tensions between Sudan and Uganda: Khartoum allowed the LRA to set up camp in southern Sudan in retaliation at Kampala's support for Sudanese insurgents. At the end of 2002, the two countries signed an agreement ending the sponsorship of terror in each other's countries. This meant that the Ugandan army was free to chase the LRA rebels over the border into Sudan. The LRA seldom attacks any strategic target, rather preferring nocturnal hit-and-run raids on rural communities. They are also known mainly for its brutality towards civilians and for the abduction of approximately 20,000 children. The LRA is made up entirely of child abductees, who grew over the years into adults and hardened fighters, and are now preventing more recent recruits from leaving their ranks. The movement is thought to number somewhere between 4,000 and 7,000 fighters. The LRA is composed of five brigades, each of which can number up to 1,500 fighters. The children undergo various rites to dehumanize them, normally being forced to kill members of their own families under threat of being killed themselves. This ensures they become social outcasts and cannot run away to return home. Girls taken hostage can be forced to fight as well as being made concubines to rebel leaders.

The LRA was for a long time, along with the Sudan People's Liberation Army (SPLA), the main bone of contention between Sudan and Uganda, which broke off diplomatic relations in 1995. Kampala accused Sudan of backing the LRA and Khartoum counter-accused Uganda of supporting the SPLA, the southern rebel movement that has been fighting the Sudan government since 1983 to end domination of the Christian and animist south by the Arabised, Muslim north. The war in the north has left tens of thousands of people dead and has displaced over 1.2 million others²¹.

Instead of limiting its operations, the LRA responded aggressively. Dividing into groups of 10-15, it stepped up attacks on the few civilians who remained in their villages. At the same time, the LRA started kidnapping children at a younger age and attempted to extend its power base further south. The LRA is known for its three-part strategy of land mines, ambushes on vehicles and attacks directed at remote villages. As part of the latter members of the LRA abducted children, 20,000 children, half of them within the past year, are forcing them to kill²².

KEY COMMITMENTS: CRITERIA FOR SELECTING BENCHMARKS AND LEVELS OF REVIEW

ORGANISED CRIME

Important commitments have been made in respect of organised crime by African states at various junctures. However, not all have been made as part of continental covenants. In selecting benchmark commitments it is necessary to confine the survey to commitments that form part of regional (i.e. Africa-wide) Conventions or treaties. While this might appear to be a relegation of international Conventions and sub-regional protocols, it is not necessarily the case. Often, regional Conventions adopt the provisions of international Conventions by cross-reference. Such is the case with the Treaty Establishing the African Economic Community (1991), in its reference to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). Sub-regional protocols (and Conventions) are also important to the evaluation exercise, in that they are predicated on the efficacy of continent-wide Conventions, and designed to complement the latter. By their nature, the protocols are intended to enhance the harmonisation of state responses to the incidence of organised crime. Much of their focus is on what may be called 'law-enforcement law'. The capacity of a given state to co-operate with other states in implementing a provision in for example, the African Union Convention on Corruption, may depend on whether that state has adopted a legislative framework set out in a sub-regional protocol. In turn, the adoption of the framework may depend on whether the state has ratified the protocol. In an indirect sense, the provisions of the protocol become relevant to the Convention. The performance record of states has in some cases been evaluated at two levels, initially in respect of any relevant sub-regional protocols, and then in respect of the Convention.

Related to sub-regional treaties are the various Memoranda of Understanding (MoUs) which exist between and among some states. Aust (2000) describes an MoU as 'an instrument concluded between states which is not legally binding.'²³ In international law, a treaty is defined as:²⁴

An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Some commentators nevertheless draw no distinction between a treaty and an MoU, but they appear to be in a minority.²⁵ Even though there may be similarities in terms of subject matter and content, the technical distinction between an MoU and a treaty is fairly well settled. One must however acknowledge that an MoU, where it records a commitment to adopt and implement prescriptions of an international treaty or Convention, goes beyond simple political declarations. It often represents a clear intention on the part of the signatories to implement the content of the underlying treaty. This report therefore takes into account any MoUs that states may have entered into in respect of matters falling within the ambit of their commitments. In reviewing implementation of commitments, account is taken of legislative developments in the form of bills, even where they have not yet been passed. A bill can be regarded as evidence of, and part of, an implementation plan, at least on the part of the executive institutions of the state. However, formulating a bill is quite a

different matter from getting it passed into law. Amendment, rejection, abandonment or delay have been known to constitute barriers between the two. The existence of a bill as an indicator of implementation of commitment must therefore be accepted only conditionally and with the necessary caution.

Commitments: an overview of sources

The commitments that have a bearing on organised crime can be found in the Treaty Establishing the African Economic Community and the African Union Convention on Corruption. The commitments are considered in separate chapters in this report.

CORRUPTION

This report is not concerned with the substantive content of anti-corruption laws. The extent to which respective laws criminalise corrupt conduct falls outside the scope of the report. Some of the legislative commitments recited in the Convention are relatively remarkable in their reach, for instance the resolution to extend anti-corruption law beyond the public sector, and to introduce a modicum of transparency to the funding of political parties. For that reason, it is tempting to engage in a detailed discussion of the merits of these provisions, and assess compliance to date by the selected states.

This report however considers only the procedures to enforce the substantive law. While some attention is given to measures available to enforce anti-corruption measures within a given state, greater focus is placed on legislative structures to enhance co-operation in combating corruption with trans-national dimensions.

Commitments of African states in the sphere of combating corruption comprise a principal or thematic commitment, and subsidiary commitments. They are principally derived from the African Union Convention on Preventing and Combating Corruption and Related Offences, adopted in Maputo, Mozambique in July 2003. The Convention requires state parties **to pursue, as a matter of priority a common penal policy aimed at protecting society against corruption**. To this end, state parties pledged to adopt laws to enable themselves individually, and the continent collectively to combat the scourge of corruption and act against the proceeds of corruption in a similar manner to the proceeds of drug trafficking. Included in Article 16 are measures to:

- search, identify, trace, administer and freeze or seize the assets yield by corruption, and the means by which corruption is committed
- confiscate the proceeds of corruption
- repatriate the proceeds of corruption

Article 6 requires state parties to criminalise the laundering of proceeds of corruption. Article 9 requires state parties to give practical effect to the right of access to information that is required to combat corruption. The provisions of Articles 6 and 9 complement, and are complemented by, Articles 16-20 of the Convention. Key commitments evident in the latter may be summarised as:

Commitment 1

To adopt legislative measures to detect, seize, confiscate and, in appropriate cases, repatriate proceeds of corruption.

Commitment 2

To waive bank secrecy in order to facilitate the use of financial records in tracking proceeds of corruption (To be discussed under chapter 4 – financing of terrorism).

Commitment 3

To facilitate access to information required to detect and combat corruption. Related to this is the pledge to permit civil society and the media to monitor the implementation of the anti-corruption measures envisaged by the Convention.

Commitment 4

To make corruption and the laundering of the proceeds of corruption, extraditable offences, without requiring additional treaties. The provisions of the Convention in this respect resemble cognate provisions of the Vienna Convention.

Commitment 5

To enhance international co-operation against trans-national corruption, inter alia, by:

- **exchanging technical assistance and co-operation**
- **exchanging information and sharing expertise**
- **designate a national authority to co-ordinate requests for mutual legal assistance**

The Convention stresses that it is complementary to any existing arrangements relating to mutual legal assistance.

TERRORISM

With reference to terrorism, African commitment to organised responses dates back to July 1992, when OAU Heads of State and Government adopted Resolution 213²⁶ in Dakar. The objective of this resolution was aimed at enhancing cooperation and coordination between African States, in order to enhance the effectiveness of its initiatives against the first real manifestations of extremism. Member States agreed not to allow any movement using religion, ethnic or other social or cultural differences to incite and justify hostile activities against Member States. Another element that was later re-enforced in the Algiers Convention was aimed at preventing the use of territories to provide support to any group that could disrupt the stability and the territorial integrity of Member States by violent means.

Two years later, in June 1994, during its 30th Ordinary Session in Tunis the Assembly of Heads of State and Government adopted a “Declaration on the Code of Conduct for Inter-African Relations²⁷”, rejecting fanaticism and extremism of whatever nature, origin or form, but particularly those based on religion, as unacceptable and detrimental to the promotion of peace and security on the continent. The Summit unreservedly condemned the terrorist acts, methods and practices and expressed its determination to strengthen cooperation between Member States.

These initiatives led to the Algiers Convention on the Prevention and Combating of Terrorism²⁸ adopted in July 1999, in Algiers by the 35th Ordinary Session of the Assembly of Heads of State and Government. The Convention called on Member States’ conviction not to justify terrorism under any circumstances, origin, causes and

objectives. The Convention contained a definition of terrorism; provisions for organizing cooperation between Member States, particularly through exchange of information on terrorist groups and the networks that finance them; and cover areas such as extradition, extraterritorial investigations and legal assistance.

As a sign of greater awareness by OAU Member States on the threat terrorism presents to the stability and security of Member States, the Constitutive Act of the African Union listed among its principles, the rejection of acts of terrorism (Art.4 (o)). In addition the Solemn Declaration on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)²⁹, adopted by the Lome Summit in July 2000, contains a double reference to terrorism:

- Under the principle on the stability, states declared, "terrorism, in all its manifestations, is inimical to stability³⁰".
- In the Plan of Action, meant to translate into concrete actions the principles governing the CSSDCA process, the Member States agreed on the need to "exchange information and cooperation, at the Sub-regional level, on security matters, especially on issues relating to terrorism..." [Paragraph 14 (d)].

Furthermore, and pursuant to the Decision adopted by the 72nd Ordinary Session of the Council of Ministers, held in July 2000, in Lome, Togo³¹, the OAU convened an Experts Meeting to consider a Draft Convention on Extradition and a Draft Convention on Mutual Legal Assistance in Criminal Matters, in Addis Ababa, from 2 to 5 April 2001. These two conventions, once finalized and formally adopted and ratified, will go a long way in reinforcing the OAU Convention on Terrorism, relating to Extradition and Mutual Legal Assistance.

Although the Western world refers to 9/11 as the watershed in the manifestation of terrorism, African countries were shocked by the gravity of transnational terrorism by the Kenya and Tanzania bombings of August 1998. This led to the Algiers Convention (1999) that closely relates to provisions in Resolution 1373.

Currently the OAU/AU Convention on the Prevention and Combating of Terrorism is the latest and most comprehensive instrument in Africa to address terrorism. Broadly the convention could be divided into two categories: General followed by Specific Legal measures or requirements:

General Legal measures:

- **The signing, ratification and implementation of the Algiers Convention and other international counter-terrorism instruments (Commitment 1).**
- **Review legislation – making terrorism a criminal offence and making provisions within international conventions binding (Commitment 2).**
- **Promote interaction between the institutions involved in the fight against terrorism: legislative, judicial and financial authorities, security forces, the army, and civil protection (Commitment 4). The following measures could be included: the exchange of information and experience, the creation and development of anti terrorist units given the necessary equipment and training required.**

- **Examine inter-relationships and links between terrorism and other forms of crime: drug trafficking, illegal proliferation and circulation of light arms (Commitment 3), corruption and the collection of monetary means to be used in the financing of terrorist activities.**
- **Address the causes of terrorism in particular poverty and marginalization.**

Despite being considered as “broad legal measures” above-mentioned could be converted into “*specific measures or requirements*”:

- Police and border control (Commitment 3)- The reinforcement of border controls (air, sea, land) and the prevention of falsification of identity and travel documents, the training and development of African specialist capacities. Practical conditions, such as effective communication networks and a lack in logistics prevent many African countries to effectively adhere to international requirements.
- Legislative and legal measures (Commitment 2 and 3) - The passing of national legislation and criminal procedure, the harmonization of legislative authorities, of procedures and means of proof, the conclusion and the reinforcement of legal assistance, including extradition, the creation of coordinating mechanisms between legal authorities, the application of the principle of systematic extradition or prosecution, applying the main charge of terrorism to acts of instigation, inciting and justification of acts of terrorism, the qualification of terrorist acts in national legislations as serious crimes and the introduction of punishments which correspond thereto.
- Financing of terrorism (Commitment 3) - The implementation of the International Convention for the Suppression of the Financing of Terrorism, the control of funds and suspect movement of capital, preventative measures which relate to banking identity and to anonymous accounts, the creation of information and financial investigation units, the control of movement of funds. Identify external role-players such as charitable organisations associated with the financing of individuals and groups associated with terrorism.
- Exchange of information (Commitment 4) - Operational co-operation between the law enforcement communities in sharing information that also manifest in regional early warning initiatives. Member states should establish or support the expansion of a sub-regional system to facilitate the exchange of information. The reinforcement of exchanges of information and research on the activities of terrorist groups, their methods, their means of action and the sources of their funding, the reinforcement of exchanges of experience, capacities and expertises of personnel in charge of the fight against terrorism.

This report isolates and analyses eight member-states commitment to counter terrorism on the OAU/AU Convention on the Prevention and Combating of Terrorism. Seven of the eight countries, namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal and South Africa ratified the Convention, while Uganda signed the convention. In assessing national implementation of the OAU/AU Convention on the Prevention and Combating of Terrorism (Algiers Convention) a basic questionnaire was compiled covering all the primary areas of concern in a national, regional and international counter-terrorism strategy. This questionnaire also standardized the questions presented to authorities, that made evaluation possible.

CHAPTER 2: **INTERNATIONAL CONVENTIONS**

RATIFY AND IMPLEMENT INTERNATIONAL CONVENTIONS

INTERNATIONAL CONVENTIONS AGAINST NARCOTIC DRUG PRODUCTION AND TRAFFICKING

In terms of Article 72(2) of the Treaty which established the African Economic Community, member states committed themselves to ratify and implement international anti-drug Conventions. Thirteen multilateral Conventions, directed at regulation of the production and trafficking of narcotics, were adopted between 1912 and 1988. The process culminated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), commonly known as the Vienna Convention. Its adoption symbolised the realisation that the proliferation of narcotics was not a challenge that could be confronted only by states acting in isolation. The Convention accordingly laid emphasis on trans-national co-operation in law enforcement.

The selected States may be assessed in terms of ratification and implementation of the Vienna Convention. No attempt is made to evaluate their record in respect of the earlier Conventions. In order to appreciate the progress made in complying with the Convention, a brief contextual background of the situation in few countries is presented in the next few paragraphs.

The production, marketing and trafficking of drugs is a challenge for all states under review. In several instances, transmission routes of drugs interconnect these countries. Uganda's Entebbe International Airport has for some time been known to be a transit route for heroin and mandrax from the Far East *en route* to South Africa. A review of drug seizures in 1998 and 1999 showed an increase in the trafficking of heroin to east African countries from Pakistan, Thailand and India. In 2003, the United Nations Office on Drugs and Crime noted an increase in the number and volume of seizures of heroin with Nigerian connections bound for Uganda through Ethiopia. The large amount of the substance seized supported the inference that Uganda was being used as a major transit country.³²

In addition to the airport, bus routes leading to Rwanda, Tanzania and Kenya have also been utilised to transmit drugs. The Uganda Revenue Authority has also reported the use of postal parcels to transmit narcotics, especially heroin. The commercial seaport of Mombasa on the coast of Kenya, which serves many land-locked countries in east and central Africa, has been exploited by drug traffickers, as has Nairobi's Kenyatta International airport. Another transit hub with excellent international connections, Addis Ababa international airport has also been targeted by West African syndicates trafficking in heroin from Pakistan, Thailand, India and Iran.

Internally, the major drugs abused in Uganda are cannabis, heroin, cocaine, mandrax and khat. The latter, which is not considered illegal in some parts of East Africa,³³ is mostly abused by youth and men between the ages of 15 and 45 years.

At the base of the continent, South Africa continues to encounter a monumental challenge of containing the drug threat. Irish and Qhobosheane report that since 1990, South Africa there has been a notable diversification and expansion of drug

trafficking in South Africa, and that this coincided with a significant influx of trans-national organised crime syndicates into the country. They write that ‘cocaine, heroin and hashish markets have dramatically expanded....Although there are some domestic groups involved in the illicit drug trade in the country (such as the Western cape gangs), trans-national groups including those from Pakistan, Nigeria, Morocco, Tanzania and China dominate the bulk of the trade. Drug trafficking is estimated to be worth R50 to R75 billion annually.’³⁴

Vienna Convention: ratification record and implicit commitments

Table 1 below shows the ratification status of the various states.

Table 1

Country	Ratified/not ratified
Algeria	Ratified
Ethiopia	“
Ghana	“
Kenya	“
Nigeria	“
Senegal	“
South Africa	“
Uganda	“

As of the 2nd February 2004, there were a total of 168 state parties to the Vienna Convention. The legal systems of civil law countries incorporate the provisions of the Convention upon ratification, in the absence of domestication by internal legislation. The provisions of the Convention are therefore part of the law of Senegal in the absence of domestication.

Vienna Convention: implementation record of implicit commitments

Implementation of the Convention entails establishing and maintaining international co-operation against trans-national drug trafficking. The Convention encapsulates measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals. Its key articles pertain to the detection, seizure and confiscation of proceeds of drug trafficking. It prescribes international cooperation in criminal cases, through, for instance, the extradition of drug traffickers, controlled deliveries and transfer of proceedings. The Convention also prescribes certain substantive criminal law provisions. In this report the focus is on procedural prescriptions rather than the content of substantive criminal law. The main measures required of state parties are given in parenthesis. It should be observed that, while the Vienna Convention preceded the AU Corruption Convention, there is considerable overlap in the content and reach of the provisions of both relating to tracing, freezing and confiscation of proceeds. For ease of reference, the commitment in respect of drug proceeds have been cross referenced to the commitments in respect of corruption using standard numbering. Thus, commitments on tracing, freezing and confiscation of proceeds are matched to Commitment 1, while commitments relating to banking secrecy are matched to Commitment 2 etc. Tables inserted into the text summarise the position of each of the respective states.

Commitment 1.1**Tracing of drug proceeds and instrumentalities connected to drug production/trafficking**

Each Party should adopt measures to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things connected to drug production or trafficking, for the purpose of eventual confiscation.

Commitment 1.2**Confiscation of drug proceeds**

Each Party should adopt measures to enable confiscation of:

- (a) Proceeds derived from drug production and/or trafficking, or property whose value corresponds to that of such proceeds;
- (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in drug production and/or trafficking.

Table 2

COUNTRY	Do measures to trace, and freeze drug proceeds/instrumentalities exist?	Does the law permit confiscation of drug proceeds & instrumentalities?
Algeria	Yes	Yes
Ethiopia	Yes	Yes
Ghana	Yes, Narcotic Drugs Law (1990)	Yes
Kenya	Yes, Narcotic Drugs Act (1994)	Yes
Nigeria	Yes, Decree 48/1989	Yes, i.t.o. Decree; Money laundering Decree (1995); and Economic & Financial Crimes Commission Act (2002)
Senegal	Yes, Code des Drogues (1997)	Yes
South Africa	Yes, Drugs & Drug Trafficking Act (1992)	Yes
Uganda	Yes, National Drug Policy and Authority Statute (1993)	Yes

There is an impressive degree of compliance on the aspects set out in Table. It is as if the Convention was declaratory of a pre-existing state of affairs.

Commitment 2.1**Waiver of bank secrecy**

Each Party should empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

The measures prescribed in respect of enhancing 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. It appears that banking confidentiality or secrecy as it is sometimes called, is indivisible. Once waived, the use to which the information revealed can be put cannot be restricted. The context in which banking secrecy is invoked, and the implications for economies in transition, are discussed in the section on corruption

below. It is appropriate to consider the position of all the states on bank secrecy in respect of drug trafficking.

Table 3

COUNTRY	Does the law permit access to financial records?	Who may access financial records?
Algeria	In drug related cases	The police, all else require court order
Ethiopia	In drug related cases	The police, all else require court order
Ghana	No, although declarations by public officers required	Commission of inquiry; human rights investigator
Kenya	No, although declarations by public officers required	Responsible Commission; police; person authorised by court order
Nigeria	Yes, in drugs and serious economic investigations	Economic & Financial Crimes Commission; police
Senegal	No	N/A
South Africa	Yes, i.t.o. Financial Intelligence Centre Act (2001)	Financial Intelligence Centre; law enforcement agencies on reference by FIC
Uganda	Yes, in respect of political office holders. Leadership Code Act (2002)	Inspector-General of Government and/or nominee, declaration accessible to public.

In all cases the courts can order the disclosure of bank records in respect of assets held within their area of jurisdiction. On the face of it, **although there is no generalised access to financial information, there is substantial compliance with the Convention.** It is however worth examining the depth of conformity with the Convention, to determine whether the current arrangements match not just the letter of the Convention, but its spirit as well. Chapter 3 examines this issue in more detail.

Bank, financial or commercial records constitute an integral component of infrastructure to combat the laundering of proceeds of most economic crime. The underlying premise is that organised criminal syndicates have to make use of the legitimate (legal) institutions of the economy both to conceal proceeds of their activities and to make profitable investments. The acceptance of this premise has three broad implications for the direction and content of norm-formulation, firstly that money laundering should be criminalised, secondly that the range of predicate offences for money laundering should be conceived widely, and finally that impediments to trans-national co-operation in combating money laundering should be removed. The Palermo Convention reflects contemporary trends in combating trans-national economic crime. The Convention may not be a direct source of the benchmarks for this review, but the selected states can be evaluated against the criteria to guide norm-formulation that are crystallised in the Convention. In Table 4, the first two criteria, namely criminalisation of money laundering and the scope of the predicate offences for money laundering, have been separated from the third.

Table 4

COUNTRY	Is money laundering an offence? If so, brief citation of the statute.	What predicate offences are recognised for money laundering, if any?
Algeria	Yes, but only for drug proceeds. General bill under consideration.	Drug trafficking
Ethiopia	No, except for proceeds of drug trafficking	N/A
Ghana	No, except for proceeds of drug trafficking	Only drug trafficking
Kenya	No, except for proceeds of drug trafficking	Only drug trafficking
Nigeria	Yes, Money Laundering Act (1995); Economic and Financial Crimes Commission Act (2002)	All non-violent illicit activities, including corruption, fraud, drug/arms/human trafficking, looting, oil bunkering, tax evasion, counterfeiting currency, intellectual piracy, and environmental crime.
Senegal	No, except for proceeds of drug trafficking	Only drug trafficking
South Africa	Yes, Prevention of Organised Crime Act (1998); Financial Intelligence Centre Act (2001)	Widely defined in POCA to include all unlawful activity. Specific mention of racketeering and organised crime.
Uganda	Not generally	Drug trafficking

Banking secrecy is also considered to be relevant to the financing of terrorism. The factors taken into account in assessing state compliance with the relevant prescriptions of international conventions in the sphere of terrorist financing are not the same as those considered above. Chapter 4 discusses banking secrecy as it relates to terrorist financing.

IMPLEMENTATION OF INTERNATIONAL COUNTER-TERRORISM INSTRUMENTS

In analysing the level of political commitment of African countries to become parties to international counter-terrorism instruments Article 2 (b) of the OAU/AU Convention on the Prevention and Combating of Terrorism, called upon states “as a matter of priority to sign and ratify the international instruments listed in the Annexure”:

The particular Annexure made provisions for the following:

- a) *Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963.*
- b) *Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970.*
- c) *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971.*
- d) *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973.*
- e) *International Convention against the Taking of Hostages, 17 December 1979.*
- f) *Convention on the Physical Protection of Nuclear Material, 3 March 1980.*
- g) *United Nations Convention on the Law of the Sea, 10 December 1982.*

- h) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 24 February 1988.*
- i) Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, 10 March 1988.*
- j) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 10 March 1988.*
- k) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991.*
- l) International Convention for the Suppression of Terrorist Bombings, 15 December 1997.*
- m) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997.*

Table 5 summarises the status of member-states committed to the above-mentioned list of conventions:

Table 5

	A	B	C	D	E	F	G	H	I	J	K	L	M
Algeria	1-Mar-98	6-Oct-95	6-Oct-95	7-Nov-00	18-Dec-96		11-Jun-96	6-Oct-95			14-Nov-96	8-Nov-01	9-Oct-01
Ethiopia	25-Jun-79	26-Mar-79	26-Mar-79	16-Apr-03	16-Apr-03		10-Dec-82	15-Dec-99				16-Apr-03	3-Dec-97
Ghana	16-Mar-70	12-Dec-73	12-Dec-73	25-Apr-75	10-Nov-87	16-Oct-02	7-Jun-83	15-Jul-97			22-Apr-98	6-Sep-02	30-Jun-00
Kenya	20-Sep-70	11-Jan-77	11-Jan-77	16-Nov-01	8-Dec-81	11-Feb-02	2-Mar-89	5-Oct-95			22-Oct-02	16-Nov-01	23-Jan-01
Nigeria	6-Jul-70	3-Jul-73	3-Jul-73				14-Aug-86	25-Mar-03			10-May-02		27-Sep-01
Senegal	7-Jun-72	3-Feb-78	3-Feb-78		10-Mar-87		25-Oct-84	24-Mar-03			1-Mar-91	27-Oct-03	24-Sep-98
South Africa	24-Aug-72	30-May-72	30-May-72	23-Sep-03	23-Sep-03	18-May-81	23-Dec-97	21-Sep-98			1-Dec-99	1-May-03	26-Jun-98
Uganda	23-Sep-82	27-Mar-72	19-Jul-82	5-Nov-03	5-Nov-03		9-Nov-90	17-Mar-94				5-Nov-03	25-Feb-99

Although not mentioned in the Algiers Convention (adopted after 1999), the following counter-terrorism conventions are important and therefore imperative that member states become parties. Especially since the Algiers Convention make provision for *subsequent international treaties and protocols that relate to combating terrorism, money laundering, organized crime, drug and arms trafficking.*

- n) *International Convention for the Suppression of the Financing of Terrorism, 9 September 1999.*
- o) *UN Convention against Transnational Organized Crime (Palermo Convention), 15 November 2000.*
- p) *OAU/AU Convention on the Prevention and Combating of Terrorism, 1999.*

Table 6 summarises the status of member-states committed to the above-mentioned list of conventions:

Table 6

	N	O	P	
Algeria	8-Nov-01	7-Oct-02	16-Dec-00	
Ethiopia		14-Dec-00	24-Feb-03	Ratified
Ghana	6-Sep-02		30-Aug-02	Signed
Kenya	27-Jun-03		28-Nov-01	
Nigeria	16-Jun-03	28-Jun-01	28-Apr-02	
Senegal		27-Oct-03	21-Jan-02	
South Africa	1-May-03	14-Dec-00	7-Nov-02	
Uganda	5-Nov-03	12-Dec-00	2-Sep-99	

Commitment to *Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, 1988 and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988* is relative open. A possible explanation might be that countries do not consider the protection of marine navigation and fixed platforms a priority, especially in land-locked countries. In contrast, although later implemented the *International Convention for the Suppression of Terrorist Bombings, 1997* and *International Convention for the Suppression of the Financing of Terrorism, 1999* is considered the foundation of the international

counter-terrorism initiative, explaining higher level of commitment on the part of member-states.

It is clear as could be expected that countries showed their political will and commitment in the fight against terrorism through becoming parties to international and regional counter-terrorism conventions and instruments. Despite renewed commitment in the aftermath of 9/11, implementation is a different aspect, especially in countries that urgently lack technical and economic resources to enforce political commitment.

CHAPTER 3: **NATIONAL LEGISLATION**

NATIONAL COUNTER-TERRORISM LEGISLATION (TERRORISM COMMITMENT 2)

The second natural step after commitment to regional and international instruments will be to implement it in the format of national legislation, therefore formalize its status as criminal activities and/or formalise commitment as provided in the original instrument. Legislation related to counter or to criminalize actions related to terrorism could be classified into two broad categories:

- The act of terrorism itself (bombings, hijacking, intimidation) and against whom directed; and
- Actions that will facilitate the act of terrorism (financing of terrorism, border control instruments to limit the movement of suspected terrorists and regulations to counter the availability of instruments used to commit acts of terrorism.

The aim of this discussion will be to evaluate whether countries under review assessed the effectiveness of their legal instruments in preventing and prosecuting individuals that committed acts of terrorism, against the background of formal requirements and the current threat presented by terrorism.

Article 2 - States Parties undertake to:

(a) "Review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences" and

(c) Implement the actions, including enactment of legislation and the establishment as criminal offences of certain acts as required in terms of the international instruments referred to in paragraph (b) and that States have ratified and acceded to and make such acts punishable by appropriate penalties which take into account the grave nature of those offences.

Table 7

	National Counter-Terrorism Legislation			
	Dedicated Counter-Terrorism Legislation in place.	Specific national definition of "terrorism" and/or "terrorism act"	Dedicated Legislation related to the Financing of Terrorism in place.	Extradition and Mutual Legal Assistance Legislation in place.
Algeria	No – Penal Code	Yes	Yes – Finance Act, 2003	Yes – Code of Criminal Procedure, Article 694-720
Ethiopia	No - Penal Code of 1957 (draft legislation)	Yes: "Terrorist act"	No – In the interim Monetary and Banking Proclamation No. 83/1984 and 84/1984 allow the monitoring of monetary and	

			banking activities.	
Ghana	No – Public Order Act, 490 of 1994 & Security and Intelligence Agency Act, 526 of 1996			
Kenya	No (draft legislation) - Penal Code and Criminal Procedure Act			
Nigeria	Penal Code (draft legislation)			Nigerian Extradition Act
Senegal	No – Penal Code apply			Yes - Extradition Act No. 71-77 of 1971
South Africa	Yes - Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2003 (effective from 31 March 2004)	Yes: “Terrorism activities”	Yes	Yes
Uganda	Yes – Anti Terrorism Act, 2002	Yes – Anti Terrorism Act, Article 7	Limited - Dealt in Section 12 of the Prevention of Anti-Terrorism Act	Extradition Act, 1962 No specific Mutual Legal Assistance legislation

In contrast to the initial hypothesis that countries that were the target of terrorism implemented dedicated counter-terrorism legislation, Algeria moved away from dedicated legislation to address terrorism as a criminal act within its Penal Code. The reason is that during 1992 Algeria was accused of being too harsh in its fight against terrorism, often in ‘contradiction’ to human rights. Other countries that seek to address terrorism through Penal Codes include Ethiopia, Ghana, Kenya (although the latter has drafted a counter-terrorism bill) and Senegal.

DEFINITION OF TERRORISM

The Algiers Convention as with other international counter-terrorism conventions does not define terrorism, it rather describes 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).

Algeria

Algeria as a target of domestic terrorism, predominately focused its definition on domestic terrorism and the threat of terrorism against state security as the primary threat: The Article 1 of Decree No 93-03, (reproduced in article 87 bis of Ordinance No 95.11 of 25 February 1995 amending and supplementing Ordinance No 66.156 of 8 June 1966 enacting the Penal Code), defines as a subversive or terrorist act “any offence targeting State security, territorial integrity or the stability or normal functioning of institutions through any action seeking to:

- Spread panic among the public and create a climate of insecurity by causing emotional or physical harm to people, jeopardizing their lives or freedom or attacking their property;
- Disrupt traffic or freedom of movement on roads and obstruct public areas with gatherings (reference to roadblocks as a modus operandi used by the GIA);
- Damage national or republican symbols and profane graves;
- Harm the environment, means of communication or means of transport;
- Impede the activities of public authorities and bodies serving the public, or the free exercise of religion and public freedoms;
- Impede the functioning of public institutions, endanger the lives or damage the property of their staff, or obstruct the implementation of laws and regulations”.

Article 2, reproduced in article 88 bis 3 of the Penal Code, equates the following with terrorist acts:

- Establishment of associations, bodies, groupings or organizations for the purpose of engaging in subversive or terrorist activities;
- Membership or participation in such subversive or terrorist associations in any forms;
- Advocating terrorism and encouraging or funding terrorist activities;
- Reproducing or disseminating documents, recordings or printed matter advocating terrorism.

The above-mentioned Ordinance No 95.11 amended the Penal Code to reflect new realities and the development of terrorist activities at national and transnational levels, with a view to incorporating in the definition the following terrorist acts:

- Any Algerian who participates or enrolls abroad in a terrorist or subversive association, grouping or organization, whatever its form or name, even if its activities are not directed against Algeria;
- Any person who sells, purchase distributes, imports or manufactures knives for illicit purposes;
- Any person who possesses, obtains, carries, markets, imports, exports, manufactures, repairs or utilizes prohibited weapons, ammunition or explosives without authorization from the competent authority.

‘Terrorist act’ refers to any individual or collective act, regardless of the place, manner and motive for committing it, and its perpetrators, instigators and sponsors, abettors, planners, advocates and beneficiaries, that has been designed and calculated to cause terror in the general public or a specific category of persons and to undermine the constitutional order of States, their territorial integrity, and the security of property and persons.

The notion of instigator or sponsor applies to any individual, group of individuals, organization or State that directly or indirectly instigates, foments, encourages, facilitates or organizes the commission of acts of terror and/or designates their target.

'Advocate' means any individual, group of individuals, organization or State that directly or indirectly tolerates, justifies, legitimizes or claims credit for the commission of acts of terror and/or affords them favourable propaganda by any means whatsoever.

The term 'support' applies to any type of direct or indirect contribution provided by an individual, a group of individuals, an organization or a State that facilitates the commission of an act of terror or creates the conditions for it by:

- Collecting information on the targeted persons or institutions;
- Recruiting, training, sheltering and supplying food;
- Counterfeiting or providing identity and travel documents, illegally crossing borders and any other means of movement and liaison;
- Supplying arms, ammunition, explosives and other devices capable of causing death or injury.

ETHIOPIA

Article 252, of the Penal Code of 1957 define a "Terrorist Act" as:

1. Whosoever commits a terrorist act which may endanger the life, physical integrity or freedom of, or causes 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, environment or cultural heritage and is calculated or intended to:
 - a. Intimidate, put in fear, force, coerce or seduce 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
 - b. Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - c. Create general **insurrection** in a state is punishable with rigorous imprisonment from ten to twenty five years; or in grave cases, with rigorous imprisonment for life or death.
2. Any **promotion, sponsoring, contribution to**, command, aid incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with intent to commit any of the acts referred to in Sub-article (1) of this Article shall be punished in accordance with Sub-Article (1) hereof (*emphasis added*)."

This definition is clearly similar to that of the OAU/AU Convention on the Prevention and Combating of Terrorism as provided in the beginning of this discussion.

South Africa

South Africa's new counter-terrorism legislation titled "Protection of Constitutional Democracy Against Terrorism and Related Activities" "**terrorist activity**", means—

- (a) any act committed in or outside the Republic, which—
 - i. involves the systematic, repeated or arbitrary use of violence by any means or method;
 - ii. involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to-
 - (aa) any dangerous, hazardous, radioactive or harmful substance or organism;
 - (bb) any toxic chemical; or
 - (cc) any microbial or other biological agent or toxin;
- iii. **endangers the life, physical integrity or physical freedom of, or violates the physical freedom of, or causes serious bodily injury to or the death of, any person, or any number or group of persons;**
 - iv. causes serious risk to the health or safety of the public or any segment of the public;
 - v. causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private;
 - vi. is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to—
 - (aa) a system used for, or by, an electronic system, including an information system;
 - (bb) a telecommunication service or system;
 - (cc) a banking or financial service or financial system;
 - (dd) a system used for the delivery of essential government services;
 - (ee) a system used for, or by, an essential public utility or transport provider;
 - a. an essential infrastructure facility; or
 - b. any essential emergency services, such as police, medical or civil defence services;
 - i. causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or
 - ii. creates a serious public emergency situation or a general insurrection, whether the harm contemplated in paragraphs (a)(i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and (b) is intended, or by its nature and context, can reasonably be regarded as being intended to, in whole or in part, directly or indirectly-
 - i. threaten the unity and territorial integrity of a State;
 - ii. intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; or
 - iii. unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or an international body, organisation or intergovernmental organisation or institution, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles,

whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and

(c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological, or philosophical motive, objective, cause or undertaking.

Uganda

In Uganda under Article 7 of the Anti-Terrorism Act, 2002 “offence of terrorism” refers to:

- (1) any person who engages in or carries out any act of terrorism commits an offence and shall, on conviction –
 - (a) be sentenced to death in the offence directly results in the death of any person;
 - (b) in any other case, be liable to suffer death.

- (2) A person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts –
 - (a) intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other legal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss;
 - (b) direct involvement or complicity in the murder, kidnapping, maiming or attack, whether actual, attempted or threatened, on a person or groups of persons, in public or private institutions;
 - (c) direct involvement or complicity in the murder, kidnapping, abducting, maiming or attack, whether actual, attempted or threatened on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons;
 - (d) intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the terrorist activities under this Act;
 - (e) direct involvement or complicity in the seizure or detention of, and threat to kill, injure or continue to detain a hostage, whether actual or attempted in order to compel a State, an international inter-governmental organization, a person or group of persons, to do or abstain from doing any acts as an explicit or implicit condition for the release of the hostage;
 - (f) unlawful seizure of an aircraft or public transport or the hijacking of passengers or group of persons for ransom;
 - (g) serious interference with or disruption of an electronic system;

- (h) unlawful importation, sale, making, manufacture or distribution of any firearms, explosive, ammunition or bomb;
- (i) intentional development or production or use of, or complicity in the development or production or use of a biological weapon;
- (j) unlawful possession of explosives, ammunition, bomb or any materials for making of any of the foregoing.

Most definitions could be described as relative, conservative and broadly influenced by experience. In other words, countries that were the target of domestic terrorism reflect this reality in its respective legislation. An example is the reference to knives and roadblocks in the definition provided by Algeria. Proving that countries that were predominately targeted by domestic based terrorist groups are weak on the international dimension of terrorism and procedures to detect terrorist financing through financial or charitable institutions. Despite this possibility Algeria experienced the export of terrorism to other countries through the influence of non-state actors, introducing the criminalization of support to domestic as well as international terrorism. Broken down all four examples made use of a different 'strategy' to define terrorism or acts of terrorism. The definition provided by Ethiopia was an image of the definition presented in the Algiers Convention. Although still in line with the Algiers Convention, Uganda included the justification or motivation, the instruments or elements of terrorism as well as the suspected sentence if found guilty. South Africa's definition of "terrorist activities" could be described as a step further in including more 'modern' threats including cyber as well as chemical, biological and nuclear terrorism.

CHAPTER 4: PREVENT THE ESTABLISHMENT OF SUPPORT NETWORKS

In addressing the commitment made by Member States to prevent the establishment of support networks (commitment 3) brief focus will be placed on:

- Border control provisions in preventing the country being used as a safe haven for individuals and groups associated with terrorism;
- Financing of Terrorism – It is however important to note that most countries focus their attention structural counter financing initiatives.
- Firearms – Most acts of terrorism in Africa are committed through the use of firearms. Although the use of explosives are regarded as the preferred weapon of choice in international/transnational terrorism, domestic groups will always resort to weapons that is available, explaining the use of firearms and knives.

Article 4 (1) - *State Parties undertake to refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.*

Under Article 4 (2)(f) State Parties are called upon to: *take all necessary measures to prevent the establishment of terrorist support networks in any form whatsoever.*

4.1 POLICE AND BORDER CONTROL

Article 4 (2) (a) *Prevent their territories from being used as a base for the planning, organization or execution of terrorists acts or for the participation or collaboration in these acts in any form whatsoever;*

(b) *Develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation, importation, export, stockpiling and use of arms, ammunition and explosives and other materials and means of committing terrorist acts;*

(c) *Develop and strengthen methods or controlling and monitoring land, sea and air borders and customs and immigration check points in order to preempt any infiltration by individuals or groups involved in the planning, organization and execution or terrorist acts*

Table 8

	BORDER CONTROL			NATIONAL REGISTER	MEASURES TO PREVENT FRAUD OF PASSPORTS
	COMPUTERIZED SYSTEM	LEGISLATION ON THE ENTRY AND DEPARTURE OF ALIENS	PASSPORT STOP LIST		
Algeria	Yes	Yes	Yes	Yes	Yes

Ethiopia	No	Yes Proclamation 271/1969	– Yes	No	Article of the Revised Penal Code of 1982 Computerized system in the process of being developed
Ghana					
Kenya	Yes		Yes	Yes	Yes
Nigeria					
Senegal		Yes		Yes	
South Africa	Yes	Yes	Yes	Yes	
Uganda	Not yet	Immigration Act	Not Yet	No	Yes - New passports with photo endorsements were introduced in September 2002

Legislative measures to prevent country being used as a safe-haven or transit point for individuals and groups associated with terrorism –

National register – A national register is not only necessary for countries to keep record of its population it is also essential in the implementation of structural counter-terrorism measures. For example, the issuing of a passport or firearm licence or even implementing an international requirement to verify a customer's identity before opening a bank account will not be possible without a national register/verification system

Practical instruments to support national legislation in preventing the movements of individuals related to terrorism or crime:

Computerized System and Passport Stop list -
Measures to prevent fraud of passports –

In addition Senegal legislation laws on political asylum prohibit refugees to engage in any political activity. Activities related to terrorism are regarded as political motivated, implying that these individuals will lose their refugee status.

Sophisticated measures to prevent the illegal manufacturing of passports proved to be insufficient if the country is plagued by corruption within government departments. In other words, syndicates will rather resort to corrupt government officials than to invest in expensive and sophisticated tools to manufacture illegal or easy fraud able passports and travel documents.

4.2 SUPPRESSING THE FINANCING OF TERRORISM

Although the *International Convention for the Suppression of the Financing of Terrorism, 1999* was introduced after the Algiers Convention it forms an essential part of the international strategy to counter terrorism. The aim of the former could be summarized as:

- Requiring parties to the convention to implement steps to prevent and counteract the financing of terrorists, especially though groups claiming to have charitable, social or cultural goals used as a front for the financing of terrorist groups and/or operations; and

- Implement measures that will make provision for the identification, freezing and seizure of funds allocated for terrorist activities. Bank secrecy will no longer be justification for refusing to cooperate.

Table 9

	COUNTER INITIATIVES: FINANCING OF TERRORISM					PROVIDE RECORDS TO AUTHORITIES
	ANTI MONEY-LAUNDERING LEGISLATION: FREEZE OF ASSETS BLACKLISTING	MEASURES AGAINST SUSPECTED CHARITIES	VERIFY CUSTOMER IDENTITY	REPORT SUSPICIOUS/LARGE TRANSACTIONS		
Algeria	Anti-Money Laundering and Proceeds of Crime Bill, 2003. The Financial Information Processing Unit is the responsible authority to freeze assets of individuals and groups associated with terrorism.	Fund-raising must be authorized – Ordinance No. 77.03 of 19 February 1977.	Yes	Yes – Finance Act, 2003 lift bank and professional secrecy provisions	No	
Ethiopia	National Bank block accounts linked to the financing of terrorism	Ministry of Justice established an organ to monitor the financial activities of charities. Article 32 of the Ethiopian Penal Code of 1957 can be used to convict a person who wilfully provides and collects funds	Yes	No - Instead under Articles 438, 439 and 267 of the Penal Code individuals and entities are under the obligation to inform the concerned authority about the commission or the preparation to commit serious offence.	No – However according to Art 267 of the Penal Code official or professional secrecy cannot be invoked to evade the obligation to inform the authorities. Despite the Act the National Bank is reluctant to supply information – bank secrecy	
Ghana						
Kenya	Anti-Money Laundering and Proceeds of Crime Bill, 2003.		Yes - Anti-Money Laundering and Proceeds of Crime Bill			
Nigeria	Money Laundering Act Economic and Financial Crimes Commission Act, 2002 – Article 14			Yes – Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17 of 1995 Central Bank monitor all transactions & reports to the National Economic Intelligence	Yes	

				Committee	
Senegal	Planned ECOWAS legislation and Code of Criminal Procedure ³⁵ – Art 87	No specific banking / financial regulations on control and surveillance measures to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes. Uniform Law – mechanisms for registering, auditing and monitoring the collection and use of resources of religious, charitable and other associations	Yes	Yes	
South Africa	Chapter 4 of the Prevention of the Protection of Constitutional Democracy Against Terrorism and Related Activities Act – Article 23 Organized Crime Act, 1998; Financial Intelligence Centre Act, 2001		Yes – Financial Intelligence Centre Act – Article 21 ³⁶	Yes - Financial Intelligence Centre Act – Articles 28 ³⁷ & 29	Yes – According to Article 26 of the Financial Intelligence Centre Act the Centre has access to any records
Uganda	No legislation - Make use of Bank of Uganda Guidelines	NGO Board responsible for vetting and monitoring	Difficult without national identification system	No	Yes – Anti Terrorism Act – Article 15

In complying with the international strategy to prevent and combat terrorism, countries predominately focus their attention on countering the financing of terrorism through specific legislation or intermediate bank regulations and/or circulars. Specific Legislation to deal with the providing of financial assistance to individuals and groups associated with terrorism:

Nigeria Economic and Financial Crimes Commission Act, Article 14:

- (1) A person who wilfully provides or collects by any means, directly or indirectly, any money by any other person with intent that the money shall be used for any act of terrorism, commits an offence and is liable on conviction to imprisonment for life.

- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence is liable on conviction to imprisonment for life.
- (3) Any person who makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

In implementing the UN Convention of the Suppression of Financing of Terrorism Article 4 (1) of the Prevention of the Protection of Constitutional Democracy Against Terrorism and Related Activities Act extend beyond the providing of financial or monetary assistance to include the use of property and other economic support as instruments of means to finance acts of terrorism: "Any person who, directly or indirectly, in whole or in part, and by any means or method-

- (a) acquires property;
- (b) collects property;
- (c) uses property;
- (d) possesses property;
- (e) owns property;
- (f) provides or makes available, or invites a person to provide or make available property;
- (g) provides or makes available, or invites a person to provide or make available any financial or other service;
- (h) provides or makes available, or invites a person to provide or make available economic support;
- (i) facilitate the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support,

intending that the property, financial or other service or economic support, as the case might be, be used, or while such person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part-

- (i) to commit or facilitate the commission of a specific offence;
- (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
- (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25 is guilty of an offence.

Although Ethiopia has no specific legislation to prohibit individuals or entities from making available funds, etc, in support of terrorist acts. Article 32 and 36 of the Penal code, however, criminalizes any act of assisting, e.g. by making funds available, by giving advice etc, the commission of any offence by assimilating such individuals with the principal offender as co-offender or accomplice.

In addressing the first requirement countries under review reacted in a different manner. For example in Algeria all fund-raising must be authorized, while in Ethiopia and Uganda specific structures were introduced to ensure that NGO's and other chartable organizations do not abuse their function. In addition to the formal registration of NGO's and chartable organizations, associations are required to keep

adequate accounts and records of income and expenditure and to provide a report to the identified authorities that primarily a balance sheet for the association showing the assets and liabilities, an auditors report; and a description of the major activities of the association during the financial year.

Although Senegal has not implemented specific banking / financial regulations to control and monitor funds and other economic resources collected for religious, charitable or cultural purposes, the Uniform Law implemented mechanisms for registering, auditing and monitoring the collection and use of resources of religious, charitable and other associations.

Although ground lying work commenced in the countries under review additional work is still required in implementation, especially in practical testing.

- Verify customer identity – With the exception of Uganda (as a result of technical difficulties) require individuals and other entities to present 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
- Report suspicious transactions and Provide records to authorities –

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

Banking secrecy is one of the most intractable impediments to combating corruption and money laundering.³⁸ Simply stated, banking secrecy refers to the traditional protection of information on the personal property, usually in the form of liquid assets and investments held by a bank, from anyone not authorised by the beneficiary to access it. Entities excluded from gaining access include the state. A general exception, recognised for a long time, applies where there is a higher private or public interest, as in the case of a prosecution. Switzerland is frequently regarded as the citadel of banking secrecy, but this assumption may be erroneous.³⁹ Stessens (2000) expresses the apprehension that the combination of the effects of technological evolution (vast enlargement in the volume of international financial transactions) and the ideological transformation that started in the late 1980s, and gained momentum in the 1990s has serious implications for the proliferation of money laundering through the erstwhile state-controlled economies.⁴⁰ He observes:

‘Because of the collapse of a number of communist regimes, the capitalist economic model has now been adopted by most states, which has led to the development of wholly new financial sectors in formerly communist states. This not only allows legitimate businesses to flourish but also provides new avenues for money laundering. These states are attractive to money launderers because of their lack of a fully functioning regulatory system and are therefore sometimes called regulatory havens. This is especially the case in those states that have recently converted to capitalism in that the supervisory and regulatory authorities whose task it is to supervise and control the proper functioning of financial institutions are often inexperienced and under-equipped and have to work against a background of a new resistance to state interference of any kind.

Moreover, a number of countries are so eager for an inflow of foreign capital that their authorities are not likely to scrutinise the origin of the monies invested. This is especially the case in respect of an umber of secrecy havens and regulatory havens, some of which have even advertised their willingness to accept criminally derived proceeds.'

It is true that none of the states under review are evolving from communism to capitalism. It is equally true that most of them have hitherto not been regarded as attractive destinations for major money launderers. What places them in a position of equal vulnerability to the regimes adverted to by Stessens is that they are caught up in the liberalising wave set in motion by globalisation and the technological evolution. It is also significant that the supervisory and regulatory regimes within these states are not well developed, in a few cases they do not exist. The demand for foreign capital is evident in all states. At the very least, these states can be exploited as transit points in the laundering of illicit funds.

The authors of the Convention were clearly cognisant of the potentially counter-productive role that banking secrecy could play in negating the detection and control of money laundering.

The integrity of financial markets depends heavily on both the reality and perception that high legal, professional and ethical standards apply. If the proceeds of crime are laundered through a financial institution, or employees of the institution are corrupt or turn a blind eye to the criminal origin of funds, the reputation of the institution is likely to be seriously damaged. This could affect the willingness of law-abiding customers and other institutions to deal with it, and could also affect the market as a whole.

The following tables present the position in the reviewed states in respect of these commitments.

Table 10

COUNTRY	Can bank secrecy be a barrier in corruption cases?	Is seizure and confiscation of proceeds permissible?	Does the law facilitate access to essential information?
Algeria	Yes	Yes, general and drug cases	Limited
Ethiopia	Yes	Yes, general and drug cases	No
Ghana	Yes	Yes	Yes, but only by the Auditor General
Kenya	Yes, but ACC can override in investigation ACECA (2003)	Yes	Yes, to ACC. Also from asset declarations
Nigeria	Yes	Yes	
Senegal	Yes	Yes	No
South Africa	Yes	Yes	Yes
Uganda	Yes	Yes	Yes, supplemented by Leadership Code Act (2002)

Some of the findings summarised in the table above require clarification. Kenya and Uganda present interesting illustrations of asset disclosure systems. In both states, public officers are required to declare their income, assets and liabilities, as well as that of spouses, children and dependents within a prescribed period. In Kenya annual

declarations are prescribed, while in Uganda, after the first declaration, officers only need to declare every two years.⁴¹ Asset declarations in both countries are liable to verification by the authority to which they are made. The form that is used in Kenya is glaringly lacking in particularity. It appears that in the case of bank accounts, none need be identified. As regards liabilities, the declarant need not indicate the creditors or size of each liability. Taking into account the multiplicity of commissions authorised to receive declarations, these omissions do not bode well for effective asset disclosure verification. The Ugandan disclosure is preferable, as it probes for much more precise detail, and makes the verification process less onerous. Declarants are required to indicate bank names, addresses, account numbers, and balances on the form. Assets include those held outside Uganda, movable and immovable, developed and undeveloped. The information provided on the form can be crosschecked with databases of financial institutions, within and outside the country. In cases of suspected false declarations, the information can form the basis of a request for mutual assistance by a foreign authority.

Ghana's asset disclosure, in terms of the Public Office Holders (Declaration of Assets and Disqualification) Act (1998), is applicable to public officials other than members of the armed forces. The reason for excluding the military is not self-evident. The form that is used for declarations is almost as extensive as that used in Uganda.

An implicit requirement stemming from Commitments 3.1- 3.3 is the extension of transparency to transactions in financial institutions beyond the banking sector. The use of institutions such as insurance companies, asset management firms, investment brokerages and estate agencies has increasingly become a characteristic of trans-national organised crime. The Corruption Convention prescribes the introduction of legislative measures to detect, seize, confiscate and, in appropriate cases, repatriate proceeds of corruption. To be able to achieve this combination of aspirations, African states have to implement a range of statutory provisions familiar to anti-money laundering systems. These include due diligence requirements across the spectrum of intermediary services, financial intelligence units, asset forfeiture agencies, and enhanced law enforcement capabilities.

Once established, financial intelligence units have to develop the capacity to aggregate all financial information about suspect sources, where such information may occasionally be dispersed among a number of accounts and jurisdictions. The Abacha embezzlement saga in Nigeria highlights this dimension. The funds illicitly procured by the late dictator were distributed among no less than twenty-one jurisdictions. Detecting their movement, with a view to seizing and confiscating them proved quite a daunting challenge.

Implementation of the requirements under discussion entails a restructuring of the conventional inter-agency relationships within public sector agencies and between the public sector as a collective unit, and the private sector. In practical terms, this means better integration and co-operation between immigration authorities, customs authorities, the revenue collecting authorities, and the police. It also means that information in the custody of immigration should be accessible to the banking sector and the bureaux de change. Without it, transactions that should be regarded as suspicious can easily slip through the net.⁴² Various models of financial intelligence units have taken shape within the membership of the Financial Action Task Force on Money Laundering (FATF). Four of them are described by Boudewijn Verhelst, the Deputy Director of the Belgian financial intelligence-processing unit (CTIF/CFI), who also serves as Chairman of the Egmont Group Legal Working committee. They are:

the intermediary or administrative model, the police model, the judicial model and the hybrid police/judicial model.⁴³

The Intermediary (administrative) model is centred around a specifically designated administrative authority, to which reports are submitted for analysis and processing before being passed on for investigation and prosecution. The authority performs a filtering and selecting function and is a typical “financial intelligence unit.” The institutions operating in Australia (known by the acronyms AUSTRAC); Belgium (CTIF/CFI); Brazil (COAF), the Czech Republic (FAU); France (Tracfin); Italy (UIC), the Netherlands (MOT); Slovenia (OMLP); South Africa (FIC); Spain (SEPBLAC) and the United States of America exemplify it. (FinCEN).

In the Police model the disclosure-receiving agency is a police authority, or rather a specially created or designated unit within the police force. Reports are submitted directly to it for investigation. This model approximated the position in South Africa before the advent of the FIC, when reports were made in terms of the Prevention of Organised Crime Act (1998) to the Commercial Crimes Unit of the South African Police Service. Current examples cited by Verhelst include Austria (EDOK); Finland (MLCH); Germany (LKA of some *Länder*); Hungary (MLD); Portugal (BIB); Slovakia (OFiS); Sweden (NFIS); U.K. (NCIS) the understanding is that the police agency will ultimately submit its work to the prosecuting authority for case disposal. In the Judiciary model the intermediary step is dispensed with, and reports are addressed directly to the public prosecutor’s office, which then refers cases to the police for investigation if warranted. Financial intelligence units in some *Länder* in Germany operate in this manner, as do those in Iceland and Luxembourg. The hybrid or mixed model is characterised by the combination of the analysis, investigation and prosecution functions in the same unit. This is the case in Cyprus, Denmark (Money Laundering Secretariat) and Norway.

There are variations in the extent to which the transformation outlined has occurred in the states under review. Progress has been made in the larger economy of South Africa, but deficiencies are glaring in the smaller economies. In some jurisdictions, the legislative framework to create FIUs and allocate responsibilities does not exist yet. In its absence, informal arrangements tend to fill the void. A common form of these arrangements is the imposition of extended supervisory responsibilities on the central bank. In addition to the usual concerns with prudential financial management, central banks in a number of countries have taken on the role of receiving suspicious transaction reports, and analyzing them. Whether they are equally well equipped for this is debatable. In other cases, central banks have been prompted by external impulses to intervene in specific cases.

Algeria

A bill, the Anti-Money Laundering and Proceeds of Crime Bill (2003) was under consideration in Algeria at the time of writing.

Ethiopia

No information was available at the time of writing as to the provisions enacted in this sphere in Ethiopia.

Kenya

Kenya has committed itself to introduce measures against money laundering, as required by the ESAAMLG, of which it is founder member. This has not yet happened. Financial institutions report suspicious transactions either directly to the police (not as money laundering) or to the Central Bank, but this appears to be discretionary and not erratic. The same position obtains in **Uganda**. In each state a national task force on money laundering was established in 2002 to carry out preparatory work for eventually setting up an FIU.

Nigeria

Nigeria established the Economic and Financial Crimes Commission in 2002. It is tasked with:

- investigating all financial crimes including the infamous advance fee frauds, money laundering, and futures market fraud;
- co-ordinating and enforcing all economic and financial crimes laws;
- identifying, tracing, freezing, confiscating or seizing proceeds derived from terrorist activities, as well as economic and financial crimes;
- facilitating rapid exchange of scientific and technical information, and conduct of joint operations to eradicate economic and financial crimes;
- investigating corruption

The wide ambit of its powers and competences indicates that the Commission combines police and prosecution functions, as well as administrative functions.⁴⁴ In this regard it appears to deviate from any of the other models described above. The Nigerian authorities seem to have over-stretched the arms of the Commission, and it remains to be seen how successful the Commission is in discharging the onerous mandate imposed on it.

South Africa

The Prevention of Organised Crime Act, (1998) criminalises organised crime, money laundering and criminal gang activities. It also provides for confiscation of proceeds of crime, allocating the responsibility to an asset forfeiture unit. The Financial Intelligence Centre Act, (2001) is aimed at combating money laundering, introducing in particular the reporting of suspicious transactions to the Financial Intelligence Centre (FIC). The FIC occupies a position between sources of financial intelligence and law enforcement agencies. The former are obliged to report suspicious transactions to the FIC, which passes on genuinely suspicious transactions for investigation and prosecution to law enforcement agencies. Regulations promulgated in terms of the Act amplify the scope of new due diligence requirements that financial intermediaries have to comply with, and set out the manner in which it should be done. The Extradition Act, 1962 (Act 67 of 1962) and International Cooperation in Criminal Matters Act, 1996 (Act 75 of 1996) deal with extradition and mutual legal assistance in criminal matters. South Africa has also concluded bilateral and multilateral treaties for these purposes. The FIC is affiliated to the Egmont Group of financial intelligence units, which enables it to exchange technical expertise and fact-based experiences with cognate institutions in major financial jurisdictions in a less bureaucratic process.

Senegal

Senegal had no mechanism to collect, collate and analyse financial intelligence at the time of writing.

Ghana

Ghana had no mechanism to collect, collate and analyse financial intelligence at the time of writing.

Algeria was one of the first countries to criminalize the financing of terrorism by adopting Ordinance 95.11 of 25 February 1994, which makes the financing of terrorism punishable by from 5 to 10 years' rigorous imprisonment.

Measures against informal banking systems – In contrast to formal financial institutions that require registration, informal structures could operate undetected.

In countering the suspected relationship between terrorism and transnational organized crime, **Nigeria** established the National Drug Law Enforcement Agency, who's responsibility it is to adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from drugs related offences or properties whose value corresponds to such proceeds⁴⁵. Where a person is arrested for an offence under the Act, the Agency has the authority to immediately trace and attach all the assets and properties of the person and shall thereafter cause to be obtained an interim attachment order by the Tribunal. This means that on arrest, the assets, and properties of the arrested person would be validated later by obtaining order from the Tribunal. Funds can be frozen in Nigeria on the request of foreign authorities where there exists between both countries a mutual legal assistance treaty in criminal or civil matters, which specify or give details of such arrangement.

Countering terrorism through cutting the financial source of terrorist operations make strategically 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. Despite this practical reality, national initiatives to counter financing of terrorism are still relative new, making it difficult to assess, considering the lack of resources, training and experience. Uganda, as with other African countries that is weak on the international dimension of terrorism and procedures to detect terrorist financing through financial and charitable institutions resorted to guidelines in the intermediate. These guidelines are however not enough and in any event difficult to enforce since they do not have the force of law. In addition, the Guidelines do not protect compliant institutions from legal suits, should they wrongly interrupt client transactions and cause prejudice. It has been noted that the banks prefer rather not to report for fear of civil litigation and protect the business. Furthermore, there is a perception that banks cannot make timeously and adequate follow up of the reported transactions and individuals involved. In addition banks do not have adequate technical and qualified personnel resources to detect financing of terrorism or criminal activities and control money laundering.

4.3 CONTROL OF ILLEGAL FIREARMS

This issue is considered in detail in a different contribution, but a limited reference will be made to initiatives in preventing the supply of firearms to individuals and/or groups associated with terrorism.

In contrast to the most preferred modus operandi in Europe and the Middle East, the use of explosives and firearms are more or less equal for the period 1990-1999. The period 2000 - 2003 presents a different scenario in which shooting incidents were the most frequently used modus operandi, represented by 48% compared to 26% of acts of terrorism in which explosives were used. Explained by the availability and flow of illegal firearms as a result of a lack in control, inter- and intra-state warfare and instability. Since 1970, more that 30 wars have been fought in Africa. In 1996 alone 14 of the 53 countries were affected by armed conflicts⁴⁶. Stockpiles of weapons that were used and then circulated by secondary and tertiary actors to other conflict areas are one of the most primary concerns faced by governments. Most of the African countries do not have the resources to implement sufficient measures of control over illegal weapons as well as border control measures.

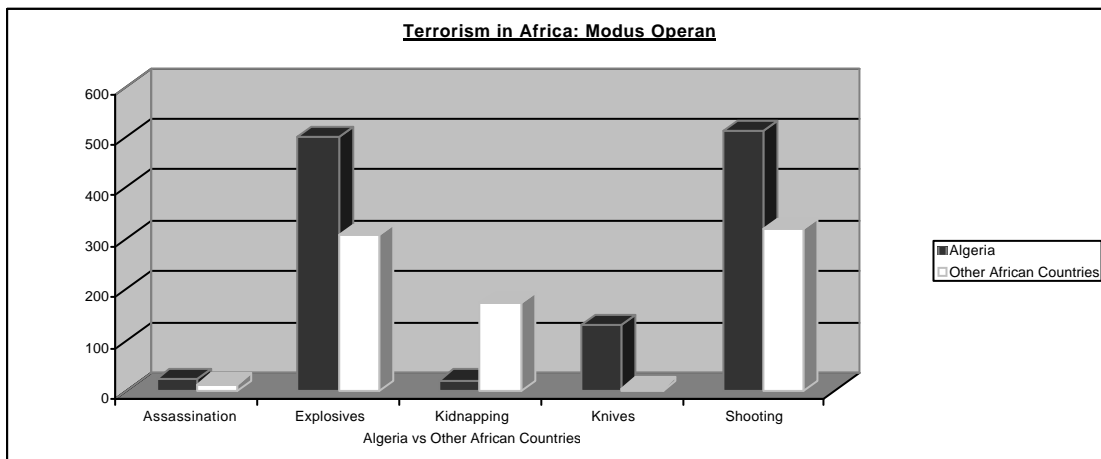
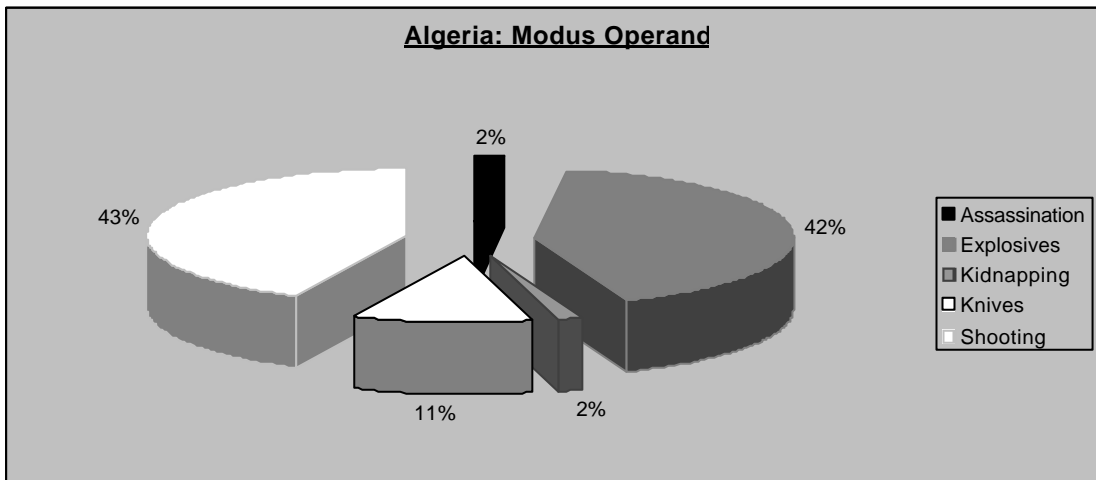
Table 11

	COUNTER INITIATIVES: SUPPLY OF FIREARMS				
	LEGISLATION AGAINST SUPPLYING OF FIREARMS TO TERRORIST ORGANIZATIONS	MEASURES TO COUNTER TRAFFICING IN ILLEGAL FIREARMS	FIREARMS REGISTER	LEGISLATION ON ILLEGAL POSSESSION OF FIREARMS	RESPONSIBLE AUTHORITY
Algeria	Yes	Yes	Yes	Yes	Police – Security Service
Ethiopia	No specific legislation – It is an offence under Article 475, 763 and 764 of the Penal Code to supply weapons.	Illegal trafficking in arms is punishable under Article 41 of the Revised Special Penal Code (Proclamation 214/82)	Yes	Yes - Regulation No. 229/1960	Ministry of Security and Immigration
Ghana					
Kenya					
Nigeria	Yes	Yes – Permission is required to import firearms (Firearms Act)		Yes – Firearms Act	
Senegal	No	ECOWAS moratorium on illicit traffic in light weapons – prohibit signatory countries from importing, exporting or manufacturing of light weapons. All manufacturing and importing of weapons need to be authorized by the ECOWAS Secretariat.	Yes	Yes	Ministry of Interior & Under the ECOWAS moratorium a national commission on light weapons based at the Ministry of Armed Forces was established – Both monitor all arms trading within its borders
South Africa	Yes - Protection of Constitutional Democracy Against Terrorism and Related	Yes	Yes	Yes	Police

	Activities Act Art 3 (2) (a) ⁴⁷				
Uganda	Yes – Anti Terrorism Act, Article 7 (h)	Yes – Firearm Act (New legislation planned)	Yes	Yes – Firearms Act, 1970	Police

Most countries under review implemented the fundamental legislative measures to address the illegal flow and record the legal possession of firearms. Despite these legal instruments African countries are still confronted by the impact of firearms as the most preferred instrument to commit acts of terror with in Africa. Additional coherent and specific instruments are required to counter this threat. Algeria in an attempt to prevent the use of legal firearms in acts of terror confiscated legal firearms in the early 1990’s. Although other countries might consider the same tactic, this strategy proved to be insufficient. Senegal on the other hand has no arms industry of its own that helps to limit the circulation of military weapons. However, the continuing conflict in the Southern Casamance region there is an arms traffic supplying the MFDC rebellion.

In Africa, Algeria is by far the country that experienced the most incidents that could be classified as terrorism. Although explosives and shooting incidents are in ratio with and reflect a similar trend in Africa, knives became a significant weapon of choice, different than in other African countries. Reflected in the following two graphical presentations, the first summarizing the modus operandi in Algeria comparing it to the continent as a whole.



Despite counter measures to prevent the use of firearms in acts of terrorism Algerian legislation also makes provision for the purchase, sale and manufacturing of knives for illicit purposes. The reason for this inclusion is found in the use of knives as a method to terrorise Algerian nationals.

CHAPTER 5: **INTERNATIONAL COOPERATION**

One of the objectives of contemporary international initiatives against organised crime and terrorism is to eliminate the impediments to transnational co-operation through making legal systems compatible across borders. The ultimate goal is to harmonise all legal systems across the globe, which is an ambitious undertaking. In the short to medium term, states should create frameworks for such co-operation at sub-regional and regional levels. A framework for international co-operation in combating crime and terrorism cannot be compartmentalised on the basis of the sphere in which it is invoked or in which co-operation is sought or granted. Co-operation could be required in respect of drug trafficking or terrorism. In both instances, its availability and scope falls to be determined by the laws on extradition or mutual assistance in criminal matters. For that reason, the compliance of states in these areas is reviewed at the same time.

MUTUAL LEGAL ASSISTANCE AND THE EXCHANGE OF INFORMATION

In order to implement provisions within the Algiers Convention to prevent and combat terrorism Article 4 (2) highlighted a few initiatives, including:

(e) *Promote the exchange of information and expertise on terrorist acts and establish databases for the collection and analysis of information and data on terrorist elements, groups, movements and organizations.*

Countries that were the target of terrorism, often out of practical necessity implemented referred databases. It is however impossible, due to the sensitivity of information to reflect on the nature, focus or extend of these databases. Most countries exchange information and cooperate with Interpol.

Under Article 5: *States Parties shall co-operate among themselves in preventing and combating terrorist acts in conformity with national legislation and procedures of each State in the following areas:*

1. *States Parties undertake to strengthen the exchange of information among them regarding:*
 - (a) *acts and crimes committed by terrorist groups, their leaders and elements, their headquarters and training camps, their means and sources of funding and acquisition of arms, the types or arms, ammunition and explosives used, and other means in their possession;*
 - (b) *the communication and propaganda methods and techniques used by the terrorist groups, the behaviour of these groups, the movement of the leaders and elements, as well as their travel documents.*
2. *States Parties undertake to exchange any information that leads to:*

- (a) *the arrest of any person charged with a terrorist act against the interest of a State Party or against its nationals, or attempted to commit such an act or participated in it as an accomplice or an instigator;*
- (b) *the seizure and confiscation of any type of arms, ammunition, explosives, devices or funds or other instrumentalities of crime used to commit a terrorist act or intended for that purpose.*
3. *State Parties undertake to respect the confidentiality of the information exchanged among them and not to provide such information to another State that is not party to this Convention, or to a third State Party, without the prior consent of the State from where such information originated.*
4. *States Parties undertake to promote co-operation among themselves and to help each other with regard to procedures relating to the investigation and arrest of persons suspected of, charged with or convicted of terrorist acts, in conformity with the national law of each State.*
5. *States Parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat terrorist acts and to exchange expertise relating to control of terrorist acts.*
6. *State Parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes or organizing, where necessary and for the benefit of their personnel, joint training courses involving one or several States Parties in the area of control of terrorist acts, in order to improve their scientific, technical and operational capacities to prevent and combat such acts.*
- Under Article 18 States Parties undertake to develop, if necessary, especially by concluding bilateral and multilateral agreements and arrangements, mutual legal assistance procedures aimed at facilitating and speeding up investigations and collecting evidence, as well as cooperation between law enforcement agencies in order to detect and prevent terrorist acts.*

Before countries could be expected to exchange information or to initiate any cross border initiative to establish or enhance strategies to prevent and combat terrorism it is essential to identify the primary role-players in particular countries. Although the Ministry of Foreign Affairs was identified as the primary facilitator in cross border cooperation, in one country it will be imperative in order to exchange information timeously that all the role-players responsible for preventing and combating the different dimensions of terrorism be identified:

Table 12

	PRIMARY ROLE-PLAYERS AND SPECIALIZED UNITS RESPONSIBLE FOR INVESTIGATING AND ANALYSING TERRORISM				
	COUNTER-TERRORISM INVESTIGATION UNITS	RAPID RESPONSE UNITS	BORDER CONTROL	EXTRADITION & MUTUAL LEGAL ASSISTANCE	FINANCING OF TERRORISM
Algeria	Police, Military and Gendarmerie on national and regional level meet regularly Police primarily responsible for information gathering while the military (under military sector commanders) are included to assist with arrests	124 Mobile Squads were formed on a national level to deal with terrorism	Border Police Police deployed at primary arteries & Soldiers deployed at outskirts and strategic sites. National Gendarmerie was deployed in the outskirts of Algiers	Ministry of Justice and Foreign Affairs	Financial Information Processing Unit (includes the Ministries of Foreign Affairs, Justice, Finance and the security services)
Ethiopia	Police (primary), Security, Immigration and Refugee Authority analyse security threat – share info	No specific unit – responsibility of the police, special police and military	Military, Security and Federal Police	Ministry of Justice	Federal Police investigate & the National Bank of Ethiopia monitor banking activities
Ghana	Counter-Terrorism Intelligence Centre established in October 2001 under the National Security Council			Appointed by the President – Extradition Act, 1960 Article 30	
Kenya	Anti-Terrorism Unit under the Police, NSIS	No Unit	Immigration, Police, Military and Customs	Foreign Affairs	Task Force on Money Laundering and Combating the Financing of Terrorism: Ministries of Finance, Trade and Foreign Affairs, Central Bank, Police, Criminal Investigation Department and National Security Intelligence Agency
Nigeria	Police; State Security Service; Nigerian Intelligence Agency; Immigration Department; Central Bank - Joint Intelligence Board (JIB) & Intelligence Community Committee (ICC)		State Security Service (SSS) and Immigration		Central Bank / National Economic Intelligence Committee
Senegal	Ministry of Interior has specialized units within the General Directorate of National Security (DGSN) that include the Department of State Security (DSE), the Criminal Investigation Police Department (DPJ) and the General Investigation Brigade (BIP)	Yes – Counter-terrorism unit	Ministers of Interior, Justice and Foreign Affairs		Central Bank
South Africa	Counter-Terrorism Unit under the Police	Task Force	Ministry of Interior (Immigration) South African Police Service and Defence	Department of Justice	Financial Intelligence Centre and the Money Laundering Advisory Council that include: - National Treasury; - South African Police Service - Department of Justice; - Public Prosecutions; - National Intelligence Agency; - South African Secret Service; - Reserve Bank; - South African Revenue Service
Uganda	Joint Anti-Terrorism Task Force (established in 1999):	Yes	Immigration under the Ministry of	Foreign Affairs, Internal Affairs &	Anti Money Laundering Committee

	Military Intelligence, Police (CID & SB) External and Internal Security Organization		Internal Affairs in cooperation with the Police and Customs	Ministry of Justice	Criminal Investigation Department & Fraud Section under the Police
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Countries that directly experienced the impact of terrorism, whether domestic or international, proved to be better equipped to deal with terrorism through specialized intelligence gathering and coordination structures. All countries, especially after 9/11 implemented additional intelligence gathering and crime prevention measures to ensure that suspected terrorists do not have easy access. The intention was also to enhance the exchange of information between state-security structures.

Table 13

	EXTRADITION & MUTUAL LEGAL ASSISTANCE				
	TREATY BASIS FOR EXTRADITION	TREATY BASIS FOR MUTUAL LEGAL ASSISTANCE	EXTRADITION OF OWN NATIONALS	GROUND FOR REFUSAL EXTRADITION : POLITICAL OFFENCES	GROUND FOR REFUSAL EXTRADITION : DEATH PENALTY
Algeria	Yes	Yes – treaty based	No – Prosecution in Algeria Crimes committed by an Algerian abroad will be prosecuted in Algeria ⁴⁸	Not Mandatory	Not Mandatory
Ethiopia	Yes, Penal Code. Wide and not dependent on treaties	Yes – will be in terms of the EAPPCO Agreement	No	Mandatory	No
Ghana	Yes, Extradition Act, Article 1(1)	Commonwealth Mutual Assistance in Criminal Matters (Harare Scheme)	Yes – Under the Commonwealth London Scheme for Extradition within the Commonwealth ⁴⁹	Mandatory	
Kenya		Yes but formally limited to the Commonwealth Mutual Assistance in Criminal Matters (Harare Scheme)	Yes - Also under the Commonwealth London Scheme for Extradition within the Commonwealth		
Nigeria	Yes	Yes - various bilateral agreements /memorandum of understanding. Also uses the ECOWAS Convention (29/7/92). As well as Commonwealth Mutual Assistance in Criminal Matters (Harare Scheme)	Yes - Under the Commonwealth London Scheme for Extradition within the Commonwealth	Discretionary	
Senegal	No (ECOWAS Convention)	Yes in terms of the ECOWAS Convention			Yes
South Africa	No - Extradition Act (1996)	Yes – International Cooperation in Criminal Matters Act (1996) Also under	Yes – Also under the Commonwealth London Scheme for Extradition within the Commonwealth	Discretionary	Yes - Mandatory

		Commonwealth Mutual Assistance in Criminal Matters (Harare Scheme)			
Uganda	Yes - Extradition Act (1962)	No Legislation However under Commonwealth Mutual Assistance in Criminal Matters (Harare Scheme) and EAPCCO agreements	Yes - Also under the Commonwealth London Scheme for Extradition within the Commonwealth	Mandatory	No

Extradition

Parties with treaty-based extradition regimes may regard the Convention as a basis for extradition even where there is no treaty.

The offences set out in the Vienna Convention (mainly drug production and trafficking) should be considered as extraditable offences by state parties that do not have treaty-based extradition regimes.

Mutual Legal Assistance

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to drug production and/or trafficking.
2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures;
- (d)** Examining objects and sites;
- (e)** Providing information and evidentiary items;
- (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

Parties should designate an authority, or when necessary authorities, to be responsible for executing requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the UN Secretary-General. Transmission of requests for mutual legal assistance and any communication relating to it shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

It is important to point out that the states under review do not form a single 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.

Various functional levels with a bearing on law enforcement in the sphere of money laundering control have been reviewed in this report. A minimum requirement at the local level is the co-ordination of efforts by law enforcement and the financial sector within a given state. The most effective co-ordination observed is by structured financial intelligence units or centres. Furthermore, the internal law should facilitate international co-operation, in providing mutual legal assistance, asset repatriation, and where necessary, extradition. Even more important is the existence of an identifiable streamlined process by which to manage requests for these forms of assistance. This report considers these matters in the following table. However, it only considers the legislative infrastructure at face value, for instance, it asks the question whether a structure to co-ordinate law enforcement and the financial sector exists on the statute books, without necessarily establishing whether the structure is in place or functions as promised by the law. One should therefore not read too much into an affirmative answer. It is notable that the non-existence of a structure to co-ordinate law enforcement and the financial sector is not necessarily related to issues of mutual legal assistance and extradition.

Extradition and mutual legal assistance tend to be regulated either by treaties or through the 'soft-law' of trans-national economic blocs and communities. Sub-regional groups also play an important role in creating protocols and Conventions applicable among member states.

The findings summarised in the table below are based partly on a survey of domestic legislative provisions, and partly on trans-national soft-law instruments. In this regard, it was observed that half of the reviewed states, namely Ghana, Kenya, Nigeria and South Africa (as members of the Commonwealth) subscribe to Commonwealth soft-law. In respect of extradition, the London Scheme binds Commonwealth states for Extradition within the Commonwealth. After the latest amendments (agreed at Kingston 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 London Scheme permits the requested state to deny an extradition request on the basis that the offence is of a political character. In addition, extradition may be refused if the requested state decides that:

'...upon extradition, the person is likely to suffer the death penalty for the extradition offence and that offence is not punishable by death in the requested country, and...that it would, having regard to all the circumstance of

the case, and to the likelihood that the person would be immune from punishment if not extradited, be unjust or oppressive or too severe a punishment for extradition to proceed.'

The requesting state may make give an undertaking in advance of the trial not to carry out the death sentence if imposed, which would remove the validity of this ground for refusal.

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 additional 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 appears as a witness
- (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 amassed some experience in 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)
- 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 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, Sudan and Tanzania.

Brief country positions

This part looks at the position in countries that do not belong to either the Commonwealth or ECOWAS.

Algeria

Algeria's extradition law is treaty based. Treaties with the following states have been signed and ratified:

Morocco
Tunisia
Mauritania
Libya
Egypt
Syria
France
Belgium
Bulgaria
Poland
Hungary
Romania
Mali
Niger
Turkey
United Arab Emirates
Jordan
Cuba
South Africa

In addition, Algeria has entered into bilateral and multilateral Mutual Legal Assistance agreements with the listed states:

Albania
Azerbaijan
Bosnia-Herzegovina
Denmark
Georgia
Germany
Iran
Ireland
Malaysia
Netherlands

Ethiopia

Ethiopia has bilateral extradition agreements with Djibouti and Sudan. In the event of an extradition request from any other country, Ethiopia is inclined to consider it favourably unless it has a strong ground for claiming jurisdiction over the fugitive or

Ethiopia has exclusive jurisdiction. This is generally the case unless the offence directly and principally concerns Ethiopia.⁵⁰

Table 14

COUNTRY	Structure to co-ordinate law enforcement & fin sector?	Is there scope for the outward repatriation of proceeds of crime?
Algeria	-	No
Ethiopia	No	No
Ghana	No	No
Kenya	No	No
Nigeria	Yes, Econ & Fin Crimes Comm.	Yes, as part of MLA.
Senegal	No	-
South Africa	Yes, Fin Intelligence Centre	
Uganda	No	Yes, but very limited.

Political nature of offence as refusal ground (terrorism) –

Death penalty as refusal ground (terrorism) – Countries that disallow the death penalty as a refusal ground for extradition are normally countries that practice the death penalty and visa versa.

On the question of jurisdiction, focus is predominately on whether countries allow the extradition of their own nationals. Algeria and Ethiopia have exclusive jurisdiction over their nationals with respect to the provision that nationals will not be extradited to other countries. Even in the case of Algeria, if an Algerian committed a crime abroad he/she will be prosecuted in Algeria. How practical this provision might be in cases of terrorism is another question.

Senegal: Dual Criminality - According to Article 665 of the Code of the Criminal Procedure: "Any person who, in the territory of the Republic, became an accessory to the commission of an offence abroad, may be prosecuted and brought to trail if the act is an offence under both Senegalese law and the law of the foreign country."

Nigeria: Nigerian Courts have no jurisdiction or competence to deal with criminal acts committed outside Nigeria either by its citizen or person habitually resident in Nigeria; ditto a foreigner who is currently in Nigeria where the crime is committed outside Nigeria.

In terms of principles, cooperation in the fight against terrorism should respond to the need for acts of terror to be handled in such a way as to avoid their justification, manipulation and exploitation for any purpose whatsoever; this makes automatic referral to the judicially competent security services an urgent necessity. In addition to genuine cooperation between judicial institutions, anti-terrorist cooperation requires regular and systematic exchanges of information in real time.

There is a need to extend, especially to countries victims of terrorism, the principle of 'spontaneous communication of information' in effect among the States members of the European Union. Data gathered during investigations in a country should thus be transmitted automatically to the foreign authority concerned whenever they are useful in its own investigations.

Despite the necessary instruments to facilitate extradition, **Algeria** proved that international commitment is required in the prosecution of suspected terrorists:

Algeria has sent a number of countries 96 international arrests warrant and five requests for extradition, which have so far gone unanswered. Apart from political will, one of the main problems lies in the fact that there is no deadline by which the requested State must rule on the extradition request. This issue represents a major obstacle to the development of judicial cooperation between States. History proved that extradition is a very delicate matter, almost a reflection of the nature of relationships between states. For example, after the assassination attempt on Egyptian President Hosni Mubarak in Addis Ababa on 26 June 1995 Sudan refused to extradite to Ethiopia the three Egyptian suspects believed to have been involved in the assassination attempt. Although much changed in world politics since this incident, one might ask whether bilateral and multilateral agreements are sufficient enough to deal with extradition and other forms of cross border cooperation in preventing and combating terrorism.

CHAPTER 6: CO-OPERATION BETWEEN GOVERNMENT AND CITIZENS

The preamble of the Algiers Convention particularly states that terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilization of States. Recognizing this threat, it is equally imperative to recognize that excessive counter-measures will not only create or justify acts of terrorism it will therefore counter national, regional and international counter-terrorism initiatives and strategies.

Under Article 4 (2)(i) State Parties are called upon to *establish effective co-operation between relevant domestic security officials and services and the citizens of the States Parties in a bid to enhance public awareness of the scourge of terrorist acts and the need to combat such acts, by providing guarantees and incentives that will encourage the population to give information on terrorist acts or other acts which may help to uncover such acts and arrest their perpetrators.*

Table 15

HUMAN RIGHTS IN COUNTER-TERRORISM STRATEGIES

	COUNTER INITIATIVES: RECRUITMENT AND HUMAN RIGHTS				
	LEGISLATION AGAINST ESTABLISHMENT OF TERRORIST ORGANIZATIONS	LEGISLATION AGAINST RECRUITMENT INTO TERRORIST ORGANIZATIONS	PERIOD OF DETENTION BEFORE CHARGED	FREEDOM OF EXPRESSION: DEMONSTRATIONS	FREEDOM OF SPEECH
Algeria	Yes	Yes	State security offences: maximum of 12 days	Yes – Protected in the Constitution	Yes – Protected in the Constitution
Ethiopia	No specific legislation – Penal Code apply	Yes – Article 37 of the Penal Code			
Ghana					
Kenya					
Nigeria	Public Order Act (section 6) ⁵¹	Yes – Public Order Act (Section 6)			
Senegal		No – Penal Code covers offence of conspiracy ⁵²	Normally 48 hours but twice as long for offences against state security		
South Africa	Reference to an “entity” in the Protection of Constitutional Democracy against Terrorism and Related Activities Act	Yes - Protection of Constitutional Democracy Against Terrorism and Related Activities Act, Art 3 (2) (c-d) ⁵³	48 hours in serious offences	Protected as a basic Human Right	Protected as a basic Human Right

	followed by Article 25 of the same Act.				
Uganda	Yes – Anti Terrorism Act, Articles 9, 10 and 11	Yes – Anti Terrorism Act, Article 11	48 hours	Yes	Yes

Countries reviewed, especially those with an active community involvement are relative reluctant to infringe on basic human rights. Despite the fact that terrorism threatens human rights the opposite is as relevant: Counter-terrorism strategies could endanger human rights especially the rights of free association and speech. Countries with diverse communities often find it difficult to reassure its population that its policies intend to protect their basic human rights, in particular physical integrity, life, freedom and security. History will prove that the success of an effective counter-terrorism strategy will depend on its acceptability and respect for human rights.

Freedom of Expression and Speech

Expression is a wider concept than ‘speech’ and includes activities such as displaying posters, painting and the publication of photographs. It even includes forms of performing arts such as dancing. Also included within its scope are symbolic acts such as flag burning, the wearing of certain items of clothing and physical gestures.

Also includes:

- a. Freedom of the press and other media.
- b. Freedom to receive and import information and ideas.
- c. Freedom of artistic creativity.
- d. Academic freedom and freedom of scientific research.

Excludes:

- a. Propaganda for war.
- b. Incitement of imminent violence.
- c. Hate speech.
- d. Prior restraints in publication.
- e. Common law and statutory offences.

In a post 9/11 world countries are confronted by a different reality: To what extent could freedom of expression be allowed? For example, Algeria and Uganda criminalize the publishing and disseminating of news or other material that could promote terrorism⁵⁴. In Algeria, although a lighter punishment is prescribed reproduction or dissemination of documents advocating terrorism is punishable by 5 to 10 years’ rigorous imprisonment and a fine. The advocating and financing of terrorist crimes are punishable by 5 to 10 years’ rigorous imprisonment and a fine. In addition the use of a place of worship to *preach* without authorization from the competent public authorities is punishable by 1 to 3 years’ non-rigorous imprisonment and a fine. Any person who, whether through preaching or any other action, engages in activities that are contrary to the noble mission of places of worship or are likely to undermine social cohesion or to advocate and incite terrorism is liable to 3 to 5 years’ non-rigorous imprisonment and a fine.

Although understandable, the practical application, especially in providing proof that particular mediums of expression, other than direct incitement stimulated or promoted terrorism might be difficult to proof.

Right of free association

Legislation against the establishment and recruitment into a terrorist organization –

Algeria

The law on associations specifies the conditions for the creation, organization and operation of associations. Respect for the law, public order and the smooth functioning of institutions are the primary conditions for engaging in the declared activities of associations. Any association that sets up a specific programme may engage in fund-raising. Such fund-raising is conducted after written authorization has been given by the competent authorities with authority to control the use and purpose of funds. The funds are deposited in a bank account of the association the transactions of which are recorded by the banks themselves. The creation of groups, organizations or associations for subversive ends or for the perpetration of terrorist attacks is combated in Algeria by legal means and in the framework of the law. However, national counter-terrorist efforts cannot prevent enrolment in such groups abroad. Certain host countries have permissive rules and lenient attitudes towards these groups, readily grant them a safe haven, and acquiesce in their using the right to freedom of expression in order to advocate terrorist crimes. This has contributed to the upsurge of terrorist acts in Algeria.

Practical implication of counter-terrorism legislation relating to Human Rights:

Period of detention before being charged – Most countries place terrorism or crimes against the state in different category than other forms of violent crimes. This is especially the case in a longer period of detention before being charged in suspected terrorist cases. The reason: The serious nature of terrorism often allow for above the average investigation techniques, including the role of intelligence. It is especially the need to verify intelligence or information during the process of interrogation that often require a longer period of detention.

The relationship between counter-terrorism strategies and human rights is often regarded as a sensitive matter, especially in the aftermath of an incident of terrorism. Although countries under review stated that they protect human rights, in particular freedom of speech, expression and association, history proved that especially the media could easily be accused of 'supporting' terrorism. Emphasising the importance in differentiating between informing – also a fundamental right to have access to information – and directly support or incite terrorism. Education and independent and objective information are often overlooked as a strategy to counter terrorism.

CHAPTER 7: **CONCLUSION**

This study, which was the first of its kind, was predominately met with excitement, especially on the part of government officials. Despite initial fear in sharing information, particularly on terrorism or counter-terrorism strategies, trust was eventually built, and in the process the idea that trust between civil society and governments as well as between inter- and intra-government agencies inculcated. The process also confirmed the indispensable role of civil society in peer review, especially since the threat of terrorism and subsequent national, regional and international counter-terrorism strategies will remain a high priority for some time to come. Implementation of national measures to prevent the recruitment, movement and support of terrorist groups is part of a medium to long-term strategy that requires constant re-assessment. As a matter of fact the ratification and even implementation of regional and international instruments in national legislation should be regarded as the beginning and not the end of an effective counter-terrorism strategy. Countries, including the eight countries evaluated should rather focus their attention on a proactive rather than a re-active strategy. In achieving this aim the following measures were identified:

- i) Police and intelligence structures to detect, monitor and prevent those directly and indirectly involved in supporting terrorism;
- ii) The responsibility of customs, immigration and border control to prevent the movement of suspected terrorists in setting up safe houses;
- iii) Implementation of controls to prevent the access terrorists might have to weaponry.

Enhancement of regional and international co-operation through:

- i) Judicial co-operation including extradition, mutual legal assistance and early warning
- ii) Incorporation of the following inter-related manifestations of transnational security threat: Organized crime, money laundering, arms trafficking, narcotics, etc. Transnational organized crime, money laundering, arms trafficking, drug trafficking and human trafficking are all areas in which the international community have recently implemented international regulations.

Although above-mentioned initiatives could provide a foundation of a transnational strategy to counter terrorism, without complete global participation and full implementation this strategy would not be effective. It is not good enough to sign the key international instruments; it is imperative to implement it as well.

The threat of terrorism must be perceived in the light of its global nature and its full transnational implications, particularly in the countries where it has established its support networks, strong points and staging areas. The response must be adapted to the scope and transnational nature of this phenomenon, which has shown the magnitude of its capacity to strike anywhere. The results of this international battle can only be diminished in the medium and long term if we persist in thinking of it as a local or national phenomenon peculiar to the country, which is targeted directly.

Within this framework, it is imperative that the protection of human rights, which is a sacred task for the community of nations, not be invoked in an abusive manner as justification for terrorist acts whose perpetrators are liable to criminal penalties for being responsible for denying those same rights. It was especially Algeria that already experienced the full impact of terrorism that warned against any policy that calls for indiscriminate implementation. Good faith, the protection of human rights and norms and respect for good governance will in the long run guarantee the security of persons and their property.

As regards organised crime, it appears relatively easier to establish consensus of action in the key areas of drug trafficking and corruption. As observed with reference to the Vienna Convention, the eight countries have found common ground with its provisions, and already taken steps to harmonise responses to drug trafficking. At sub-regional level, much experience in joint policing has already been gained, and the process is expected to continue. The response to corruption at a continental level is less well established, but the simultaneous development of protocols at sub-regional levels offers good prospects for a simple transition. Mechanisms to control the laundering of proceeds are in their infancy in most of the states reviewed. The international Conventions on drugs, corruption, and terrorism all underline the importance of restructuring the manner of co-operation within law enforcement systems, between them and financial sectors, as well as between different countries. Banking secrecy is but one area of concern, but by no means is it the only one. It appears that much work still needs to be done in fostering a culture of prudential regulation and management of the variety of avenues through which illicit assets may be introduced into countries, or removed from them.

¹ The main forms of organised crime acknowledged to threaten African states are: corruption (mainly the misappropriation of public resources), arms trafficking, trafficking in precious stones, trafficking in endangered species, (domestic) terrorism, motor vehicle theft, armed robbery and drug trafficking.

² Guy Steffens *Money Laundering: A New International Law Enforcement Model* (2000) Cambridge University Press pp 8-9

³ See Interpol Money Laundering Threat Assessment Report for 2003.

⁴ Associated Press, "Algerian study shows 10,000 bombs exploded in the last seven years" 20 February 2002.

⁵ Sahraoui was the first Algerian extremist to recruit 15 Libyan and Tunisian Islamists who were returning (to north Africa) from al-Qa'eda training camps in Kandahar (Afghanistan).

⁶ Agence France Press, "Al-Qaeda-linked group in Algeria replaces founder" 12 October 2003.

⁷ Associated Press, "Salafist Group for Call and Combat behind European tourists kidnappings" 15 May 2003.

⁸ E Theodore, "Truck Bomb Plot Against US Embassy in Mali Averted" Dow Jones International News, 5 June 2003.

⁹ BBC Monitoring Middle East, "Algeria: Suspected 'terrorist' La Para settling in northern Mali" 30 August 2003.

¹⁰ S Daniel, "Ashamed about hostages, Malians still depend heavily on Algeria" 19 August 2003.

¹¹ BBC Monitoring Middle East, "Maximum security alert in effect on Algerian-Malian border area" 15 July 2003.

¹² APS Diplomat Strategic Balance in the Middle East, "Ethiopia – Internal Stability is the key" Vol. 31 No. 5, 6 May 1996.

¹³ Agence France Press, "Ethiopian rebel group claims train attack" 20 June 2000.

¹⁴ Agence France-Press, "Somali group accuses Eritrea of training Ethiopian rebels" 28 April 1999.

¹⁵ BBC Monitoring Africa, "Ethiopia: Afar Rebels claim foiling government offensive in east" 19 November 2003.

¹⁶ BBC Monitoring Service, "Ethiopian forces, rebels reportedly in 'bitter' fighting in east – Somali report" 21 August 1999.

¹⁷ BBC Monitoring Service, "Oromo rebel group vow to topple government" 3 October 2000.

¹⁸ O Awoniyi, "Nigeria's Obasanjo at loss on unrest, cleric blames government" Agence France-Press, 27 January 2002.

¹⁹ O Awoniyi, "Violence feared as Nigerian opposition politician assassinated" Agence France-Press, 5 March 2003.

²⁰ BBC Monitoring Africa "Official voices fear of incursions from DR Congo by ADF rebels" 26 November 2003.

²¹ H Vesperini, "The Lord's Resistance Army – Little-known but brutal rebel group" Agence France Press, 29 November 2003.

²² Dow Jones International News, "Combatants Stop UN Relief in 20 Countries" 11 December 2003.

²³ Anthony Aust *Modern Treaty Law and Practice* (2000) Cambridge University Press, p.26, and generally Chapter 3.

²⁴ Article 2(1) of the Vienna Convention on the Law of Treaties (1969). The Convention entered into force in January 1980.

²⁵ J Klabbers *The Concept of Treaty in International Law* (1996)

26 [AHG/Res.213 (XXVIII)]

27 [AHG/Decl.2 (XXX)].

28 [AHG/Dec.132 (XXXV)]

29 [AHG/Decl.4 (XXXVI)]

30 Paragraph 11 (e)

31 [CM/Dec.540 (LXXII) Rev.1]

³² See United Nations Office on Drugs and Crime 2003 Report, accessible at http://www.unodc.org/kenya/en/country_profile_uagan.html

³³ Including Somalia, Ethiopia and Kenya.

³⁴ Jenni Irish & Kevin Qhobosheane in Gastrow (ed) *Penetrating State and Business: Organised Crime in Southern Africa* Volume 2 (2003) ISS Monograph series number 89, Chapter 3

³⁵ In an attempt to harmonise legislation on money laundering legislation applicable to all ECOWAS member-states is in the process of being drafted. The aim of this legislation will be to:

- Establish financial intelligence units;
- Initiate mechanisms for reporting suspicious transactions; and
- Formulate rules on the seizure and confiscation of assets emanating from money laundering.

In addition ECOWAS member-states established the Intergovernmental Action Group against Money Laundering (GIABA) with the aim to encourage cooperation on legislative measures and coordinate the activities of member-states. Accordingly, the Central Bank of West African States (BCEAO) decided to set up, within the framework of the Western Africa Economic and Monetary Union (WAEMU³⁵) an appropriate legislative framework for combating the laundering of the proceeds from criminal activities, including corruption, fraud and the misappropriation of public funds. These regional and international initiatives in instruments are essential to counter the recent growth and threat of financial crime, which threatens the integrity of financial and monetary systems.

³⁶ An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps -

- (a) to establish and verify the identity of the client;
- (b) if the client is acting on behalf of another person, to establish and verify-
 - (i) the identity of that other person; and
 - (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of the other person; and
- (c) if another person is acting on behalf of the client, to establish and verify-
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client.

³⁷ "An accountable institution and a reporting institution must, within the prescribed period, report to the Centre the prescribe particulars concerning a transaction concluded with a client if in terms of the trans action an amount of cash in excess of the prescribed amount..."

³⁸ Stessens, op cit, at 92-3

³⁹ See the monograph by Dr Peter F Mueller *A Guide to Swiss banking Secrecy: Foundations, Legal Assistance, Outlook* (Synopsis) (1999) Transparency International/Transparency Switzerland

⁴⁰ Stessens, op cit, at p 92

⁴¹ See the Public Officer Ethics Act (2003) for Kenya, and the Leadership Code Act (2002) in Uganda.

⁴² On 25 April 2001, one Mohamed Suleman Vaid and his wife Moshena were caught on the South African/Swaziland border with banknotes to the value of ZAR1.2 million stuffed in their clothes. They were apparently on their way to Mozambique. An investigation by the *Wall Street Journal* found that Vaid had travelled from Durban to Maputo 150 times in 18 months. Sometimes he would phone a foreign exchange bureau in Maputo first. There was speculation of al Qaeda links, but this was not established.

⁴³ See Boudewijn VERHELST 'The Financial Intelligence Units' (unpublished paper read at the SADC/ISS Conference on Money Laundering with specific reference to drug trafficking, Benoni (South Africa) 21-23 October 2003.

⁴⁴ See Part II of the Economic and Financial Crimes Act (2002)

⁴⁵ The National Drug Law Enforcement Agency (NDLEA) Act Cap 253 section 3 (c)

⁴⁶ UN Secretary General's report to the Security Council, April 2000.

⁴⁷ "Any person who provides or offers to provide any weapon to any other person for use by or for the benefit of, a person or entity... connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities."

⁴⁸ Articles 582 to 589 of the Code of Criminal Procedure confer jurisdiction on Algerian courts to try any Algerian for a crime or offence committed abroad under specified conditions and on the basis of an official indictment procedure.

⁴⁹ Commonwealth London Scheme for Extradition applicable within the Commonwealth:

Antigua & Barbuda	Australia	The Bahamas	Bangladesh	Barbados
Belize	Botswana	Brunei Cameroon	Canada	Cyprus
Dominica	Fiji	The Gambia	Ghana	Grenada
Guyana	India	Jamaica	Kenya	Kiribati
Lesotho	Malawi	Malaysia	Maldives Malta	Mauritius
Mozambique	Namibia Nauru	New Zealand	Nigeria	Pakistan
Papua New Guinea	St Kitts and Nevis	St Lucia	St Vincent & the Grenadines	
Samoa	Seychelles	Sierra Leone	Singapore	Solomon Islands
South Africa	Sri Lanka	Swaziland	Tanzania	Tonga
Trinidad & Tobago	Tuvalu	Uganda	United Kingdom	
Vanuatu	Zambia	Zimbabwe		

⁵⁰ Article 21 of the Penal Code.

⁵¹ The Act prohibits any person or group of persons to assemble with a common mission that is prejudicial to the law of the land. Legislative measures prevent entities and individuals from recruiting, collecting funds or soliciting other forms of support for unlawful activities.

⁵² Art. 239 of the Penal Code: Any person affiliated to an association formed for the purpose of preparing or committing one or more offences against persons or property, or becoming a party to an agreement concluded for that purposes, shall be subjected to criminal penalties”.

⁵³ “Any person who- (c) provides, receives or participates in training or instruction, or recruits a person to receive training or instruction; (d) recruits any person or entity ... connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities.”

⁵⁴ Anti-Terrorism Act, 2002 specific reference to Article 9(1) (b): “Any person who establishes, runs or supports any institution for publishing and disseminating news or materials that promote terrorism commits an offence and shall be liable on conviction, to suffer death”